

MINUTES OF HARRISONBURG PLANNING COMMISSION

June 10, 2015

The Harrisonburg Planning Commission held its regular meeting on Wednesday, June 10, 2015 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Gil Colman, Judith Dilts, Deb Fitzgerald, Jefferson Heatwole and Henry Way.

Members absent: MuAwia Da'Mes.

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 May 13, 2015 Planning Commission meeting.

Dr. Dilts moved to approve the minutes as presented.

Mr. Heatwole seconded the motion.

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

New Business

Preliminary Plat – Ramblewood Subdivision

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Low Density Mixed Residential. This designation states that these large undeveloped areas located at the edge of the City are planned for residential development containing a mix of large and small-lot single family detached dwellings and attractive green spaces. Planned “open space” (also known as “cluster”) developments are encouraged. The intent is to allow innovative residential building types and permit creative subdivision design solutions that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and protection of environmental resources. Such innovative residential building types as zero lot-line development and patio homes will be considered as well as other new single family residential forms. The gross density of development in these areas should be in the range of 1 to 6 dwelling units per acre.

The following land uses are located on and adjacent to the property:

Site: Undeveloped property, zoned R-1

North: Single family home lots, zoned R-1

East: Agricultural use and single family home within Rockingham County, zoned A-2

South: Single family home lots, zoned R-1

West: Across Ramblewood Road, single family homes, zoned R-1

The applicant is requesting to preliminarily subdivide a parcel that has approximately 400 feet of street frontage along Ramblewood Road. The subject parcel is part of a large farm that has 12.5 +/- acres within the City and many more acres located within Rockingham County. The plan of

development includes creating seven parcels—six single family home lots and the remaining parent tract—along with dedicating a new public street. The applicant is requesting to deviate from three sections of the Subdivision Ordinance including Sections 10-2-41 (a), 66, and 67, which means after review by Planning Commission, the request must be reviewed and approved by City Council.

The property is zoned R-1, Single Family Residential. Each of the proposed lots meet or exceed the area and dimensional requirements of the district, where minimum requirements are 10,000 square feet of lot area and lot widths and depths must be at least 80 feet and 100 feet, respectively. Each lot would have the required street frontage along the proposed public street, which would extend from Ramblewood Road approximately 590 feet to the City/County boundary. A temporary cul-de-sac would be provided just outside the City limits. The Director of Planning with Rockingham County noted that the temporary cul-de-sac complies with their ordinances. Ultimately, it is the applicants desire to extend this street to what could become an extension of Peach Grove Avenue in the County. To demonstrate the overall development plan, the applicant has submitted an early draft of what they hope to develop, which includes several new roads in the County and another phase within the City. The County portion of their property could not be developed as shown without being rezoned and then preliminarily platted.

The proposed subdivision meets all requirements of the Subdivision Ordinance except for the three sections as noted in the opening paragraph. Section 10-2-41 (a) requires proposed public streets to conform to the design standards and specifications that are outlined in the Design and Construction Standards Manual (DCSM). Specifically, this section states:

“Proposed streets shall conform to the standards and specifications outlined in the Design and Construction Standards Manual except that variances to the standards for streets, alleys, blocks, easements, sidewalks, and all such related features may be approved on a case-by-case basis by the City Council when:

- (1) the proposed alternative would better achieve the walkable, pedestrian and bicycle-oriented environment the City desires;
- (2) the particular conditions of the site and surrounding street network would allow the proposed alternative without causing undue inefficiencies for service vehicles, nor an excessive reduction in pedestrian safety due to pedestrian-vehicle movement conflicts; and
- (3) the proposed alternative would better balance the needs of pedestrians and vehicles, and better achieve the goals of the comprehensive plan.”

Specifically, the proposed design of the street does not conform to several sections of the DCSM. The deviations to the DCSM are described below.

- The proposed public street right-of-way is less than the required 50 feet minimum per DCSM 3.1.4 and Appendix F. The proposed ROW width is 36 feet.
- The proposed public sidewalk is not separated from the curb by a 2-foot grass strip per DCSM 3.1.4 and Appendix F. The proposed sidewalk would be constructed adjacent to the curb with no grass strip.
- Pavement width is not to the standard 26 or 30 foot width minimum per DCSM 3.6.4 and Appendix F. The proposed pavement width is 20 feet plus 2-foot gutters on each side (12-foot travel lanes).

Included within the packet is a letter from the applicant addressing why he believes the proposed development meets the three criteria for variance approval. In particular the applicant desires to preserve the wooded, wet retention pond area, directly south of the proposed street, to be used as a community pocket park. He feels he can achieve this by reducing the proposed street width, yet still designing the street to avoid undue inefficiencies for vehicles and pedestrians. Staff does not have concerns with the requested reduction, but because of the desired narrow pavement width no parking would be allowed along the street. The applicant has noted on the plat that “No Parking” signs would be required on both sides of the proposed street.

