

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**December 8, 2021**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, December 8, 2021, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Jim Orndoff; Kathy Whitten; Laura Dent, via GoToMeeting; Richard Baugh; Dr. Donna Armstrong and Brent Finnegan, Chair. Adriel Byrd arrived during the presentation of the special use permit to allow for a short-term rental at 43 Maplehurst Drive.

Also present: Thanh Dang, Assistant Director of Community Development; Alison Banks, Senior Planner; Adam Fletcher, Director of Community Development; Wesley Russ, Assistant City Attorney; and Nyrma Soffel, Office Manager/Secretary.

Chair Finnegan called the meeting to order and said that there was a quorum with five members physically present in Council Chambers. Councilmember Dent participated remotely via GoToMeeting.

In accordance with the Planning Commission's adopted policy for remote participation, Councilmember Dent has requested to participate remotely in this meeting due to a temporary medical condition that prevents her physical attendance. She will be participating remotely from her residence, which is not open to the public. A quorum of the Planning Commission is physically assembled at one primary meeting location, and arrangements have been made for the voice of Councilmember Dent to be heard by all persons at the primary meeting location.

Chair Finnegan asked if there were any motions to grant Councilmember Dent's request to participate remotely.

Commissioner Whitten moved to grant Councilmember Dent's request.

Commissioner Baugh seconded the motion.

All members voted in favor of granting Councilmember Dent's request (5-0).

Chair Finnegan asked if there were any corrections, comments or a motion regarding the November 10, 2021 Planning Commission minutes.

Commissioner Orndoff moved to approve the minutes.

Commissioner Whitten seconded the motion.

All members voted in favor of approving the July 14, 2021, Planning Commission minutes (5-0).

**New Business – Public Hearings**

***Consider a request from Frederic B. and Laurinda F. Peters for a special use permit to allow for a short-term rental at 43 Maplehurst Drive***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site as Low Density Residential. These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

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

- Site: Single-family detached dwelling, zoned R-1
- North: Single-family detached dwelling, zoned R-1
- East: Nonconforming multiple-family dwelling, zoned R-1
- South: Single-family detached dwelling, zoned R-1
- West: Single-family detached dwelling, zoned R-1

The applicant is requesting approval of a short-term rental (STR) operation at 43 Maplehurst Drive, which is located between South Main Street and Moffett Terrace. The applicant desires to rent the entire residence for STR, which includes five accommodation spaces. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant is seeking approval for up to eight guests at a time, with the ability to host up to 12 guests during 12 nights each calendar year. The applicant describes that the property is their primary residence.

The applicant explains in their letter that their “initial request was for approval to host up to 12 guests at any time. Staff comments noted concern over the number of guests initially proposed and the proposal has been revised in response to those concerns while seeking to preserve the ability to capitalize on major event weekends (e.g. homecoming, parents’ weekend, graduation, etc.).”

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent for STR five accommodation spaces, the property should provide five off-street parking spaces. In addition to the off-street parking spaces required for the STR, the ZO requires one off-street parking space for the non-transient dwelling unit. Off-street parking is available in the rear of the property, accessed by an alley; two parking spaces are available within the detached garage and a third parking space is available on the east side of the garage. Rather than creating new off-street parking areas, staff recommends a condition to limit the number of guest vehicles during a rental period to no more than three. It should be known that

Maplehurst Avenue and surrounding neighborhood streets are subject to Brown Zone permit parking restrictions.

With the following conditions, staff recommends approval:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than five STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to eight.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the items identified in the Pre-Operation Form when short-term rental guests are present.
5. There shall be no more than three guest vehicles during a rental period.
6. Only two off-street parking spaces are required; the spaces do not have to be delineated.
7. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for a STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 limits the total number of guest rooms and accommodation spaces on the entire property to five. Condition #3 limits the total number of STR guests to not more than eight at all times. Condition #4 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the items identified in the form when STR guests are present. Condition #5 limits the number of guest vehicles during any rental period to three. Condition #6 requires the applicant to provide two off-street parking spaces for the STR use and provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to delineate off-street parking spaces. (NOTE: As a reminder, a third off-street parking space is required for the non-transient dwelling unit.) Finally, condition #7 allows PC or CC to recall the SUP for further review if the STR becomes a nuisance.

As noted above, staff is recommending approval only with the suggested conditions; the conditions would not allow the applicant to operate as they requested in their application. If PC disagrees with staff, it has the authority to recommend different conditions to CC, who may accept or reject any of staff's or PC's recommended conditions or, if they so choose, establish their own conditions for approval or deny the request.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicants or operator, and transfers to future property owners. If the applicants were to sell the property, then future property owners could operate a STR so long as they meet the conditions for the SUP as approved. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Staff recommends approval of the request with the suggested conditions. Staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Chair Finnegan asked if there any questions for staff.

