



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections

Engineering

Planning & Zoning

December 28, 2017

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Consider a request from Randy Fauls (Fauls Property LLC) per Section 7-2-4 of the City Code for the City to provide water and sanitary sewer service for a commercial business within Rockingham County. The property is located across Ruby Drive from 269 Pear Street, Harrisonburg, Virginia 22801 and is identified by Rockingham County's tax map parcels 108-(A)-164.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: December 13, 2017

Chair Way read the request and asked staff for a review.

Ms. Dang said the subject property is located at the northwest corner of the intersection of Pear Street and Ruby Drive, and is identified on Rockingham County's tax maps as parcel 108-(A)-164. Between Pear Street and the subject property is the City-County line. Pear Street is a city street. The property is zoned in Rockingham County as A-2, General Agricultural, which only allows the proposed use by an approved special use permit (SUP). Currently, the parcel is mostly undeveloped, containing a small parking lot and fields. The applicant desires to construct and operate a vehicle repair garage with spaces for 10 vehicles.

Per Section 7-2-4 (b) of the City Code, all uses, other than residential uses involving fewer than ten units, requesting to be connected to the City's water and sanitary sewer infrastructure, shall be reviewed by Planning Commission and then forwarded to City Council for final approval or rejection. As noted above, this request is for a commercial connection; thus, Planning Commission review and City Council approval must occur.

The City has existing water and sanitary sewer infrastructure that is located near or within the public street right-of-way of Pear Street. The Department of Public Utilities has completed the preliminary review of the request and has no issues with the daily demand of service to the subject site.

The Rockingham County Board of Supervisors was to consider the applicant's SUP request on Wednesday, December 13, 2017; however, the applicant has applicant tabled their SUP request. City staff submitted comments to Rockingham County on December 6, 2017 stating that city staff does not believe the proposed SUP to allow for a vehicle repair shop and impound lot are consistent with the City or County Comprehensive Plans. (The comment document that was sent to Rockingham County is included in the packet.) The Rockingham County Comprehensive Plan's Land Use Plan for both 2020 and 2050 designates the subject property as Community Residential. Similar to the County's plans, the City's Comprehensive Plan's Land Use Guide has all properties along Pear Street, from West Mosby Road to Erickson Avenue, designated Low Density Mixed Residential. Staff believes approving such a

use could establish a precedent for other similar uses in the area. If such a SUP was available in the City along this section of Pear Street, City staff would find it difficult to recommend in favor of the request to the City's Planning Commission and City Council.

For the above reasons, planning staff does not recommend in favor of connecting the proposed use to the City's water and sanitary sewer infrastructure because the proposed use is currently not permitted. However, if Rockingham County's Board of Supervisors approve the SUP request, city staff feels that water and sanitary sewer service should be provided to the subject property.

Staff recommends approval of the request for water and sanitary sewer service connection with the condition that this approval is effective only if Rockingham County approves the SUP request.

Chair Way asked is there any precedence for other water and sanitary sewer service connection request being denied. It seems in my experience that they are typically approved. Has there been in the past any denials?

Mr. Fletcher said we have stressed concerns for particular developments in years past that have requested utilities. There were concerns brought up for Aspen Heights; that is the most recent one I can think of. What happened there was they ended up not connecting to water, but only connecting to sanitary sewer. But I do not recall any that we denied and we are not saying that here either.

Mrs. Fitzgerald said we have had Mike Collins, Director of Public Utilities, come in to give us an overall perspective of these requests.

Chair Way asked can we as a Planning Commission consider all different dimensions to a case like this when we are thinking about our recommendation for approval or denial. Can we think about land use as well?

Mr. Fletcher said that is a great way of putting it and yes, that is your responsibility.

Chair Way said I just want to make sure for clarity that we can go beyond just water and sewer infrastructure impacts.