Along with deviating from Section 10-2-41 (a), the applicant is also requesting to deviate from Sections 10-2-66 and 67. These two sections, together, require subdividers to build all required street improvements at their expense along the entire street frontage of the parcel they are subdividing. Therefore, the applicant would be required to construct approximately 400 feet of street improvements along Ramblewood Road where the subject property borders the street. As indicated on the overall development plan included with the preliminary plat, the applicant desires to realign the existing Ramblewood Road as part of another phase for this subdivision, extending the road into the County portion of the development, ultimately tying into the extension of Peach Gove Avenue. Given the sharp curve along this portion of the existing Ramblewood Road, staff is supportive of the realignment for a new road. Rather than build improvements, staff would prefer that the applicant put forth the same financial obligations and engineering efforts toward connecting future Ramblewood Road with the existing improved Ramblewood Road to the south. The amount required would be whatever the cost is to improve existing Ramblewood Road along the applicant’s frontage. Exact details of where improvement costs need to be estimated from (i.e. from point A to point B) can be worked out during the comprehensive site plan or final plat review. The applicant will be required to submit an approved form of surety for all costs at the time of final platting for this phase.

There are several things that the applicant needs to be mindful of when proceeding with comprehensive site plan review for this phase of the development and the remaining subdivision:

- During the comprehensive site plan review the applicant will be required to provide detailed calculations to determine compliance with the Stormwater Management Regulations from the standpoints of both quantity and quality.
- As presented the proposed development is entirely within the Harrisonburg Corporate Limits, but with stated intent to expand into Rockingham County with connection to existing City water and sewer utilities. The applicant has been advised that future residential phases within Rockingham County will need to be reviewed through the Public Utilities Application process in which both Planning Commission and City Council will provide input.
- As part of an easement agreement for the existing 30-inch City waterline located within the County portion of the subject property, the City has a commitment to allow water and sewer up to 168,100 GPD. This is pending approval as noted above. The applicant needs to keep in mind that the City needs to make a small revision to the easement and should do this during or before development in the County.

- Lastly, the applicant needs to be aware that the maintenance of the proposed wooded, “pocket park” area, which currently remains on the parent tract, will need to be addressed as the subdivision develops. This would not be considered a City Park.

As required, the applicant has provided several names for the proposed street. Currently, the names are under review within the 911 addressing system. Prior to approval of the final plat an accepted name must be provided for the proposed street.

Staff is supportive of the preliminary plat with the requested variances.

Mr. Colman said the only comment I have is that the applicant shows the curb and gutter within the street cross section as two feet and it should be two feet six inches. Curbing is six inches and the gutter pan is two feet. Therefore, the right-of-way should reflect 37-feet, not 36-feet.

Mr. Fletcher said the cross section is incorrect. The right-of-way will be six inches behind the sidewalk and the drawing should reflect a curb of six inches with gutter of two feet.

Dr. Dilts said in the staff report where it describes land use, zoning, and site characteristics, it talks about the intent is to allow innovative residential building types and permit creative subdivision design solutions that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and protection of environmental resources. What is meant by environmental resources? These are heavily wooded areas, with mature trees and once you start raising it you lose all the carbon sync. What exactly do we mean when we say protection of environmental resources?

Mr. Fletcher said there are different ways of looking at this. What the land use guide is referring to is the opportunity to have these designs that are flexible, such as small lot R-6 and R-7 developments, with compact, dense lots, that are saving open space. That is why we often associate low density, mixed residential with our R-6 development; because they require open space. In this particular case there is somewhat of a give-and-take; the applicant is offering the idea that he wants to conserve as much of the large open areas as possible; whereas, the R-1 by right permissions would allow the applicant to go in there and essentially wipe the slate clean. We appreciate the fact that the applicant wants to do a small street, this helps to reduce the footprint and secondly, the applicant does have an overall concept that he wants to have the open space and park area. Of course we would recommend as general practice to not have to cut into steep slopes as much as possible; however, if he were building the public street to City standards, more of the hillside would need to be removed. Again, that would be a by-right permission to go in and create the fifty-foot wide public street.

Mrs. Turner said not to say that we do not look at the land use guide when someone is subdividing, but we look at it much harder when an applicant is asking to rezone property. In this case the applicant is developing a permitted use. If he was going to rezone the area to something lower density mix, with smaller lots and smaller setbacks, staff would have looked harder at the land use guide. However, he is taking R-1 land and trying to incorporate some of what the Comprehensive Plan is calling for by keeping the open area where the more mature trees and pond are and reducing the street width.

