

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**April 13, 2016**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, April 13, 2016 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, Chair; Jefferson Heatwole; and Henry Way, Vice Chair.

Members absent: None.

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

Chair Fitzgerald called the meeting to order and said there was a quorum with all seven members in attendance. She then asked if there were any corrections, comments, or a motion regarding the March Planning Commission minutes.

Dr. Dilts moved to approve the minutes as presented.

Mr. Heatwole seconded the motion.

All members voted in favor of approving the March 9, 2016 minutes as presented (6-0) with Chair Fitzgerald abstaining because she was not in attendance at the meeting.

***Preliminary Plat – Red Oak Street Cul-De-Sac (Permanent Termination) and Street Closing – Undeveloped Red Oak Street (Adjacent to 46-C-8, 56-G-2A, and 56-E-26)***

Chair Fitzgerald read the first two requests and stated they would be presented as one. She then asked staff for comments.

Mr. Fletcher said the Comprehensive Plan's Land Use Guide 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, as well as the properties' existing zoning, are located on and adjacent to the property:

Site: Properties involved in the dedication of ROW for the public street include portions of the already constructed cul-de-sac, which are zoned M-1

The area involved with the Red Oak Street ROW closing is undeveloped, but includes an existing gravel driveway to access the property at 1430 Red Oak Street

North: Existing built and platted Red Oak Street

East: Undeveloped land, zoned M-1

South: Recreational and leisure activity use and non-transient single family detached structures under development at 1430 Red Oak Street, zoned M-1

West: Industrial uses, zoned M-1

The reasoning for both the preliminary plat application and public street ROW closing request stems from conditions placed upon the July 2015 approval of the special use permit (SUP) to allow for recreational and leisure time activities with nontransient dwellings on the M-1 zoned property at 1430 Red Oak Street, which is owned by Jamison Black Marble Wildlife Preserve, LLC. (The Planning Commission minutes associated with the above described SUP, which includes the associated Zoning Ordinance amendment that accompanied that application, are attached with this submission for reference.)

In brief, the approved SUP allowed for Jamison Black Marble Wildlife Preserve, LLC to have up to five single family detached dwellings on the property and to have—as described by the property owners—recreational and leisure time activities that include “...occasional special events for family and friends, (not for charge) and swimming and water activities.”

With conditions, staff supported the SUP, Planning Commission (PC) voted in favor of the request with the conditions suggested by staff, and City Council approved the request as recommended by PC. The conditions of the approved SUP are as follows:

1. The property [1430 Red Oak Street] 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.

If the preliminary plat and street ROW closing are approved and completed, then condition “3 a” would be fulfilled.

The submitted plat demonstrates the details for both the public street dedications and the requested ROW closure. Portions of nine properties (made up of four separate property owners) would be dedicated as public street ROW around the existing, built Red Oak Street cul-de-sac. In conjunction with the public street ROW dedication, the owners of 1430 Red Oak Street are requesting to close and purchase the remaining 8,523 +/- square feet of undeveloped Red Oak Street ROW that extends southward beyond the existing, built cul-de-sac.

Acceptance of both the ROW dedication and vacation of the remaining portion of the undeveloped ROW would permanently end the southern section of Red Oak Street. Per Section 10-2-41 (e) of the Subdivision Ordinance, “[c]ul-de-sacs and other permanent dead-end streets are prohibited except when permitted by the planning commission in accord with the DCSM.”

The applicant is aware of this requirement and, as noted in their submitted letter, has requested for PC's consent.

With regard to the ROW closing, per letters submitted with the application, neither of the two property owners adjacent to the undeveloped ROW (to the east or west) is interested in purchasing any portion of the undeveloped street property. As a result, and if approved for vacation, Jamison Black Marble Wildlife Preserve, LLC, may acquire the entire area requested for closure.

If the City chooses to vacate the ROW, there are a few easements that must be reserved. Regarding public easements, the submitted plat demonstrates where an easement will be reserved for a public waterline. There is also a separate combined easement for both public water and sewer infrastructure. For private easements, there are two easements that need to be retained for the accommodation of the approved industrial development on the adjacent property to the east (tax parcel 56-E-26). In December 2014, the developer of tax parcel 56-E-26 received approval of their engineered comprehensive site plan, which utilized the undeveloped Red Oak Street ROW for two purposes: 1) a private driveway extending from the constructed cul-de-sac curving onto their property, which provided a second means of ingress and egress; and 2) stormwater drainage facilities, which channeled water flowing from their site and other upstream properties across the undeveloped ROW to Blacks Run. Construction for that development has not yet begun as their land disturbance permit cannot be released for several reasons (including but not limited to the receipt of an approved surety for public improvements, submission of their Stormwater Pollution Prevention Plan, and other issues). Regardless, private easements shall be retained for the agreed upon use of the undeveloped ROW. The submitted plat demonstrates where a private access easement would be reserved and where the private drainage easement shall be located for the owner of tax parcel 56-E-26.

