



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

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October 2, 2014

TO THE MEMBERS OF CITY COUNCIL  
CITY OF HARRISONBURG, VIRGINIA

**SUBJECT:** Public hearing to consider a request from Lutheran Family Services of Virginia, Inc. (LFSVA) the sole “member” of Massanutten Street, LLC to close approximately 700 +/- sq. ft. of public alley right-of-way. The entire alley stretches about 660 feet between Jackson Street and West Washington Street, however, the section requested for closure extends from Jackson Street southward about 50 feet. The section to be closed is about 14 feet wide and is adjacent to tax map parcels 40-N-13A and 14.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING  
HELD ON:** August 13, 2014

Chair Fitzgerald read the request and asked staff to review.

Mr. Colman recused himself from the meeting.

Mr. Fletcher said the following land uses are located on and adjacent to the property:

Site: Undeveloped 14-foot wide public alley

North: Public street right-of-way of substandard Jackson Street and industrial uses, zoned M-1

East: Minnick School, zoned M-1

South: Continuation of the 14-foot wide, undeveloped public alley extending to West Washington Street

West: Residential dwellings (single family homes and duplexes), zoned R-2

The applicant, the owner/operator of the Minnick School, is requesting to close 5,857 +/- square feet of the 14-foot wide undeveloped public alley right-of-way (ROW) adjacent to their property. The entire alley stretches between Jackson Street and West Washington Street for a length of about 660 feet; however, the section requested for closure extends from Jackson Street southward about 410 feet—the length adjacent to the applicant’s property. If approved as requested, there would remain approximately 250 feet in length as undeveloped public alley ROW extending to West Washington Street.

The Minnick School has operated at the Massanutten Street location since 2007 after they received approval of a special use permit per Section 10-3-97 (9) to allow the school within the M-1, General Industrial District.

As is standard practice, if the City approves the closing request, all property owners adjacent to the requested areas for closure will have the opportunity to purchase up to 50 percent of the ROW width along the entire length adjoining their property. If approved, the applicant could obtain the entire width

of the alley for the first 50 feet extending from Jackson Street as they own the private property on both sides of this section of the alley. As noted by the submitted letter, the applicant is interested in obtaining any portion of the alley that adjoining property owners do not wish to purchase.

During the review process, the applicant contacted each of the adjoining property owners to notify them of their intentions to close the alley. This letter, and copies of the certified mailings, is included within the packet of information. The alley closing application request was originally scheduled to be heard at Planning Commission's July regular meeting, however, while in review, an issue arose regarding potential minimum building setback requirements and to work-out this issue the applicant had to delay the request until Planning Commission's August regular meeting. Since adjoining property owners are not notified by the City during the Planning Commission review, the applicant kept the adjoining property owners aware of the application process and sent them a follow-up letter providing notice of the hearing's delay. A copy of this letter is also included within the packet. (The setback matter was eventually resolved.)

There is sanitary sewer infrastructure located within the northern section of the area requested for closure. (See the aerial map included within the packet, which demonstrates the general location of the sewer lines within this area.) Staff will recommend the City Attorney reserve an easement within this area for the City to be able to maintain this infrastructure. The easement shall be at minimum 20-foot wide centered on the utility line. In addition, Columbia Gas of Virginia, Inc. has a 2-inch gas line that runs the length of the entire alley. Staff will recommend the City Attorney reserve an easement over the entire section of the alley to be closed so that Columbia Gas can maintain their infrastructure. Because easements will be located within the entire section of the alley to be closed, no structures can be located within this area.

The submitted survey of the alley demonstrates the area which the applicant is guaranteed to obtain if the City approves the closing. The applicant should be aware, however, that before the second reading can occur at City Council, the survey must be revised to demonstrate how the alley property is to be distributed among the applicant's and the surrounding property owners' property. The survey must also demonstrate the areas in which the City will reserve easements for the utilities discussed herein.

