

MINUTES OF HARRISONBURG PLANNING COMMISSION

June 8, 2022

The Harrisonburg Planning Commission held its regular meeting on Wednesday, June 8, 2022, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Brent Finnegan; Adriel Byrd; Kathy Whitten; Richard Baugh; Dr. Donna Armstrong; Laura Dent; and Jim Orndoff.

Also present: Thanh Dang, Assistant Director of Community Development; Adam Fletcher, Director of Community Development; and Nyrma Soffel, Office Manager/Secretary.

Chair Finnegan called the meeting to order and said that there was a quorum with six members present and asked if there were any corrections, comments or a motion regarding the May 11, 2022 Planning Commission minutes.

Commissioner Orndoff moved to approve the minutes.

All members voted in favor of approving the May 11, 2022 Planning Commission minutes.

New Business – Public Hearings

Public hearing to consider a request from Phone Phonelath for a special use permit to allow for a short-term rental at 41 Port Republic Road

Commissioner Baugh read the following disclosure and left Council Chambers.

The Virginia State and Local Government Conflict of Interests Act requires that I make disclosure, to be recorded in the City records, in any matter in which I am prohibited by law from participating. Therefore, I make the following disclosures:

1. The transaction involved is the item taken up on the June 8, 2022 Harrisonburg Planning Commission Agenda as Item 4(a), a request for special use permit.
2. My personal interest in this transaction relates to the ethical requirements to which I must adhere as a licensed member of the Virginia Bar.
3. I affirmatively state that I will not vote or in any manner act on behalf of the Planning Commission in this matter.

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher said 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: Across Port Republic Road, single family detached dwellings, zoned R-1
- East: Single family detached dwellings, zoned R-1
- South: Single family detached dwellings, zoned R-1
- West: Single family detached dwellings, zoned R-1

The applicant is requesting a special use permit (SUP) per Section 10-3-34 (7) to allow for a short-term rental within the R-1, Single Family Residential District. The parcel is +/- 8,276 square feet and addressed at 41 Port Republic Road, which is located on the southwestern side of Port Republic Road between the intersections of South Main Street and Carrera Lane. The property is improved with a “wraparound” driveway, where two entrances are located on each side of the property’s frontage along Port Republic Road with the driveway wrapping around the rear of single family detached dwelling.

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the Zoning Ordinance. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time.

The applicant is the property owner, who will also be the operator of the STR with the site being their principal residence, the latter of which is required by the ZO. As explained in the applicant’s submitted letter they will have three accommodation spaces with plans to allow up to six guests at one time. While not necessary to operate a STR, the applicant plans to make improvements to the dwelling by adding a full bathroom on the first floor.

While the applicant has explained their operation plans for the STR, the SUP is not restricted to only the current applicant/operator. All SUPs transfer to future property owners; thus, if the applicant sells the property, any future property owner could operate a STR so long as they meet the requirements of the ZO and any conditions placed on the SUP. How the STR could be operated by any future property owner should be considered and evaluated as part of this request.

The ZO requires one off-street parking space for the single family detached dwelling. If the STR is approved as requested, the site must have three more off-street parking spaces—one for each approved accommodation space. Unless City Council allows for a reduction in off-street parking spaces as a condition of the SUP for the STR, the site must ultimately accommodate four off-street parking spaces—one for dwelling and three for the STR.

Typically, the ZO allows individuals at single family detached home parcels to utilize the public street right-of-way to maneuver in and out of the property (i.e. to back in and out of a driveway to

and from a public street). In this particular case, since it is known that Port Republic Road has high traffic volumes, the City should do what it can to prevent individuals from backing in and out on to Port Republic Road, especially for individuals that would be staying at the short-term rental, who are not familiar with the property and the area. Since the site already has two entrances on Port Republic Road, where the driveway wraps around the house, staff believes a condition prohibiting lodgers from backing in and out of Port Republic Road is necessary. The existing wraparound driveway should allow for individuals to enter one driveway and exit the other or that there is sufficient area on site to turn the vehicle around on the property so that vehicle movements are always in a forward motion when entering and exiting the property.

Because the City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations, staff recommends approval of the request, but only with the following conditions:

- a. All STR accommodations shall be within the principal building.
- b. There shall be no more than three STR guest rooms or accommodation spaces.
- c. The number of STR guests at one time shall be limited to six.
- d. 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.
- e. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
- f. All vehicle movements entering and exiting the property shall do so in a forward motion.
- g. 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.

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.

Chair Finnegan said I have a question about condition f, as suggested by staff. How would that be enforced? Since they are guests coming in, there would be people unfamiliar with it. I guess the instructions would go into Airbnb.

