



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: *Consider a request from Luis O. Rodriguez to close an undeveloped public alley located behind 211 East Washington Street and adjacent to Tax Parcels 33-B-1, 2, 23, 24 and 25*

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: December 8, 2021

Chair Finnegan read the request and asked staff to review.

Ms. Banks said that in November 2016, the same applicant applied to close portions of two undeveloped public alleys, which were located on the eastern and southern perimeters of 211 East Washington Street. Staff and Planning Commission recommended in favor of closing the requested portions of undeveloped public alleys; however, at City Council there was a concern brought forth by an adjacent property owner regarding closure of the alley along the southern perimeter. The applicant elected to withdraw the request to close the southern alley and only move forward with a request to close the alley along the eastern perimeter. City Council approved the amended request in December 2016 and the eastern alley was purchased by the applicant and added to the property addressed as 211 East Washington Street. The alley described as “along the southern perimeter,” which was withdrawn from the 2016 request, is the same section of the alley that is currently requested for closure.

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

- Site:** +/- 1,422 square feet of undeveloped public alley right-of-way adjacent to tax map parcels 33-B-1, 2, 23, 24 & 25, zoned M-1
- North:** Vehicle storage use, zoned M-1
- East:** Continued portion of alley, warehouse building for industrial uses, zoned M-1; and single-family dwellings, zoned R-2
- South:** Single-family dwellings, zoned R-2
- West:** Across Myrtle Street, continued portion of alley, automotive repair services and storage, and single-family dwellings, zoned M-1 and R-2

The applicant is requesting to close a portion of an undeveloped public alley right-of-way. The applicant owns 211 East Washington Street and the adjacent property addressed as 751 Myrtle Street, and desires to close the alley in order to expand their properties. The alley is about 10 feet in width and runs along the southern perimeter of 211 East Washington Street and 751 Myrtle Street. The entire alley runs parallel to, and between, East Washington Street and East Johnson Street, from about 300 feet west of Harris Street to Simms Avenue. The portion requested for closure can be accessed from Myrtle Street for about 50 feet before dense vegetation prohibits further travel through the alley.

This portion of the undeveloped alley is not used by the City for trash pick-up and it is not maintained by the City. City records indicate that there are no water or sanitary sewer mains within the alley. There are also no stormwater facilities within the alley.

If the applicant is granted approval to close the requested portion of the alley, staff will need to research and determine the zoning of the alley. Depending upon the zoning of the alley area and where the new property lines are established, property owners should be aware that the required minimum building setback for the rear yards of 211 East Washington Street and side yards of 751 Myrtle Street could be increased. This is because Section 10-3-98 of the Zoning Ordinance states that properties zoned M-1 require side and rear yard setbacks of 10 feet, “except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any structure greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.”

Since the time of the applicant’s 2016 alley closing request, staff has begun evaluating the need for public alleys in a new light and, while there will be times that there is a compelling reason to close an alley, generally staff believes alleys offer the public a great benefit. Furthermore, the current 2018 Comprehensive Plan Land Use Guide (adopted after the applicant’s 2016 alley closing request) recommends that Traditional Neighborhood Development (TND) should, to the greatest extent possible, include TND principles throughout the City, where the utilization of alleys provides alternative transportation routes. An alley can provide the opportunity for homeowners to access the rear of their property for parking vehicles or perhaps to access a detached garage. Parking in the rear of the property with access by an alley can help to improve the appearance of the public street by reducing the number of vehicles parked along the street and opening the view from the public street to the front of homes instead of vehicles, driveways, and garages. Alleys can also act as a buffer between different zoning districts, buffering more intense commercial or industrial uses from residential uses, such as the case with this request, where one side of the alley includes properties zoned M-1, General Industrial District and the other side of the alley includes properties zoned R-2, Residential District. There is also the ability to utilize alleys as walking and bicycle paths connecting neighborhoods without having to travel on busy streets.

Staff believes that the TND grid system of streets and alleys is beneficial to the neighborhood and the City. Connectivity to all parcels is a very important aspect for neighborhoods and traffic, both vehicular and pedestrian. Closing an alley that extends through a great length of a neighborhood is not consistent with what the City desires for neighborhoods and loses the opportunity for future redevelopment or infill development of the area utilizing the TND pattern. The public alley acts as

a buffer between an industrial and residential zoning district and supports TND. For these reasons, staff recommends denial of the alley closing request.