Aside from the utilities as described, the City does not need to maintain ownership of the alley ROW to provide any other City services. Staff recommends closing the 5,857 +/- square feet of undeveloped alley ROW with the following two conditions:

1. The City shall reserve, at minimum, a 20-foot wide sanitary sewer easement, centered on the infrastructure within the alley.
2. The City shall reserve an easement over the entire section of the alley to be closed to allow Columbia Gas of Virginia, Inc. to maintain their infrastructure.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Da'Mes asked if the alley was identified as having a possible future use by the Bicycle and Pedestrian Committee.

Mr. Fletcher said the Public Works Department actually had no comments regarding the alley closing and they are the keepers of that list; therefore, I have no idea where this alley falls on that list.

Mr. Baugh said according to the map they anticipate bike lanes on Washington Street, but not through the alley. It shows the bike lanes then going through the neighborhood across North Liberty Street from this request. There is nothing shown in the alley.

Chair Fitzgerald said we are not required to hold a public hearing on this; however we usually allow the applicant to speak at this time.

Mr. David Pruett said he is the Chief Financial Officer of Lutheran Family Services and is here from Roanoke. We are working with Mr. Colman on this project, which is why he has recused himself tonight. We appreciate your consideration on this request. Our main concern for the alley closing request is for the safety of our children attending the school. Our concern is with the businesses that have now opened along the street (Massanutten Street) which have a lot of traffic in and out, including large trucks. If for some reason this alley was opened in the future and made a public throughway, then we would have traffic on both sides of our school, which could cause safety issues for our students. That is the main reason for our application. I appreciate your time and would be happy to address any questions.

Mr. Da'Mes said he had a question more for staff. Could a fence be built within the easement requested by the gas company?

Mr. Fletcher replied yes, fences are not considered structures for those purposes.

Chair Fitzgerald asked if there was any one else wishing to speak regarding the request.

Mr. Russell Showalter said he lives in Mt. Clinton; however, we own the property at 776 North Liberty Street. We are opposing the closing of the alleyway. Our opposition is that it would land-lock our property to the rear; our property is narrow and there is no access from the front of the property. Massanutten Street is the entry to our back yard and we do use it, as do our tenants. We want to keep it open for the parking option as well as access to the rear if ever we needed to get back there. We feel that the applicants could still put a fence up for safety purposes; the fence would just be seven feet closer to their rear property line.

As for the construction that has started at the school's property, it has basically made the alleyway unavailable. We do have a bit of an issue with the school. We had a fence that was removed from our property and a tree that was removed. I had a surveyor come out and stake the property before anything else was removed. We are concerned, after these two instances, that there is a bit of disregard for the residents of the neighborhood that still have access to the alleyway.

Chair Fitzgerald asked if there were any further questions for staff.

Dr. Dilts asked what is the distance between Mr. Showalter's house and the south property line.

Mr. Fletcher said I do not have that information here; but, from looking at this aerial it appears you could get a car through there. We could ask the property owner.

Mr. Showalter said you could get a car between the house and property line, it would be close. There is a fence along the property line and just below the house there is a concrete drop-off. Of course there is curbing along North Liberty Street as well.

Mr. Fletcher said some type of easement could be worked out between the two property owners. If Planning Commission feels it is important enough to recommend denial or delay of the request in order to compel the two property owners to come up with some type of an agreement you could do so.

Mr. Fletcher went on to explain the work that was currently being done at LFSVA property in order to better define the property and parking areas by installing curbing along their property boundary. Mr. Fletcher questioned whether or not City Council could require a private easement across the LFSVA property for the adjoining neighbor.

Mr. Baugh said Council could just say “no” to the alley closing and inform the applicants that they could come back if they were able to work something out.

Mrs. Turner agreed and said I would wonder what the terms of the agreement would be; however, that is not something the City would have to get involved with. If both parties came to an agreement that was to their mutual satisfaction, then that is all City Council would need to know.

