



# City of Harrisonburg, Virginia

## Department of Planning & Community Development

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Building Inspections

Engineering

Planning & Zoning

April 1, 2019

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

**SUBJECT:** Consider a request from Emily and Dan Fudala and Gretchen Nyce to close a total of +/- 1,200 sq. ft. of undeveloped public alleys, which are located perpendicular to Myrtle Street. The approximately 10-ft wide alley connects Myrtle Street to another undeveloped alley that is perpendicular to and connects to East Wolfe Street and East Rock Street, and is adjacent to parcels identified as tax map parcels 34-OO-10, 11, 16, and 19.

### EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: March 13, 2019

Chair Way read the request and asked staff to review.

Consider a request from Emily and Dan Fudala and Gretchen Nyce to close a total of +/- 1,200 square feet of an undeveloped public alley, which is located perpendicular to Myrtle Street. The approximately 10-foot wide alley connects Myrtle Street to a graveled alley that is perpendicular to and connects to East Wolfe Street and East Rock Street. The section of the alley to be closed and purchased is adjacent to tax map parcels 34-OO-10, 11, 16, and 19.

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

- Site:** 1,200 +/- square feet of an undeveloped public alley right-of-way adjacent to tax map parcels 34-OO-10, 11, 16, and 19, zoned R-2
- North:** Single-family dwellings, zoned R-2
- East:** Continued +/- 60-ft. portion of the undeveloped alley leading to Myrtle Street and single-family dwellings, zoned R-2
- South:** Single-family dwellings, zoned R-2
- West:** Continued +/- 175-ft. portion of the undeveloped alley leading to another perpendicular alley between East Rock Street and East Wolfe Street and single-family dwellings, zoned R-2

The applicants are requesting to close a portion of an undeveloped public alley right-of-way within the Northeast Neighborhood area of the City. The alley is approximately 10-feet in width and runs parallel to East Rock Street and East Wolfe Street, between Myrtle Street and a 12-foot wide alley that is perpendicular to East Rock and East Wolfe Streets. The portion of the alley requested for closure is located mid-block along East Wolfe Street. From Myrtle Street, this alley has the appearance of a private driveway; however, beyond that, one can see that the alleyway is grassy with trees and shrubs throughout. The two applicants own 374 and 384 East Wolfe Street and they desire to close the alley in order to enlarge their properties.

City records indicate that there are no public water or sanitary sewer mains within the alley. However, the Public Utilities Department has noted that a future sanitary sewer service within portions of this alley would best serve the homes along East Rock Street in this block. Although at this time there are no plans to construct a new public sanitary sewer line, if the alley is closed, the City should reserve a public sewer line easement over the entire section of the alley to be closed behind 374 East Wolfe Street.

In addition, there is currently a 24-inch stormwater pipe within the portion of the alley requested for closure. If the alley is closed, the property owners that purchase that portion of the alley will take on the ownership of the stormwater facility. Prior to closure, the City should reserve an easement so that it is clear that private property owners cannot make changes to the land that obstruct the storm drain pipe or change the function of the storm drain pipe.

Within chapter six of the 2018 Comprehensive Plan, the concept of Traditional Neighborhood Development (TND) is discussed. The TND concept is a pattern of development of a complete neighborhood or community using traditional town planning principles; the Comprehensive Plan encourages the City to incorporate TND practices to the greatest extent possible throughout the entire City. One principal of TND is that the circulation system should serve many modes of transportation and provide choices for alternative transportation routes. Streets, alleys, and pedestrian and bike paths should connect to the surrounding area. Streets and alleys should generally follow a grid pattern to provide these route choices and connections. The Northeast Neighborhood is a good example of the TND grid pattern having a gridded public street network and numerous alleyways that connect to public streets.

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 off of 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. The street and alley grid system can help to limit the number of driveway entrances along public streets; thus, helping to reduce the number of conflicts with pedestrians along the sidewalks.

Staff believes that the grid system of streets and alleys throughout the Northeast Neighborhood 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 alleyway mid-block 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. For these reasons, staff recommends denial of the alley closing request. If the alley closing is approved, as noted above, staff recommends that a private storm drainage easement be reserved across the entire portion of the alley being closed and a public sanitary sewer line easement be reserved over the entire section of the alley to be closed behind 374 East Wolfe Street.

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 and all public and private easements that might be reserved by the City for the purposes herein identified.

Chair Way asked if there were any questions for staff.

Commissioner Finnegan asked if the storm system is one of the old clay systems.

Ms. Banks replied yes, it is a 24-inch clay pipe.

Commissioner Finnegan asked when the system was put in.

Ms. Banks replied that she did not know.

Commissioner Finnegan asked if it may be a hundred years old.

Mr. Fletcher replied that it was not that old, but it is old.

Commissioner Finnegan asked if it was built in the forties. When are the pipes due to be replaced? If they are clay, they may need to be replaced.

Ms. Banks answered I do not know.

Mr. Fletcher said I do not know if the Department of Public Works has as schedule for replacement of the stormwater facilities.

Ms. Dang said these are not city-owned stormwater pipes, so they would not replace them. They would not replace these particular ones in the alley.

Commissioner Colman asked they are not city-owned?

Mr. Fletcher clarified that if they are in the public right-of-way then they are city-owned.

Ms. Dang acknowledged she had misspoken; the stormwater pipes are city-owned.

Mr. Fletcher said generally, across the city, the policy is that the city does not own stormwater facilities on private property because there is an expectation of the management of the facilities and different liabilities that come into play. Anytime that someone acquires a space they are acquiring the stormwater facilities.