Councilmember Dent said that we received a comment saying that the SUP should be non-transferable and applicable to this owner only. That is not feasible, right, from what I heard you say? It conveys with the property, correct?

Ms. Dang said that is correct.

Commissioner Whitten asked if this is permit parking.

Ms. Dang said yes, it is in Brown Zone Permit Parking. In Brown Zone Permit Parking, a permit is required 24 hours a day to park on the street. It is a towable zone. The Brown Zone is around the Maplehurst area and portions of the Purcell Park neighborhood. All the residential permit parking zones allow the owners to get two guest passes. The guest passes are for vehicles parked within 500 feet of the property and only for those visiting the property.

Chair Finnegan asked if there any comments received that were not reflected in the two comment emails received earlier.

Ms. Dang said that those were the only two comments received.

Commissioner Armstrong said that if the SUP is conveyed with the property in a sale, this condition number 7 “if it becomes a nuisance” could be invoked?

Ms. Dang said that is correct.

Commissioner Armstrong said that would be some reassurance to the neighborhood.

Councilmember Dent said that the applicant was requesting 12 nights a year when they could have 12 guests for special events. Staff is not recommending considering that, correct?

Ms. Dang said that is correct.

Chair Finnegan acknowledged that Commissioner Byrd joined the meeting.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant’s representative to speak to their request.

Josh Peters, son of the applicant, came forward to speak to the request. I have not seen the emails, so I would like a chance to speak to those.

Copies were provided to the applicant.

Chair Finnegan said that there was a comment from Kathleen Kelley, stating that they would like for this permit to be non-transferable and approved as a limited time permit. We will enter that into the record. Mr. Sellers said that his concern was the alteration to the R-1 character of the Maplehurst neighborhood. He wants it to remain R-1. Those were the comments.

Mr. Peters said I will try to address the things that I see here. There is the question of character of the neighborhood, parking, the non-transferable comment which I believe was already addressed. Any approval would run with the property, so we understand that is how that works. The staff report recommends approval. It recommends approval with a set of conditions. We appreciate that recommendation and are generally in agreement with all those conditions, with the exception of one. That is the maximum number of guests. Staff is recommending that the number be set at eight at all times. We agree that is a generally appropriate number. What we are asking for is to be able to host slightly larger groups during 12 calendar days which would be six weekends out of the year. The idea is that if there is a graduation gathering for a graduating senior, and their family comes from out of town, there would be a number of people coming. It could be two parents, two adult siblings, a significant other for each sibling, and two children, takes you to eight right away. It would not allow for the graduating senior to stay at the house. It is those exceptional weekends out the year, we would like to accommodate that slightly larger family gathering. That is the intent. We want to do justice by our request and to stand by that request. That said, we respect that there are norms that get established along the way. If in the Commission's deliberations eight is deemed to be the appropriate number, we accept that. That is not a critical point for us. We do need to do justice by our initial request for those 12 people just a couple times out of the year.

As far as parking goes, staff is recommending as condition of approval that no more than three vehicles be allowed to come to the property at any time. We are in agreement with that condition. The property would be marketed that way, that no more than three vehicles could come to the property, even with the exception for 12 people, if that were granted. As far as character of the neighborhood is concerned, I do respect that concern. If it is compared to the impact that is caused by a typical single-family use, we have more than eight people come stay at the house with us on family gathering weekends, like Christmas or any major event weekends in our family. If you think about a Christmas gathering, if our family were to go somewhere out of town instead of our house, the impact would be more or less equivalent.

Chair Finnegan said I wanted to clarify that it is stated in this request that it is the primary residence of the applicant.

Mr. Peters said that is correct.

Chair Finnegan said that is an important distinction for me, that we are not taking people out of houses and turning houses into full-time hotels in these neighborhoods. That is an important distinction, that it is a primary residence.

Commissioner Whitten said, so your mother lives in this house?

Mr. Peters said yes, my mother lives there full-time. That is her home.

Commissioner Whitten asked what the rental rate would be for the nights.

Mr. Peters said that he did not know. I do not know if it has been decided yet.

Chair Finnegan said my understanding is that it fluctuates. The rent would be higher on Parent's Weekend and would be lower in the off season.

Commissioner Whitten said that there must be an idea if there is a business plan for this. It certainly does seem like it is a business.

Mr. Peters said I could tell you what our next steps would be. If we were granted approval, we would check Airbnb looking for comparable places and seeing what they are charging. I did that three or four weeks ago, but I cannot remember what those prices were.

Commissioner Whitten said that for that number of people it might be \$500 to \$800 a night.

Mrs. Peters, from her seat, said that is what I am thinking, somewhere in there.