Mr. Pruett said we, as the Minnick School, would be open to some type of agreement to allow the property owner at that location access upon authorization, with that authorization not to be unreasonably withheld. We would oppose a full open easement to that property which would allow them to enter into our property and across the parking lot, over the hill into their property. As far as being cut-off from access to the back yard from the street; I cannot enter into the rear yard of my personal residence from the street. I think it is not all that uncommon in neighborhoods. The property owner has stated that they can get a car between the house and fence into the back yard. I, myself, have not seen vehicles parked in the back yard.

Chair Fitzgerald asked if there were any further questions or comments.

Mr. Heatwole said I do not know if it is prudent to delay the request; but, I do like the idea of the two parties discussing an easement or some type of arrangement so that Mr. Showalter is not cut-off from the back of his property.

Mr. Fletcher said I am curious to know if the applicant’s had any other adjoining property owners contact them. I know letters were sent out twice by the applicant to all adjoining property owners regarding the alley closing. Where I am going with this question is that if Planning Commission is considering delaying this in order for something to be worked out for access for this one adjoining property owner, there may be others that have contacted Mr. Pruett who are interested in access as well.

Mr. Pruett replied yes. As you know we did send notification to all the adjoining property owners and we did receive one letter back from a Mr. Victor Ortiz at 736 North Liberty Street, who wrote: “I hope that the alley between your property and my property gets closed for the safety of the children. I like not to purchase the portion of the alley adjacent to my property, so you can acquire it. I do not have any questions; your request to the City is very clear and necessary. Best wishes for your project in favor of the children.”

Chair Fitzgerald thanked Mr. Pruett for reading the letter.

There was further discussion regarding the scope of work being done at the LFSVA property to improve the parking lot and access area.

Mr. Pruett said our plan is to spruce the place up as well. Add some landscaping and fencing. We will be replacing the fence we mistakenly removed from Mr. Showalter’s property with a six-foot, vinyl, privacy fence along the northern property line.

Mr. Baugh said I will go ahead and bring this matter up now. Last night at City Council we approved the street and alley closing requests for JMU; but, the public use that was being given up was just a general use. You have a situation where JMU owns both sides of the entire corridor and it did not seem to have any other potential use now that the hospital was no longer there, other than a potential cut through. Yet we had one person come last night to speak in opposition of the request and one Council member voted in opposition. I am saying this because I do think there would be some sensitivity at the Council level to giving up public right-of-ways that do have direct impact on adjoining property owners. Therefore, I think it would be great if we could find some way to work out some of this.

Mr. Showalter asked to speak again, stating that they have discussed with LFSVA about the fence and tree issues. One thing that we did ask for was the possibility to have an easement granted to us from the LFSVA property; we asked that on Monday. Currently, we have not heard anything back from them. I just wanted to make sure it was understood that we have asked.

Dr. Dilts moved to table the request until the next regular (September) Planning Commission meeting to allow for further discussion between the two property owners.

Mr. Heatwole seconded the motion.

Chair Fitzgerald called for a voice vote on the motion to table. All voted in favor (5-0).

Mr. Fletcher said the next scheduled Planning Commission meeting is September 10<sup>th</sup>.

Mr. Colman returned to the meeting at 7:39 P.M.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: September 10, 2014**

Mr. Fletcher said last month Planning Commission reviewed Lutheran Family Services of Virginia's (LFSVA) alley closing application to close a 5,857 +/- square foot section of the 14-foot wide public alley that is adjacent to their school property addressed off of Massanutten Street. Planning Commission tabled the application to allow LFSVA to discuss matters related to access with an adjoining property owner. LFSVA has revised its request and is now only applying to close a 700 +/- square foot portion of the public alley right-of-way (ROW).

As a reminder, the entire alley runs about 660 feet between Jackson Street and West Washington Street. Last month's request was to vacate the 410-foot in length section that is adjacent to the applicant's property. If that request would have ultimately been approved, the remaining 250 feet of undeveloped public ROW extending to West Washington Street would have remained open. During last month's review, Russell Showalter, one of the property owners of 776 North Liberty Street (tax map parcel 40-N-12) spoke in opposition to the alley closing noting that if the closing were approved, although he and his wife would have the right to purchase up to 50 percent of the alley width adjacent to their property, they would no longer have public access to the rear of their property, which they and their tenants use. As discussed above, Planning Commission tabled the application until the September regular meeting to allow for further discussion to take place between the applicant and the Showalters.