Dr. Dilts said I understand all of that and I appreciate what he is doing, but my question is about the protection of environmental resources and how we define environmental resource.

Mr. Fletcher replied we do not define it. The reality is that more than likely the intent with protection of environmental resources was to leave as much open space as possible.

Dr. Dilts said by open space do you mean with trees?

Mr. Fletcher said it does not matter; just undeveloped space.

Mrs. Turner said it could mean any environmental resource; it would be dependent on the site. If the site has trees – that would be the environmental resource; if the site has meadows – that would be the environmental resource; stream areas with the floodplain would be considered such. It would be site specific.

Mr. Fletcher said if the Commissioners desire, we could define environmental resource in the next review of the Comprehensive Plan.

Dr. Dilts said I think it is a good conversation to have then.

Mr. Fletcher said what we are looking at here this evening is the fact that the land use guide designation actually recommends for higher density and the applicant is not even building to the higher density. He is building to the R-1, by-right density. When you compare low density to low density mixed – low density is standard, traditional single-family home area and says nothing about environmental resources.

Mr. Baugh said I will just add that I have recently been exposed to some jurisdictions that have actually developed urban tree plans. Part of that plan is that certain incentives are built in to protect environmental resources. The City does not have anything like that. It is definitely something we may want to look at in the future.

Dr. Dilts said if my history recalls in other areas I have been associated with there was a two-for-one plan, where you replace one mature with two new ones. That being because the trees that are coming down are mature trees and they do a lot more for the environment than the small trees you are replacing them with. I would appreciate a conversation on this in the future.

Mr. Colman said the new stormwater management plans may play into this when we review the Comprehensive Plan again.

Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she continued and said this is not a public hearing, however we do offer the applicant the opportunity to come forward and speak.

Mr. John Daly said he is a Virginia architect and the developer for this project. I think the presentation said it all and I would be happy to answer any questions you may have.

Mr. Way said the future plan of development extends out into the County as well, what are your thoughts regarding traffic impacts for the City?

Mr. Daly said only in a vague sense; however, I believe that even though there would be more units in this area in the future we are going to see a better traffic pattern than what is currently in place.

Mr. Fletcher said to add to that, the property in the County is not zoned for residential and would have to go through the rezoning process. Therefore, the future County development is very hypothetical at this time.

Chair Fitzgerald asked if there was anything else or perhaps a motion.

Mr. Way said I like what I have heard tonight, especially the narrowing of the street to reduce the footprint, that goes a long way to making it more of a green development.

Mr. Colman said to that point, I think it would be good for us to consider reducing the minimum requirements for a street. This could be used as a good model.

Mr. Way moved to recommend approval of the preliminary plat with the requested variances as presented.

Dr. Dilts seconded the motion.

All voted in favor of the motion (6-0).

Chair Fitzgerald said this will move forward to City Council on July 14th with a favorable recommendation.

Special Use Permit – 961 Acorn Drive (Section 10-3-97 (3) Business Office in M-1)

Chair Fitzgerald read the request and asked staff for review.

Mrs. Banks said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development and related activities.

The following land uses are located on and adjacent to the property:

Site: Vacant 6,700+/- sq. ft. building, zoned M-1

North: Across Acorn Drive, professional office, storage buildings, sports training facility, zoned M-1

East: Landscaping business, zoned M-1

South: Industrial businesses and vacant land, zoned M-1

West: Business office, zoned M-1

The applicant is requesting a special use permit per Section 10-3-97(3) of the Zoning Ordinance to allow business and professional offices in the M-1, General Industrial District. If approved, the applicant would utilize the facility located at 961 Acorn Drive for a business office.

The site is situated in the northwest quadrant of the City, along the southern side of Acorn Drive, about 280 feet west of the intersection with Red Oak Street, in an area with a mix of small scale industrial uses, businesses, and storage facilities. Previously, the subject building had been used for industrial warehousing and associated office space; a conforming use to the Comprehensive Plan and zoning regulations.

If approved, the conversion to a business office use may require a change of use permit from building inspections and have to meet specific building code standards. The applicant should be aware that any change back to an industrial use after its use as a business office would likely require a new change of use permit.

Parking for the office use would be calculated at one parking space for every 300 square feet of gross floor area. Per records available to staff the building is approximately 6,700 square feet which would require 24 parking spaces; all of which must be appropriately delineated. The

applicant has noted that a portion of the parking lot will be fenced in order to secure company vehicles.

