



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Master

File Number: ID 20-327

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Version: 1 Agenda Section: In Control: City Council

File Created: 11/04/2020

Subject: Alley Closing 435-473 South Main Street and 270-288 South Liberty Street Final Action:

Title: Consider a request from Trenton, Inc. and Bernard, LC to close +/- 7,245 sq. ft. of public alley located between 435, 445, 457, and 473 South Main Street and 270, 276, 282, and 288 South Liberty Street

Internal Notes:

Sponsors:

Enactment Date:

Attachments: CC Memorandum Alley Closing (adjacent to Warren St), Site maps, Application, applicant letter, and supporting documents, Exhibit - Proposed alley closure and location of access easement, Public comments received as of November 5, 2020, PC Memorandum

Enactment Number:

Contact:

Hearing Date:

Drafter: thanh.dang@harrisonburgva.gov

Effective Date:

Related Files:

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Planning Commission	11/11/2020	recommended to full council	City Council	12/08/2020		Pass

Action Text: A motion was made by Whitten, seconded by Orndoff, that this Action Item be recommended to full council to the City Council, due back on 12/8/2020. The motion carried with a recorded roll call vote taken as follows:

Notes: Chair Colman read the request and asked staff to review.

Ms. Dang said that the following land uses are located on and adjacent to the property:

- Site: +/- 7,245 sq. ft. of public alley, zoned R-3
- North: City Hall, green space, and city parking lots, zoned B-1
- East: Funeral home and parking lots, zoned R-3

South: Funeral home and parking lots, zoned R-3
West: City parking lot and vacant parcels, zoned R-3

The applicant is requesting to close an alley located in the downtown area. The alley is paved, is +/- 37-feet in width and runs parallel to South Main Street and South Liberty Street. The entrance to the alley begins at Warren Street and runs +/- 211-feet south until it reaches a dead end. Nine parcels abut the alley. Two of the nine parcels (tax map parcels 25-J-19 and 20) are owned by the City and are used for parking for City Hall. Five of the nine abutting parcels (tax map parcels 25-J-5, 6, 7, 16, 17, and 18) are owned by Trenton, Inc. and one abutting parcel (tax map 25-J-4) is owned by Bernard LC. The applicant's representative describes that Trenton, Inc. and Bernard LC are related entities.

The applicant's letter describes that "[t]he requested closure will also allow the Applicant to add the land comprising the existing alley to its adjoining parcels to foster future development opportunities."

Both the applicant and City staff agree that if the alley is closed, then an access easement would be reserved by the City to serve the parcels identified as tax map parcels 25-J-19 and 20, where the City parking lot is located. Staff recommends reserving a 20-foot wide access easement for two-way vehicular traffic and for the length of the access easement to run from Warren Street to include the limits of the current entrance into the parking lot (approximately 75 feet in length).

Within this alley is a public sanitary sewer line that had served structures that are no longer existing on the adjacent parcels. As part of staff's review of the subject request, the Department of Public Utilities investigated and confirmed that the public sanitary sewer line is inactive, and therefore, an easement for the sanitary sewer line is not necessary. There are no other utilities within the public alley.

The applicant is aware that if City Council votes to approve closing the alley (first reading at City Council), the applicant is responsible for having a survey and plat prepared in order for the City Attorney to draft the ordinance to finalize the closure (second reading). The plat should show the portions of the closed alley being added to adjoining parcels and the access easement. Once the applicant has submitted the funds to buy the public alley and the ordinance is drafted, the second reading can occur to finalize the closure.

Staff recommends approval of the alley closing request with the condition that the City reserve an access easement as described above.

Chair Colman asked if there were any questions for staff.

Commissioner Byrd asked is the length of 75 feet to maintain two-way vehicle traffic?

Ms. Dang said no and then referenced the slide show to further answer the question She

said that the 20 feet width is for the two-way vehicle traffic. The length from Warren Street going south is 75 feet in length. The entrance to the City's parking lot is in this location. The intent is that it would be whatever length is necessary to incorporate the full width of the current entrance so that the public access easement would touch it so that the City and anybody using this lot could maintain access from Warren Street to get into the parking lot.

Commissioner Byrd said that is what he intended to say. The length enables maintaining the current use of the lot.

Ms. Dang said that is correct.

Commissioner Whitten asked if the easement also takes care of the access to the compost drop-off location.

Ms. Dang said that this would not have any impact on continued plans to have that compost drop-off there. Community members would still be able to use that access easement to access the City parking lot. I did follow up with the person who made the comment, Ms. Voors, who had emailed. I discussed this with her, and she understands, but I still wanted to include her comments in the packet.

Commissioner Whitten said that is essential and so important as an environmental program for our City.

Chair Colman asked what impact of this alley dedication would have on the future park that is planned for that area. How does the sale of this City property impact the future of the planned park?