Staff met with and communicated via email several times with the applicants, and separately spoke a few times with Mr. Showalter, to try and facilitate some type of an agreement among the two entities. Staff does not believe the applicants and the Showalters ever directly communicated on working out an access issue. Recently, staff was informed by the applicants that a local attorney representing the interests of LFSVA would make contact with the Showalters (before the Planning Commission meeting) to inform them of LFSVA's decision in moving forward with an amended application.

As noted by the applicant's recently submitted letter, rather than requesting to close the 410-foot in length portion of the alley that is adjacent to the school's total property, LFSVA now desires only to close the portion of the alley, where they are the property owners on both sides of the ROW. This section of the alley stretches from the Jackson Street ROW for a length of 50 feet, which totals 700 +/- square feet in area. If approved, although closing this section of the alley would restrict the Showalters from accessing the rear of their property from the Jackson Street ROW, the remaining portions of the subject alley would remain open to West Washington Street. In addition to the subject alley, there is an

additional public alley located between 736 and 754 North Liberty Street, which extends from North Liberty Street and intersects the subject alley about 200 feet south of the Showalter's property.

It should be known that since last month's meeting occurred, physical improvements have been made to portions of the 700 +/- square foot alley area that is currently requested for closure. Soon after the Planning Commission meeting last month, LFSVA paved portions of their adjoining properties and paved over the remaining undeveloped portions of the alley that they want to obtain. (Remember that a small portion of this section of the alley extends into the area that is already paved and used for ingress and egress for the Minnick School and for some of the other properties in this area.) In addition to paving the alley, they also curbed over the Jackson Street entrance to the alley. Once staff was informed of what took place, we notified LFSVA that they must remove the section of the curb located over the alley. LFSVA had the curb removed. Paving an alley is not prohibited, but to correctly do so, one must first apply for and then receive approval of a public access permit—a permit which is free to review and obtain. LFSVA did not obtain a public access permit.

As discussed last month, Columbia Gas of Virginia, Inc. has a 2-inch gas line that runs the length of the entire alley, and therefore, staff will recommend the City Attorney reserve an easement over the entire section of the alley to be closed so that Columbia Gas can maintain their infrastructure. In addition, this small section of the alley that is desired for vacation is the section of the alley that staff explained last month has sanitary sewer infrastructure located within its limits. (See the aerial map included within the packet demonstrating the general location of the sewer lines within this area.) Staff will recommend the City Attorney reserve an easement within this area for the City to be able to maintain this infrastructure. The easement shall be at minimum 20-foot wide centered on the sewer line. Because easements will be located over the entire section of the alley to be closed, no structures, aside from fencing, could be located within this area.

Before the second reading can occur at City Council, the survey must be revised to demonstrate the new area requested for closure and how the alley property is desired to be distributed among the applicants' properties. The survey must also demonstrate the areas in which the City will reserve easements for the utilities discussed herein.

As was also the case last month, staff is again supporting the closure of the alley request. Aside from the utilities as described, the City does not need to maintain ownership of the alley ROW to provide any other City services. Consequently, staff recommends closing the 700 +/- square feet of alley ROW with the following two conditions:

1. The City shall reserve, at minimum, a 20-foot wide sanitary sewer easement, centered on the infrastructure within the alley.
2. The City shall reserve an easement over the entire section of the alley to be closed to allow Columbia Gas of Virginia, Inc. to maintain their infrastructure.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she said this is not a public hearing; however, we generally ask the applicants, or their representatives, if they would like to speak.