Staff has no concerns with this request and believes a business office at this location would be compatible with the existing moderate to minor industrial operations nearby. Furthermore, the same SUP has been approved along this section of Acorn Drive as the property adjacent to the west, at 971 Acorn Drive, and across the street, at 950 Acorn Drive, received approval in 2001 and 1996, respectively.

Staff recommends approving the request.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked the applicant or applicant's representative to speak.

Mr. Bill Neff said he is with Neff Enterprises and represents the owners of the subject property. The building is not changing much, it currently has offices and we have very little work we need to do to it. The building was used as the corporate offices for Computer Cabling Technology. We will only occupy the building for a short period of time. If you have any questions for me I would be happy to answer them for you.

Observing that there was no one else wishing to speak on the request, Chair Fitzgerald asked if there were any further questions, discussion, or a motion.

Mr. Way moved to recommend approval of the requested special use permit.

Mr. Colman seconded.

All voted in favor of the motion (6-0).

Chair Fitzgerald said this will move forward to City Council on July 14, 2015 with a favorable recommendation.

Zoning Ordinance Amendment – Section 10-3-97 (10) (To Allow Nontransient Dwellings with Recreational and Leisure Time Activities)

Special Use Permit – 1430 Red Oak Street (Recreational Use with Nontransient Dwellings)

Chair Fitzgerald read the next two items on the agenda and said we will have one staff presentation for these items and then have a separate vote. She asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development and related activities.

The following land uses are located on and adjacent to the property:

- Site: Recreational and leisure time activity special use with cabins under construction and an accessory building, zoned M-1
- North: Industrial uses and undeveloped property, zoned M-1
- East: Industrial uses, zoned M-1,
- South: Undeveloped property, zoned M-1

West: Pilgrim's Pride industrial operations, zoned M-1

The owners of 1430 Red Oak Street—the legal owner being Jamison Black Marble Wildlife Preserve, LLC, which consists of Richard L. Blackwell III, Edmond H. Blackwell, and Gregory S. Johnson—are requesting to amend the M-1 special use permit (SUP) section of the Zoning Ordinance (ZO) while simultaneously applying for the SUP they are requesting be amended so they can have the ability to permanently reside in dwellings on industrially zoned property. 1430 Red Oak Street is accessible from the temporary Red Oak Street cul-de-sac via a private gravel drive extending south from the cul-de-sac within the undeveloped Red Oak Street right-of-way (ROW). The undeveloped Red Oak Street ROW terminates at the subject property.

The proposed ZO amendment is to Section 10-3-97 (10), which currently allows M-1 property owners to request permission to have “recreational and leisure time activities.” The amendment would create the opportunity to have such uses while also allowing, on a case-by-case basis, nontransient dwellings. Specifically, the amendment would be as follows: (proposed text is underlined):

- (10) Recreational and leisure time activities, which may include nontransient dwelling units.

In 2009, the applicants were granted a recreational and leisure time activities SUP, which allowed them to formally utilize the property for recreational use and to build two cabins on the property to be used for shelter, which were for temporary recreational use only. At that time, the owners stated the use of the property was a retreat for themselves and their family and friends, where they could camp, picnic, swim, fish and more. They also noted that at times, and for no charge, small groups would use the property to recreate, and further that the property was closed to the general public. The SUP was approved with the following conditions:

- limiting the site to the two proposed cabins only,
- the cabins cannot be occupied on a long term basis, and
- staff shall be authorized to review any complaints received regarding the property and based on their finding may require the applicant to return to Planning Commission and City Council for a public hearing to re-examine the use of the property. Such re-evaluation may result in additional conditions being placed on the use or revocation of the special use permit.

The property owners are now interested in being able to permanently reside at 1430 Red Oak Street. As explained to the applicants, in general, there are two ways to allow their desired outcome: 1) rezone the property or 2) amend the ZO in some way to allow the use. After a great deal of discussion with the applicants, and in evaluating the different options available to them, staff suggested the text amendment approach, which the applicants ultimately decided upon as applied for in this request.

As noted above, the applicants are also simultaneously requesting approval of the SUP as proposed for modification. As their submitted application materials demonstrate, although they plan to have up to five single family detached dwellings, at this time, only two are planned to be finished in the near future. Along with the dwellings, they will have recreational and leisure time activities that include “...occasional special events for family and friends, (not for charge) and swimming and water activities.”

Although they plan to utilize water from the quarry as their water source, the applicants should understand that they could be required to connect to the City's water infrastructure. This matter will ultimately be determined once the final decision is made to the exact location of the fire hydrant that they will be required to install. With regard to sewage, they plan to either connect to the City's infrastructure or utilize an onsite septic system regulated by either the Virginia Department of Health or the Department of Environmental Quality. Their submitted letter also notes they plan to have chicken coops, which for this piece of property would be permissible so long as they abide by the regulations as noted in Section 15-2-24 of the City Code.