Ms. Dang said that the staff review process took longer than the usual week to review this application because we had several questions. One regarding the sanitary sewer investigation as well as the question of the impact to the park. I consulted with representatives of the City Manager's office who had been involved in the Build Our Park discussion. They did not have any concerns that this alley closure would impact future park plans.

Commissioner Fitzgerald said that over the past number of years we have seen a lot of requests to close alleys and have been in favor of some of them, especially the ones that do not look like they are used very much, are overgrown and are effectively part of someone else's property. I am uneasy about closing something without a really good balanced positive use for the City that would come about for giving up this piece of land that is adjacent to a busy area and an area that gets a lot of use. We have a lot of alleys that are alleys on paper and alleys that are full of brush and grown over, where it is difficult to tell where the alley is or is not. This is an actual alley that is used fairly frequently to the point where the map deliberately showed what would have to happen to preserve the current uses of the alley. I do not ever mind voting in favor of closing an alley that is not used, but I

am not sure that this one qualifies. I am not sure that this uncertain potential use in the future balances out the use that we would give up and the complication for how it is used right now.

Commissioner Finnegan said that those are good points. Part of my concern is that we have received a lot of alley closure requests. Always in the back of my mind is the setting of precedent. Applicants like to mention that we have closed alleys or done the same for other applicants. I am hesitant at this point.

Commissioner Byrd asked if the joint applicants surround the entire end of this alley.

Ms. Dang said that is correct. Except for the two parcels that are owned by the City, the applicants own all of the other parcels. They are the only ones that need access to the alley, other than the City which the access easement would be reserved for.

Commissioner Byrd said that he is not downtown enough to observe the travel that people use of this alley. Is most of that travel a get-around to City access through this alley? Or is it to get to the parcels owned by the applicant?

Ms. Dang said that her observations are that only City staff use it to access the gravel parking lot. I do not see much funeral traffic, other than when a funeral is occurring, to access that one large parking lot that is on Main Street. People might use the alley to get in and out from that point. I have not observed cut-through traffic from the general public.

Chair Colman said that according to the plat provided, it shows the alley abutting to property that has an easement that appears to be an access easement. Is that also owned by the applicants?

Ms. Dang showed another image. The applicant owns all the properties that are bounded in yellow.

Chair Colman said that it appears that the alley serves the applicants more than anybody else. Does the City maintain that alley or is it maintained by the applicants?

Ms. Dang said that what she recalls from discussions with Public Works is that we maintain the snow removal. I think that Mr. Hartman, Director of Public Works, said that it is whoever gets there first. Public Works would have to plow to get City Staff access to that lot. I do not recall having any discussion regarding other types of maintenance such as paving maintenance.

Chair Colman said he wondered how the maintenance is handled and whose burden it is. As much as I agree with preserving City alleys, I wonder if this is a burden for the City. It may be a good idea to let them have it, while allowing access to our parking lot. On the other hand, I agree that setting precedent of closing alleys that are being used is counter to

what we have done. The users of the alley are the ones requesting this.

Commissioner Finnegan said that the same is true for every alley in the City. It is up to the adjacent property owners to maintain it. It falls into this weird category between public space and private space in terms of City maintenance. I do not think that the City has any more obligation to maintain that than they do any other alleys in the City, unless downtown alleys are treated differently.

Chair Colman asked staff if there are revenues that the City receives based on paved alleys? Is the City putting an effort to maintain this alley where we could let the user maintain it? Other users in other alleys have to maintain the alleys themselves, so why would the City be maintaining this one?

Ms. Dang said that the City would not receive any funding for this alley. It would not meet the criteria to receive funding. The City's maintenance of alleys throughout the City is on a case by case basis. In this case, I do not know the specifics of how Public Works might treat this alley different from other alleys, if they do at all, other than to serve the interest that the City has for staff to have access to that gravel lot.

Chair Colman asked if there were any more questions for staff. Hearing none, he opened the public comment period and invited the applicant or applicant's representative to speak to their request.

Todd Rhea, Clark and Bradshaw, the applicant's representative, called in support of the request. The Lindsey family, who are the principles of the LLC, which is the same Lindseys, who previously owned and operated Lindsey Funeral Home on this site and has leased it for 28 years, own all of the parcels surrounding this alley other than the City parking lot, which fronts on Liberty Street. The Chairman pointed out an access easement at the terminus of this alley. That is a private access easement that no longer exists because it was in favor of the funeral home use. Since ownership is now consolidated, that is no longer a valid easement. The alley does not terminate on any other public street or alley, nor does it serve any other private parcels other than the applicant's parcels. There is no public transport or public circulation use of the alley. People cannot legally go to the end of that alley and go to any other parcel other than those owned by the applicants. Is there a fiscal benefit to the City? These are not cheap square footages, being prime downtown parcels. One of the impetus for the applicant at this time is that the applicant has some funding in place where they could justify making the application and paying the purchase price. It is correct that there are no current redevelopment needs for the alley vacation, since the funeral home lease is still current and ongoing for most of the parcels in question. It certainly is possible, over the next five years, to see some redevelopment come before the Commission for these parcels and that alley is a very awkward configuration as it currently exists. Vacating it would allow that land to be incorporated into productive plans. We concur with staff's recommendation to provide access to the composting drop off and the City parking lot from Warren Street onto the City lot. There used to be houses along