Commissioner Colman asked if that means that the applicant would take the responsibility for that portion of the stormwater pipe?

Commissioner Whitten asked if we are asking for an easement at the same time.

Mr. Fletcher said we are asking for a private easement to maintain the flow. They cannot restrict the flow that goes through that section.

Ms. Banks said that, in other words, we would not want to see a structure put back there with a slab or planting of deep-rooted trees.

Ms. Dang added that we would not want the structure of the pipes to be removed and stormwater not managed in some way to flow through that area.

Mr. Fletcher said it would not be in the applicants' interest to remove the pipes because it would restrict the flow under their property and start flowing up into their spaces. I know we are talking in extremes, but I am not sure of any scenario during my tenure where we have had a situation where someone took ownership of a facility that was once maintained by the City. We do not know what the outcome would be regarding maintenance and their responsibilities. It is a different scenario.

Commissioner Colman asked since there will be a private easement, who is responsible for the maintenance?

Mr. Fletcher said it is a private easement reserved for the flow of waters that come from upstream.

Commissioner Colman said that it is not a typical drainage easement. Is it a drainage easement?

Mr. Fletcher said that we would work with the City Attorney to designate specific language. When you look at our Design and Construction Standards Manual, our easement language for drainage is for a public easement. A public easement in the sense that it is publicly owned. We own the rights to the easement, in this case we are reserving a private easement on the property for the public use.

Commissioner Colman said that the stormwater pipes convey water from the public street through private property. It is passing those properties. It seems odd to have that in a private easement.

Mr. Fletcher said that it happens all across the city. There is a network of stormwater infrastructure across the city where it goes from public street to private property to public street and so on.

Commissioner Colman asked who is responsible right now for taking care of that. That is my concern thinking in terms of what the petitioner might want. Do they want to buy the stormwater sewer? I would rather the City be responsible for taking care of it especially when that area is of little use.

Commissioner Whitten asked is it clear that there is no plan to improve the sanitary sewer.

Ms. Banks said correct, there is a desire to make improvements to the sanitary sewer in that area and this would be the direction of flow through the alley and through private properties. It provides a general idea of what they might do. I am not saying that it would come between the two houses that I showed or maybe another two. It would start at 374 East Wolfe Street and come down.

Commissioner Whitten said that there is also no plan for this traditional neighborhood grid design to be put into effect while we say that it looks like a good place to do that.

Ms. Banks said that there is always the ability for someone to redevelop the area in that pattern.

Mr. Fletcher said the utilization of alleys changes as the demographic changes and as the residents move in and out. At any point, someone who moves in that has not developed their back alley may want to utilize it as a rear entrance. They may want to gravel or pave it. They would get a public access permit from the Department of Public Works to do that. They also recognize that it is not part of the street network system that we maintain. If they pave it, it does create the opportunity for other people to use it. It is on their dollar to put it in and maintain it. Look at the intersection of this alley with the perpendicular alley. At some point, someone graveled it and then it became a more heavily utilized alley. In the image that Ms. Banks showed, the alley is not traversable at this time. However, there is no elevational change that would prevent it from becoming traversable. It takes some clearing out and, if somebody wanted to use it, they could. It is a traditional neighborhood design network. It is what we are emphasizing all across the city for these types of areas. Does it take time to utilize those spaces? Of course. But breaking them off, in staff's opinion, is not good long-term planning.

Commissioner Finnegan said that the real question from the city standpoint is: are we ok with eliminating the options for future use? That is the question that is on the table.

Commissioner Whitten said that there are tons and tons of these alleys. They are in Old Town, too. A lot of them are part of people's yards and have been fenced in. They are effectively being used privately.

Commissioner Colman said I believe that there was a presentation by the Department of Public Works a couple years ago about the interest the City has in maintaining certain alleys open and others that could be closed. Does the alley that we are talking about fall within one or the other? Is the plan still in place?

Ms. Banks replied I know which document you are talking about. This alley showed up as a possible future bike path. Upon further review and conversations that the Department of Public Works has had in this area, it was not something that was desired by the neighborhood. A bike path that runs down that alley crossing Myrtle Street, Broad Street and further up Sterling Street, a bicyclist would be "popping out" at different points along public streets. Also, the Public Works Department had no comments regarding closing this alley.

Councilmember Romero asked if the City has ever closed any alleys.

Ms. Banks answered yes.

Councilmember Romero asked under what circumstances have we done that? Perhaps the most recent one, how did that one happen?

Ms. Banks answered that our most recent alley closing was the one off East Washington Street near the old Salvation Army building that backed up to a neighborhood. In that case, they ended up closing a portion of the alley.

Ms. Dang added that the portion that was closed was next to the Salvation Army, perpendicular to East Washington Street between the Salvation Army and the Rodriguez parking lot. Another one that comes to mind is the alley near George's.

Ms. Banks said that was interior to their operation.

Ms. Dang said that they owned property on both sides of the alley, so they requested closure of that alley.

Councilmember Romero asked if it was a similar sort of proposal. Were those alleys purchased by the property owners adjacent to them?

Ms. Banks answered yes, they were closed and purchased.

Councilmember Romero asked how we determine which alleys to close. Was that something that the City considered?