The applicants are aware that if City Council votes to approve closing the alley (first reading at City Council), the applicants are responsible for having a survey and plat prepared in order for the City Attorney to draft the ordinance to finalize the closure (second reading). After City Council's first reading, letters will be sent to the adjoining property owners on the other side of the alley, who will be given 60-days from the date of the letter to notify the City of their interest to purchase half of the alley. Once all property owners have decided on whether they want to purchase the alley and have submitted the funds to buy the property, the plat should show the portions of the closed alley being added to adjoining parcels.

Chair Finnegan asked if there were any questions for staff.

Commissioner Byrd said that M-1 setbacks facing the alley are 10 feet, but M-1 setbacks...

Ms. Banks said that with that property, there is an alley that is its own separate section. If you remove the alley and it becomes part of the property, it is going to be abutting the R-2 zoning district or it is going to be split [zoned].

Commissioner Byrd asked, if an M-1 property is abutting an R-2 district, would the setback be 30 feet?

Ms. Banks said that if an M-1 property is directly abutting an R-2 district property, with no alleyway, there is a 30-foot setback required.

Chair Finnegan asked if there any more questions for staff. Hearing none, he invited the applicant or applicant's representative to speak to their request.

Luis and Naty Rodriguez, 211 East Washington Street, came forward to speak to their request.

Ms. Rodriguez said we are the owners. As described, in 2016, we applied to close both alleys. We use the property as an impound lot. We tow for the Police Department. At the time, one of the neighbors had an issue because he used that alley and maintained it at the time. We decided not to create any conflict, so we pulled the application and did not proceed further because he was using the alley. The first neighbor at the corner lot of Myrtle Street and East Washington do not use the alley. They have fenced in their portion. As mentioned, there are also dead trees and those are blocking the alley. None of the other houses that have access to the alley can get back in there due to all of the trees. We decided to apply once again because the owner who had an issue in 2016 sold the house. We purchased the house, knowing that we were not going to get any pushback from the other properties to purchase that alley. That alley has caused problems for us. The City does not maintain it. The trees are falling over into our property and knocking over the fence that we put up a few years ago. When the Salvation Army closed, they posted signs that people could no longer leave things there, so people started leaving them in the alley. On our side of the property on Myrtle Street, there has been so much furniture and stuff that we had to call the City to remove it. It was too much for us to do. If it was just the trash, we just pick it up and dispose of it ourselves.

When it was furniture, that became an issue. There has been a vehicle left in the alley. I reported it and it had been a stolen vehicle. The person who owned the property that we purchased had a tenant that kept throwing trash over into our property. We ended up pressing charges because it was a big problem. It has been more of a problem to have that alley open. We maintain it. As far as vehicle access, there is no way they can get in there. It would have to be a very small vehicle, as it is only 10 feet wide. No one could really park there, except the house that we own, unless it is a very small car it might be possible. To us it seems that it is more of an issue to have the alley open than not. We had the same issue with the alley that was approved to close next to the Salvation Army. Since we fenced it in, traffic stopped and not as much trash was dumped over on that side like it was at one point. It would be beneficial to expand our property and would help with the dumping of trash. We would appreciate your approval.

Commissioner Whitten said you are running a business in the City. This is your business.

Ms. Rodriguez said we have a small business off of Charles Street, automotive repair. We also do towing for the Police Department, mostly from accidents. We store the vehicles there [211 East Washington Street] until the insurance comes through. It is an empty lot. The building that is on 751 Myrtle Street is our building, but we just use it for personal storage. There is no business, an office or anything.

Commissioner Armstrong said that there are three structures on the residential end of this. Which one did you purchase?

Ms. Rodriguez said it is 212 East Johnson Street.

Commissioner Whitten said it is the one in the middle.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he opened the matter for discussion.

Chair Finnegan said that there is something that does not currently exist in Harrisonburg that needs to exist. It is no one's job to create it. We need a something like a Blacks Run Cleanup Day that cares for the alleys. The City does not maintain the alleys. They exist in this Venn diagram between public and private. We understand things that are public property, and we understand things that are private. The alley falls into this weird middle ground. I agree with staff. I hear the concerns and I understand the frustrations that you are dealing with. My concern is that when you look at that grid, in that neighborhood that is very close to Simms Center, I think it might set a precedent to start closing alleys in that neighborhood. I also understand that there are trees in there so you cannot walk from one end to the other.

Commissioner Whitten said that grid is a fallacy because it does not exist like that picture [from the staff presentation] would lead you believe. Trees are very expensive to remove.

Chair Finnegan said If I had unlimited time, I would start an organization myself called the Harrisonburg Alley Keepers Association.