Mr. Fletcher said as with any type of conditions or many of our zoning regulations, we would likely have to go on a complaint basis. If there is some type of observation made by anyone saying that there were difficult scenarios, or they observed traffic situations where they were backing in and out. We believe that the applicants could at least inform their lodgers. They can put it as detail in their advertising, however they want to do that, but to make it known that they should not back out or into this site. It is for their safety.

Councilmember Dent said I wonder if signage could help. “Enter here” and “Exit here” so that it is a one-way loop.

Mr. Fletcher said that it could. It would just be signage on a property that would otherwise not be there. We are not promoting to enter one side or the other. Whatever is most accommodating for entering the site has to be in a forward motion. If you deem that worthy, that could be a condition that you would like to add. An issue with signage and lodgers coming in who are trying to locate and enter the site is that when they find 41 Port Republic Road, they may stop and then realize that it is the exit, and they have to maneuver and find the entrance. If they have that information ahead of time, maybe when they are setting their lodging accommodations with the property owners, they can be informed that there are two entrances and that they should always move in a forward motion.

Commissioner Finnegan said the danger may be blocking through traffic at the end of that U driveway. It would force someone to have to pull in, then back out. They would have to not block the path of the U shape.

Commissioner Armstrong said that they are allowed to park in there, so it may be blocked.

Commissioner Finnegan said on the site visit yesterday, we were driving a standard sized SUV and it was taking up the majority of the back of the driveway. You could fit another vehicle back there, but only if people park tight up against the end of the fence.

Commissioner Armstrong said I am noticing this sentence is repeated across these SUP STR applications, “[b]ecause the City has approved multiple STR SUP applications in similar locations throughout the City... staff recommends approval of the request” with conditions. What is “similar locations”? What are we using to differentiate or not differentiate these applications?

Mr. Fletcher said that goes back to the 2017-2018 era when staff was offering recommendations for denial for the majority of the STR SUP applications. [Note: These recommendations were actually offered in 2019, not the incorrectly referenced 2017-2018 time period.] In early conversations, staff had a high threshold of where such uses should have been operated in the City. We believed that they should have been in locations that were... this is where that conversation got lost several years ago, not deep into single-family detached homes, or not deep into neighborhoods in general. We thought there should have been an awareness of what should be expected from the zoning perspective of what people buying properties and zoning protections that they have. We thought there should be somewhat of a high threshold for the specialness of where the STRs should be located.

Over the years, we did not have our recommendations followed. STRs had been approved all over the City. There has been a decrease in the specialness of them from our stance of what that threshold review criteria might be, as to where specifically they should be located. We recognize that the physicality of the site itself, where driveways are located, how big a space might be, how small a lot might be, will always be different. That statement that you reference is pointing to the fact that the precedent has been set. We have allowed them in many different areas of the City,

and numbers of individuals that can lodge at one time. That is reminding folks and capturing what that precedent might be.

Chair Finnegan asked is another way of saying that, “we have approved them in R-1 neighborhoods”?

Mr. Fletcher said I would remove the zoning designation from where we have approved them, but that we have approved them almost in any kind of neighborhood that we have in the City. There was a request in the Park View area. In one of our staff reports, we were trying to bring to attention how far removed that particular property was from areas that the general bystander, individuals in the area would recognize that the property is deep in the neighborhood. That it is far removed from a collector street, where it is acknowledged that there would be quite a bit of traffic on that street. That the property is far from transition zones from different styles of housing and where non-residential uses begin to get mixed in with residential uses. What we were trying to say got lost in the translation and it was stated that how far you are from a collector street should not really be a review criteria. Maybe our message got mixed up, but what we were trying to say is that it was not in the right location in a neighborhood.

Commissioner Armstrong said so prior to 2017-2018 you were recommending non-approval for most of them and City Council was approving them.

Mr. Fletcher said Planning Commission had also made motions to approve. I would have to go back and look at all the data.

Commissioner Armstrong said this is very interesting history because of the discussions we have been having. This is my dilemma. One of them is that I looked back at the Newman Avenue application and, to me, it is different from this one. This one is facing Port Republic Road. It is at the periphery of a neighborhood. Newman Avenue is a much older neighborhood. Long-term residents objected to it. Two wrote letters. There was cohesion across the convening street. This one, there is no way you would know what is happening on the opposite side of Port Republic Road in a routine way. I live there, so I know. To me, they are different. Where I would normally not be in favor of it, I am more in favor of this one because I do not think that it is going to erode social fabric in that neighborhood. But if I vote for this, the argument is that I should vote for all of them because “similar locations” is not really meaningful.