Mr. Baugh said we did one a while ago, it may have been one of the first ones that came up after the moratorium; if you go far enough back in history there was a moratorium and there was no such thing as City service into the County. It was right when I was new at this. A developer was looking to develop the area across from Thomas Harrison Middle School, on the other side of West Market Street that has substantial undeveloped County land very close to the line. We had a couple of meetings, and Mr. Collins came in and talked to us, and I think ultimately the County did not approve the development. But that was one that had some of those issues that it was potentially a big development in an area that was not where the County had said that they wanted that type of development and ultimately it was removed because the County did not approve it. We certainly discussed the issue.

Mr. Finnegan asked if the City said yes and then the County did not approve their request.

Mr. Baugh said I think we did ultimately say yes in providing water, but the development that would have needed the water was not permitted.

Mrs. Whitten said maybe the water and sewer in this one is a big sticking point of the use.

Chair Way asked if this should be treated as a public hearing.

Mr. Fletcher said it was not an advertised public hearing, but you can ask the applicant to speak.

Chair Way said let us go ahead and allow the public to speak about the public utility application. Would anyone like to speak for or against the request?

Dick Blackwell, 70 Peyton Randolph Court, Blackwell Engineering, said it is subject to the County approving the special use request. Before they consider the SUP, the County wants to know if the use will have public water and sewer. This application is obviously asking the City to allow that.

Chair Way asked if there were any questions for Mr. Blackwell. Hearing none, he asked if anyone else would like to speak regarding this request. Hearing none, he closed the public hearing and asked for discussions or motions regarding the request.

Mr. Finks said the question we are trying to answer is not necessarily do we want to allow water and sewer to this property; but, do we want to allow water and sewer to this property for the intended use. I do not necessarily have any problem with the public utility application to the property, because it has nothing to do with the property in specific, it is for the intended use. Is that enough reason to deny? Will our answer to the County be “this is not going to be in keeping with the Comprehensive Plan,” so we say no water or sewer because we do not feel if we made this decision to approve it would be in keeping with the Comprehensive Plan.

Mrs. Fitzgerald said the other way of looking at it is that Rockingham County gets to say how Rockingham County land ought to be used and that we really should not be the ones to decide. Because if we say no water and sewer, it decides it for them. I like the idea of the City having control over what city land is used for and I think respecting what Rockingham County has for their land, and not effectively deciding for them, is something worth considering. When I read through this that is where I came to; I am not so keen on the use, but I am also not so keen on deciding for the County.

Mrs. Whitten said but it is also City land that is right up against it.

Mr. Finnegan said and City resources.

Mr. Colman said something else that we have been talking about with the Comprehensive Plan is how Rockingham County will review our Comprehensive Plan, so they know what our intentions are and they can work with us, or let us know how our plan impacts their land use. I think in some way this is the same thing; how is this project impacting land use in the City? I agree the decision should be made by the County on how they use their property; but we can, based on what we know about their Comprehensive Plan and our Comprehensive Plan, and our plans for that area and their plans for that area, let them know what our opinion is, or a recommendation to them with our disagreement of the land use.

Mrs. Fitzgerald said “we will let you use water and sewer but we hope you do not approve the special use permit,” is basically what you are saying.

Mr. Colman said we do the same thing with City Council. We cannot tell them what to do, we just give them our recommendation. It is up to City Council to make the decision.

Mrs. Whitten said it is a recommendation based on our Comprehensive Plan. What better basis for a decision could there be?

Mrs. Fitzgerald said if they follow their land use guide, they are likely to not approve the special use permit.

Mrs. Whitten said and they are in a different situation then we are in that they have a lot more residential land to put houses on. If we do not preserve our land the way we would like to use it, then this could affect whether someone wants to put a house there in the City or not.

Mr. Colman said I think one of the issues here is not so much this specific project, but is this creating a precedence for other things allowed by special use permits and how that area develops? In some ways,

depending on how that area develops it could force the next Comprehensive Plan of the City to change how to plan this area differently.

Mrs. Fitzgerald said flip the localities, suppose you change the role of the City to the County here. How do you feel about the County deciding that a City business could not go there?

Mrs. Whitten said so we give them the water and sewer. I do not see how you can flip this.