Commissioner Whitten said that you would have a lot of people who would not be [remainder of comment was unintelligible].

Chair Finnegan said that we would need buy-in from the community. It is a community space. There is a condemned house in my neighborhood that was recently demolished. It was in the middle of the alley, blocking the entire alley. You could not walk from one street to the next because there was a house in the middle of it. Since that house has been demolished, we have walked that alley several times. We use the alley structure in our neighborhood quite a bit for walking. It is a safe place for kids to walk to school, since we live close to a school. I am not in favor of this request. I understand why the request has been brought forward. Often times on this body, we have an option to say yes or no to something, but we do not get to come up with a third solution.

Commissioner Whitten said that if we had a plan in place to use these, I would be all for saving this little piece. Because we do not, and there is a business, someone who is a family in our City who are trying to go about running a business, I feel like we need to support them, too, not just a thoroughfare that does not exist.

Commissioner Orndoff said that the City has a philosophical position here that the alleys ought to be open and usable and provide connectivity. This alley is not one of those alleys. The City is not willing or able to make that happen. I do not know that it is fair to punish a landowner who has run up against a situation where it is an unusable space otherwise.

Chair Finnegan said I hear what you are saying, and I agree. It is currently unusable because it is a grove of trees once you go one property in. When does an alley come overgrown? It is an important distinction because, when do we start writing alleys off? Well, this one is full of trees, write it off. This one is full of weeds, write it off. I understand what you are saying.

Commissioner Orndoff said there is another side to that. When does the City decide to start taking care of its alleys?

Commissioner Whitten said or at least make a plan?

Chair Finnegan said that goes back to what I was saying. This is not like a public park, for example. The City fully takes care of the public parks. It is a public-private piece of property that falls into a middle ground between the public and the private.

Commissioner Byrd said I do not view alleys as thoroughfares unless they are paved. If we are buffering between one residential row and another residential row, I would be more inclined to say, "Why do we have that, if no one can traverse it?" Whereas we have an industrial area and a residential area. Those areas are allowed to do certain things. Those businesses that reside in that industrial area can change overtime and still be allowed to do different things. There being a buffer there, makes more sense to me over time, regardless of how it is stated and how it is currently able to function with multiple uses or any uses at all. I understand that people who might live there or work in that area. People see an empty space and might throw stuff. There are a lot of rude citizens that throw stuff in empty space that they see. I have seen that. People who have a house that just

looks unkempt, and other people just throw their stuff and rubbish there. It is a nuisance and I feel bad for anyone who has to deal with neighbors and passersby who think that is a good idea. My only concern in considering approval is that we are saying that alleys that are not currently being used need to be closed because no one is using them. Alleys were never declared streets, as passing areas. They are more like buffers. Over time, if the City decides they want to use the alley, then the City could clear out the alley and take out those trees and do something there. To say that because we are not thinking about that now we should just close parts because they are not well kept, I do not see that argument when we have two clearly divergent zoning areas. If this was between two residential or two industrial uses, then I would be more inclined to all the arguments.

Commissioner Armstrong asked if it is allowed to put an accessible gate to discourage dumping. People could pedestrian through. Is that allowed?

Mr. Fletcher said no. It is not fully their private property.

Commissioner Baugh said that you might find spots within the City where it has been done and no one has said anything about it.

Commissioner Whitten said the code allows for alleys to be purchased. That is why they are coming and asking to do this. It is not an anomaly.

Chair Finnegan asked Mr. Russ if it is against the law to put a barrier up in an alley.

Commissioner Armstrong clarified an accessible barrier that is there to discourage dumping, since the biggest nuisance here is dumping and trees falling.

Mr. Fletcher said that typically no, but never say never. It is a question that we would have to talk about at the administrative level regarding what is the ability to do something like and who grants the permission.

Mr. Russ said it is the other way around. Who is going to tell you no?

Mr. Fletcher said the ownership of the property. If the City does own the property, then the question is who is getting permission to put something on City property.

Mr. Fletcher asked Ms. Banks is this alley deeded?

Ms. Banks said it has an easement of use.

Commissioner Baugh said that the City does not own it. The City has the right of use.

Commissioner Baugh said that the underlying idea is that if it is an easement and the City does not own the property, I guess the City has the right to clear it, but it has chosen not to for a whole lot of reasons.

Mr. Russ said that the City would always have the right to remove any obstruction to allow for free passage.

Commissioner Baugh said that it is almost impossible to think that anybody could come to the City and get permission to put a gate. That sounds unlikely, except for the practical thing that if you actually put the gate up, then it is there until somebody says something and the City asks for it to be removed.