Commissioner Whitten said the width of the driveway to the left of the house, if you are facing the house, is unbelievably narrow. You could clip the corner of that house. When you drive into the back, that is not a large area to park four cars. If you have four cars, there could be three rooms, six guests, you could really have more than four cars. If somebody comes in the wrong driveway, headed the opposite direction, I am not sure that can even happen back there, moving cars past each other. It is very narrow. If someone is coming out and someone is coming in at the same time, it is a dangerous situation. I am concerned about the width of the pavement on that side.

Mr. Fletcher said it is providing two driveway entrances. Would it be best to only have the one on the north which is wider? Then you could go around the back and park and maneuver in any other part of the backyard and pull out.

Commissioner Whitten said I do not know how you could maneuver in that back yard. I think it is dangerous.

Mr. Fletcher said that never came up as a concern. Clearly vehicles can come in and out of there and it is better having the two driveways, rather than the one. I do not know how we would have evaluated this any differently if it was only an entrance on the north side. If there was only one entrance on the site and it was here, the question of the width of the driveway would not have come up.

Commissioner Whitten said it is wider.

Mr. Fletcher said my point is that if this driveway did not exist at all, if it was just grass and stopped here, would there be any concern about them coming into the space and parking four vehicles.

Commissioner Armstrong said the turning around would be hard.

Mr. Fletcher said referring to Commissioner Armstrong's comment about the idea that there are so many of these across the City. It is not that staff would never recommend denial of any one of these, but we did not see anything particularly different about this site from all of the others that have been approved.

Commissioner Armstrong said I did. If the criteria... and it sounds like, from your suggestion about deep in the neighborhood versus not, you really were thinking about the social fabric and the nature of it.

Mr. Fletcher said maybe we miscommunicated. This one would be one that we would have looked at very differently when you are comparing the physical location. There are properties along East Market Street, Port Republic Road, West Market Street, South Main Street, and Liberty Street, all over the City, where I would have thought if someone would have applied there, it makes sense. If you go to a lot of our memos from 2018 to 2019, we talked about community building and what happens when you invite these types of units. This one had a lower threshold from that perspective. When I say we do not see it any differently, it is because we have already approved these others that are nothing like this site. It sounds like you and I are agreeing.

Commissioner Armstrong said I think we are agreeing.

Chair Finnegan said if you go back and read those notes, early on staff was recommending denial of most of the STR SUPs that we received.

Mr. Fletcher said there was a point where we said, we flipped. It was hard for us to continue down that path because we believed the precedent had been set.

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.

Phone Phonelath, 41 Port Republic Road, came forward in support of her request. I know you are concerned about the *[unintelligible]*. Where I put my picnic table, I can remove that table. They can park one more in there. Then they can move out that way more easily. They can turn and go out.

Commissioner Whitten asked is it by the patio or by the garage?

Ms. Phonelath said it is by the patio. I put a big table there. It sits about eight people. I can move that table out. I usually park over there, too. It is easy to get out. I can turn right and get out. It can park a lot. On the grass there, I can have two parking spots and one where the picnic table is. Then they can park one more, about four parking spots. It is easy to get in and out.

Chair Finnegan said you did state in the application that this is your primary residence. Is that correct? You do live here?

Ms. Phonelath said yes.

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.

Commissioner Armstrong said the dilemma that the planning department had is now my dilemma. I have a lower threshold for this one, too. I would be inclined, for the reasons I have already stated, to approve this. I do not want to then be held to a precedent that does not distinguish between this kind of location and, for example, the Newman Avenue location, which had two people writing in. We are not recognizing differentiation because that sentence is in here on all of them.

Chair Finnegan said that is staff's recommendation. It is in our purview to agree or disagree with staff.

Commissioner Armstrong said it is compelling. This is our planning department, and their applications are really so good.

Chair Finnegan said I will say, as a footnote, the Community Development planning staff is down several members. I do want to recognize that you all are operating five people down.

Commissioner Armstrong said that is the dilemma I have right now. I am very reluctant to approve any of them because I think that someone is going to come back and say that there are similar locations. How can you approve that one and not approve this one?

Commissioner Whitten said the word "similar" in that sense is unfortunate. I think that choice was unfortunate.

Commissioner Byrd said in defense of that sentence, I think it is good that the staff, who interacts with the applicants more than we do, are trying to help give the applicants the best foot forward on these discussions, since we are the ones who have to make the decision.

Commissioner Armstrong said it is not about the applicant. It is about the location.

Commissioner Byrd said we were discussing what the staff wrote in the report. That is what I am commenting on. The language that people were discussing, what the staff was saying. I am saying that the staff are trying to give the applicant their best foot forward on any presentation.