If both applications are approved, at the time of final platting and recordation of the ordinance to vacate the ROW, staff will ensure of the exact locations of the described easements above. There also remains a question as to whether an additional public waterline easement is needed for a small portion of the northwest corner of the undeveloped ROW. If an easement is needed, staff will make sure it is drawn accordingly and reserve an easement during the final steps of the process. The applicant must remember that if City Council approves the request to close the ROW, the City Attorney will not begin to prepare the ordinance document nor will the procedural second reading of the request occur until the funds to purchase the ROW are submitted and the applicant has the final plat submitted and in an acceptable form for recordation.

As was identified in the SUP staff report in 2015, to be able to construct the 16 feet wide private street to serve the dwellings on 1430 Red Oak Street, the applicants must receive approval of a variance from the private street standards as listed in the DCSM Section 2.7. To deviate from this standard they must request a variance to the Subdivision Ordinance Section 10-2-41 (a), which 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.
3. The proposed alternative would better balance the needs of pedestrians and vehicles, and better achieve the goals of the comprehensive plan.”

As noted in their submitted letter, the applicant has requested to deviate from the private street standards by receiving approval of a variance to Section 10-2-41 (a) of the Subdivision Ordinance.

During the staff review of the two applications, the Department of Public Utilities identified that the existing waterline that crosses the Jamison Black Marble Wildlife Preserve, LLC property in the northwest corner of the parcel is not within a public easement. Staff requested for the property owners to consider dedicating an easement for this infrastructure. Staff is appreciative that as part of this process the plat identifies their intent to dedicate that public easement.

In brief, the requested permissions herein are fulfilling obligations and expectations that staff previously identified would be acceptable. As staff identified in June 2015, there is no current need for Red Oak Street to continue through the Jamison Black Marble Wildlife Preserve, LLC property; thus, staff accepts the permanent termination of Red Oak Street as well as the street ROW closing with the condition that all necessary easements are retained. Furthermore, staff also supports approving the variance to Section 10-2-41 (a) of the Subdivision Ordinance to allow the private street that will be constructed to serve the dwellings on the 1430 Red Oak Street property to deviate from the private street standards within the DCSM Section 2.7.

As a reminder, certificates of occupancy for any of the permitted single family dwellings on the 1430 Red Oak Street property cannot be released until the SUP conditions “3 b” and “3 c” are fulfilled.

Staff recommends approving the preliminary plat and requested public street ROW closing.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she said this is not a public hearing, but, asked if the applicant would like to speak regarding the requests.

Mr. Dick Blackwell, the applicant’s representative, said this is complicated, however, Mr. Fletcher has explained everything well. I would be happy to answer any questions.

Dr. Dilts recommended approval of the preliminary plat, the permanent termination of Red Oak Street, the Subdivision Ordinance variance, and the public street right-of-way closing as presented.

Mr. Colman seconded the motion.

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

All voted in favor (7-0) of the motion to recommend approval.

Chair Fitzgerald said that portions of this would move on to City Council for the May 10, 2016 meeting.

***Special Use Permit – 1911 South High Street (10-3-91 (9) Zero Setback)***

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

Mrs. Banks the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, office, wholesale, or service functions. These areas are generally found along the City's major travel corridors and in the Central Business District of the City.

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

Site: Convenience store and gas pumps, zoned B-2

North: Across Erickson Avenue, Lumber and Building Material sales, zoned M-1

East: Across South High Street, Financial Institutions, zoned B-2

South: Commercial Businesses, zoned B-2

West: Automotive repair business, zoned B-2

The applicant is requesting a special use permit (SUP) per Section 10-3-91 (9) of the Zoning Ordinance to allow for a reduction in the required side yard setback to zero feet along the lot line of an adjoining lot or parcel zoned B-2 or M-1. The property is located on the southwest corner of South High Street and Erickson Avenue. Currently on the site is a convenience store with four gas pumps, which are covered by a canopy that is attached to the convenience store. If approved, the applicant desires to redevelop the property and construct a new structure within 0.83 feet of its southern property line.

In 2009, the property was granted a variance of 10.1 feet from the required 30-foot setback along Erickson Avenue after right-of-way was purchased for the Erickson Avenue/Stone Spring Road improvement project. Thus, the existing structure sits only 19.9 feet from the Erickson Avenue right-of-way. As shown on the attached site plan for the proposed redevelopment, the applicant does not intend to take advantage of the front setback reduction when redeveloping the parcel.

