



City of Harrisonburg, Virginia

Department of Planning & Community Development
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To: Kurt Hodgen
From: G. Chris Brown, city Attorney
Date: October 3, 2016
Re: Right-Of-Way Closing

Summary:

1. Consider a request from Jamison Black Marble Wildlife Preserve, LLC represented by Richard Blackwell to close an 8,523 +/- square foot undeveloped portion of Red Oak Street. The section to be closed is adjacent to three parcels, which are zoned M-1, General Industrial District. The adjacent parcels are identified as tax map parcel numbers 46-C-8, 56-G-2A, and 56-E-26.

Background:

The Comprehensive Plan's Land Use Guide 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, as well as the properties' existing zoning, are located on and adjacent to the property:

Site: Properties involved in the dedication of ROW for the public street include portions of the already constructed cul-de-sac, which are zoned M-1

The area involved with the Red Oak Street ROW closing is undeveloped, but includes existing gravel driveway to access the property at 1430 Red Oak Street

North: Existing built and platted Red Oak Street

East: Undeveloped land, zoned M-1

South: Recreational and leisure activity use and non-transient single family detached structures undeveloped at 1430 Red Oak Street, zoned M-1

West: Industrial uses, zoned M-1

The reasoning for public street ROW closing request stems from conditions placed upon the July 2015 approval of the special use permit (SUP) to allow for recreational and leisure time activities with nontransient dwellings on the M-1 zoned property at 1430 Red Oak Street, which is owned by Jamison Black Marble Wildlife Preserve, LLC. (The Planning Commission minutes associated with the above described SUP, which includes the associated Zoning Ordinance amendment that accompanied that application, are attached with this submission for reference.)

In brief, the approved SUP allowed for Jamison Black Marble Wildlife Preserve, LLC to have up to five single family detached dwellings on the property and to have—as described by the property owners—

recreational and leisure time activities that include "...occasional special events for family and friends, (not for charge) and swimming and water activities."

With conditions, staff supported the SUP, Planning Commission (PC) voted in favor of the request with the conditions suggested by staff, and City Council approved the request as recommended by PC. The conditions of the approved SUP are as follows:

1. The property [1430 Red Oak Street] 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.

If the preliminary plat and street ROW closing are approved and completed, then condition "3 a" would be fulfilled.

Key Issues:

The submitted plat demonstrates the details for both the public street dedications and the requested ROW closure. Portions of nine properties (made up of four separate property owners) would be dedicated as public street ROW around the existing, built Red Oak Street cul-de-sac. In conjunction with the public street ROW dedication, the owners of 1430 Red Oak Street are requesting to close and purchase the remaining 8,523 +/- square feet of undeveloped Red Oak Street ROW that extends southward beyond the existing, built cul-de-sac.

Acceptance of both the ROW dedication and vacation of the remaining portion of the undeveloped ROW would permanently end the southern section of Red Oak Street. Per Section 10-2-41 (e) of the Subdivision Ordinance, "[c]ul-de-sacs and other permanent dead-end streets are prohibited except when permitted by the planning commission in accord with the DCSM." The applicant is aware of this requirement and, as noted in their submitted letter, has requested for PC's consent.

With regard to the ROW closing, per letters submitted with the application, neither of the two property owners adjacent to the undeveloped ROW (to the east or west) is interested in purchasing any portion of the undeveloped street property. As a result, and if approved for vacation, Jamison Black Marble Wildlife Preserve, LLC, may acquire the entire area requested for closure.

If the City chooses to vacate the ROW, there are a few easements that must be reserved. Regarding public easements, the submitted plat demonstrates where an easement will be reserved for a public waterline. There is also a separate combined easement for both public water and sewer infrastructure. For private easements, there are two easements that need to be retained for the accommodation of the approved industrial development on the adjacent property to the east (tax parcel 56-E-26). In December 2014, the developer of tax parcel 56-E-26 received approval of their engineered comprehensive site plan, which

utilized the undeveloped Red Oak Street ROW for two purposes: 1) a private driveway extending from the constructed cul-de-sac curving onto their property, which provided a second means of ingress and egress; and 2) stormwater drainage facilities, which channeled water flowing from their site and other upstream properties across the undeveloped ROW to Blacks Run. Construction for that development has not yet begun as their land disturbance permit cannot be released for several reasons (including but not limited to the receipt of an approved surety for public improvements, submission of their Stormwater Pollution Prevention Plan, and other issues). Regardless, private easements shall be retained for the agreed upon use of the undeveloped ROW. The submitted plat demonstrates where a private access easement would be reserved and where the private drainage easement shall be located for the owner of tax parcel 56-E-26.