Commissioner Armstrong said that statement is boilerplate. It is exactly the same.

Chair Finnegan said it is staff's purview to have discussions among staff and make the decisions that they make and make their recommendation. It is our realm to agree or disagree with staff. I have gone both ways on these STRs. Something to keep in mind is, and it is not a SUP, right now the City does allow STRs called Homestays. These allow up to 90 nights. All of these SUPs are for anything over that.

Commissioner Whitten said I think the use of the word "similar" is unfortunate. "Similar" makes it sound like that they are all kind of alike. They certainly are not.

Chair Finnegan said all locations are different. There have been two STR applications in Old Town in the last six months. I said "no" to one of them and "yes" to another for different reasons. That is why Homestays are by-right and these are SUPs, where we have these discussions and make decisions.

Commissioner Byrd said in that light I tend to view Homestays and STRs in a different light. If someone said that they did the Homestay for a while and now they are trying to ramp up, I would evaluate that differently. You might say that it is the same situation that I previously voted on, but that slight difference changes how I view things. As it comes to this parcel, it reminds me of a parcel that I voted no on because I did not like how the driveway and parking situation would work. That one was on a side road and not on a main thoroughfare like this one. It bothers me because the STR is basically us recognizing that they are putting a business there while also saying that it is a residence. Having seen that back area, that is very... will require "hands on" from the resident to manage that parking. The City cannot effectively observe if that is going to become a nuisance on that road or not until someone has to hit their breaks hard because they are not paying attention. Then we notice. That is the issue with this particular application. If it just had more space, I would be more inclined to vote in favor of it. It does not, so I could not approve of this with it allowing six. I do not think that four parking spaces can be reasonably occupied there and allow for significant movement. I do understand that the applicant was referring to changing the placement of certain things on the property, but that is connected to the same thing that I voted against the other application.

Chair Finnegan asked are you suggesting alternative (c) with different conditions? If so, what conditions? Homestays are limited to 90 nights and four guests. This is six guests. If we were to say limited to four guests, is would change the 90 night part of it?

Mr. Fletcher said if you limit it to four guests, then they would only get the ability to have more than 90 nights. It would not be a Homestay. It would still be a STR. They would still get the flexibility to have a limitless number of nights per calendar year.

Commissioner Armstrong asked is it limitless. I thought that on some prior STRs there were conditions put on the number of weekends and nights.

Mr. Fletcher said yes. There were conversations that Planning Commission might have limited that number at one time. I do not recall if staff ever gave that recommendation.

Ms. Dang said I recall it with Maplehurst. The applicant had requested up to 12 guests for certain weekends or number of nights during the year because they were thinking of graduation weekend or certain events. If I recall correctly, once it got to City Council... My recollection is that Planning Commission and staff were not comfortable with up to 12 guests. I think that everybody was in agreement to reduce the number. I believe it got reduced to eight.

Mr. Fletcher said I do not recall any conditions that limited the exact number of nights per year.

Commissioner Byrd said from my evaluation of the space there, I can clearly see how you can make three parking spaces work, even if it is not delineated, and still be reasonable. All these calculations are based on number of guests.

Chair Finnegan said we do not know for sure how many cars the guest will bring. We could be talking about six guests and six cars. We could be talking about six guests and one car.

Ms. Dang said based on your conversation, you could offer another condition that could limit the number of vehicles. We have done that before with 150 Crescent Drive. You could say no more than three guest vehicles, or whatever the number might be.

Chair Finnegan said if you feel that you might be supportive of this but your issue is with the number of cars that might be in the driveway, it sounds like you might be talking about another condition "h" limited to no more than X cars.

Commissioner Byrd said I am not making a motion right now, but I would be more comfortable with that.

Councilmember Dent said the one thing that I am noticing looking at the floor plans, I see three bedrooms. I do not know if they are planning on any renovations. That would indicate to me that there is the resident plus two rental spaces, unless you are planning to do something different with it.

Commissioner Whitten said they do not have to be there. All three bedrooms would be available for rent.

Councilmember Dent asked do they not have to be there for a STR?

Chair Finnegan said it has to be their primary residence, but they do not have to be there.

Mr. Fletcher said going back a few years, we had the work sessions to create those regulations. If you were the property owner and it is your principal residence, you do not have to be on site during the lodging period. If you rent the property, you have to be present during the lodging period. To clarify, if I own a single-family home and it is my principal residence, I do not need to present during the lodging period. If I rent a single-family home and I am the operator, I have to be present because I am not the owner of the property.