Ms. Banks said that one difference about this particular request is that it is a mid-block closure. The alley runs from Myrtle Street to an open perpendicular alley that is accessible. The properties belonging to the applicants desiring to purchase the alley are somewhat mid-block. It would still allow access by one or two neighbors on one side and then it would be completely closed off, so that you could not traverse the entire alley to the perpendicular alley. The fact that it is a mid-block closure that would prevent that grid system from continuing for everyone along that block.

Commissioner Colman said that the alley in the George's case was usable and people were using it. As a matter of fact, I think an access easement was left for that one. Was there not an access easement for the neighbors?

Mr. Fletcher said that the alley in George's was not being used. It was undeveloped. Are you talking about the alley that was added for the preliminary plat?

Ms. Banks said, no, Commissioner Colman is talking about the alley George's closed, but only the portion interior to George's property was closed.

Commissioner Colman explained that there were cars and employees using the alley.

Mr. Fletcher agreed. Yes, it was in the middle of the parking lot.

Ms. Banks explained that there were two alleys. There was an alley that Mr. Fletcher is referring to, that you and I spoke of earlier that went with the preliminary plat onto Collicello Street. That alley ran from the open George's alley, that everyone uses, that we all drive up and down, leaving George's to Third Street. The alley was an undeveloped, grassy alley that was accessed from George's open alley and ran alongside of the proposed preliminary plat property and three other parcels that fronted on Third Street and then stopped. It did not run all the way out to Collicello Street. It did not run to Third Street. It was behind three properties. Yes, we recommended closure for that one.

Mr. Fletcher said that of the two most recent alley closing locations, the George's alley properties are zoned industrially, and Rodriguez was zoned industrially, on the fringe of the neighborhood.

Commissioner Whitten said there have been others.

Commissioner Ford-Byrd said that she would like to get clarification about the other two examples to know if they created mid-way blockages, as well.

Ms. Banks responded that they were not mid-block. They were smaller alleys that did not traverse the whole length of the street. The proposal with the East Washington Street Salvation Army alley was originally a proposal to close portions of two alleys. One was the alley that was between the Rodriguez property and the residential houses and the second was between the Rodriguez property and the Salvation Army. The Rodriguezes decided to withdraw the request for the alley closure between their property and the residential houses to allow access for the neighbors to continue to use it. They only closed the portion between their property and the Salvation Army.

Chair Way stated that this is not a public hearing but invited the applicants to speak to the alley closing request.

Mr. Dan Fudala, 384 East Wolfe Street, came forward to offer his comments in support of the request. I live at 384 East Wolfe Street. Commissioner Whitten talked about TND, which I had not heard of until I saw the report from staff. Some thoughts that we discussed on the way over, and our neighbor also had thought things that I had not vocalized, were that we are looking to improve the quality of our living situation by adding to our yard. We are doing a renovation on the back of our house, which is pushing back 16 feet into the back of our property. If we could get ten more feet of our yard back, we would be breaking even. The thought there is that we are putting more money into staying where we are. We evaluated leaving the neighborhood for more space, but we love where we are. We love being downtown. I have lived downtown for 18 years. I lived across the street when I was 18 years old. We love the spot. I feel like we are invested in Harrisonburg, invested in the downtown, and invested in the neighborhood. You are all familiar with the block. You have probably driven by there. Everyone uses Wolfe Street like a highway. The alley is not being utilized or kept clear. It is just a dumping ground for yard debris and trash. Other neighbors have essentially adopted the alley as part of their back yard because, why not, they can just extend their fence ten feet. When I moved in, I was not looking to argue with anybody, so our fences follow the property line. We did not just assume that we could take on another ten feet of the alley.

Here at 396 East Wolfe Street, good friends of ours live next door, and they are interested in purchasing their portion of the alley but are not in a situation right now to do it. Theoretically, the house at 235 Myrtle Street, for the foreseeable future, would still retain what looks like a driveway, which they are using right now. I heard something about permitting from Adam, in order for us to be able to make improvements to the alley. As far as applying to be able to use the alley, if you want access with your car, would I have to start bush-whacking through there? Would I have to clean it up myself to be able to use it?

Ms. Banks answered that there are a couple of steps to take. To remove any trees that are within the alley, you will need to apply to the City for approval from our Public Tree Advisory Board before any large trees are removed. You would also need a Public Access Permit, which may be acquired from the Department of Public Works to show that you are going to put gravel down in the alley.

Mr. Fudala asked if that would be for my piece of it or for the entirety.

Ms. Banks answered that it would be for whatever portion he was interested in opening.

Mr. Fudala said I agree with the TND plans, the big picture and all, I think we all know parts of the City downtown where the alleys are utilized. There are paved portions. I lived on Campbell Street for years. There is a huge paved alley there. I do not see that happening in our alley for the foreseeable future. When you say redevelopment, does that mean the City is changing the planning and allowing someone to redevelop? What does that mean?

Ms. Banks answered that it could also mean a large development by someone who may have control of more than one parcel there who wanted to redevelop.

Mr. Fudala asked, someone who was able to buy off a section of it and redevelop it?

Ms. Banks answered, yes.

Mr. Fudala asked if that would be for a single house, as they are zoned R-2? You would have to rezone if you wanted to do otherwise.

Ms. Banks said that is right. They could ask for a rezoning.

Mr. Fudala asked would this impede what they are gaining now, which is a driveway. We would get our alleys, both of us would be fine with the easements, whatever those look like with the Department of Public Works. Further investing, as Councilmember Romero said, if the whole block wanted to purchase the alley, what is keeping the block from wanting to do it? If everyone else follows suit because they see that others are investing in the back of their property. Across the street, the McCreadys have been living there since the 1990s and they said the same thing. They were not aware that you were allowed to purchase alleys. They would be interested in that, too. People taking on more property and investing more into the neighborhood.