Within the area where the new building is proposed, there is a 30% grade change. The southern property line is at an elevation of about 1,280 feet while the parking area for the site is at about 1,298 feet. Any building constructed in this area would require a foundation wall of approximately 18-feet and may require some encroachment onto the adjacent property. There is also a storm drainage pipe and sanitary sewer located within this area of the subject parcel, which crosses onto the adjacent property to the south. When redeveloping the subject property, the applicant will need to work closely with the adjacent property owner in order to construct the foundation wall and to ensure relocation of the sanitary sewer and the stormwater infrastructure, and any necessary easements, can be properly located. These issues would be worked out during the Comprehensive Site Plan review.

The Fire Chief has expressed that should the adjacent property to the south be redeveloped to accommodate a multi-story building with no setback requirement, there would be serious concerns about the ability of a fire to pass from one structure to the other. There are also specific Building Code regulations regarding fire rating and wall openings for structures with a zero to

less than three foot setback. The applicant has been made aware of these issues and will need to work closely with the Building Inspections Division when designing the proposed new building.

Staff has no concerns with the requested SUP and supports the application.

Chair Fitzgerald asked if there were any questions for staff before opening the public hearing.

Mr. Way said it seems like this has potentially somewhat significant impact on the adjacent southern property. I am not sure there are any plans for that property, but I am presuming the owners have been notified and are okay with all of this. I am thinking in terms of more than just the building; the easements and any encroachment.

Mrs. Banks said I believe the applicant or the applicant's representative has been in touch with the adjacent property owners.

Mr. Fletcher said we also notified the adjacent property owners as required with any SUP public hearing.

Mr. Way said that is good.

Mr. Da'Mes asked the adjacent property owner, Mr. Early, to come forward to answer a question. He then asked Mr. Early if he understood that with the configuration shown on the plan, there was an alternate sewer line that would be on his property and may impact his use. He then asked staff to explain what that would mean regarding future use of Mr. Early's property.

Mrs. Banks said currently there is a sanitary sewer line within an easement that runs across the subject parcel and would have to be relocated to construct the building in this proposed location. One of the proposals for relocation shows the sewer line and easement coming onto Mr. Early's property and running along the property boundary between the proposed new building and Mr. Early's building.

Mr. Early said that is a concern. If I were to build adjacent to the subject property, I would have to be further south because there would be an easement there now. No one has discussed a sewer easement with me.

Mrs. Banks explained to Mr. Early that is something that would have to be worked out between you and the adjacent property owner. If that is the direction they desire to take the sewer line and easement, then they would have to work directly with you on that. The comprehensive site plan for the proposed project could not be approved until this issue was resolved. If this location does not work, the applicant has other options.

Mr. Fletcher said if Planning Commission recommends approval of this tonight and City Council approves the SUP next month, it does not mean that the building will absolutely be constructed where they are proposing it. This hearing just allows them to get to a zero setback if they would want to. Where they have it preliminarily shown does not mean this is where they will ultimately place it.

Mr. Early said from the way I understood, the sewer would be directly under the new building.

Mr. Fletcher said, yes the storm sewer would be under the building, not the sanitary sewer. Storm sewer is often times in a private easement and private easements can be determined between the property owners.

Mr. Early said I thought the sanitary sewer would be under the building.

Mr. Fletcher said the sanitary sewer is currently located where the building is proposed; but it is proposed to be relocated.

Mr. Early asked if it would be relocated on his property. The proposal shows it there and I do not like that. I hope you understand that.

Mr. Da'Mes said we just want you to understand that.

Mr. Early said I did speak with Mr. Holtzman and he was interested in purchasing some of my property; however, I do not wish to sell. I have plans of perhaps locating another building on my site, perhaps adjacent to this area, and if he has a zero setback I would expect the same thing. I believe that is reasonable thinking.

Chair Fitzgerald said that is not exactly what is before us tonight. When you decide to move forward with your plans we can discuss that.

Mr. Early thanked the Commission.

Chair Fitzgerald asked if there were any other questions for staff.

Dr. Dilts questioned whether there were other options for the easement location.

Mrs. Banks replied the owner could look into other locations on their property for the sanitary sewer and easement.

Mr. Way said just to be clear we are only deciding on a zero setback tonight, not locations of easements or buildings.

Mrs. Banks said correct, this is approval of a zero setback. This project would still have to go through the Comprehensive Site Plan review and meet all regulations.

Chair Fitzgerald said the question that we had yesterday at the site was whether or not the adjacent property owner to the south was aware of the possible implications of this project and clearly, as of right now he is very aware. She then opened the public hearing and asked the applicant or the applicant's representative to speak.

Mr. Ed Blackwell, of Blackwell Engineering, said he is representing the owner, Mr. Holtzman. The owner has been re-developing many of the Exxon convenience store/gas stations that he owns throughout the area. Mr. Holtzman has met with Mr. Early to the south and the other neighbor to the west. There are several ways we can take care of the sanitary sewer through this area and Mr. Holtzman is very open to working with either neighbor to work this out; or if it means making the building a bit smaller, which we really do not desire, but can do.

