



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

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## TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

**SUBJECT:** Public hearing to consider a request from Jamison Black Marble Wildlife Preserve, LLC to amend the Zoning Ordinance to allow nontransient dwellings with recreational and leisure time activities. Recreational and leisure time activities are permitted in the M-1, General Industrial District only by special use permit Section 10-3-97 (10). Currently, no dwellings are permitted in association with this use. The amendment would add text to Section 10-3-97 (10) allowing for nontransient dwellings.

### **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 10, 2015.**

Chair Fitzgerald read the next two items on the agenda and said we will have one staff presentation for these items and then have a separate vote. She asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development and related activities.

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

Site: Recreational and leisure time activity special use with cabins under construction and an accessory building, zoned M-1

North: Industrial uses and undeveloped property, zoned M-1

East: Industrial uses, zoned M-1,

South: Undeveloped property, zoned M-1

West: Pilgrim's Pride industrial operations, zoned M-1

The owners of 1430 Red Oak Street—the legal owner being Jamison Black Marble Wildlife Preserve, LLC, which consists of Richard L. Blackwell III, Edmond H. Blackwell, and Gregory S. Johnson—are requesting to amend the M-1 special use permit (SUP) section of the Zoning Ordinance (ZO) while simultaneously applying for the SUP they are requesting be amended so they can have the ability to permanently reside in dwellings on industrially zoned property. 1430 Red Oak Street is accessible from the temporary Red Oak Street cul-de-sac via a private gravel drive extending south from the cul-de-sac within the undeveloped Red Oak Street right-of-way (ROW). The undeveloped Red Oak Street ROW terminates at the subject property.

The proposed ZO amendment is to Section 10-3-97 (10), which currently allows M-1 property owners to request permission to have “recreational and leisure time activities.” The amendment would create

the opportunity to have such uses while also allowing, on a case-by-case basis, nontransient dwellings. Specifically, the amendment would be as follows: (proposed text is underlined):

- (10) Recreational and leisure time activities, which may include nontransient dwelling units.

In 2009, the applicants were granted a recreational and leisure time activities SUP, which allowed them to formally utilize the property for recreational use and to build two cabins on the property to be used for shelter, which were for temporary recreational use only. At that time, the owners stated the use of the property was a retreat for themselves and their family and friends, where they could camp, picnic, swim, fish and more. They also noted that at times, and for no charge, small groups would use the property to recreate, and further that the property was closed to the general public. The SUP was approved with the following conditions:

- limiting the site to the two proposed cabins only,
- the cabins cannot be occupied on a long term basis, and
- staff shall be authorized to review any complaints received regarding the property and based on their finding may require the applicant to return to Planning Commission and City Council for a public hearing to re-examine the use of the property. Such re-evaluation may result in additional conditions being placed on the use or revocation of the special use permit.

The property owners are now interested in being able to permanently reside at 1430 Red Oak Street. As explained to the applicants, in general, there are two ways to allow their desired outcome: 1) rezone the property or 2) amend the ZO in some way to allow the use. After a great deal of discussion with the applicants, and in evaluating the different options available to them, staff suggested the text amendment approach, which the applicants ultimately decided upon as applied for in this request.

As noted above, the applicants are also simultaneously requesting approval of the SUP as proposed for modification. As their submitted application materials demonstrate, although they plan to have up to five single family detached dwellings, at this time, only two are planned to be finished in the near future. Along with the dwellings, they will have recreational and leisure time activities that include "...occasional special events for family and friends, (not for charge) and swimming and water activities."

Although they plan to utilize water from the quarry as their water source, the applicants should understand that they could be required to connect to the City's water infrastructure. This matter will ultimately be determined once the final decision is made to the exact location of the fire hydrant that they will be required to install. With regard to sewage, they plan to either connect to the City's infrastructure or utilize an onsite septic system regulated by either the Virginia Department of Health or the Department of Environmental Quality. Their submitted letter also notes they plan to have chicken coops, which for this piece of property would be permissible so long as they abide by the regulations as noted in Section 15-2-24 of the City Code.

As is required for all property owners wanting to develop a parcel along an undeveloped public (paper) street, per Section 3.5.1 of the Design and Construction Standards Manual (DCSM), "[i]f an owner, developer, etc. wishes to develop any parcel of land abutting a paper street, and the parcel abuts no other publicly maintained city street, it shall be the sole responsibility of the developer to construct the street to current standards until it accesses a publicly maintained street. If there is not a minimum width of fifty (50) feet of public street right-of-way or other width as determined by the City, then it must be dedicated to the City. Design of such improvement must be adequate to ensure extension of the remainder of the street in the future." However, in this particular situation, another option for them would be to request closing the remaining undeveloped ROW of Red Oak Street while working with

the adjoining property owners to the north to dedicate the necessary property around the existing temporary cul-de-sac to permanently enclose the turnaround in public street ROW. At this time, the applicants believe they will tackle the latter option. In the future, if they request closing the remaining public street ROW, as part of that application, the applicants will also have to formally request Planning Commission's consent to permanently terminate Red Oak Street as Section 10-2-41 (e) of the Subdivision Ordinance prohibits permanent dead-end streets unless permitted by Planning Commission. At this time, staff would support this street's permanent termination as there is no current need for it to continue through the subject property to connect to other public streets.