Mrs. Emily Fudala, also of 384 East Wolfe Street, came forward. Since we are butted up right next to each the other, the other neighbors would still technically have access to their back yards. Would they still be allowed to do a public access permit to get to their back yards?

Ms. Banks answered that if you purchased it, the people directly behind you, could not use the alley to access their backyards.

Mrs. Fudala said, right, but would these six closest to the perpendicular alley still have access to their backyards?

Ms. Banks said, yes, they could petition to the Public Tree Advisory Board to remove any large trees through there and get a Public Access Permit.

Mrs. Fudala said if we closed the alley behind our properties, would we be blocking their access to their backyards?

Ms. Banks responded that they would have the ability to come in through the perpendicular alley.

Commissioner Finks said that the qualifier on that is that, for them to use it, that would require them putting in some kind of turnaround.

Ms. Banks said that they would not have to.

Commissioner Finks said that he is not saying that they would have to legally, but to physically use it, otherwise they would not be able to turn a vehicle around.

Ms. Banks said that they would turn into their property.

Ms. Dang said that you are not allowed to park in the alley. You have to pull onto your own property.

Commissioner Finks said that if they wanted to access their backyard with a vehicle, they would have to put a parking lot of some sort, gravel back there to be able to do anything with it.

Commissioner Whitten said not necessarily.

Commissioner Finks asked then how are you going to turn around?

Commissioner Colman said that would be the case right now. You cannot turn around in the alley.

Commissioner Finks said that is what I am saying. So how would you access it?

Mr. Fletcher said that you turn into your own property.

Ms. Banks said that they can turn around on grass, on their own property.

Commissioner Whitten said that if you take a load of mulch in, it does not have to be a gravel lot.

Commissioner Finks said that he is envisioning someone using it to park.

Commissioner Whitten said that we do not know how they are going to use it.

Chair Way asked if there were other comments.

Gretchen Nyce, from 374 Wolfe Street, came forward. I cannot argue about future use because I do not know future use. I would say that our lots are pretty small for people to envision putting a garage in the back. If I were to put a garage in the back of my house and leave room to turn into it, it would be touching my back deck. I do not think our block is like some of the ones in old town that have longer lots, and it is more useful to have that alley and a garage in the back to pull into. I would think that would be unlikely that that would happen in our neighborhood just because of the lot size. I have lived there nine years, the Fudalas have been there about the same time, maybe a little bit longer. I have never seen a person go down this alley, even on foot. Obviously, in a vehicle you could not. Whether someone in the future would want to do that, I obviously cannot say, but it certainly has not happened in the time that I have lived there. We built our fences because we have dogs. We put our fences on our property lines, so the 10-ft. wide alley automatically got incorporated into our neighbors' yards because they do not have fences. They are presently mowing those spaces and they are presently using them if they choose to. Whereas since we put up our fences on our property lines, we do not benefit from any of that extra unused space. That is why we are asking to do this because both of us would like to have slightly larger yards. In my case, partly for the dogs. In their case, partly because they are adding onto their house and would like more space. I cannot argue about future use because I do not see the future any better than any of you do. If you decide that future use is a possibility, then I have to go with that. I do have a couple of questions about the drain system pipe. Does anybody know where it is? How deep is it? 24-inches is a big pipe. Is it very far down?

Mr. Fletcher said that he did not know.

Ms. Nyce asked if anyone knows. Is there anywhere I can go to find out?

Mr. Fletcher said that Public Works would be able to tell you.

Ms. Dang said that Public Works could probably lift the manhole and look in there and see how deep the pipe is.

Ms. Nyce asked if Ms. Dang meant the manhole that is at the end of it at Myrtle Street. Do you assume it is fairly similar all the way through?

Mr. Fletcher asked if it is a manhole or a drainage inlet?

Ms. Dang said that it is a rectangular manhole.

Ms. Banks said that it is a manhole on Myrtle Street and a drainage inlet on East Wolfe Street.

Mr. Fletcher said that he does not suggest her lifting the manhole cover in Myrtle Street to check. We can have folks go out and determine how deep it is.

Ms. Nyce said that it would have a little bit of slope, presumably, but it would be fairly similar to the depth at the end.

Commissioner Finnegan said that Myrtle Street is uphill.

Ms. Nyce said that there is definitely a slope this way, for sure. We have seen that very well in this past year with all the rain. It is running downhill fast. Commissioner Colman, I think you were getting towards this and I am not sure we got an answer. You were talking about, as a property owner, what is my responsibility? I am wondering that, also. Is the easement just that I would need to allow someone to come on my property and get to the pipe if they need to or is it that if the pipe needs to be replaced, I have to pay for the pipe to be replaced?



Mr. Fletcher said that it is possibly the latter. The easement is about allowing the flow of water to go across your property. Once you take ownership of that space, if you take ownership, you could not restrict the flow of the water. That is essentially what the easement would be doing. It would just be saying that as the property owner you must allow the flow of water to go through.

Ms. Nyce said that if I would do something that would damage the pipe, then obviously I have restricted it and I would have to fix. What if the City decides that they need to replace those really old pipes? Is that my responsibility to pay for that?

Mr. Fletcher said I do not know the answer to your question. I am not aware of other instances of this particular situation that we have been discussing. If we have approved an alley closure to where somebody has taken ownership of an alley, I am not aware of us having to go back and do the maintenance to know how the financials work.