Chair Finnegan said, for the record and because the applicant did not speak into the microphone, that the property owner said that is what they were thinking about.

Commissioner Whitten said that she said that for context for the Planning Commission and for the public. When we start to run businesses from home and we are making a lot of income from homes, we are putting ourselves into a situation of the cost of housing going up. We do have concerns about affordability. What I would say is that if 12 people want to come to Harrisonburg for a weekend like homecoming or graduation, we have hotels for that. Those are businesses that also support the community. We have to keep all that in mind and balanced.

The other concern that I have is, who is going to enforce the three car rule? It seems to me that we are putting that on the neighborhood. Living in a neighborhood where parking is at a premium, I do not love that.

Chair Finnegan said this is a brown-zone permit parking area. Can staff speak to parking enforcement for on street parking.

Ms. Dang said that she cannot speak to the permit parking. I assume that someone would contact the police department to enforce the towable zone. In that case, if there were someone who would arrive without a guest pass or in general, not necessarily because of the STR. In terms of zoning enforcement, yes, it would be based on the neighborhood to file a complaint with the Planning and Zoning Division of Community Development to inform us that they have concerns. We would either do a site inspection or reach out to the property owner to discuss it with them. I discussed with Mr. Peters the expectation of when they market the property, they would disclose the

requirement on their listing. When people are booking, they would know in advance that is the limit.

Commissioner Armstrong said that she is in the brown permit parking zone. They have two off-street and the garage. Typically, we have two guest passes. As long as the person is on premise, it is permissible for them to use those guest passes. That covers three spaces. They would just have to use that guest pass.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said that each neighborhood has its own concern around something new, like Airbnb or whatever it may be. I have voted for several of these in my neighborhood, where they are owner occupied and they rent out several rooms. I have seen new people and cars from out of town parked on the street. I have not seen any problems with the Airbnbs that have been approved in my neighborhood. I am inclined to support this, with staff's recommendations and limitations, not the twelve people from the original request. I think there is no way to enforce specific weekends. Making a condition that is contingent on once or twice a year is difficult.

Commissioner Whitten said I think that we have had that request before. That was always my concern. Who was going to keep up with that? I do not think anybody can.

Chair Finnegan said I would be inclined to support with the conditions, all seven conditions, listed by staff.

Councilmember Dent said I appreciate the confirmation that the owner is occupying the residence. That is one of the key provisions of the STR SUP, so that we do not get people buying up properties just to serve as STRs. With that and the conditions by staff, I support it as well.

Chair Finnegan said I like history and I like newspaper archives. I want to speak to the comment about the character of the single-family neighborhood. I have a subscription to the DNR archives. I searched for Maplehurst. There were several stories about the Catholic Campus Ministry Building. There is one from 1970, before this community was downzoned. There are ads in the paper for Maplehurst Avenue duplex or single-family. They all say, "located near Madison College." A listing from 1940 states "Apartment for rent on Maplehurst Avenue, 28 Maplehurst apartment for rent, 5 rooms". There were apartments and duplexes on this street. I think it is important when we are talking about maintaining the historical character of the neighborhood.

Commissioner Orndoff made a motion to recommend approval of the SUP with conditions, as presented.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Whitten	No. I am concerned about the cost of housing increasing related to this kind of use of property in the City.
Commissioner Byrd	Abstained.
Councilmember Dent	Aye
Commissioner Baugh	Aye
Commissioner Armstrong	Aye
Commissioner Orndoff	Aye
Chair Finnegan	Aye

The motion to recommend approval of the SUP request passed (5-0). The recommendation will move forward to City Council on January 11, 2022.

**New Business – Other Items**

***Consider a request from Mark Smith (Massanutten Animal Clinic) for water and sanitary sewer service onto property located at 2702 Spotswood Trail (Rockingham County)***

Chair Finnegan read the request and asked staff to review.

Ms. Banks said that per Section 7-2-4 (b) of the City Code, all uses located outside City limits, 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. This request is for a non-residential connection; thus, Planning Commission review and City Council approval is necessary.

The +/- 1.02-acre property is located approximately 500 feet east of the City limits, at 2702 Spotswood Trail (State Route 33). The site is zoned B-1, General Business District within Rockingham County and is identified as County tax map 109-(3)-L4B. If the applicant's request to connect to the City's water and sanitary sewer infrastructure is approved, the applicant would extend existing water and sanitary sewer infrastructure located within this area to the subject property.

When reviewing previous public utility application requests, staff has discussed that the City should be careful about extending more utilities into the County, as it may contribute to using the City's available water and sanitary sewer capacity, which could be detrimental to future development within the City, and it may indirectly lead to undesirable development around the edge of the City. The use of the subject property is an existing animal clinic. The Department of Public Utilities has completed the preliminary review of the request and has offered approval for extending City water service to the subject property noting that the proposed average daily use of 185 gallons is an insignificant size to have impact to the surrounding distribution system. The applicant will need to extend an existing 12-inch water main, located within the Route 33 right-of-way, to their property for service connection.