We realize as well that a high grade storm pipe will be needed for the storm sewer that will be under the building; this will all be within a private easement underneath the building. We will have to work with Mr. Early very closely on details during the site plan phase; right now we are just trying to see if a zero setback is a viable option.

We do know it will be a really tall wall, but we have a good architect and structural engineer to work out the details on that. If there are any other questions about the design, I would be happy to answer them.

Dr. Dilts asked if the building would be just one level.

Mr. Blackwell replied yes, just one level. On Mr. Early's side it will be one large wall. If Mr. Early would desire to have the same along his property boundary, it would be like the multi story

buildings you have downtown with zero setbacks. We know we have to work around that sewer issue on that side of the building.

Chair Fitzgerald said it sounds like the sanitary sewer conversations are just beginning.

Mr. Blackwell said I have not been part of the conversations that Mr. Holtzman has had with Mr. Early. Our goal is to get the SUP and get through the site plan process this year in order to begin work next year.

Dr. Dilts said the space between the proposed canopy and the proposed building is very wide, is that because of cars maneuvering?

Mr. Blackwell said the owner has a lot of gas station/convenience stores and he has learned over time the distance he needs between the pumps and the front door of the store, to allow for parking and vehicle movement. The idea is to try and keep the canopy somewhat where it is now, with the new building within a certain range from the canopy.

Dr. Dilts asked if the only way to get that range was to have the zero setback.

Mr. Blackwell agreed and said we do not really want to move the canopy closer to Erickson Avenue; that is not a safe entrance location on the site.

Mr. Way said I think it is valuable that you have included the pedestrian walkway from South High Street to the building.

Mr. Blackwell said thank you; however, that is a City requirement now.

Mr. Colman said something else that may come into play with the sewer line is that you are probably going to need a temporary construction easement on the adjacent southern property.

Mr. Blackwell said of course, if we have a zero setback on the side with Mr. Early we will need to obtain some type of construction easement. Even if we construct ten inches off the property line as planned, we will need the easement. Again, this would have to be done during the site plan phase.

Chair Fitzgerald asked if there were any more questions for Mr. Blackwell. Hearing none, she asked if there was anyone else desiring to speak regarding the request. Hearing none, she closed the public hearing and asked Planning Commission for discussion or a motion on the request.

Mr. Colman moved to recommend approval of the special use permit as presented by staff.

Dr. Dilts seconded the motion.

Chair Fitzgerald called for a voice vote.

All voted in favor of the motion (7-0) to recommend approval of the SUP.

Chair Fitzgerald said this will move forward to City Council on May 10<sup>th</sup> with a favorable recommendation.

***Rezoning – 245 East Water Street (WAW) B-2 to B-1C***

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said Wharton Aldhizer & Weaver, PLC (WAW) is requesting to rezone 2,316+/- square feet of their property from B-2, General Business District to B-1C, Central Business District Conditional. The Comprehensive Plan designates this area as Mixed Use Development.

These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for “live-work” and traditional neighborhood developments. Live-work developments combine residential and office/service uses allowing people to both live and work in the same area, which could be combined in the same building or on the same street.

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

- Site: Vacant two story, structure, zoned B-2
- North: Across East Water Street, Urban Exchange mixed use building, zoned B-1
- East: Office building, zoned B-2
- South: Across Newman Avenue, office buildings, and non-conforming residential uses, zoned B-2
- West: Office building and parking lot, zoned B-2

Currently, the WAW structure that they refer to as the “carriage house” is situated across two of the rear parcels within the six parcels that comprise the WAW property. The applicant desires to subdivide the structure onto an individual parcel, separate from the main property. After meeting with staff to discuss the proposed subdivision, two concerns were identified: setbacks and parking.

The carriage house currently is non-conforming to the B-2 setback regulations as a property line straddles the building and it does not meet the 30-foot minimum front setback requirement for the B-2 zoning district as it encroaches into City public street right-of-way as much as 0.8 feet. In September 1987 a Boundary Line Agreement was made between WAW and the City of Harrisonburg and is included as part of this packet. Regardless of the existing setback non-conformities, when the applicant met with staff and described their desired lot configuration, which was to closely surround the carriage house, staff explained that such a configuration could not be done under the B-2 zoning regulations. Staff further explained that if subdivided, the structure must meet the minimum off-street parking requirements for any use.

There is an existing 20 X 27 foot parking area adjacent to the carriage house, which is adequate for three parking spaces. WAW described this area would remain on the property when it is subdivided. Staff explained, however, that depending on the use that occupies the structure; three spaces might not be enough to meet minimum requirements. Previous tenants of the carriage house could utilize the adjacent parking area as well as use the WAW parking lot to meet parking requirements; this non-conforming parking scenario changes once the subdivision occurs unless a shared parking agreement is created between the two properties. WAW was not interested in creating a shared parking agreement.