Ms. Nyce noted that 60 feet of a 24-inch pipe would be pretty pricey. Is there any way to get that answer before I purchase it?

Mr. Fletcher said that we can find out. I do not know that the Department of Public Works would know the answer yet because there is a lot involved with the liability of stormwater. When it rains, it goes into the pipe and flows to Blacks Run or Cooks Creek. Any time it is in the public street we are maintaining it, but when it is flowing across private property, which there is potentially more flowing across private property than there is across public property, the City does not own them and does not maintain them.

Commissioner Colman said that what is interesting about this is that I have worked on many sites that have that issue. Those sites themselves are using the drainage and contributing to the flow. In this case, they are not. This is passing through the property. It makes somewhat of a unique situation, which also begs the question; if something happens here, who is responsible?

Mr. Fletcher said we are focusing so much on the piecemeal approach. I do not foresee this being redeveloped in the sense that we often times use the term redevelopment. This is a little bit different. If there was someone that came in and said, I am buying up that whole block and have this grandiose scheme, they are obviously buying the whole stormwater, as well. If that whole neighborhood went through and said, we want to take ownership of the alleys piecemeal, then they are all taking on that burden. It is like buying any private property. In this case, the City owns that property, they are taking on the thing that is there.

Commissioner Colman said that if somebody were to buy all those lots and redevelop them, most likely they will vacate that alley and rework it in a different way that is going to benefit whoever wants to do something with it. In other words, the alley being there or not being there does not keep a developer from reshaping it. It is not a hindrance. I am looking at both sides of this. When it comes down to the pipe itself, if the pipe needed to be replaced, most likely it would have to be the whole pipe, which means that maybe you are responsible for your portion of it but not the whole thing.

Mr. Fletcher said that the Department of Public Works will work with people. No one at this table can make any commitment as to what responsibility would lie into any financials associated with maintenance.

Commissioner Colman told Ms. Nyce that she still has time to research this and find out whether in the end she wants to buy it or not.

Ms. Nyce said that is one thing to take on the financial responsibility of buying the land, which I have understood from the beginning, but the responsibility of paying for 60 feet of a 24-inch pipe might be an added cost that I am not interested in.

Mr. Fletcher said that Commissioner Colman is correct. Regardless of what the recommendations are, you could go through this whole process and if City Council says yes, we will sell it to you, then you could choose to not fulfill the second reading until you decide whether or not you understand the maintenance responsibilities involved.

Ms. Nyce said I could talk to Public Works and see what they can tell me.

Mr. Fletcher said we will help you figure it out.

Ms. Nyce said thank you.

Chair Way asked if there were any further comments regarding this request. Hearing none, he opened the matter for discussion.

Commissioner Whitten said that, as far as our ordinance is concerned, it does not say anything about mid-block. That came up in the report, that it is problematic that the proposed closure is mid-block. Your house is where your house is. It does not quite seem fair to say that if you happen to live on the corner or right next to the corner it makes more sense to take over an alley or to purchase an alley. If you have the problem of being in the middle, that does not seem evenhanded to me.

Commissioner Finks asked where have we done that. I thought the other two alley closings were not blocking access to anyone.

Commissioner Whitten said I am just speaking to that point. I am saying that I do not think it is evenhanded to say if you happen to live mid-block you cannot purchase the alley if we are giving other people the opportunity to purchase an alley that runs behind their house.

Commissioner Finks said that if it blocks future use, if it is going to essentially shut down an alley.

Commissioner Whitten said that if we are looking at a particular alley, everyone has to look at it as a unique entity, correct? With this particular unique entity, I do not see how it is going to harm the public good.

Commissioner Finks said that we cannot see because we cannot see the future. We have to plan for the future. What we do could do harm in the future. We do not know for sure. We do not know what is going to happen with that block.

Councilmember Romero asked about the size of the lots. What are the requirements if you want to build a two-car garage? Is that permissible?

Ms. Banks said that the lots are 60 feet wide. I do not know the length.

Mr. Fudala said that they are 50 feet by 100 feet.

Ms. Banks explained that a detached garage could be within five feet of that rear property line and 50 feet of width would allow for a two-car garage. As Ms. Nyce pointed out, you are going to have to back it up a little further than five feet off the property line for an angle to swing a vehicle out of the alley.

Mr. Fletcher said that it appears that it is about 150 feet in length.

Commissioner Colman said that the people who are utilizing those alleys right now are doing that. They are pulling their vehicles into their garage. There is no issue with turning around.

Commissioner Finks asked if we are talking about the alley between East Rock and East Wolfe Streets.

Commissioner Colman answered, yes, people already have garages in there.

Commissioner Whitten said that she does not want it to seem like she is not concerned about the future. I certainly am. You also have to be cognizant of the fact that you have people who are living in your city

and want to have their home. It is very important to all of us to be able to have our home and do the things that we would like to do to improve our home, which are well within the law.

Commissioner Finks said that he would love to have 10 feet of property show up in the back of his yard, as well.

Commissioner Whitten explained that you have to pay for it. That is what you have to do. And it goes on the tax map, too.

Chair Way said that another thing that we need to balance here is the broader neighborhood thing, the immediate, current use of the block. What the TND idea gets at is the general permeability through the neighborhood and the ability to walk-through and get through in alternative routes as pedestrians, cyclists, and vehicles, as well. I am trying to make sure that we think about whole neighborhoods and the patterns, where the other alleys are, where people who come through from other parts of the neighborhood through that area. Every traditional neighborhood design has many upsides to it and one of the upsides is that ability to find many ways through the neighborhood.