Currently, the subject property is being served by a 50+ year old septic system on the site. The system is described as old and near its functional end. Removing the septic and connecting to City



services is the desired solution for the property owner and the Department of Public Utilities is supportive of the connection to City sanitary sewer infrastructure.

In August 2021, City Council approved a public utility application for the property directly adjacent to this site at 2557 East Market Street, Virginia Self Storage. As part of that approved connection the property owner was informed that they would be required to install a private sanitary sewer pump. The applicant for this request is currently working with the adjacent property owner and the Department of Public Utilities for approval of a two-party sanitary sewer pump. The approval of the two-party system is separate from the request to allow the property to connect to City infrastructure and will be reviewed by Public Utilities engineering staff after a decision is made regarding connection.

Staff has no concern with the connection to City water and sanitary sewer infrastructure and is supportive of the removal of a septic system from the environment.

Staff recommends approval of the request.

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

Gil Colman, Colman Engineering, came forward on behalf of the applicant. Mark Smith is my client. He is the owner of the Massanutten Animal Clinic property and is making this request. We have been discussing this for a few months with Public Utilities and with the adjacent property owner. We have discussed easements, and everything is underway. We are not extending the main. It will just be service lines. The property has a water connection with the County. It is the same main and there is a vault that transfers the water from the City to the County. In conversations with the City, the City recommended that we get water and sewer from the City because that facilitates the accounting. Otherwise, they have to obtain the water usage information from the County. There is no additional demand, it is just service by the City. To the City's benefit, any County property has to pay more for water in the City than they pay from the County. I am happy to answer any questions.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he opened the matter for discussion.

Commissioner Whitten made a motion to recommend approval of the request.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Whitten	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Baugh	Aye

Commissioner Armstrong     Aye  
Commissioner Orndoff        Aye  
Chair Finnegan                Aye

The motion to recommend approval of the request passed (7-0). The recommendation will move forward to City Council on January 11, 2022.

***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***

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 (6-0). The recommendation will move forward to City Council on January 11, 2022.

### **Unfinished Business**

None.

### **Public Comment**

None.

## **Report of the Secretary & Committees**

### ***Proactive Code Enforcement***

On hold.

### ***Rockingham County Planning Commission Liaison Report***

Chair Finnegan said that he showed up to the meeting a few minutes late and was locked out of the meeting. I called to obtain information about the meeting. The Chair and Vice Chair were not at the meeting, and they had a quorum of three. They had one item which was the Sunnyside Presbyterian master plan amendment to add eight single-family detached units and Village Apartments, a four unit apartment building. That was recommended for approval.

### ***Board of Zoning Appeals Report***

None.

### ***City Council Report***

Councilmember Dent said that City Council has not had a regular meeting since the Planning Commission meeting there is nothing to report. We have been involved in the ARPA work sessions instead.

## **Other Matters**

### ***Update on Zoning and Subdivision Ordinance Rewrite Project***

Ms. Dang said that staff and the consultants continue working on the project.

### ***Capital Improvement Plan Update***

Ms. Dang said that Mr. Fletcher has compiled a draft of the CIP projects. It is a list and descriptions of projects for your advance review. The commissioners that were here several years ago had requested that, given the length of the CIP, they wanted to get a head start at looking at the list and descriptions of projects. There is a memorandum that provides more information. While we do not have a schedule for the final draft for your review and recommendation, you can begin working on your questions. If you have any questions that you would like to ask of staff, please send them to Mr. Fletcher and myself. We will ensure that the Directors get them. The Directors typically provide written comments back to the Planning Commission. Based on the type of questions and responses, we can decide if a Director is needed to come to a meeting to further explain something. In the past, the written responses have been received well.

Chair Finnegan asked if any of the Federal emergency funding is reflected in the CIP.

Mr. Fletcher said no. The funding is not reflected, but projects that are in the packet could potentially be funded by that. Those decisions have not been made by City Council.

Chair Finnegan said that, before the meeting, Commissioner Whitten was talking about some infrastructure issues with the sewage and things like that. I did not know if Federal infrastructure money might be used for that type of project.

Mr. Fletcher said that those discussions about how to use the funding are still up in the air. What you will see is a typical reflection of what the CIP includes.

Ms. Dang said that there are 12 items potentially on the agenda for next month. There are five unique sites with 12 items. It is a mix of rezoning and SUPs and some Zoning Ordinance amendments as well.

The meeting adjourned at 7:31 p.m.

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Brent Finnegan, Chair

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Nyrma Soffel, Secretary