Because of these concerns, staff suggested the applicants might consider rezoning the proposed carriage house area/parcel to the B-1 district, where no setback or parking requirements exist. As is always emphasized by staff, since there are no minimum parking requirements in the B-1 district, if the City approves any B-1 rezoning request, the City is also accepting the responsibility of the parking demand such properties place on the City’s downtown area. In this particular case, the building could be enlarged, or the property redeveloped, eliminating any parking area on site, and operate a use more parking intensive. The applicant understood staff’s concern and submitted an application for a rezoning to B-1 with a proffer stating that “two parking spaces shall be provided on site if the subject property (245 East Water Street) is used

for commercial/business purposes, and if used residentially, one parking space per tenant will be provided on site.”

At this time WAW intends to maintain the existing paved area, which, as described, is essentially three parking spaces. However, depending upon the uses that might utilize the property and coupled with improvements that might be made to the structure, due to handicapped accessibility issues, the existing three spaces could end up being converted to two spaces.

The Comprehensive Plan designation of Mixed Use Development supports the idea for the B-1 zoning classification for this parcel. On-street parking is available along East Water Street and Newman Avenue within this area and with the submitted proffer, staff’s typical concern regarding off-street parking for B-1 properties is resolved.

During the review of this application, the applicant was informed that there is an issue regarding easements for the existing water and sewer services to the carriage house that would need to be worked out prior to the approval of a subdivision for the parcel. This however, does not affect the rezoning request. The applicant was also informed that depending upon where the new property line is placed, there may be building code issues regarding future openings for any proposed doors or windows.

Staff recommends approval of the rezoning from B-2 to B-1C with the proffer, which states “two parking spaces shall be provided on site if the subject property (245 East Water Street) is used for commercial/business purposes, and if used residentially, one parking space per tenant will be provided on site.”

Chair Fitzgerald asked if there were questions for staff.

Mr. Way said I am having a bit of anxiety about “spot” zoning and does this fit into that category? How does this fit in with the other carriage houses around the Old Town neighborhood? Could they be carved out into some type of business or other use? Is this something we should be anxious about?

Mrs. Banks said this particular building has been used in the past for other business and commercial offices such as attorneys, a drafting and design office, and a church office. This property has also always been zoned B-2, whereas the other carriage houses you are probably thinking of are within the residential area of the U-R and R-2 zoning districts. This particular property is also adjacent to existing B-1 property, Urban Exchange, and has the Mixed Use designation; those properties within Old Town have a Neighborhood Residential designation. As well, this property has direct public street frontage and off street parking.

Mr. Way said that makes sense, thank you.

Chair Fitzgerald asked if there were further questions. Hearing none, she opened the public hearing and asked if the applicant or the applicant’s representative would like to speak.

Mr. Greg St. Ours, said he is a partner with Wharton, Aldhizer and Weaver, (WAW) the owner of the property. First let me say thank you to staff, they did a great job presenting our request. We have had office and commercial use of the entire property since WAW moved there in 1988 and since then we have had four tenants. I do not know that it was ever a carriage house, its history tells us differently; I believe it was used as a jail at one time.

We appreciate the fair evaluation of our application and we are here to answer any questions you may have for us.

Chair Fitzgerald asked if there were any questions for the applicant. Hearing none, she thanked Mr. St. Ours and asked if there was any one else desiring to speak on the request. Hearing none, she closed the public hearing and asked for comments or a motion from Planning Commission.

Mr. Way said if the applicant wanted to do a mixed use of retail on the bottom and residential on the top, that would not be allowed today.

Mr. Fletcher said right, that would not be allowed in B-2. However, because of the parking there would be complications if they get rezoned to B-1 and did a mixed use.

Mr. Way asked, is that because of the number of spaces required being one per tenant for residential and three for commercial.

Mr. Fletcher replied we cannot just look at what is there today. The owner could completely rebuild with parking on the bottom, a level of commercial and apartments above. There are multiple scenarios that could be done. Also, with building codes there will be multiple issues – the building may need to be sprinkled.

Mr. Way said if I remember correctly, if rezoned to B-1 and the owner demolished the building, it would require a SUP to make the property into a parking lot.

Mr. Fletcher said yes, that is correct.

Mr. Colman said there is a door in the back of the structure. Is the access to that door the reason the property line sits back somewhat?

Mrs. Banks said I do not know exactly what that door serves; however the property line is back about five feet.

Mr. Colman said technically they would have room to walk around the building without encroaching.

Mr. Way moved to recommend approval of the rezoning request as presented.

Mr. Colman seconded the motion.

Chair Fitzgerald called for a voice vote on the motion.

All voted in favor (7-0) of the motion to recommend approval.

Chair Fitzgerald said this will move forward to City Council on May 10<sup>th</sup>.