As is required for all property owners wanting to develop a parcel along an undeveloped public (paper) street, per Section 3.5.1 of the Design and Construction Standards Manual (DCSM), "[i]f an owner, developer, etc. wishes to develop any parcel of land abutting a paper street, and the parcel abuts no other publicly maintained city street, it shall be the sole responsibility of the developer to construct the street to current standards until it accesses a publicly maintained street. If there is not a minimum width of fifty (50) feet of public street right-of-way or other width as determined by the City, then it must be dedicated to the City. Design of such improvement must be adequate to ensure extension of the remainder of the street in the future." However, in this particular situation, another option for them would be to request closing the remaining undeveloped ROW of Red Oak Street while working with the adjoining property owners to the north to dedicate the necessary property around the existing temporary cul-de-sac to permanently enclose the turnaround in public street ROW. At this time, the applicants believe they will tackle the latter option. In the future, if they request closing the remaining public street ROW, as part of that application, the applicants will also have to formally request Planning Commission's consent to permanently terminate Red Oak Street as Section 10-2-41 (e) of the Subdivision Ordinance prohibits permanent dead-end streets unless permitted by Planning Commission. At this time, staff would support this street's permanent termination as there is no current need for it to continue through the subject property to connect to other public streets.

With regard to access for emergency responders, regardless of whether Red Oak Street remains in its current location or it is extended to the subject property, at minimum, a 16 feet wide all-weather surface road (with shoulder) must be provided from the termination of the public street on and through the property for a distance appropriate to serve the dwellings. Early discussions with the applicant included, at minimum, extending the road past the existing 30 feet X 30 feet cabin and past the proposed 2,950 square feet dwelling and then back toward the entrance to the property—essentially, a "loop road" following the existing gravel drive. However, depending upon the final locations of the other three planned dwellings, the 16 feet wide road as described above may need to be extended further south on the property so that emergency responders have appropriate access to the dwellings. Furthermore, to be able to construct the 16 feet wide private street as described, the applicants will be required to request a variance from the private street standards as listed in the DCSM Section 2.7. This variance can be requested either at the time they would submit a comprehensive site plan to improve/complete Red Oak Street to their property or during the street ROW closing request.

Although the applicants are already aware of this, as a reminder, aside from the 30 feet X 30 feet cabin and the accessory building, it appears portions of all of the other proposed dwellings could be partially in the floodplain. The property owners should be prepared to meet all requirements of the floodplain district.

Staff is recommending approval of both applications. First, with regard to the ZO amendment, staff does not believe affording recreational and leisure time use property owners the ability to request nontransient dwellings will negatively impact the integrity of the industrial zoning regulations. The approach is narrowly tailored to a non-industrial-like use, and because the SUP process gives the City the ability to deny the request or stipulate approval with appropriate conditions, there should be no damaging implications. As a reminder, this is not the first time that staff has recommended in favor of an amendment to allow permanent residential uses on industrially zoned property. In 2009, the City approved a staff proposed amendment to the ZO to allow boarding and rooming houses by SUP on M-1 property. (After that amendment was approved, in March 2010, a boarding and rooming house SUP was granted to 715 North Main Street, which is zoned M-1.)

With regard to the applicants' SUP request, the subject property is likely the perfect scenario for such a use. The property is located at the end of a public street, where there is no public plan to extend the street; it is also greatly secluded; and it would have very minimal impact to the surrounding uses. Staff's support, however, does not come without the following conditions:

1. The property shall be limited to five single family detached dwellings.
2. Occupancy of each dwelling shall be limited to a family or two persons.
3. Final certificates of occupancy shall be withheld until the following items are completed or an acceptable form of surety is accepted by the City to cover the cost for such work:
 - a. Red Oak Street shall be extended from its existing location to the subject property per public street standards as specified by the DCSM; or, the undeveloped Red Oak Street ROW shall be closed and purchased and the existing cul-de-sac permanently enclosed in public street ROW.
 - b. At minimum, a 16 feet wide all-weather surface road (with shoulder) shall be constructed from the termination of the completed public street on and through the property. The distance/extent that the road must travel shall be determined by the Fire Department, when the final locations of the residential structures are determined.
 - c. A fire hydrant shall be extended onto the property and located at a location determined by the Fire Department.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Way said my only question is regarding the zoning ordinance amendment. Did we not have a discussion about reduction or encroachment of the M-1, Industrial District at some point last year?

Mrs. Banks said are you referring to the rezoning request along Mt. Clinton Pike.

Mr. Fletcher said yes, the request to eliminate the M-1 property in the area.

Mr. Way said we were trying to protect the amount of M-1 property.