Liberty Street that this alley accessed, but those houses have all been torn down. There is no longer a private use need for the alley as it currently exists. Those are the reasons and justifications behind the application for closure. You have raised great questions and I will stay on the line for anymore that you may have.

Chair Colman asked if there were any questions for the applicant's representative. Hearing none, he asked for the next caller. As there were no more callers, he closed the public comment period and opened the matter for discussion.

Commissioner Whitten moved to recommend approval of the alley closure request with conditions as presented.

Commissioner Orndoff seconded the motion.

Commissioner Finnegan stated for the record that he will vote against the request. The reason is that I do not see the benefit to the City, and I see this as not a great precedent. I do not have a problem with the applicants or the request in general. I intend to vote against it for those reasons.

Commissioner Fitzgerald stated for the record that she will vote against the request. I align myself with my earlier comments and with the comments Commissioner Finnegan made. I am not convinced that the tradeoff, giving up this land, is the best thing for the City.

Commissioner Byrd said that he does not see why the City needs this long alley if someone else has taken the time to acquire all the land surrounding it. The City is maintaining the alley for what purpose, to aid this one property owner? I do not see the value in that.

Commissioner Whitten agreed with Commissioner Byrd. This is an alley to nowhere except to the applicant's property. It does not make sense for the City to hold on to the property. I think it should be part of the taxable property that they own.

Vice Mayor Romero said that the alley had a use at one point for the residents that lived there. It is outdated. It is no longer there for the reasons that it was put there. It leads to nowhere. I have seen it many times and I always thought it was a driveway, a part of the property. I do not like the precedents either. I do agree with Commissioners Fitzgerald and Finnegan, but I also do not see why get in the way of allowing the owners to take care of it and make it useable for them and still benefitting the City by providing the access we need. It does not have the intended uses it was designed for, so I will be voting in the affirmative.

Chair Colman said that he will be voting in the affirmative. I am torn, also, because of the way we have voted before and setting precedents. At the same time, I consider the property, with an alley in the middle of the property, it limits the potential development of that property. It will be taxable property for the City, as well. Leaving it there provides more of a limitation to that property's development than a benefit to anybody else. I agree

with Vice Mayor Romero that the benefits to the City have expired.

Commissioner Fitzgerald noted that she would have been willing to vote in favor of this if they would be interested in closing half of the alley, the half that does not abut right next to the City property. I would have voted yes for that without any problem at all.

Chair Colman said that is important that we express that opinion because we are protective of our alleys. We want to see them used. This is one that is nicely kept, and wish would be used more, but it is not to the public benefit at this point.

Commissioner Fitzgerald said that it highlights the need to talk about this in the [Zoning and Subdivision Ordinances Update Project's] Ordinance Advisory Group where we are thinking through some of the big picture items about how judgements should be made about issues like this.

Commissioner Finnegan said that the alleys in my neighborhood were ultimately designed for coal delivery. We do not use coal anymore to heat houses. I use the alleys in my neighborhood quite a bit, except for the ones where I think bad decisions were made and parts of the alleys were closed. Once you have done that, there is an argument to close the rest of the alley. I am voting against it on principle that I do not think we should close alleys in general.

Commissioner Byrd said that the City parcels are next to two streets and the only access is to this alley. To me that is a strange use of the property relative to a street.

Chair Colman said that is a leftover from what was there before.

Commissioner Orndoff said that if we were not requesting the easement, the City could have access to its parking lot directly off Warren Street. This is just convenience to the City not having to create a different entrance.

Chair Colman said that it does not increase cost to the City by having an access easement.

Chair Colman asked if there was any more discussion. Hearing none, he called for a roll call vote.

Commissioner Fitzgerald	No
Commissioner Orndoff	Aye
Commissioner Whitten	Aye
Vice Mayor Romero	Aye
Commissioner Finnegan	No
Commissioner Byrd	Aye
Chair Colman	Aye

The motion to recommend approval of the alley closure request with conditions as presented passed (5-2). The recommendation will move forward to City Council on December 8, 2020.

Yes: 5 Colman, Whitten, Romero, Orndoff and Byrd

No: 2 Finnegan and Fitzgerald