### ***Chicken Ordinance Revisions***

Chair Fitzgerald read the item and asked staff for comments.

Mr. Fletcher said during City Council's September 22, 2015 regular meeting, City Council briefly discussed whether the regulations within City Code Section 15-2-24 Fowl, Chicken and other Domestic Birds—commonly referred to as the “chicken ordinance”—should be revisited and potentially amended. At the end of the discussion, City Council decided to refer this matter to Community Development and Planning Commission (PC) for review. Issues that City Council noted they wanted to explore included: whether the lot size threshold should be reduced; if there should be a “neighbor’s approval” added to the permit process; to explore whether a certain number of permits should be allowed within an implemented trial period; and other options that might not have been discussed during the 2009 debate on this matter.

At the October 14, 2015 regular PC meeting the group discussed how to move forward with becoming fully informed about the ordinance and generally about backyard chicken issues. Eventually PC requested for staff to provide the packet of information that was provided to PC in 2009 when the existing ordinance was discussed and approved. PC also requested for someone considered to be an expert on the topic of avian influenza to come and speak to the group.

During the January 13, 2016 regular PC meeting, Dr. Don Hopson, Regional State Veterinary Supervisor, with the Virginia Department of Agriculture and Consumer Services (VDACS), spoke to the group about avian influenza. After Dr. Hopson's presentation, a brief discussion occurred related to the virus and generally about backyard chickens. At the end of the discussion, PC decided to further explore the chicken ordinance at their February 10, 2016 regular meeting by taking public input on the specific talking points that City Council requested for PC to consider.

On February 10, 2016, PC held the public input session. For the meeting the Virginia Poultry Federation submitted several comments, one of which included a suggestion to prohibit chickens on properties that were within 1,000 feet of particular poultry facilities. After receiving input from the public and discussing the issue further, at the end of the meeting PC decided for staff to draft amendments to the ordinance based on the following points:

- to eliminate the 2 acre minimum requirement for individuals wanting to keep chickens and thus have no minimum lot size requirement;
- to not require a neighbor waiver;
- to not have a trial period for a certain number of permits;
- to reduce the existing 25-foot setback;
- to prohibit property owners from keeping chickens if their property was within a certain distance from the facilities noted by the Virginia Poultry Federation; and
- to accept the recommendation from the Stormwater Advisory Committee that included for chicken pens to be setback 20 feet from streams, tributaries, ditches, swales, stormwater management facilities, or other storm drainage areas.

For the March 9, 2016 regular meeting, staff prepared the draft ordinance per the recommendations of PC and proposed a few other minor modifications. Staff also provided additional miscellaneous information as well as maps to assist in understanding the impact of the proposed setbacks and the buffer area requested by the Virginia Poultry Federation. At the end of the March meeting, PC requested a few other changes to the ordinance, which are reflected in this submission.

Minutes from the meetings discussed above were attached within the packet.

Per the direction of PC, staff has prepared additional revisions to the chicken ordinance. The changes that are reflected since the March meeting include: 1) that chickens shall not be permitted on any parcel of land that is within 500 feet or less from any poultry processing plant, poultry hatchery, poultry feed mill, poultry truck lot, poultry farm, or from property where facilities are operated by the Virginia Department of Agriculture and Consumer Services (VDACS); and that if any portion of a parcel is located in the prohibited 500-foot buffer from the noted properties, no chickens shall be kept on that parcel; 2) that chicken pens shall be located in

the rear yard and to be no closer than five feet from any parcel line; and 3) that all unexplained bird deaths shall be reported to VDACS prior to burial or transport to the county landfill.

There are two things I would like to point out about the 500-foot buffer. There will be situations where someone's property may be made up of three parcels and one of the parcels is impacted by the 500-foot buffer. By the way the ordinance is written the other two parcels would be allowed to house chickens. If the individual decided to vacate the property lines and make it one parcel, they would no longer be allowed to keep chickens. This is just somewhat of an educational component as we move forward with this ordinance. The other thing to think about is that the 500-foot buffer is not a static buffer; what it is today may not be what it is tomorrow. Anytime a new facility is built or enlarged, the buffer will change.

Staff also communicated with the Department of Environmental Quality (DEQ) regarding burial of dead chickens. DEQ noted that our proposed regulations would not conflict with their requirements as they noted that there are no regulations associated with burying pets and that there are no regulations prohibiting routine poultry disposal for routine poultry mortality.

With regard to the disposal of chicken litter and the proposed addition to the ordinance for individuals to be able to dispose of such litter through a bona fide poultry litter service, staff contacted poultry litter services to find out whether they would collect litter that accumulated on residential property in the City. Their responses included that they mainly serve the commercial poultry industry and that they likely would not be interested in coming to a residential property to collect the waste because the amount of waste would probably not be of an amount to make it worth their time.