With regard to access for emergency responders, regardless of whether Red Oak Street remains in its current location or it is extended to the subject property, at minimum, a 16 feet wide all-weather surface road (with shoulder) must be provided from the termination of the public street on and through the property for a distance appropriate to serve the dwellings. Early discussions with the applicant included, at minimum, extending the road past the existing 30 feet X 30 feet cabin and past the proposed 2,950 square feet dwelling and then back toward the entrance to the property—essentially, a “loop road” following the existing gravel drive. However, depending upon the final locations of the other three planned dwellings, the 16 feet wide road as described above may need to be extended further south on the property so that emergency responders have appropriate access to the dwellings. Furthermore, to be able to construct the 16 feet wide private street as described, the applicants will be required to request a variance from the private street standards as listed in the DCSM Section 2.7. This variance can be requested either at the time they would submit a comprehensive site plan to improve/complete Red Oak Street to their property or during the street ROW closing request.

Although the applicants are already aware of this, as a reminder, aside from the 30 feet X 30 feet cabin and the accessory building, it appears portions of all of the other proposed dwellings could be partially in the floodplain. The property owners should be prepared to meet all requirements of the floodplain district.

Staff is recommending approval of both applications. First, with regard to the ZO amendment, staff does not believe affording recreational and leisure time use property owners the ability to request nontransient dwellings will negatively impact the integrity of the industrial zoning regulations. The approach is narrowly tailored to a non-industrial-like use, and because the SUP process gives the City the ability to deny the request or stipulate approval with appropriate conditions, there should be no damaging implications. As a reminder, this is not the first time that staff has recommended in favor of an amendment to allow permanent residential uses on industrially zoned property. In 2009, the City approved a staff proposed amendment to the ZO to allow boarding and rooming houses by SUP on M-1 property. (After that amendment was approved, in March 2010, a boarding and rooming house SUP was granted to 715 North Main Street, which is zoned M-1.)

With regard to the applicants' SUP request, the subject property is likely the perfect scenario for such a use. The property is located at the end of a public street, where there is no public plan to extend the street; it is also greatly secluded; and it would have very minimal impact to the surrounding uses. Staff's support, however, does not come without the following conditions:

1. The property shall be limited to five single family detached dwellings.
2. Occupancy of each dwelling shall be limited to a family or two persons.
3. Final certificates of occupancy shall be withheld until the following items are completed or an acceptable form of surety is accepted by the City to cover the cost for such work:

- a. Red Oak Street shall be extended from its existing location to the subject property per public street standards as specified by the DCSM; or, the undeveloped Red Oak Street ROW shall be closed and purchased and the existing cul-de-sac permanently enclosed in public street ROW.
- b. At minimum, a 16 feet wide all-weather surface road (with shoulder) shall be constructed from the termination of the completed public street on and through the property. The distance/extent that the road must travel shall be determined by the Fire Department, when the final locations of the residential structures are determined.
- c. A fire hydrant shall be extended onto the property and located at a location determined by the Fire Department.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Way said my only question is regarding the zoning ordinance amendment. Did we not have a discussion about reduction or encroachment of the M-1, Industrial District at some point last year?

Mrs. Banks said are you referring to the rezoning request along Mt. Clinton Pike.

Mr. Fletcher said yes, the request to eliminate the M-1 property in the area.

Mr. Way said we were trying to protect the amount of M-1 property.

Mr. Fletcher said we are not losing M-1 property in this case.

Mr. Way said I realize that but I was just trying to think about the implications of this request and are we going down the same route where we might be potentially opening up property to be less manufacturing suitable. But you are correct in the fact that it is restricted enough through the special use permit that it becomes more of a case-by-case basis. Therefore, it is not really an erosion of any manufacturing opportunities.

Mr. Fletcher said if you are looking at a major throughway zoned M-1 it makes it much harder to be in favor of a special use such as this. This request tonight is at the dead end of a public street with no plans for future extension.

Mr. Colman asked if the location of the dwellings were proffered or was it demonstrative for this presentation.

Mr. Fletcher replied there is no condition attached that the dwellings have to be in the exact location; of course two of them are basically there already.

Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing for the ordinance amendment and asked the applicant or the applicant's representative to speak.

Mr. Dick Blackwell with Blackwell Engineering said I am representing the owners of the property – the owner's are two of my sons and my son-in-law. This is an unusual piece of property that is zoned M-1; but, using it for an industry purpose seems a crime. This is a very beautiful setting. One reason the owners desire to live there is because of trespassing; people cut the fence and come in to party. That is one reason that the previous owners, Pilgrims Pride, decided to get rid of the property. It is somewhat of an attractive nuisance, but living there does help with the trespassing problems. I will be glad to answer any questions.

Chair Fitzgerald asked if there were any questions for Mr. Blackwell. Hearing none, she asked if there was anyone else wanting to speak in regard to the zoning amendment. Hearing none, she closed the

public hearing for the ordinance amendment, opened the public hearing for the special use permit request and asked if the applicant's representative would like to speak.

Mr. Dick Blackwell said if there are any questions regarding the request, I would be glad to answer them.

Chair Fitzgerald asked if there was anyone else wishing to speak in regards to the special use permit request. Hearing none, she closed the public hearing and asked if there were further questions, discussion, or possibly a motion on the requests.

Dr. Dilts said she recommends approval of the zoning ordinance amendment to allow nontransient dwellings with recreational and leisure time activities, Section 10-3-97 (10) and to recommend approval of the special use permit for 1430 Red Oak Street to allow nontransient dwellings with the three conditions as specified by staff.

Mr. Colman seconded the motion.

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

All voted in favor of the motion to recommend approval of both requests (6-0).

Chair Fitzgerald said this will move forward to City Council on July 14<sup>th</sup>.

Respectfully Submitted,

Alison Banks  
Planner