If approved, at the time of final platting and recordation of the ordinance to vacate the ROW, staff will ensure of the exact locations of the described easements above. There also remains a question as to whether an additional public waterline easement is needed for a small portion of the northwest corner of the undeveloped ROW. If an easement is needed, staff will make sure it is drawn accordingly and reserve an easement during the final steps of the process. The applicant must remember that if City Council approves the request to close the ROW, the City Attorney will not begin to prepare the ordinance document nor will the procedural second reading of the request occur until the funds to purchase the ROW are submitted and the applicant has the final plat submitted and in an acceptable form for recordation.

As was identified in the SUP staff report in 2015, to be able to construct the 16 feet wide private street to serve the dwellings on 1430 Red Oak Street, the applicants must receive approval of a variance from the private street standards as listed in the DCSM Section 2.7. To deviate from this standard they must request a variance to the Subdivision Ordinance Section 10-2-41 (a), which states:

“Proposed streets shall conform to the standards and specifications outlined in the Design and Construction Standards Manual except that variances to the standards for streets, alleys, blocks, easements, sidewalks, and all such related features may be approved on a case-by-case basis by the city council when:

1. The proposed alternative would better achieve the walkable, pedestrian and bicycle-oriented environment the city desires.
2. The particular conditions of the site and surrounding street network would allow the proposed alternative without causing undue inefficiencies for service vehicles, nor an excessive reduction in pedestrian safety due to pedestrian-vehicle movement conflicts.
3. The proposed alternative would better balance the needs of pedestrians and vehicles, and better achieve the goals of the comprehensive plan.”

As noted in their submitted letter, the applicant has requested to deviate from the private street standards by receiving approval of a variance to Section 10-2-41 (a) of the Subdivision Ordinance.

During the staff review of the application, the Department of Public Utilities identified that the existing waterline that crosses the Jamison Black Marble Wildlife Preserve, LLC property in the northwest corner of the parcel is not within a public easement. Staff requested for the property owners to consider dedicating an easement for this infrastructure. Staff is appreciative that as part of this process the plat identifies their intent to dedicate that public easement.

In brief, the requested permissions herein are fulfilling obligations and expectations that staff previously identified would be acceptable. As staff identified in June 2015, there is no current need for Red Oak Street to continue through the Jamison Black Marble Wildlife Preserve, LLC property; thus, staff accepts the permanent termination of Red Oak Street as well as the street ROW closing with the condition that all necessary easements are retained. Furthermore, staff also supports approving the variance to Section 10-2-

41 (a) of the Subdivision Ordinance to allow the private street that will be constructed to serve the dwellings on the 1430 Red Oak Street property to deviate from the private street standards within the DCSM Section 2.7.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

Rather than approving the preliminary plat or public street ROW request as applied for herein, denial of the applications would otherwise require the property owners of 1430 Red Oak Street to fulfill their SUP condition number “3 a” by extending and constructing Red Oak Street from its existing, built location to the northwestern section of the 1430 Red Oak Street property per public street standards as specified by the DCSM.

Community Engagement:

As required by the Subdivision Ordinance, a sign was posted giving public notice to the request for a variance to deviate from the standards of the Subdivision Ordinance. In addition, although not required for the Planning Commission review but a standard practice by Planning staff to assist in the awareness that a public street ROW closing request was made, a sign was posted giving notice that an application was submitted to close the undeveloped public street ROW. (As a reminder, the public street ROW closure request does not become a public hearing until the case is heard at City Council, at which time other community engagement occurs.)

Recommendation:

Staff recommends approving the preliminary plat and requested public street ROW closing.

Attachments:

1. Preliminary Plat demonstrating property dedications and public street ROW closing request (4 pages).
2. Ordinance
3. Deed of Easement

Review:

Planning Commission unanimously (7-0) recommended approval of the preliminary plat, the permanent termination of Red Oak Street, the Subdivision Ordinance variance, and the public street right-of-way closing as presented.