Commissioner Finks said that the part that concerns me is that this alley continues up to Hill Street. If it was just contained in that block, that alley between East Rock and Wolfe and ended on Myrtle, it would not seem so much of a concern. That alley goes up to Hill Street from there. It connects to another alley. It is not an alley unto itself. There is a connectivity issue there. If you cut that off, then what is the usage? Does that kill the usage for that next block for future usage for walking or any other future usage? We have to keep these things in mind. Neighborhoods are changing in a big way. They are going to continue to change. As the City gets more dense, more people move in, we are going to have to think of new and better ways to manage our property. We will have to look at building adjacent buildings in the back to house our grandmothers or our children. Alleys could be really useful for something like that.

Commissioner Whitten said so could having 10 extra feet.

Commissioner Finks said that it would be useful today, but not for being able to access that property.

Commissioner Whitten said that, two generations from now, our grandmother can live in the back yard, but not now.

Commissioner Colman said that if we want to encourage that, which I agree would be ideal, to have a path there that people can use. As far as connectivity, it seems that the City should be doing its job in maintaining those alleys and keeping them clear so that people can walk through them. The debris could be charged to whoever is doing that, but in terms of the overgrowth of trees, that should be the City's responsibility.

Chair Way said that he would suggest an "Alley Task Force" to be proactive in maintaining the alleys and looking at things strategically. Where are the valuable ones? Where are the important ones? It might be something worth adding to the list regarding another potential thing to do, especially in light of the Downtown Master Plan. If we think of connectivity to Downtown and through these areas, thinking a bit bigger picture about the neighborhood might be valuable.

Commissioner Whitten said that if we are going to bring up TND, then we should have some sort of idea about what we would like to see before we deny an alley closure request because we think we might want to do this in the future. It needs to be a little more concrete if you are going to use it as the main reason. When you look at the way that alley looks now, there is no way you could make your way through there, unless you had a machete.

Commissioner Finnegan said that he agrees with Commissioner Whitten that we should not be prioritizing or deprioritizing the closing of any portion of that alley based on where the house is. Whether it is on the Myrtle Street end of the alley or next to the other alley. That makes no difference because closing the

alley is closing the alley, regardless of which property does it and where it is. We were talking on the site tour yesterday that these were used when they were put in, probably for coal delivery or ice, things that we do not do anymore. My question to Commissioner Finks point is, what might these alleys be used for in the future? We do not have coal delivery anymore, but something might change in these neighborhoods so that we may want sidewalks and we may want paths through the neighborhood. I do not see how it serves the common good of the neighborhood to close down the option to do something with it in the future.

Commissioner Finks agreed. That is where my concern comes from. I do not see how it is going to benefit the neighborhood to close this alley. We have to be concerned about what future uses we are going to have in these neighborhoods. It could come to a point where every neighborhood in town was wishing that they had these alleys for some future use. The people that own these properties in the future and hoped that that alley had stayed open. It comes down to my concerns that when we have city property like this that seems that it could be useful in the future when we make a change like this we cannot take it back. It is gone.

Commissioner Colman said that was the reason for my question earlier regarding what Public Works had analyzed before in terms of the use of those alleys. Was this one of the alleys that was used or was considered to be kept? It does not sound like it. On the other hand, any time anybody is requesting an alley closing or right-of-way closing, it is City property. The City does not do it because they need the money. It is because it is an opportunity for the neighbor, or whoever is asking, to extend their property. It is not something that has to be done, either. Without concrete plans, it seems a little bit capricious to say that we do not want to close this alley because we just do not like to, because we think we might have plans at some point. We cannot apply that rule everywhere. We should not apply it anywhere. It is not enough reasoning. My main reason to deny would be because there is a storm pipe there. Are you sure you want to take that on? If there were any issues with the pipe you would be responsible for it, so just let the City take care of it. That is more in terms of the actual maintenance of it because the water and the infrastructure is there. I am not pushing one way or another. We need to have a consistent argument or a good base on which to make that decision.

Commissioner Finnegan said that we have had these kinds of theoretical future arguments before. There was a church that wanted access next to the county school building off of Mt. Clinton Pike. The discussion was what about future businesses that might want to come in. It was a different set of concerns having to do with tax base and such, but we have had these future theoretical arguments before. That is not new.

Commissioner Colman said that we have the Comprehensive Plan. Things like this should be considered into our Comprehensive Plan. If it did not come into the Comprehensive Plan, then it seems without basis.

Commissioner Ford-Byrd asked whether other alley closing requests have been made. I am wondering if an approval would set a precedent for other request of this nature and if so, what does that mean for the traditional neighborhood development plan that we are using as a gauge here?

Mr. Fletcher answered that he can think of one mid-block closing of an alley. It is a somewhat different scenario. This one goes back a number of years to when Mr. Hostetter, on Virginia Avenue, requested to close a section of an undeveloped alley, which connected to two undeveloped public streets. He was hoping to pick up the square footage, so that he would then be able to build a duplex. I honestly do not remember what staff's recommendation was, but it was approved and closed. If I had to guess what staff's recommendation was, I feel like we supported it at that time. That goes back to 2008 or 2009. Somebody asked the question, have you ever done this before and that is the only one I can think of. It is between undeveloped 6<sup>th</sup> Street and undeveloped 7<sup>th</sup> Street. That is the section that is between Lee Avenue and Virginia Avenue. The northern section, where the billboards are located.

