

MINUTES OF HARRISONBURG PLANNING COMMISSION
FEBRUARY 11, 2015

The Harrisonburg Planning Commission held its regular meeting on Wednesday, February 11, 2015 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Gil Colman, MuAwia Da'Mes, Judith Dilts, Deb Fitzgerald, and Henry Way.

Members absent: Jefferson Heatwole.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; and Alison Banks, Senior Planner/Secretary.

Chair Fitzgerald called the meeting to order and determined there was a quorum with six members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the January 14, 2015 Planning Commission meeting.

Mr. Da'Mes moved to approve the minutes as presented.

Dr. Dilts seconded the motion.

All members voted in favor of approving the January 2015 minutes as presented (6-0).

New Business

None.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said proactive enforcement visited the Bluestone Hills-Valley Mall area and the Preston Heights area. There were a total of 27 violations in the Bluestone Hills-Valley Mall area; 25 of those violations were signs. Within the Preston Heights area there were seven violations consisting of discarded materials and inoperable vehicles. Next month inspectors hope to pick up two more areas – Northfield Estates and Wyndham Woods.

The completion of the two sectors this month brings proactive zoning to the close of the fourth cycle. Each cycle takes three years; therefore, we have completed twelve years of proactive zoning. Staff felt this would be a good opportunity to share with you some of the ebbs, flows and quirks of proactive zoning throughout the twelve years. As you can see by the chart provided on the screen, there were 338 total violations, an average of 9.39 per sector, for the first cycle which began in the fall of 2002. The second and third cycles show slight increases in total violations, before dropping to 323 violations in the fourth cycle.

The next chart lists the top five repeat offenders by sections. The Northeast Neighborhood has consistently been elevated in violations; however, as you can see they are making improvement. The same can be said for the Jefferson Street area. Then there are those sectors that appear to be going slightly up from the first cycle until now – I will discuss some reasons for that in a moment.

The last chart is a graph of each cycle through the years. The first cycle is the blue line and the fourth cycle is the purple line. Some things you need to take into consideration with violations in proactive zoning are that when it began we were looking only at discarded materials and inoperable vehicles. Over the years we have started to look at other things such as indoor furniture on porches, tall grass and weeds, signs, and so forth, which is why you notice some increase in particular sections. Also, there are new developments that have come on board, for instance along Reservoir Street in the Avalon Woods area has a lot of new development.

Mr. Way asked if staff had considered mapping this into the GIS to look at it differently and see if there were any spatial patterns.

Mr. Fletcher said we do enter it into GIS, but in a different capacity. Every violation, not just proactive, is noted in the GIS.

Mr. Way said I was thinking it might be a good project for my students to map the quadrants to see the patterns throughout the City.

Mr. Fletcher said I do not know if you would get much out of it; there are violations on so many properties within the City.

Other Matters

Chair Fitzgerald said the proposed draft for Wireless Telecommunications Facilities is on the table for our discussion. She then asked staff to review.

Mr. Fletcher said this should be considered an informal worksession regarding wireless telecommunications facilities. Feel free to ask any questions throughout the brief presentation.

Before you is a 17-page document, which includes all of the Zoning Ordinance amendments that would be needed to implement the new regulations associated with “wireless telecommunications facilities.” (As you will soon read, “wireless telecommunications facility” is a new term that is defined.) The document is organized chronologically by code section, where the first eight pages include the changes necessary in the existing code, beginning with those needed in the Definitions section and then proceeding through the code sections of most of the zoning districts and specifying the different types of wireless telecommunications facilities that will be permitted and whether they would be allowed by-right or by special use permit. There is an underlying tone of what we are attempting to achieve here, which is trying to accommodate all of the new technology while at the same time not taking away by right permissions that are in place today. No one is losing any permitted use or right within this proposal; it is providing more opportunities.

Beginning on page 9 are the nuts and bolts of the wireless telecommunications facilities regulations, which are proposed within a new article titled Article CC. Wireless Telecommunications Facilities. The new article includes the specifics of how wireless telecommunications facilities would be permitted within all residential districts and the MX-U district, the B-1 and B-2 districts, and the M-1 district. There are submittal and application requirements, rules for submitting annual reports for each facility, maintenance and enforcement regulations, stipulations regarding the removal of defective and abandoned facilities, and finally specifics regarding how property owners can take advantage of Section 6409 Wireless Facilities Deployment of the Middle Class Tax Relief and Job Creation Act of 2012.