Jay Litten with Litten and Sipe, LLP said he is here representing Lutheran Family Services. Mr. Fletcher did an excellent presentation; I just want to add a couple of points and answer any questions you might have. This request represents an attempt by LFSVA, which operates the Minnick School, to make their property safer. They have the need to segregate the industrial traffic from play areas and pedestrian traffic. It was proposed to close the entire length of the alley adjoining the school; however, there was some objection by a neighboring property owner, Mr. Showalter, who said it would be less convenient for him to access the back of his property if the entire alley were closed. LFSVA then went

back to the drawing board to separate what absolutely had to be done from what could be done; and in doing so they have relinquished over eighty percent of their original request. They are now asking only for the vacation of the alley between the two lots that LFSVA owns. They are doing this so that they can better segregate the vehicle traffic coming into the area; therefore, making the property safer for the children.

I think what my clients have been able to do within the month since they were last here, was to create a situation to gain what they need to do their job, without any real sacrifice on the part of any of the neighbors. I would be happy to answer any question.

Chair Fitzgerald had a question regarding the applicant's letter where it discusses installing fencing and other barriers to restrict flow. What is meant by other barriers, because the staff report is stating that nothing could be constructed within the easement?

Mr. Litten said the idea is not to deny any respective easement holders access, it is to create some type of physical barrier such as a fence so that traffic cannot flow through the area and also create a visual separation of space. These children will react to a change in the character of space and where they should and should not be.

I would like to mention that I did contact Mr. Showalter and left a voice message on Monday. I have received no reply to the message.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak against the request.

Mr. Russell Showalter said he owns the property at 776 North Liberty Street. At last month's meeting we were asked to converse with LFSVA to try and come to an agreement on this issue. We had already contacted them about an easement before the first Planning Commission, to which they declined our request. After the Planning Commission meeting we asked Mr. Pruitt if they would like to discuss the easement at that time. Mr. Pruitt said he did not want to discuss the easement, because there would be no easement. This has concerned us greatly. We have received no contact from the school, LFSVA, or a message from their attorney.

It does not make sense for us to have to maintain the alley or drive the entire length of the alley to get to the rear of our property. The turn from Washington Street into this alley is a very tight turn and after driving the entire length of the alley we do not find it to be a very viable option. We strongly oppose our loss of an access at the northern end of this alley, as we use the access on a daily basis.

We have researched the minutes of a similar alley closing request for Muhlenberg Lutheran Church off of Ott Street where an adjoining property owner requested an easement to access the back of his property and the church provided access for all adjoining property owners.

Again, we strongly oppose our loss of access from the northern end of this alley. We hope that the Planning Commission will carefully consider how the loss of this alley will affect our property now, and in the future.

Chair Fitzgerald asked if there were any questions for Mr. Showalter. Hearing none, she asked if there was a motion or any discussion on the request.

Mr. Way asked if the physical and visual barriers could be achieved without having to actually close the alley.

Mr. Litten replied the immediate answer would be no. LFSVA has taken a long hard look at this and there is really only one way to lay out the parking that they are required to have for teachers, staff and

visitors while still keeping separation for children and pedestrians. The purpose of closing it is to keep vehicles from traveling through the area and an easement defeats that purpose.

Dr. Dilts said is it the intent for the section of the property that is going towards North Liberty Street to be used for parking.

Julie Swanson, CEO of Lutheran Family Services of Virginia, said the three factors we are dealing with on this property are the large eighteen wheeled trucks that travel through the property to the poultry plant, the varying sizes of school buses that we have coming onto the site, and vehicles for staff and parents. The section that we are now requesting for closure would be the bulk of our parking, while the property going towards Liberty Street would be fenced so that we could have a very contained piece of property.

Chair Fitzgerald said the issue of the stumps and boulders in the alley coming off of North Liberty Street would not be a question of City maintenance, would it?

Mr. Fletcher said correct. You could drive on these grass alleys but if you want to make them more passable you would have to get permission from the City to remove the stumps and boulders or to put in gravel. This could be done by obtaining a public access permit from the City; however, the City would not maintain any of the alley.