Mr. Fletcher said we are not losing M-1 property in this case.

Mr. Way said I realize that but I was just trying to think about the implications of this request and are we going down the same route where we might be potentially opening up property to be less manufacturing suitable. But you are correct in the fact that it is restricted enough through the

special use permit that it becomes more of a case-by-case basis. Therefore, it is not really an erosion of any manufacturing opportunities.

Mr. Fletcher said if you are looking at a major thoroughway zoned M-1 it makes it much harder to be in favor of a special use such as this. This request tonight is at the dead end of a public street with no plans for future extension.

Mr. Colman asked if the location of the dwellings were proffered or was it demonstrative for this presentation.

Mr. Fletcher replied there is no condition attached that the dwellings have to be in the exact location; of course two of them are basically there already.

Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing for the ordinance amendment and asked the applicant or the applicant's representative to speak.

Mr. Dick Blackwell with Blackwell Engineering said I am representing the owners of the property – the owner's are two of my sons and my son-in-law. This is an unusual piece of property that is zoned M-1; but, using it for an industry purpose seems a crime. This is a very beautiful setting. One reason the owners desire to live there is because of trespassing; people cut the fence and come in to party. That is one reason that the previous owners, Pilgrims Pride, decided to get rid of the property. It is somewhat of an attractive nuisance, but living there does help with the trespassing problems. I will be glad to answer any questions.

Chair Fitzgerald asked if there were any questions for Mr. Blackwell. Hearing none, she asked if there was anyone else wanting to speak in regard to the zoning amendment. Hearing none, she closed the public hearing for the ordinance amendment, opened the public hearing for the special use permit request and asked if the applicant's representative would like to speak.

Mr. Dick Blackwell said if there are any questions regarding the request, I would be glad to answer them.

Chair Fitzgerald asked if there was anyone else wishing to speak in regards to the special use permit request. Hearing none, she closed the public hearing and asked if there were further questions, discussion, or possibly a motion on the requests.

Dr. Dilts said she recommends approval of the zoning ordinance amendment to allow nontransient dwellings with recreational and leisure time activities, Section 10-3-97 (10) and to recommend approval of the special use permit for 1430 Red Oak Street to allow nontransient dwellings with the three conditions as specified by staff.

Mr. Colman seconded the motion.

Chair Fitzgerald asked if there was any further discussion on these requests. Hearing none, she called for a voice vote.

All voted in favor of the motion to recommend approval of both requests (6-0).

Chair Fitzgerald said this will move forward to City Council on July 14th.

Zoning Ordinance Amendment – Wireless Telecommunications Facilities and Radio and Television Stations and Studios or Recording Studios in B-1

Chair Fitzgerald read the next request and asked staff to review.

Mr. Fletcher said the comprehensive Zoning Ordinance (ZO) amendment associated with wireless telecommunications facilities is complete and, if desired, ready for adoption. In brief, the proposed amendments would allow for particular wireless facilities to be administratively reviewed and approved in the commercial and industrial districts, which will expedite the process for wireless infrastructure installation. The new regulations also create the opportunity for facilities to be located in 13 of the City's zoning districts as opposed to the current provisions, which only allows them in three.

This ordinance project began in November/December 2011 when a special use permit (SUP) was requested to construct a telecommunications tower along Reservoir Street. In short, opinions differed regarding whether the SUP should be approved as staff recommended denial and both Planning Commission (PC) and City Council (CC) had split votes through the process that ended with the SUP being approved with conditions. During this review members of both PC and CC questioned whether new or more provisions were necessary for telecommunications, which ultimately led to this considerable undertaking.

Throughout the process a few reports were completed to aid in the creation of the proposed regulations. After the Reservoir Street SUP was approved, in January 2012 staff prepared a report for PC that explained the City's zoning provisions associated with wireless telecommunications facilities. At this meeting, staff was advised to investigate the options involving updating those regulations. As staff began to explore different approaches, a second document was generated that included an inventory of the existing properties with such facilities. Eventually, both of the previously described documents became appendices to a detailed research document titled "Considering Amendments for Telecommunications" that was provided to PC in August 2013. This report was a thorough evaluation of the topic including: why the City was investigating telecommunications regulations; what authority the City had in regulating telecommunications; a section describing example regulations; and information about recent and future telecommunication practices to help understand the issues if new regulations were to be drafted. The report also included staff's recommendations for moving forward. Prior to presenting this information to PC, staff provided the document to other City departments and the other groups on the monthly development review team to receive their feedback. Moreover, staff reached out to the wireless industry (i.e. AT&T, NTelos, Shentel, Verizon Wireless, and others) to receive feedback on our understanding of not only the technology but where the industry was heading. The roles of the individuals from the wireless industry were diverse and included: the regional general attorney or other attorneys of major carriers, real estate manager, site acquisition manager, remote access network (RAN) engineer/strategic planner, leasing coordinator, and private contractor. Overall, the industry representatives provided positive feedback about staff's thoughts and recommendations.