Mr. Way said the tower along Reservoir Street that Planning Commission reviewed as a special use permit, would still be allowed only by special use?

Mr. Fletcher said yes, a new tower in B-2 would still require a SUP. Also, keep in mind that every single macro cell that we have in the City is an eligible facility, which can take advantage of Section 6409; therefore, you will not have to deal with the existing sites much anymore. On all of the existing sites, if someone wants to co-locate on them they can do so by administrative approval. Unless they are doing something like exceeding the permitted height, Planning Commission will likely not have to deal with these existing sites.

That is a simple summary of the ordinance. I thought perhaps we would look at it section by section and pick it apart. Staff envisions that once Planning Commission is satisfied with the proposed amendments, we will have other City departments review the proposed text and have the ordinance reviewed by our contacts within the wireless telecommunications industry. Once we receive feedback from those groups, we can report back to Planning Commission with any suggested changes prior to moving forward with official public hearings and recommendations for adoption.

Mr. Way said I have a small correction. On page 9, next to number 1, should there be a hyphen within the “by right”. This is the only place where a hyphen is present.

Mr. Fletcher said it will be removed.

Mr. Way said on page 12, the correction regarding things being screened; you said you are going to remove letter “v” regarding screening. My only concern is there are some M-1 districts that are quite close to residential districts; so perhaps if we said something more like – “unless they are adjacent to a residential district.”

Mr. Baugh said this is also true in the downtown area where you have some spots zoned M-1 that are adjacent to the B-1 district.

Mr. Fletcher said the only argument that we had in not putting it in was we were thinking that all of the uses within M-1 can put lots of “ugly” things there by right, and not having to screen. A telecommunications facility would be the only thing that had these compounds where you have to screen around such items. So we went back to the original intent to not place a burden on existing by right permissions that already exist. But we can change this.

Mr. Colman said I like the idea of screening. Perhaps it could be adjacent or a certain distance from a residential area.

Mr. Way said with accessory structures it is a certain number of feet that you must have.

Mr. Fletcher said in the commercial and industrial districts the accessory structure set back is the same as the principal building.

Chair Fitzgerald said we went from the 110 percent setback requirement in the recommendation for consideration in the ordinance to the requirement that is in the existing zoning ordinance. What made staff give up on the 110 percent?

Mr. Fletcher said it seemed unacceptable from a matter of: “Will it work anywhere?” Again, properties already have this permission by right; it is zoned M-1, it is the industrial district, should they not be allowed to do this by right. There was no real science behind our position other than it seemed over burdensome.

But do not forget we are talking about two different things. You are talking about the tower and we were discussing the equipment cabinets and screening.

Mr. Colman asked if there are any industrial areas within the City that we would say we would rather have it screened; compared to an industrial district where everything is industrial.

Mr. Fletcher said in a perfect world I believe we would all say we wanted it to be screened. However, there are a lot of M-1 uses that do not require screening today, that we may wish to change. If that is the case, we should be having a different conversation; which is should we be screening these other things that are adjacent to residential or downtown property?

Mr. Colman said perhaps this is a good start.

Mr. Way said I believe if we nudge things in the direction of where we want things to be; not just throwing our hands up and say that is not what we are trying to achieve right now. When we come to review future ordinances and we see this language we may be more apt to use it.

Mr. Colman asked is it a prohibited burden on these facilities.

Mr. Fletcher said it sounds to me that perhaps we should just leave it as “it shall be screened,” for the M-1 district.

Mrs. Turner said I do not mind leaving it as it. What came to my mind when staff was discussing it was that right now all of those places could have their mechanical equipment sitting out right next to the property line, whether it is B-2 or M-1. But like you said in your point, just because we do it now does not necessarily mean we should keep doing it. We have the opportunity to change it slightly.

Mr. Fletcher said we will leave it as shown.