Note under the "Attachments" section below that staff has revised the existing application for keeping chickens and has included it in this submission for your reference. To assist individuals that want to keep chickens, the application provides the email address and website for the VDACS Virginia Livestock Premises Registration. As noted within Section 15-2-24 (c) (10), it is proposed that individuals must provide verification of the registration with the submitted application. In addition, staff has provided copies of information that we obtained from the United States Department of Agriculture (USDA) website that can be included with the application to keep chickens in the City. The information includes educational resources associated with keeping backyard chickens. Please note that staff has copies of these materials in the Spanish language, but are only including the English versions for this submission.

Other modifications that have come about since the staff report was sent out are associated with how to dispose of chicken litter and deceased chickens. Please see the changes before you regarding the new Sub-section 8, third paragraph now reads "*chicken litter and waste shall be disposed of by composting on site, collected by a bona fide poultry litter service, or bagged and taken to the county landfill*". This has changed over the past couple of days as to whether or not you can bury the chicken litter on site (which we just recently learned from the Department of Environmental Quality that you cannot do.) There was confusion regarding bagging the chicken litter and placing it in the trash. As of today I was provided with the specific code section that it does say that manure and other types of odors shall not be placed in the trash. By any means what is before you in the ordinance is acceptable by all parties.

Planning staff has maintained a neutral position throughout this process and has not offered recommendations on whether the proposed changes should be approved or not. Staff has served

as a resource to answer questions regarding implementation of the ordinance from a land use perspective.

Dr. Dilts asked if birds taken to the landfill are incinerated.

Mr. Fletcher said he did not know.

Chair Fitzgerald said within the application it asks for a site layout showing the proposed location of the pen; I am assuming that can be quiet a simple hand drawn sketch.

Mr. Fletcher said yes.

Mr. Colman said how can you enforce a setback when you are working with a sketch?

Mr. Fletcher said that becomes a question for the Animal Control Officer when she is making a site visit. But as is the case with any accessory structure placed on a premise it is a community enforcement mechanism.

Chair Fitzgerald reminded everyone it is a movable pen in some cases.

Mrs. Banks said it is also for information and education purposes. When an applicant comes in to apply, staff can help them with their sketch and discuss with them the five foot setback and where that would be. As well as looking for any stormwater and drainage issues that may be present on the property.

Chair Fitzgerald said some people may read this and feel it is too many hurdles to jump through; however, I feel it is the appropriate amount given the fact that it is somewhat of a risky business we are entering into with the poultry industry where it is in our community. This should not be something that people undertake in a trivial and unthinking kind of way.

Mr. Fletcher said I would like to add something to Mr. Colman's concern about the setback issue and the sketch. For staff it is really no different than any accessory building that does not necessitate a building permit. If you are below 256 square feet in area, you do not need a building permit; however, you must still abide by zoning regulations of a five foot setback. No one goes out to check to ensure the setback is met.

Dr. Dilts said is there a way to ensure that the word gets out to the community that there is actually a process for keeping chickens. Do we need to have some flyers or brochures?

Mr. Fletcher said I am sure we can have something worked up if you would like us to. A lot of the public exposure that this has had – article in the newspaper, facebook and twitter posts. I think it is a good idea to get more information out.

Chair Fitzgerald said the idea would be to get those that are currently keeping chickens "outside" the framework and bring them inside the ordinance regulations.

Mr. Fletcher said there is some faith that if someone already has chickens and if a next door neighbor is aware that the ordinance might move forward, they can always call us with a concern and we, or the Animal Control Officer, can get in contact with the chicken owner to educate them on the regulations.

Mr. Colman said my concern with advertising this more than we are doing right now, is that in some ways it is like encouraging people to do this. I do not think we want to do that.

Chair Fitzgerald said our concern is more that people need to know that they can now keep chickens legally.

Mr. Fletcher said I think Commissioner Dilts' point is very well taken and we can work with our Public Information Officer to do a public announcement that goes out to all the media sources.

Continuing on, Mr. Fletcher said if the Commission believes this is acceptable and want to move forward with this tonight, I would suggest consider giving staff some leniency toward amending that litter section if we learn something between now and when it goes to City Council. I think the end result is basically the same for this body – whether it goes into the trash or to the landfill and how those things get incorporated. I do want it to be solidified when it goes to Council.

Mr. Way asked where does the \$25 permit fee come from and is it a typical permit fee amount for the City.

Mr. Fletcher said the fee is the same as it is with the current chicken application. As far as fees, you really cannot compare permit fees; they are so different across the board.

Mr. Way said when hurdles were mentioned, I did not want \$25 to be a financial hurdle.

Mr. Fletcher replied I believe \$25 is a reasonable cost. It is kind of like the annual dog license; it works like an honor system that you update your permit each year.

Chair Fitzgerald asked do we need to make a recommendation to accept these revisions.

