



June 24, 2025 City Council Meeting

Title

Consider Alley Closing adjacent to Newtown Cemetery — Adam Fletcher, Director of Community Development and Harrisonburg Planning Commission

Summary

Project name	Alley closing adjacent to Newtown Cemetery
Location	Undeveloped alley connecting Hill Street and Sterling Street
Adjacent Tax Map Parcels/Addresses	Adjacent to tax map parcels 33-K-12-20 (Newtown Cemetery) and tax map parcels 33-K-1, 3-8, and 11, which are addressed as 500, 508, 512, 516, 520, 524, 532, 540, 548, and 556 East Gay Street and 425 Hill Street.
Total Land Area	+/- 8,659 sq. ft.
Applicant	Newtown Cemetery Trustees
Planning Commission	May 14, 2025 (Not a Public Hearing)
City Council	Anticipated June 10, 2025 (First Reading/Public Hearing) Future Date (Second Reading)

Recommendation

Option 1. Planning Commission (4-2) voted to recommend approval to close the alley. Staff, with additional explanations below, recommended denial of the closure.

Fiscal Impact

N/A

Context & Analysis

The applicant, Newtown Cemetery Trustees, is requesting to close an undeveloped 17-foot-wide alley adjacent to the Newtown Cemetery, which totals +/-8,659 square feet. In addition to the Newtown Cemetery, the alley is adjacent to tax map parcels 33-K-1, 3-8, and 11, which are zoned R-2, Residential District and addressed as 500, 508, 512, 516, 520, 524, 532, 540, 548, and 556

East Gay Street and 425 Hill Street. The applicant would like to close the alley to allow for the future expansion of Newtown Cemetery for burials.

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

<u>Site:</u>	Undeveloped public alley, zoned R-2
<u>North</u>	Newtown Cemetery, zoned R-2
<u>East:</u>	Across Hill Street, residential uses, zoned R-2
<u>South</u>	Residential uses, zoned R-2
<u>West:</u>	Across Sterling Street, residential uses and, although slightly askew to the subject alley, an undeveloped alley that connects Sterling Street to Myrtle Street, zoned R-2

The subject alley was created by a plat recorded in 1909. In 1909, subdivisions in Virginia were governed by the Early Subdivision Act, which provided that streets and alleys shown on recorded subdivision plats created a public easement or right of passage, but title to the underlying real estate remained with the dedicator of the subdivision or their heirs or assigns. The City likely does not own the underlying land but instead holds a public easement or right of passage across the alley. There are no public water, sewer, or power lines located within the alley. Approval of the applicant's request would result in the City vacating all its interest in the alley; however, the City cannot convey title to the alley to the applicant. It would be the responsibility of the applicant to secure title to the alley in the event the City vacates its interest.

In April 2025, a non-invasive geophysical survey using ground penetrating radar (GPR) was conducted on portions of the existing Newtown Cemetery, the alley to the south of the cemetery, a portion of Effinger Street, and a portion of Sterling Street. The GPR survey identified three potential unmarked graves in or near the alley. The alley boundaries were not surveyed and flagged or staked for the GPR survey; therefore, all locations are approximate, and the precise location of the potential unmarked graves in or near the alley is unknown. A copy of the GPR report is attached. (In June, the applicant provided a copy of a boundary survey of Newtown Cemetery that is dated from 2023. The survey, however, does not indicate where the potential unmarked graves are located with regard to the boundary of the alley.)

A tree located behind 540 East Gay Street appears to encroach on the alley. The tree is approximately 13 feet from the fence and may be an obstacle for vehicular traffic. The potential unmarked graves appear to be located to the west of the tree behind 524 and 532 East Gay Street. A survey of the property would be required to determine how close the potential graves are located to the property line and whether they encroach in the alley. There appears to be evidence of vehicle traffic in portions of the alley and evidence of pedestrian traffic in the areas where vehicular traffic is likely obstructed.

If the applicant's request is approved, they hope to use the additional land to expand the existing Newtown Cemetery for burials. The undeveloped alley is zoned R-2 and would require approval of a special use permit (SUP) per Section 10-3-40 (3) to allow an expansion of the existing cemetery. The City cannot accept a SUP application until the Trustees have secured title to the land. However, it should be known that staff recognizes the sensitive nature of cemetery operations and would need to further evaluate whether a cemetery should be able to expand closer to residential properties.

Regardless of the complexity of the actions needed for the applicant to acquire the public alley and that further action is needed to gain the ability to expand the cemetery, staff believes that maintaining the public easement or right of passage across the alley is generally in the best interest of the community. A site visit and documented photos (attached) demonstrate that people are walking and driving in the alley. In addition, there are gates that provide rear access to existing lots through the alley. Staff believes that alleys offer the public a benefit and, in this neighborhood, provide access for property owners to the rear of their parcels. Therefore, staff recommends denial of the alley closing request. Staff's recommendation for denial, however, does not mean the status quo of public access should be entirely maintained. As indicated in an earlier paragraph, the alley boundaries were not surveyed, staked, or flagged and the precise location of the three potential unmarked burials is unknown. If Newtown Cemetery and its partners confirm that the three potential unmarked burials are positioned within the public access area, and if more unmarked burials are later identified to be within the public area, the City can work with Newtown Cemetery and the community to protect these significantly important areas while also maintaining as much space as possible for public passage through this block. More specifically, if burial locations are confirmed, we are not advocating to maintain vehicular access over the identified spaces, but rather at a minimum we can work together to continue providing at least public, pedestrian access through the block while respecting these areas.

During the Planning Commission review, staff offered different alternatives for the Commission to consider and suggested opportunities to reserve easements for public passage. Those options can be reviewed in the Planning Commission Memorandum. An entirely different option to consider that was not discussed at Planning Commission is that the City could table the decision about the closure of the alley and provide assistance to Newtown Cemetery and their partners to temporarily protect the areas of interest so that current public usage does not disturb these spaces. Once further research is completed, and with confirmation of burial locations with respect to the location of the alley, then, at a minimum, permanent protection can be determined as indicated in the previous paragraph.

If City Council wishes to support closing the alley, staff continues to recommend giving consideration for providing a public easement of at least five feet in width, the location of which can be confirmed after a survey of the area is completed indicating the exact boundary locations

and respecting the location of the burials. The public access easement would allow continued pedestrian access along the entire alley.

Options

1. Approve closing the alley as requested by the applicant.
2. Approve closing the alley with the condition to provide at least five feet in width of public access while appropriately respecting identified burials.
3. Deny the request with provisions for both protecting identified burials and public access through the alley.
4. Table the request to allow for further research while providing temporary protections of potential burial sites.

Attachments

- Site maps
- Application and supporting documents
- Picture tour of the alley
- Ground Penetrating Radar Report dated April 2025
- Public Comment