Chair Fitzgerald said in the original draft from September there was a list of elements that regulation ordinances should include. There are a couple of those elements that I was wondering about that I do not see within this ordinance – provisions that maximize the use of co-location and addressing how public property may be used.

Mr. Fletcher said that is captured in the ordinance already. If you recall several months back we were saying that public uses did not have to meet zoning regulations and now we are saying they do. If it is a parcel of property that is publicly owned we must comply with this ordinance; unless for some reason we do not want to comply, then the SUP to deviate from the requirements of the ordinance may be applied for. That provision is in here.

Dr. Dilts said that would hold true for JMU and EMU.

Mr. Fletcher said no, EMU would have to comply. JMU is outside of the requirement of these regulations.

Chair Fitzgerald said other elements were safety and aesthetics, which are clearly addressed. What about maintenance and parking requirements?

Mr. Fletcher said parking did not come up as a requirement; there is really no necessary means for a parking requirement. The maintenance is within the draft ordinance.

Dr. Dilts said on these sections where you are talking about artificial lighting, page 9, Section 2.4; “unless otherwise required or is part of the intent of the facility, artificial lighting is prohibited.” If you were to allow it, are there regulations that keep the light towards the ground, rather into the night skies?

Mr. Fletcher said there are no regulations that we have that say it cannot be creating light pollution. Everything in the draft says, unless it is required, like by the FAA, the only time it would be allowed is when it is part of a concealed wireless telecommunications facility, perhaps like an art piece. A flag pole would be one. Again these would only be by special use permit within the residential areas; in the commercial areas it is by right, but there is already a lot of lighting there.

Chair Fitzgerald said I thought that the inventory requirement section was good. Another jurisdiction requires applicants, in order to regulate aesthetics, to provide an inventory of its existing facilities in the City as well as within five miles of the City limits. I guess that is because they want to make sure that we are not putting up more of this stuff than needed. Is this something we want to consider within our ordinance?

Mr. Way asked what is Rockingham County doing with telecommunications? Are they requesting information from the City?

Mr. Fletcher said not that I am aware of. When I reviewed their ordinance it was still relatively older, more of the tower and macro sites. Whether or not they are proposing any updates, I do not know.

Mr. Da'Mes asked if Rockingham County's height limit was 125-feet, similar to the City.

Mr. Fletcher said no, they have a higher limit.

Mr. Da'Mes said we could have something right outside the City at a much higher elevation.

Dr. Dilts said I have a question on page 14, Section 2B; which discusses how the proposed facility fits into the applicant's telecommunications network. I really like this section; however, on the previous page, where it can be done by right, we require that they provide all this other information as well, yet we do not include the information on how it would fit. Would it be helpful to have something like that in there as well?

Mr. Fletcher said I believe the thinking here was that we were looking for the additional information, since they are applying for a special use permit and they are doing something so clearly outside of our perfect scenario. If we feel we need to add it to the submittal requirements for all, I do not feel it is a huge burden.

Dr. Dilts said I am always interested in someone having to think about why they are doing it and maybe this little extra nudge is not a bad thing.

Mr. Way said it does somewhat relate to Chair Fitzgerald's suggesting of mapping their current facilities within a perimeter area.

Mr. Fletcher said as somewhat of an argument against it I ask – is there a good argument, other than making people think harder, that we have to have this. Is it a requirement just to have a requirement? What does it do? It is a by right use; why are we making them tell us how it fits into their network?

Mrs. Turner said there is nothing about the information that they could provide us that would cause us to say no, it is not allowed. It is going to be allowed by right.

Mr. Way said from a private industry perspective they would not do it unless it was a needed thing, they are not, on a whim, going to put up a tower.

Mr. Da'Mes said on page 14 it states that a listing of property owners within 1,000 feet of the subject property. What applicant's are proposing to do could potentially affect people beyond 1,000 feet. Does that cover enough area? I do not want to over impose or become more burdensome, but is that enough?

Mr. Fletcher said we actually kicked around the idea of one-half mile, but we backed off of that because when we applied the rule we were jumping outside of neighborhoods. Because these things are so visual, the point here was to capture people who are not immediately adjacent to the subject property. This was to help the residential districts so that when someone applies to put something up, you are notifying more than just the four or five adjacent properties, you are notifying the neighborhood.