The research document's main objective was to question and help answer to what extent, if any, should the City Code be updated and amended to further address land use issues involving wireless telecommunications facilities. After having a month to review the report, PC discussed the issue at the September 2013 regular meeting, where there was consensus among them for staff to officially begin drafting updated wireless telecommunications regulations.

After many months of additional research and writing, in February 2015, staff presented to PC a complete draft of all the ZO amendments that would be needed to implement the new proposed regulations. PC consented to these amendments and requested staff obtain feedback on the proposed code changes from the wireless industry and the normal monthly development review team. After considering the comments and suggestions those groups submitted, staff made final revisions to the

proposed regulations and presented them to PC in May 2015. At the May regular meeting, PC decided to move forward with a public hearing. As with previous versions, staff sent the final draft of the proposed ordinance amendments to the wireless industry and the normal monthly development review team. Included at the end of the staff report documents herein are the final thoughts on the proposed amendments from AT&T and Verizon Wireless.

In all, the amendments include modifying multiple existing sections and adding a new article to the ZO. Changes to the existing code include those needed in the Definitions section and then proceeding through code sections of the R-1, R-2, both R-3s, R-4, R-5, R-6, R-7, MX-U, B-1, B-2, M-1, and U-R zoning districts and specifying the different types of wireless telecommunications facilities that would be permitted and whether they would be allowed by right or by SUP. The proposed new article includes the specifics of how wireless telecommunications facilities would be permitted within all residential districts, 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 specifics regarding how property owners can take advantage of Section 6409 of the Spectrum Act.

All facilities that require a SUP would, just like all other SUPs, pay the \$375 plus \$30 per acre application fee and proceed through the public hearing process with PC and CC reviews. For all facilities that are permitted to be reviewed and approved administratively, staff suggests applicants pay a \$175 review fee. I would suggest that the fee be added to the ordinance so that it officially becomes part of the ordinance. At this time I suggest we add the fees to Section 10-3-199, Application and Submittal Requirements. I do not know the exact sub-section which we would add it to; but if the Planning Commission is recommending adoption of the ordinance, please do so with the provision that this be added into the Article and Section.

In addition to the modifications associated with wireless telecommunications facilities, the ZO Section 10-3-84 Uses Permitted By Right within the B-1, Central Business District would also be modified by adding “radio and television stations and studios or recording studios” as an additional set of uses permitted by right, where all antennas and satellites and associated equipment with those uses shall be screened. Although completely unrelated to the wireless telecommunications regulations, while reviewing the ZO to make way for the updated wireless provisions, it came to our attention that the B-1 district—the zoning district in which the WHSV property at 50 North Main Street is part of—does not explicitly list “radio and television stations and studios or recording studios” as a use permitted in that zoning district as it does in other districts. As comparison, the B-2, General Business District lists those uses as permitted by right while the M-1, General Industrial District allows them by special use permit.

To rectify this situation, staff is proposing to add “radio and television stations and studios or recording studios” as a use permitted by right within the B-1 district. However, unlike in the B-2 and M-1 zoning districts, staff believes it would be good planning and zoning practice for such uses in the City’s downtown to be further required to ensure that “all antennas and satellites and associated equipment shall be screened.” If the amendment is approved as proposed, what this means for the WHSV property is that the current arrangement of the satellite dishes and other communications equipment would be considered non-conforming because the existing equipment is not screened. The same amendment though would clearly state that television stations are legally permitted by right in the B-1 district.

Before moving forward with this amendment, staff discussed this matter with WHSV and informed them that they would not be required to screen the existing equipment and it may remain in its current configuration, but that if they desired to install additional equipment or erect a similar standalone structure that houses satellite dishes like currently exists to the rear of their property, the new antennas and satellite dishes would have to be screened. We also explained that any new radio, television, or recording studios that wanted to locate in the City's downtown B-1 district would also be held to the same standard. After answering questions about how such facilities would need to be screened and in understanding that no action was needed by the television station, they had no further comments.

Staff recommends approving all ZO amendments associated with wireless telecommunication facilities and the amendment to add radio and television stations and studios or recording studios as described in the B-1 district.

Chair Fitzgerald asked if there were any questions.

Mr. Way said going back in time to the Reservoir Street cell tower that was constructed within the B-2 zoning – hypothetically, how would that tower have been impacted if these changes were in place?