Chair Finnegan said we did several work sessions and that is what we came up with. I am grateful this is the only public hearing tonight. We have been wrestling with this for four or five years, trying to regulate. This is an ongoing thing. It is hard to find the right regulations and there is not necessarily agreement. Some people believe that no STR should exist anywhere. Others are more permissive.

Commissioner Armstrong asked to clarify. If you are an owner, you do not have to be there. If you are a renter, you do not have to be there.

Commissioner Whitten said if I am owner and you are renting out my house, you better not be renting out my house. I feel like the rental people may take care of that one for us.

Chair Finnegan said similar to HOAs, it is not the purview of this body to regulate HOAs or lease agreements.

Commissioner Whitten said I do not know how we would ever be able to say that is a renter who is renting this house, unless something went wrong.

Chair Finnegan said it sounds like we are split. To Commissioner Armstrong's earlier point about being conflicted, I think that as long as you are clear as to why you are voting yes, or why you are voting no, it does not have to be a precedent.

Commissioner Armstrong made a motion to add a condition "h" to limit the number of vehicles to no more than three.

Ms. Dang said that the base regulation with the property proposing to rent out three accommodation spaces, it would be three parking spaces plus the one for the dwelling. The condition for the STR would be to restrict them to have two guest vehicles. That would allow them to have the space for the two guest vehicles, plus the third one for the resident.

Commissioner Armstrong said that if the owners are not there, that changes things.

Chair Finnegan said the way to address that would be to say that there will be no more than X number of vehicles in the driveway.

Mr. Fletcher said that would be reflective of the fact that if the owner left their own personal vehicle on the site, if staff gets a complaint and we are able to go out to take a photograph and

document it and we see four vehicles, they would be considered in violation of that condition. I want to make sure that what you want is that you do not want to see any more than three vehicles at any time during a lodging period. Do you only want to see three vehicles at one time during a lodging period?

Chair Finnegan said yes.

Mr. Fletcher said we can write a condition that says, “During any lodging period, there shall be no more than three vehicles on site.”

The commissioners agreed to the new condition.

Commissioner Armstrong moved to recommend approval of the request with the new condition “h” to allow no more than three vehicles on site during the lodging period.

Commissioner Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye, because I do not consider it similar to some previous ones that I voted against.
Commissioner Baugh	Abstained.
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the SUP request passed (6-0). The recommendation will move forward to City Council on July 12, 2022.

Commissioner Baugh returned at the conclusion of this item.

New Business – Other Items

None.

Unfinished Business

None.

Public Comment

None.

Report of Secretary and Committees

Proactive Code Enforcement

On hold.

Rockingham County Planning Commission Liaison Report

Commissioner Baugh said there were two ordinance amendments. One that was routine was changing some setbacks. They had a rule about accessory buildings were also bound by the front of the main building. They said accessory buildings would just be subject to the normal setback rules. What that is it opened up the possibility that you could have an accessory building closer to the street than the front of the house.

They tabled something that was kind of interesting. What I understood was that some of the supervisors must have complained or raised an issue. It was something that we handle routinely. The ordinance change that was brought forward was that anybody that submits anything becomes a proffer. What we wrestle with all the time and just ask is whether the nice picture that was presented proffered as what the building is going to be like or not. They usually are not. We move on accordingly. Sometimes our answer is that we could vote on it if it was proffered. It was brought up that would actually change their ordinance to say that if they submit it, it is proffered. The Planning Commission felt that was a little much to jump into, so they tabled it for further discussion.

They had a renewal of the Cross Keys agricultural and forestal district. That was fairly minor.

The one the media picked up was the waterpark with the solar. It was taking two master plans and making them into one and allowing for the solar that they will use for onsite generation.

They had two properties that were next to each other about the same area, both looking for a rezoning from B-1 to R-3. They approved one and tabled the other. The one that they approved was very specific. They wanted to put four four-unit townhouses, so 16 townhouses in four buildings. It was proffered and everybody thought that was fine. This was Bear Crossing Court, heading out east on Route 33, turning right on Massanetta Springs, it is behind it. It was approved. The other proposal was to subdivide it into 12 different lots, proffered out some more onerous uses. They basically wanted to reserve the right to do whatever uses. They thought that was a little too much potential for throwing residential, commercial, and professional offices in together randomly. They tabled that one.

That was four approvals and two items tabled.

Chair Finnegan said it is hard for me to imagine saying that whatever is put forth as a conceptual drawing is proffered. That is usually early in the stages. That may, potentially, between the Planning Commission meeting and the Supervisors meeting, if there is community feedback that they do not like this or want to orient it a different way...