Mr. Da'Mes said my question is does 1,000 feet cover a neighborhood.

Mr. Fletcher said 1,000 feet was not entirely arbitrary, we do use that number when applying for sexually oriented business; these businesses must be 1,000 feet from residential uses, churches, schools, etc. We felt it was a distance that seems to be satisfactory and already exists within our zoning ordinance.

Mr. Da'Mes said the other number that caught my attention was on page 15, regarding the abandonment of wireless devices. Why do we allow a facility to be abandoned for 24 consecutive months before we take action? It seems like a long time to me. If something is not in use for six or twelve months, it is not going to be in use.

Chair Fitzgerald asked if 24 months was a typical number.

Mr. Fletcher replied yes, 24 months is the State's non-conforming time period. Therefore, we thought we would go with the standard.

Mr. Way said going back to the 1,000 feet issue, in urban theory a quarter mile radius is typically the ideal size for a residential neighborhood; so if your intent is to try and capture the neighborhood, we may want to require a quarter mile instead.

Mr. Fletcher said we can change the item to request a listing of all property owners within one quarter mile of the subject project.

Mrs. Turner said something we may want to add to these special use permit requests is that people need to be paying more for these requests if we are going to be notifying within a quarter mile radius.

Dr. Dilts asked if the City pays for the notification.

Mr. Fletcher said it is part of the fee for the SUP. The City actually does not break even now with any of our public hearing application fees. The cost of the advertisement and the property owner notifications are generally more than the fee for the application. If you want the City to break even, then we need to increase the fees.

Mr. Way said I do not see that this will be a hugely common sort of thing. I do not think there will be outrageous costs to the City to bear.

Mr. Fletcher said I want to talk about the changes to the very last section of the draft. In Section 10-3-203, regarding Section 6409, number 4, which is the letter describing that they are not doing any of the four things listed – this was revised somewhat on January 8, 2015 when the FCC put out their true test to this rule. What was being interpreted was that the four items listed were being utilized

as a guide; however in January the FCC provide six items that we must be putting to the test. What we are proposing is to add those six things to our list as shown in letters (a) – (f). This will just make the FCC requirements part of our code.

Chair Fitzgerald asked what the next steps are.

Mr. Fletcher said we will make these changes and put this draft out for comments from our other City departments and then to our telecommunication industry contacts for review. We will give the review period a month or month and a half, if not more. Staff will keep you updated. If there are any significant changes, we would of course bring those back to you for review before public hearing. If not, we will just let you know when we are ready to go to public hearing.

Mr. Colman asked if there are any current requests for facilities.

Mr. Fletcher said there are no current requests because it is not permitted; however, there have been many inquiries.

There is one item in here that is not related to telecommunication facilities, in Section 10-3-84, page 6, permitted by right within the B-1, Central Business District; number 13 is new. It is to be added, because right now WHSV is arguably not a permitted use. It is a permitted use within B-2 and we are putting it in B-1 with all antennae, satellite dishes, and associated equipment shall be screened; because it is not currently screened. So this section is somewhat unrelated to wireless telecommunications.

Chair Fitzgerald asked Councilmember Baugh if there was a report from last night's City Council meeting.

Mr. Baugh said there were two items on the agenda from Planning Commission. The special use permit for the Harbor Freight issue and the variance to the Chand Development property; both were approved.

Chair Fitzgerald said before you are the 2014 Annual Reports. Planning Commission needs to review each; however, only the Planning Commission Annual Report will be forwarded to City Council.

Mr. Fletcher added that Commissioner Dilts suggested we use "not applicable" (or N/A) in place of a solid line, for those items within the report which do not move forward to Council.

It was a consensus among the Planning Commissioners to make that change.

Mr. Way moved to forward the 2014 Planning Commission Annual Report forward to City Council with the proposed change.

All voted in favor (6-0).

Adjournment

Planning Commission adjourned at 8:10 p.m.

Chair Deb Fitzgerald

Secretary, Alison Banks