Commissioner Armstrong said I thought that Commissioner Byrd's perspective that this is a buffer between divergent zones is a good perspective. I would also add that, in general, there are environmental benefits to these spaces in an increasingly flooded landscape that may come in use in unexpected ways that we do not know yet. The fact that it is heavily vegetated up there is a good thing. Putting aside pedestrians and bicycles, these environmental spaces are healthy for the City.

Councilmember Dent said I agree with the buffer zone argument. It is an interesting middle ground between public and private. Am I understanding correctly that the City does not actively own it but has an easement to it, the right to use it?

Chair Finnegan said yes.

Councilmember Dent said that if anyone were to maintain it, would it have to be the City or could it be the local residents?

Commissioner Baugh said that the local residents could do whatever they want with it as long as it does not impede the City's ability to use it.

Chair Finnegan said that we get confused when we think about what alleys are as an entity. I do not have an alley directly abutting my property. I live on a corner lot. I have a sidewalk in the front. It is my job to shovel the snow when it snows and make sure there are no obstructions. I do not own the sidewalk. I also have 13 feet on the side yard that the City does not mow. I mow or landscape. Most properties are like this. They may not have an alley, but we understand the concept that these are areas that the property owner maintains or does not. The City is not going to come mow the grass or do anything with it. It is a strange entity, but that is what alleys are.

Commissioner Baugh said that this is not getting mentioned directly. Maybe I am thinking everybody is more aware of it than they are. Maybe I am wrong. In some respects, the operative piece of discussion is the change of the Comprehensive Plan. Up until that change in the Comprehensive Plan, I would have expected staff to have recommended for this point of view that is being articulated. We did tend to look at it that way. We looked at it from the standpoint of "Does the City have plans to use this?" because if the City has plans to use this or in some cases there are utility easements, where we are not going to let them do that. Unless the City had a plan for it, we would go ahead and routinely approve these things and get them sorted out. Then the question is, and what staff is saying now is your Comprehensive Plan now says that you ought to look at it differently. I find myself more along those lines. What underlies this is that, when you look at communities that talk about connectivity that does not involve an automobile, one of the things that they have are these types of options. You do not just have to use the roadway. The

classic thing that you run into is that newer, more forward-thinking developments try to build that into it. Older developments often do not. So, you have the challenge of how do you go ahead and put off-road paths in a residential neighborhood where there is no way to get that without negotiating easements with everybody? We just will not do it. We will try to figure out how to get there from the outside and hope for the best once they get there on the streets. The principle that is being articulated here is that when you have these alleys like this, whether you do it for that reason or you do it for reasons like “all strips of vegetation are not bad.” Once you give it up, you are not getting it back. I can see it both ways, but I think the change of the Comprehensive Plan point of view makes sense. Is our orientation going forward going to be maintaining these gives us planning opportunities in the future, therefore we would err on the side of maintaining them, or do we continue what has been the rule up until now, which is unless the City shows that it has an affirmative planned use for it, if the property owners want it, let them have it?

Commissioner Byrd said we have to think about why you would have unkept alleys? Is it because you are trying to generate a natural buffer between zones? My concern is the divergent zoning. If you have businesses on one side and residences on the other, when they are right up against each other it affects how that area is viewed. As highlighted in this by the City, it does affect how, by ordinance, things are addressed relative those parcels. If you have a natural buffer, assuming nature and not trash, it eats up space where people would normally say, “These parts are right beside each other. This needs to be this far away.” This is an example presented by the City, if an M-1 was next to a residential zone without that 10 foot buffer, they would go from having a 10 foot setback from the alley, which is 20 feet from the residence, to 30 feet. That extends it back farther. In the future, someone might want to build a building there. The natural buffer gives the idea that things are farther way than they are when practically they are not. I look at it like barriers, not in the sense of traversing.

Chair Finnegan said that this one clearly is a buffer. The ones in my neighborhood are walkable. I would deem them as safe walking pathways. This one is not. The most you can say about this one is that it is a buffer, in terms of purpose, when we are talking about pathways versus buffers. They are two different purposes.

Commissioner Byrd made a motion to recommend denial of the request.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Whitten	No, for the reasons I stated previously.
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Baugh	Aye
Commissioner Armstrong	Aye
Commissioner Orndoff	Aye
Chair Finnegan	Aye

The motion to recommend denial of the request passed (6-1). The recommendation will move forward to City Council on January 11, 2022.