Commissioner Baugh said I thought that I could understand the impulse. It came as a staff proposal, but if I was parsing the language correctly, it was a staff proposal because one or more of the Supervisors said that they would like to see them do that. I think Chair Finnegan's point was mentioned. Stuff gets out to the public. It is one thing that we have to communicate to the public. Just because that picture was there, we all know that it will not necessarily be the case. It may look like that, it may not. Todd Rhea from Clark and Bradshaw was there representing the folks on the waterpark. He was the speaker at the public hearing who said he was not there to do this, but you are telling me that every time I submit something it is a proffer. That does not seem... I am not sure that was the rationale that persuaded them, but they did seem persuaded that they wanted to think about that a bit more.

Board of Zoning Appeals Report

None.

City Council Report

Councilmember Dent said that we are in the odd month where the Planning Commission meeting occurs before the City Council meeting so there is no report.

Mr. Fletcher said that there will be a vacancy on the Planning Commission. Commissioner Baugh will be sworn in as a City Council member prior to the meeting next week.

Commissioner Baugh said once I figured out what the calendar was and figured out that I had agreed to do the County report and went ahead and done that. The plan is to tender my resignation from the Planning Commission tomorrow and then would get sworn in at the beginning of the City Council meeting next Tuesday.

Mr. Fletcher said then there will be a seat to fill on the Planning Commission.

Chair Finnegan asked if there are applicants and when that position will be filled?

Mr. Fletcher said that would be City Council's decision.

Councilmember Dent said I raised that question in my small meeting with the City Manager and City Attorney. It is up to us and what applications we get. We might want to, in this case, be more proactive in soliciting applications. I was looking at the calendar and, ideally, next month we could approve a new member at City Council on Tuesday, and they show up on Planning Commission the next night. It is cutting it close. Otherwise, it would take until the following month before they would be seated.

Chair Finnegan said it is likely that we will have a maximum of six members next month.

Other Matters

Adopt Planning Commission Bylaw and Adopt Inclement Weather Resolution

Ms. Dang said in your packet are two documents for the Planning Commission's consideration and adoption.

1. Amendments to the Planning Commission's Bylaws, and
2. Resolution Adopting a Weather Continuation Date

The two documents were reviewed by Planning Commission at the May 11, 2022 meeting. An amendment was suggested by Commissioner Armstrong to Bylaws Section 7-2 and are included within the enclosed document. Staff also added the word "deemed." The underlined text within Section 7-2 was added as follows: "... In the event that no application, program, or business is scheduled to be heard at the second regular meeting of any month, such meeting shall be deemed cancelled."

Planning Commission should make two separate motions to vote on and adopt the two documents.

Commissioner Byrd made a motion to adopt the amendments to the Planning Commission's Bylaws.

Councilmember Dent seconded the motion.

The motion to adopt the amendments to the Planning Commission's Bylaws passed (7-0).

Commissioner Byrd made a motion to adopt the Inclement Weather Resolution.

Councilmember Dent seconded the motion.

The motion to adopt the Inclement Weather Resolution passed (7-0).

Ms. Dang said this will add this as a regular item on the agenda for this next meeting. At the next meeting there will be two new applications. You may decide whether you need one meeting or two meetings. Staff's recommendation is that we are comfortable that they can be handled in one meeting.

Chair Finnegan said I feel that we can handle that in one meeting.

All members agreed to have one meeting next month instead of two (7-0).

Ms. Dang asked if emailing the next month's agenda to the Planning Commissioners for consideration during the Planning Commission meeting was acceptable. The Commissioners confirmed that it was acceptable.

Councilmember Dent asked how is the public informed that the Planning Commission is having one only one meeting?

Ms. Dang said that staff publishes public meeting notices on the website and in the newspaper, and mails notices to the adjacent property owners. The public schedule will be updated to reflect all the meeting dates, with a footnote explaining that meetings can be cancelled if there are no items of business to be considered.

Commissioner Whitten said that she had one question and one piece of information to share. Did Woda Cooper get the grant? I got an email from somebody that said it looked unlikely.

Chair Finnegan said the last I heard, it was unlikely.