Mr. Fletcher said I do not know if we even need that. This is not a public hearing; nor is it required of this body to hold a public hearing. You can recommend it as presented and move it forward for Council to take up at their May 10<sup>th</sup> meeting. I do believe there should be a motion and vote from this body.

Mr. Way said I move to recommend to move this forward to City Council, with the flexibility on the litter element within sub-section 8.

Dr. Dilts seconded the motion.

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

All voted in favor of the motion (7-0).

Chair Fitzgerald said thank you to everyone on this issue.

### **Unfinished Business**

None.

### **Public Input**

Lindy Wessonhof said I am a JMU student and resident advisor on campus. Myself, and some other students were able to come tonight because of an Urban Planning class we are taking and I just wanted to say this has been a really interesting experience. Some of the terminology did kind of go over my head, but for the most part it was very clear and understandable. As someone in an Urban Planning class, it is really cool to see it in action. Thank you all very much.

Hobey Bauhan, Virginia Poultry Federation said I just want to thank you all for considering input from the poultry industry concerning the bio-security risks and accommodating our concerns over that.

## **Report of Secretary and Committees**

Mrs. Banks said proactive zoning visited two sectors again this month. They were in the Mosby Road/Kaylor Drive area where they found 13 violations and in the Forest Hills/JMU area where they found 8 violations. Violations consisted of signs, inoperable vehicles, debris, and tall grass and weeds.

Mr. Baugh said at City Council last evening we acted on a number of items and all were approved unanimously. The ordinance amendments for nurseries and greenhouses, the BZA amendments, and the CIP were all approved.

Dr. Dilts said she attended the Rockingham County Planning Commission meeting where they discussed an amendment to the Master Plan for Crossroads Farm and approved the rezoning for it. There was a lot of discussion regarding a rezoning of a 36.81 acre plot at the intersection of Reservoir Street and Stone Spring Road. It is a development for neo-traditional cottages for college students. The cottages would hold two to five beds each; for approximately 740+/- students. That request was also approved to move ahead, although there were concerns about issues that had happened at Aspen Heights college housing. This project will be called the Retreat at Harrisonburg. There was also conversation about whether a TIA would need to be done; however, they felt with the widening of Reservoir Street it would not be an issue. Lastly, there were several ordinance amendments, the most interesting one had to do with “microbreweries”, which are allowed to brew 10,000 barrels per year. They are amending to change that to “craft brewery” and allow as much as 250,000 barrels per year. This was tabled because there was another amendment that would allow this type of operation to happen on farms and there was a concern about what the footprint of a brewery building might be and how that might go against the idea of this being a large farming area. There is a Port Republic Village meeting, where they are going to look at the vision for Port Republic.

Chair Fitzgerald asked what to expect on the agenda for next month.

Mr. Fletcher said we have a preliminary plat and an alley closing that are connected; the subject property is along Collicello Street, near Third Street. It is to vacate a ten-foot wide alley and add at least five-feet needed to the preliminary plat property. They will then adjust property boundaries to accommodate some new units. There is also a public utilities application off of Vine Street that we will be reviewing. It is for a proposed townhouse development in the County that has been in the works for years. Lastly there is the joint public hearing with City Council for the elementary school building height. Is there anyone who will not be in attendance for the public hearing?

Mr. Way noted he will not be attending the May 10<sup>th</sup> joint public hearing.

Mr. Fletcher said if you recall the last joint hearing we had was in 2013 and it had nothing to do with public property; actually the 2013 hearing was for the Ice House project. I ask that Planning Commission sit in the front row the night of the hearing. Staff will provide a presentation; the Mayor will open the public hearing and take comments; Planning Commission will have their discussion and vote as usual; then City Council will vote. Please arrive by 7:00 p.m. We will get the information regarding the SUP out to you the week before the hearing.

Chair Fitzgerald commented on the new staff report format. I like being able to see prior actions, advertisements, site postings, and so forth.

Mr. Fletcher said that was actually driven by Anne Lewis, Deputy City Manager and Chris Brown, City Attorney to somewhat condense our memorandum and staff report to typical issues and be able to immediately state what those issues are. This helps to assist with questions that might arise. Hopefully, you do not have to search through particular sections looking for information.

Chair Fitzgerald asked if there was anything else before we adjourn.

Mr. Way said it was brought to my attention recently that this building does not have a name on it. Will this building ever have a name put on it?

Mr. Baugh said I do not know of any plans to do so; but I am not for certain.

Mr. Fletcher said this building is technically referred to as City Hall and the old building will remain the Municipal Building.

Mr. Way said there is just no indication of what the building is called. Who should I speak to regarding this?

Mr. Fletcher said you could speak with Anne Lewis.

**Other Matters**

None.

**Adjournment**

The Planning Commission meeting was adjourned at 8:35 p.m.