Chair Fitzgerald said the question is how accessible is the ability of Mr. Showalter to get to the rear of his property from these two other access points in this alley.

Dr. Dilts said for the record, I am certainly disturbed that the opportunity for conversation was not made.

Mr. Da'Mes said what obligation does the City have to provide a back entrance to a property that currently has access; I do not believe there is one. I am not completely against this proposal.

The applicants have come forward with a modification that works for them and allows the neighbors access by other means in the alley. I am in favor of the request.

Mr. Heatwole said I will say that it is true – no one is guaranteed access to the rear of their property, and I agree with Dr. Dilts that it is a shame that the two parties could not get together on this. I do believe the long alley, parallel to Massanutten Street, might be accessible.

Mr. Baugh said Council will be interested in this request. There may be some similar type alley closing requests coming in the future. We have not dealt with something like this previously. The alley closings we have been dealing with historically have been easy. I believe City Council will probably have very much the same discussion we are having tonight.

Chair Fitzgerald said that brings up the point that no matter the outcome tonight, there is another venue where you get to weigh in on this at the City Council level. Are there any further comments or questions?

Dr. Dilts said I am going to move we approve the alley closing request with the two conditions for the reserving of the utility easements.

Mr. Heatwole seconded the motion.

Mr. Baugh said let me throw something out here. I realize, given all the stated goals from the applicant that they need to have this portion of the alley. What if we switched the request, closing the portion of the alley where there is no opposition; what effect does that have on the applicant?



Ms. Swanson said we have had quite an interesting time in the last months since the poultry plant reopened. But we are talking about a road, an easement that they use now, that we have to maintain because it is our property. We have to consider what is our safe environment for the children. We had a fire drill the other day and we had to ask, where are the children going to run too? We need to contain our property. I feel it was a big surprise to our neighboring business owners just how much property we owned once the curbing began going in. We assumed, unfortunately, that we would be able to join the two pieces of property that we own to help create the 57 parking spaces that we are required to have. To do that effectively we need that small strip of land and portion of the alley between.

Mr. Baugh said am I hearing this correctly, that in order for you to get your 57 parking spaces you fully need to utilize that entire section?

Ms. Swanson replied absolutely. The other thing is the fencing that we are putting in that will provide the boundaries for our students. It will go all the way to Liberty Street, but will be more of a decorative fence.

Mr. Fletcher asked how many parking spaces do you end up with if the project is completed as proposed.

Ms. Swanson replied the required 57, no more. We have had difficulty with people parking everywhere all over the property, and to some degree it is difficult to be a good neighbor.

Mr. Showalter said he wanted to say that we did discover that our tenants were parking in the gravel area and we did inform them that it was not allowed. For us it is very hard to police every day, but we have taken care of the matter. One thing that we have tried to offer was, when the construction first began, if there was a possibility to gain an easement up closer to the Liberty Street area, which would allow us to come across the front of the property onto our property, where we could then access the rear of our property. This would still allow for the fencing that is proposed. I believe that that conversation just got somewhat lost in the shuffle.

Chair Fitzgerald asked the applicants if that was something worth considering; an easement further up along North Liberty Street.

Mr. Litten said with the disclosure that we have not thought more than just this moment about it; our initial reaction is negative, not knowing how it would interfere with our present or future use of the property. We would ask that the Planning Commission vote on the request as submitted.

Chair Fitzgerald said that makes it much more straightforward. There is a motion on the table and it has been seconded; is there further discussion?

Mr. Da'Mes said I feel this is a missed opportunity.

Chair Fitzgerald called for a roll call vote on the motion to recommend approval.

Commissioner Da'Mes – yes.

Commissioner Heatwole – no.

Commissioner Way – yes.

Commissioner Baugh – yes.

Commissioner Dilts – yes.

Chair Fitzgerald – yes.

Chair Fitzgerald said the motion passes (5-1) and will move forward to City Council on October 14<sup>th</sup> with a favorable recommendation.

Respectfully submitted,

Alison Banks  
Senior Planner