Commissioner Whitten said I had a personal experience on graduation weekend, in my neighborhood. I think that it is important that all of you hear about it. We had a party that started that night at 10:00 p.m. with a full band, amplified. I heard it, in my very big house, behind the house, with the windows closed and the air conditioning on. It sounded like they were in my house. The music was loud. The voices were not as loud. Another neighbor called me and said that there are 200 or more people back on Layman Avenue. There were parents and students and this band. We had a texting thread going. People called the police. I called and complained on the non-emergency number. The people who lived closer to this house took the lead. I received a text from the first neighbor who said that the police officer who was there told her that because they had registered the party, they could have amplified music. I said that is not right. She said that is what he told me. Another one called and reported that the police officer said that they got a late start because it was raining. That Saturday it rained late in the evening. They had hired this band and the police told them they could go until 11:00 p.m. I said that is not okay. It was crazy loud and there are people going to bed. Maybe 10:00 or 11:00 is early, but for us it is not early. For people with little kids it is not early. I called the police again and let them know that people are reporting that the police are saying that the party is registered, so they can have amplified music. Clearly that is not right. The dispatcher argued with me that they are registered and that the police called them and told them that they had to turn it down, but they can have amplified music. I went out to speak with one of the officers. The officer told me that it is registered, so they can have amplified music. I told him that he was wrong. He asked me if I was reading Section 12-2-... I told him to stop. Do not ask me that. I know which section are talking about and you are mixing registering a party with the large group ordinance. The noise ordinance clearly states that you cannot have loud music. It does not matter about registering. It does not matter about the large group.

On Monday, I called. I had a hard time trying to find someone at the Police Department to talk to. I ended up calling the City Clerk because she is the one that deals with those large party registrations. It is called Mass Gathering.

Mr. Fletcher said there is the Mass Gathering and then there is the Noise Ordinance.

Commissioner Baugh said they talk about it in terms of registering the party. That is not technical, but how they refer to it.

Commissioner Whitten asked how in the world did they get a Mass Gathering approval for a neighborhood where the houses are so close together and the Noise Ordinance... I do not understand that. The City Clerk, Pam Ulmer, said that they did not. They did not get a Mass

Gathering permit. They had over 200 people, over the 100 person threshold, and the police did not write any kind of violation. As we were talking to them, the officer that was the lead person walked back and said she was sorry, it was late, and they were trying to get this stopped. I said that I appreciated that, but now it was 11:15 p.m. and you told the neighbors that they would stop at 11:00 p.m. and they are nowhere close to being done. What are we doing here? This officer just told me that because this is registered, they can have amplified music, but that is wrong. She said of course that is wrong, they cannot. There was all this confusion. Neighbors were told by the police that that was the case. Typically, when you have a police officer tell you something, you assume that they know what they are talking about. They were in violation for not having the Mass Gathering permit and they were in violation of the Noise Ordinance. About the time we are having that conversation, screaming starts. The police officer left to deal with it. There were three officers. I understand that it was concerning for them because that many people, that large of a gathering with that much alcohol, could get pretty ugly. They were concerned about that too, and what the repercussions of saying they all have to leave might be. They did manage to close it down.

On Monday, I found out that nothing happened. There was no noise violation. There was nothing for not having the Mass Gathering permit. It is as if it never happened. The police officer that I spoke with, Officer Hancock who does community policing, said they are gone now. I said, you know what, they might not be back, but somebody else will be.

I said all this to say this, when we say on this piece of paper that talks about STRs that all you have to do is call and complain and you will get something that will verify that there is a problem. The police officer also told me that they do not have any way to tell if there is noise. Zoning staff do not necessarily know that the police have anything happening on their side. There is no way to mesh those. We do not have a way to mesh those. If that is the case, then I would say to you all that we should not be saying: if we have a problem, we will just not have that STR anymore or that we will take care of the infraction. We do not have a process to take care of this problem.

Councilmember Dent said I remember that we had a discussion about what constitutes having a SUP revoked. Mr. Russ said that there is not that connection. Someone may have complained to the police and think they have done all that they need to do, but to actually have it [the use] shut down as a nuisance they would have to go through Community Development, Planning Commission or City Council.

Commissioner Whitten said that in a neighborhood where there are rentals, if you contact a landlord and say this is a problem house... There are about three in this little area that are problem houses for noise and public urination and that kind of stuff. That was on the opposite side of the street from me, and I was not aware that it was this bad, and apparently it has been an issue. When they called the landlord, the landlord asked for the police reports. But they do not have any. It is not because it is not a public nuisance or not a big problem. It is because the police did not file a report. In this case, I felt strongly about it, and I said to both of these officers that we would like a citation. It is always their judgment, but there is no reason that there should not have been on this one. It was clearly way over the top.

Chair Finnegan said it sounds like a frustrating experience.

Commissioner Whitten said it was frustrating, but it was also because I know that we are telling people who come to us and depend on us to be able to tell them what they can do, we are telling them incorrect information. We can say that we will call the police if there is a problem, but it will not help if they are not willing to write a citation.

Chair Finnegan said I hear what you are saying, and it is very frustrating. I would say that condition, number G or whatever it is regarding a nuisance, I think that we should keep it in to give us some leverage if people can document what is happening there.