Mrs. Fitzgerald said it is a thought; experimental flipping. I do not think we would be happy on behalf of the City residents if the County made the decision essentially for us and we could not decide whether or not something should get a special use permit.

Mr. Finks said I think the tough part with that experiment is obviously we would be making, in some ways, an unfair decision for what they could do with their property; but, we are making a decision what to do with our resources. They would be using our resources for something we do not agree with and we should have control over how our resources are used outside of the city limits.

Mr. Finnegan said I agree. Particularly when we are talking about spending multimillions of dollars to hook into new water infrastructure to support the City, and everything that is going on with taxes and the schools in the City.

Mr. Baugh said our water supply is not under stress, that is what Mr. Collins always said, and so far, he is right.

Mr. Finnegan said to me the biggest red flag is staff believes approving such a use could establish a precedence, a precedence for other similar uses.

Mrs. Fitzgerald said the staff recommendation is to approve this request.

Mrs. Whitten asked what if we did not approve it, would that be the end of conversation for this applicant. They can put a septic system and well water; there are lots of auto shops that are not right next to the City and do not have City water and sewer. Will the County let them have a septic if they have water now from somewhere?

Mr. Fletcher said maybe. If the Commission would like to have Mr. Blackwell answer that question, he might know the answer to that question whether the County might allow a septic.

Mr. Blackwell said I do not know the answer for sure. It certainly could have a well and a septic, it is just a few employees.

Mr. Fletcher said this request could be the result of the applicant when they applied said "I am going to get water from the City."

Mr. Blackwell said if water and sewer is not allowed from the City the only other option would be a well and septic.

Mr. Fletcher said perhaps to help you understand the process, when staff was speaking with Diana Stultz (Rockingham County Zoning Administrator) we had this conversation of what is going first, which one should go first. Rockingham County said we will not allow the SUP to move forward unless we have an answer as to how they will get water and sewer. The applicant said they want City water and sewer, and infrastructurally it can happen. The question is will you let them have it. When you read the memo that staff sent the County of our concerns and all the various aspects of the use, it was because at the end of the day we had to say "okay, this is not an extension, this is a tap into an existing facility that is right in front of the property." If the use is allowed we will allow the connection.

Mr. Blackwell said and if there is no approval, then they would have to evaluate if they can have a well and septic.

Mr. Colman said does our recommendation go to Rockingham County Planning Commission and the Board of Supervisors?

Mr. Fletcher said your recommendation goes to our City Council and if City Council says yes, we will allow the connection; that is the answer that goes on their application to the County Board of Supervisors. The County Planning Commission does not review special use permits and County staff does not offer recommendations on their special use permit applications.

Mr. Colman said can City Council pass on recommendations in terms of “yes, we will allow you to tie in to our water and sewer, but we do not recommend the use.” Is that something that City Council would do?

Mr. Fletcher said can you ask the question again, I want to make sure I understand.

Mr. Colman said the question is does our City Council if they approve this request, would they also give a friendly recommendation by saying, “based on land use guide we would rather not see it here, but we still approve your request for water and sewer?”

Mr. Fletcher said I guess if they felt that as a body they wanted to make that statement they could.

Mr. Baugh said it is something that does come up at City-County discussions from time to time. I am skeptical that I will live to see the day where there is a combined water authority between the City and County, it does not exist now. There has been something of an understanding that where we have our infrastructure and we can conveniently provide to them, and when the Public Utilities Department thinks it is okay, that is something that we would do. Because the alternative for them, from a long-range standpoint, is having to substantially beef up their own water supply infrastructure in a way that it would be redundant. It would be redundant for the County to have to say “well, one of the things I guess we now have to do is go around and make sure we beef up water infrastructure in a big circle around the City, so that everybody who lives right up against the City gets their water from outside- in and not inside-out.

Mr. Colman said to me it makes sense that we do not try to make decisions for the County. What I am trying to say is we can send a recommendation, but it is up to them to decide what they want to do. I would say “yes, we will support their application with the condition as stated.” Even for a relationship with the County we do not want to force a decision. But, they can also hear what our concerns may be.