Commissioner Whitten added that these are and have always been handled on a case by case basis. You are not granting anyone else permission just because you say yes to one.

Mr. Fletcher said that staff disagrees, which is why we recommend disapproval of this request. We have this entire neighborhood network and a mid-block closing that, from our perspective, does affect traffic flow. If anybody was ever going to utilize the alley you can enter, and you have to exit. You do not get that flow. That is why it is a little bit different from that perspective. If someone wanted to close the entire block and wanted to keep the perpendicular section, maybe we would have to reevaluate it. When you look at the Northeast Neighborhood, there are few other pockets in the City that, when you think of TND in a block street network, this is it.

Commissioner Ford-Byrd said I understand what you are saying, as well, Commissioner Whitten. I am just looking at this grid system. If we are trying to preserve the grid system, then we should preserve the grid system. If that is not what we are trying to do, then that is a different conversation. I am just looking at both sides.

Councilmember Romero asked, if the applicant had not come forward, how much longer would it have taken the City to have this on their radar regarding having an alley here and having that potential? Do we have a list of these types of alleys and the potential uses for the future? Do they just come up as they come up?

Mr. Fletcher said that in 2012-2013 is when that inventory of undeveloped alleys and uses came up. Chair Way said something about a task force. That was somewhat like a task force. Ms. Dang you part of that group, were you not? They looked all across the City. They highlighted all the alleys in the City. Those that were in red did not have any major plans. Those in green could have been pedestrian ways and so forth. There has been something like that.

Chair Way asked how the requested alley was identified in that inventory.

Mr. Fletcher said it was to remain open. We do not put a lot of emphasis on that because it was a specific project. When I reviewed this application, I did look at the inventory. I wanted to get a reference point of what were we thinking before. We were thinking that it was to be left open. Somebody gave some thought to it. Our recommendation is that big picture perspective. I really like the way that Commissioner Ford-Byrd said - What are we wanting to preserve? I think that is a nice way to capture that, which is the big picture and the grid and the traffic flow. If you notice on this map, the only other section to my memory that was closed, which was the entire block, was the Newtown Cemetery alleys. They were closed and provided to the Newtown Cemetery.

Chair Way asked if there were any motions regarding the alley closing.

Commissioner Finks made a motion to deny the request, as recommended by staff.

Commissioner Finnegan seconded the motion.

Chair Way said we have a motion and a second. Can I ask a technical question? Does this go to Council or not?

Ms. Banks said that it goes to City Council for a public hearing.

Commissioner Colman said that if there is a plan or the alley was listed as one of the ones to remain open, then that makes more sense to me. I know we are not going by that, but it was considered at some point as a possibility that it could be used for pedestrian or some other use. The TND makes sense for planning purposes and this is already a traditional neighborhood. Some of those alleys are being used and others are not being used. To me that argument would be good if they were all being used, but they are not. Why are the neighbors not using it? Are they not aware of it? Maybe they are not aware of it. Which I think sometimes is the case.

Chair Way said that would favor a task force then.

Commissioner Finks said that he would argue that it is probably because people do not know that there is an alley in the back of their property. I have rented before where we had no idea, in that neighborhood, that there was an alley running through the back part of the property.

Commissioner Finnegan said that there are some giant walnut trees there that might stop you from driving through the alley.

Commissioner Colman said that that tree grew in the alley and it did not grow in a year or two, it has been there a long time. That tells me that nobody appears to be interested in using that piece of the alley. That is where my argument is. On the other hand, I think we should try to keep the alley open, so we can have interconnectivity and use it. However, if the neighbors who are living there right now are not using the alley, will they ever use it?

Commissioner Whitten said that if we are trying to keep it open, it is clearly not open.

Commissioner Colman said that it is open to options, to the possibility.

Mr. Fletcher said, I want to make a correction. This alley inventory document is not an official document, by any means, but on second view of this, I believe it says, "Alley eligible for closing" and green means yes.

Commissioner Whitten asked if the alley is green.

Mr. Fletcher answered that it is green. This not an official document, but I continue to look at it for a reference point. There are 402 sections of alley on the list. Each section was given a number. In this case, behind the Fudala's, that parallel section of East Gay Street and East Rock Street is one section and the perpendicular section is another section. If I am evaluating this correctly, it is eligible to be closed according to this 2013 document.

Councilmember Romero asked how many houses are on that block?

Chair Way said there are twelve.

Councilmember Romero asked if the neighbors are aware of the request. Are they in favor?

Mr. Fudala said I regret not showing you a slide. I know you guys know the house I am talking about on our street. That blocked off back yard is the worst. The run-down house that I know a local family has been trying to buy that house for years and it has so much back tax on it. The house next to it appears to be abandoned, owned by the same people. If we start allowing people to walk through our back yards, how would you feel about that if it is your house? You know the neighborhood. It is up-and-coming. It is getting better in time. I would be strongly against a conversation where this TND program enables paved access or any kind of access whatsoever to come through the back of my property. You would have a whole room of people that would be more strongly opposed to that opportunity. I used to sit on the bike path committee back in the day, so I was aware of that plan and I saw it. I am all about connectivity. I thought it was the neatest thing in the world to connect all the parks in the City and the schools all together with the trail system. It just is not in that neighborhood like it is. In the street the bike path setup is the best way to do it. That is one piece of it. The nature of the neighborhood, we are trying to make it better. The people around us, I would speculate that they do not care. It's not that they do not know they can use the alleyway. They are not taking care of it. There are trees growing in it. The oak trees you are talking about, I built my fence on that side of it because I thought I do not know whose they are. But they are 100 years old, easy. You have to do some serious work to get through there. What I was hearing, is that the TND plan seems, I do not want to be rude, speculative in nature. Like, well we want to be able to do that, so that it directly conflicts with the ability to do what we are doing now. It should say somewhere

that you are part of the TND plan so you should not apply for this because you are not going to get anywhere. It conflicts, there is no point. It seems like a moot point.