Commissioner Whitten said I agree. I hope that City Council will consider doing the work to put some teeth behind that. I know that staffing is down everywhere, but it does not mean that we can just let our neighborhoods go. That is in effect what we are doing. When students come back in August, it will be a whole new process.

Commissioner Armstrong said as a retired professor, I can say that JMU has teeth.

Commissioner Whitten said I wish they would use them.

Commissioner Armstrong said they have them, whether they use them or not. I know that in the university in which I was a professor would punish. There were penalties for this kind of community unlawfulness. They could be severe. There was a whole committee that would review student behavior from an ethical and a legal perspective. They could be expelled on severe occasions. JMU has the teeth. There is a JMU Student Life program. It should be part of the discussion.

Commissioner Whitten said I am hoping to have a conversation with Tim Miller this summer. I want to speak with the City Attorney, too, to find out where we are on all of this.

Commissioner Byrd asked what office should people be complaining to?

Mr. Fletcher said that any type of land use or zoning violation needs to come to our office.

Chair Finnegan said that would be STRs, not a loud party.

Mr. Fletcher said what Commissioner Whitten is talking about is a phone call to a non-emergency line or 9-1-1 because those are behaviors. Any time there is an issue regarding a land use violation, they should call our office. That is what we are here for. That is what our zoning staff are doing. They are documenting it. It will come to a point where our staff will say that we have received three phone calls regarding this specific site. We know that it has a SUP. That is where the conversation begins. We may bring it to you saying that we have this concern.

Chair Finnegan said theoretically, someone documents this and brings it to you. There is documentation of a violation. That documentation may not include a police report, for the reasons stated. Would staff potentially initiate revocation?

Mr. Fletcher said we would not initiate revocation. We would bring it to you and ask you if this is enough for you to want to bring it back to discussion. There are always circumstances around what a situation might be. If we received three phone calls over three different time periods. We are going to see a pattern and determine that it might be a concern.

Chair Finnegan said the initiation of the revocation would start with you would bring it as a concern and we would vote on it?

Mr. Fletcher said I can give a real world example because we had a SUP that was approved in 2000 and the condition was written in a way that we would not write them today. The condition gave staff the authority to decide. I explained it to the property owner. A complaint came in about parties. I asked if they had called the police. They had called the police multiple times. The individual said that they believed there were a lot of people living there, too. I let them know that is something we can look into. I sent to the inspectors to investigate. I asked them to find out what is going on. It might not be something we can address because it sounds like a behavioral party issue but take a look. There might be too many people living there. It was a property zoned R-2 and they had received a SUP in 2000 to have more than two unrelated individuals living there. There were two units. Ultimately, they received approval to have three people in one unit and four in the other unit. They had requested to have eight in total but received approval for three and four. One of the conditions was associated with it becoming a nuisance. It was worded in a way that gave us [staff] the authority, which we do not really like. It is too much subjectivity. We contacted the owners of the property. They immediately responded because they were concerned about the loss of their SUP. We brainstormed with them. They met with the City Attorney. They met with me. I let them know that they had to have a conversation with their tenants. Now it was documented. Now we have evidence in the file. They asked how many more complaints will we need to receive? I could not tell them. Is it two? Is it three more?

Chair Finnegan said it does give the City some limited leverage.

Mr. Fletcher said the frustrating component is that if you call the non-emergency line, which is what you should do, what mechanisms can be in place for that person who is picking up the phone to document? They are hanging up the phone and then picking up the next line. There is so much happening all at once. As much as we can share this information with people, that if it is a land use violation, call Community Development. That is what we are here for. I thank City Council for approving within the budget this year the ability for us to hire an additional staff person. Now we have the ability to add another person to our Planning and Zoning team. We will have five people rather than four. Unfortunately, the division only has three right now because we have been unable to fill Ms. Banks position. This is what we do. Call us. We will document.

Commissioner Byrd asked what is the name of your department?

Mr. Fletcher said the Department of Community Development. It includes the Planning and Zoning Division, which you see all the time. We have two other divisions which are the Engineering Division and the Building Inspections Division. The number is 540-432-7700.

Chair Finnegan said it might not be a bad idea, as we are adding the language into these SUP, to add the phone number. I know that phone numbers may change in the future, but the fact that you have it memorized tells me that it has not changed in a while. It is something that we may want to get out publicly and use this platform to do that.

Chair Finnegan said before we adjourn, I want to say for the public record that I am going to attempt to walk, bike or use any means of transportation other than driving a car to Planning Commission for the next year. Now that it is in the public record, I have to make that happen.

The meeting adjourned at 7:23 p.m.

Brent Finnegan, Chair

Nyrma Soffel, Secretary