Mr. Fletcher replied by-right the applicant would have been able to collocate the equipment on an existing facility in the area, a building or a HEC power pole; the height would have been allowed up to five feet above the facility it was collocated on; and it would have to be colored, or camouflaged, the same as whatever support structure it was attached to. If they wanted to do a tower such as what is there today, they would still have to do a special use permit.

Mr. Way asked how tall the tower is.

Chair Fitzgerald said that tower is 124-feet.

Mr. Colman said if the facility is an abandoned water tank, or something of that nature, and is not currently being used as a telecommunications facility, how does that play in to the regulations if it is in a residential area?

Mr. Fletcher said that is a good hypothetical. We do not have that currently. We do have a water tower property that looks like it is within residential, but it is actually zoned M-1. It is a decommissioned water tower and for our purposes it is now a structure that is for telecommunications.

Mr. Colman said I am thinking of the water tower that will be abandoned when the new water tank is constructed at EMU. Is that property residential?

Mr. Fletcher said it is residential. I guess the opportunity exists for someone to use it for telecommunications; but, I believe the City is planning to demolish it.

Mr. Colman said unless someone wants to purchase the tower and property.

Mr. Fletcher said I suppose that is an option. Nothing could be located more than five-feet above the existing tower, it would need to be camouflaged, and would require a special use permit.

Chair Fitzgerald asked if there were any further questions. Hearing none, she opened the public hearing and asked if there was anyone wanting to speak regarding the ordinance amendments.

Lori Schweller said she is an attorney with LeClair Ryan and represents Verizon Wireless. I thought this might be a little more contentious than it is, but I am here to express on behalf of Verizon Wireless our support of this proposed ordinance. I think it is well done and I commend the job that all of you have done. I really appreciate your listening to input from the industry. We have seen our comments are incorporated and we really appreciate that.

I did want to raise one short comment that you might want to consider in the future; I certainly do not want to slow down the adoption of this ordinance. In the future you may want to consider more provisions for temporary wireless facilities. I am encountering this more and more where we need, very quickly, to erect some sort of tower to serve a special event. Because of the large number of people who come to some special events you need a tremendous amount of wireless capacity; we are not talking about just a cell-on-wheels (COW) or a cell-on-light-truck (COLT), but some installation that is basically the same as a permanent installation. These temporary facilities require a lot of preparation and construction time, set-up, and integration into the network. Taking something like this down takes time as well. This is just something for you to think about for the future, and I do not know whether this is going to be important for the City or not, but given your vibrant art scene in the community and the University it could become important. You might find in the future a text amendment would be useful – perhaps something like 90 days and up to 125-foot tall, within a business or industrial district. That is the only additional comment I have and I do thank you for reaching out to us for questions and comments.

Mr. Way said the notion of the temporary towers I think might be an interesting one; given what we heard last night about Plan Our Park and other things going on downtown. I believe it may be an important point for the future.

Chair Fitzgerald asked if anyone else would like to speak regarding the ordinance amendments. Hearing none, she closed the public hearing and asked if there was any discussion, comments, or possibly a motion.

Mr. Colman said I move to recommend approval of the ordinance amendments for Wireless Telecommunications Facilities and to add Radio and Television Stations and Studios or Recording Studios in B-1 and to include the associated fees as presented by staff.

Mr. Heatwole seconded the motion.

Chair Fitzgerald asked if there was any further discussion on this. Hearing none, she called for a voice vote on the motion to recommend approval.

All voted in favor (6-0).

Chair Fitzgerald said City Council will get this on July 14th.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said proactive enforcement visited the Exit 243 area in the south end of the City where they found eleven sign violations. Next month they will be in the Fairway Hills area.

Chair Fitzgerald asked Mr. Baugh about the Plan Our Park presentation at City Council last night.

Mr. Baugh said we heard an excellent presentation. City Council accepted the recommendation from the Plan Our Park group that essentially is about affirming and integrating the project into City Planning as it moves forward. It will also be included within the CIP, which the Parks and Recreation Department will do, possibly next year.

Mr. Way added that Planning Commission will most likely see it through the CIP process. This will allow for the next steps of how the City will more officially engage with the planning process for the park. There was a lot of support for the park and I am personally very excited for this project.

Mr. Baugh said we do have two Council members who are official liaisons to communicate with the group.

Mr. Way said Planning Commission may be more involved because there are potentially some alley closings and potential access things that may come this way.

Other Matters

Mr. Fletcher said we do have another involved meeting next month. There are two special use permit requests, two rezoning requests, one of which is an amendment to a master plan, and two ordinance amendments.

Adjournment

Planning Commission adjourned at 8:25 p.m.

Chair Deb Fitzgerald

Secretary, Alison Banks