Ms. Nyce said I would like to quickly answer Councilmember Romero's question. He asked about the neighbors. The neighbor next to the Fudalas on the end, is interested in potentially closing. This was not a good time for them right now to do it financially or whatever. The two of us, that makes three houses. The guy next to me, I did not ask him specifically. The two houses next to him are these two that we are talking about being abandoned. Then there is the alley perpendicular. Of those six houses, three of us are in favor, one I am not sure and two are not there.

Commissioner Colman said we can talk about the TND planning for all these neighborhoods, but how much input did we get from the Northeast Neighborhood in terms of what they want? I do not see them here either. We are making plans for a neighborhood that is already established and saying we want your neighborhood to be this way, we need their input on that.

Commissioner Finks said that you could also make the argument that if someone missed the public notice about this, and they have seen the public alleyway and already know how their neighborhood is built and they do not assume that that is changing.

Commissioner Colman said I am not faulting them, I am faulting us for it.

Commissioner Finks said I am not faulting them. I am talking in the abstract. Anyone who lives in that neighborhood, if we make the argument that people need to give input on these changes you also have to make the argument that they just assumed that there is an alleyway there. If they do not live near there they are not concerned that it is going away because they do not live within a block of that.

Ms. Banks said let me add a clarifier, there has not been a public notice yet because at Planning Commission, this is not a public hearing. Staff did go back out there, today, with more signs at the perpendicular alley and ran into neighbors in the neighborhood. I just wanted to say that with the two folks that I spoke with, both were residents along East Wolfe Street, and were very well aware of the request. They had already spoken with the applicants in regard to what was going on. They were surprised when the signs went up. The one gentleman asked if it was the perpendicular alley, too. I explained that it was just extra recognition for the alley and we talked about it. He said he had spoken with them. Another gentleman across the street who came up and asked what we were doing there. When we explained he said they have come over and we have spoken with them.

Chair Way asked if the Commission was ready to vote. I do not want to foreclose this conversation before I open a roll call vote. Is there any further discussion?

Commissioner Colman asked for clarification on the motion.

Chair Way explained that the motion is to recommend denial. An "aye" vote, is a yes vote to be recommending denial and a no vote will be endorsing the closure. If you approve of the alley closing you are going to vote "no." Any more comments or discussion before I call for a roll call vote?

Commissioner Whitten said I will say that in a little bit of research that I did, Roanoke in particular asks for the applicant to get, not a petition, but a statement of approval from not just adjoining neighbors but neighbors around the block that they live on. I like that. That gives you a better sense that people who live there who are going to be impacted, while I like to look to the future, I also like to take care of people that live there now, and they live there for the next 20 years. That's pretty far into the future too.

Chair Way said I will add that suggestion to the agenda for the task force.

Commissioner Finks asked if the task force is going to look into vacant houses, too.

Chair Way said I do not think so.

Mr. Fletcher said it would be nice to have a document that we can reference because as I was looking through the unofficial alley inventory document again, the perpendicular shows up as the red color, which means no it is not eligible to be closed because clearly it is being used. Then when you go down the list, it is incorrectly identified.

Mr. Fletcher noted this is not a good document.

Chair Way said so, we need a better document. The task force has its job. Are there any more comments? Hearing none he called for the roll call vote. The motion is to recommend denial of the alley closing. An “aye” vote recommends denial and a no vote endorses the closure of the alley. Is that clear?

Chair way called for a roll call vote on the motion.

Commissioner Finks: Aye

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: Aye

Councilmember Romero: Aye

Commissioner Whitten: No

Commissioner Colman: No

Chair Way: Aye

The motion to recommend denial passed (5-2).

Chair Way said the recommendation for denial will move forward to City Council on April 9, 2019.

Chair Way explained that City Council will provide the opportunity for a public hearing; opportunities for input again and for the community input as well and the opportunity to look at this again. I would add that there is an opportunity here to think strategically about alleyways, especially in the context of TND and some of the broader aims that were mentioned here by Commissioner Ford-Byrd, as well to think about in the broader context of what we are trying to achieve with TND as well as looking at neighborhoods specifically and some of the other good ideas that came out of this discussion. Notwithstanding, this particular denial, hopefully there is some serious City thought that will be put into this.

Mr. Fletcher said we will connect to see if we can get a bit more information from the Department of Public Works. We will be in conversations with them to get some of that maintenance information. I do want to clarify that we could be charting new territory here. It could be a bit more thought from them to determine what that means.

Commissioner Finks said I would like to make the suggestion to the applicants that what might be helpful when the request goes to City Council is to get letters from your neighbors supporting this.

Commissioner Finnegan agreed, like a petition that states “we are all okay with this.”

Commissioner Whitten said we have never asked for that before.

Commissioner Finks replied, it is just a suggestion.

Respectfully Submitted,

*Alison Banks*

Alison Banks

Senior Planner