Mr. Finnegan said how would you word that?

Mr. Finks said to play devil’s advocate here; would it not be an easier response just to not approve it, would that not be the easiest way?

Mr. Colman said that is forcing the decision.

Mr. Finks said not if there is a well and septic option.

Mrs. Whitten said then they should not have applied.

Chair Way said I think in planning we often think about impact on neighboring properties and neighboring parcels, and I treat the City-County line as an example of that. If this were a R-1 type residential development, I would have no problem with the facility or use, and the infrastructure going in, and the water being used. I think this is essentially a land use thing, I think it is detrimental to that part of the City. I think we need to be robust in sending a message that we think this is detrimental;

and I plan to vote against this. Mr. Finks was making a point about sending a clear message this is what we think.

Mrs. Fitzgerald said for the purposes of getting it to discussion, moving it forward, and voting it up or down, I will make a motion to approve the request for the public utility application with the condition that this approval is effective only if Rockingham County approves the special use permit request.

Mr. Colman seconded the motion.

Mr. Colman said we are going through a Comprehensive Plan update, we are looking at land use. If we just want to say we want this area for certain land use and then we are going to violate that with the first opportunity we have, then it is counterproductive and useless to have a Comprehensive Plan. From my standpoint, the proposed use does not agree with our Comprehensive Plan of what we want at that location. With the County, I do not know if their plan says otherwise. It really is up to them to be consistent with their own plan.

Mrs. Whitten asked if the Rockingham County Comprehensive Land Use Plan slide could be shown again.

Chair Way said I do agree with the general principle that the County should be free to make its own decision about things like this. I think they should have to make decisions within certain constraints and certain parameters, and this is a constraint. I am suggesting what we should present to them is based on the land use and the land use intentions around that area. I think there is no guarantee that they will necessarily follow this land use plan. My first duty here is to look out for the interest of this City. Now you can also argue that a longer-term interest of the City is to build a better relationship with the County.

Mr. Fletcher said it should be known that the City has a program where we strive to get any property that is in the City and on septic connected to public sewer. Because, environmentally, it is better to be on public sewer.

Mrs. Fitzgerald said the idea that they can just go do septic is not necessarily the best.

Mr. Fletcher said I just wanted folks to consider that.

Chair Way said I would only consider that when I see an environmental report of the impact of septic and well extraction on that property. Not to disagree with you or the general principal of specifics of this.

Mrs. Whitten said I think that is negligible on a property this size.

Mr. Baugh said we have said as a policy we do not want our residents on septic. Now we may be saying "but we kind of like them right next to us in the County."

Mrs. Whitten said no we are not saying that. This is not about that, this is about use and that is clear.

Chair Way said let me be clear we are not advocating for it to be on septic, as we are more concerned about the residential development.

Mr. Finks said if we turn down their public utility application and they still want to move forward their only option is to do the septic.

Chair Way said we are saying the more important factor is the land use not the environmental infrastructure there.

Mr. Finnegan said I agree with Chair Way, that our primary concern, if we must prioritize what the criteria is, is that we should be making decisions based on land use and not environmental reasons

outside the City. I am not saying it is not important, but I am saying that should not be the primary driver.

Chair Way asked for any more thoughts.

Mrs. Whitten said if the County would allow the use then we would extend the services. But we are not as crazy about the use as we might be some other things that would agree with their comprehensive plan.

Chair Way asked if there were any more thoughts regarding this application. Hearing none, he said we have a motion and a second for approval. He called for a roll call vote on the motion.

Commissioner Colman: Yes

Commissioner Whitten: Yes

Commissioner Fitzgerald: Yes

Commissioner Baugh: Yes

Commissioner Finks: No

Commissioner Finnegan: No

Chair Way: No

Chair Way said the final vote is four to three (4-3) to approve the public utility application with the suggested condition for the property located across Ruby Drive from 269 Pear Street (Rockingham County) as recommended by staff. This item will go to City Council on January 9, 2018.

Respectfully Submitted,

Alison Banks

Alison Banks

Senior Planner