

**MINUTES
LURAY PLANNING COMMISSION
SEPTEMBER 10, 2008**

The Luray Planning Commission met on Wednesday, September 10, 2008, at 7:00 p.m. in regular session. The meeting was held in the Luray Town Council Chambers at 45 East Main Street, Luray, Virginia. Chairman Tom Potts presided and opened the meeting.

Commissioners Present:

Tom Potts
Clifton Campbell
Peyton Baughan
Larry Hakel
John Meaney

Absent: Mary Menefee
Sam McNeely

Others Present:

Bryan Chrisman, Assistant Town Manager
Ligon Webb, Town Planner
Jason Spitler, Town Attorney
Luther Johnson, Page News & Courier

Chairman Potts called the meeting to order at 7:00 p.m. and everyone joined in the Pledge of Allegiance to the flag.

APPROVAL OF MINUTES OF REGULAR MEETING ON AUGUST 13, 2008

There being no additions or corrections to the minutes they stand approved as presented.

PUBLIC HEARINGS:

Mr. Webb stated we have four separate ordinance amendments, each with a public hearing. Mr. Webb outlined the suggestions for Section 516. Commissioner Potts asked if he had discussed this issue with the Town Council. Mr. Webb stated that Town Council wants to consider this issue for awhile longer, but wanted the Commission to continue its work. One specific item mentioned by the Council was the potential elimination of the special use permit process, but rather have more stringent setbacks for larger buildings.

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Commissioner Campbell asked what the Council thought of the percentage and stated that based on the information he had, some wanted slightly larger percentages to begin with. He continued that it might be best to get some feedback from Council before submitting the final Commission version to a vote. He suggested that maybe the Council could review the ideas in a work session.

Mr. Chrisman stated this particular topic was brought up in Ligon's report to Council at their last meeting. Some people thought the base percentage of 4 percent was a little too restrictive and thought that it should be larger. They did bring up the issue of rather than a special use permit, maybe we could look at something like either increased setbacks or look at the total lot coverage which would include the primary house and any of the accessory structures. They would only be able to meet a certain maximum in order to allow a more flexible interpretation for those people with larger lots. Then a question came up after the meeting about height of accessory structures and whether or not the Commission was proposing to allow accessory structures to have more than one story or could they have the same number of stories that the primary structure had. Also would they be allowed an increase in height of an accessory structure and detached garage or would we restrict only to one story and just have the square footage coverage. He suggested further Council input prior to the Commission taking definitive action.

Commissioner Potts asked to proceed with the public hearing. He opened the Public Hearing and asked for anyone who wished to speak.

Mr. Gerald Dovel, 87 Gapview Lane, Luray, VA

It is his hope that somehow something good comes out of this. He understands that the Town Council may have their wishes, and that this Commission has their job to do as well. He's not sure what the right answers are, but he hopes the Town can come up with some reasonable and measureable document that can be used in the future.

Commissioner Campbell stated he thought we need some guidelines, and appreciated Mr. Dovel's participation in the process.

Mr. Leroy Lancaster stated one of the concerns that Council or a couple of us had is where do you draw the line. He questioned what do you consider to be a part of the main structure, and

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what is an accessory structure? He also noted that the connection of the primary and accessory buildings by a breezeway can cause some issues. Commissioner Baughan stated that any connection to the primary structure makes it a part of that structure and not an accessory building any longer.

Commissioner Baughan stated we are trying to establish a limit on the amount of the lot that can be covered by accessory buildings. Mr. Lancaster stated that nothing in this proposal controls how big the primary structure can be. Commissioner Baughan stated the only thing that limits the size of your house is actually the setbacks.

Mr. Lancaster stated the Baptist Church on S. Court Street has the new building and the original joined by a breezeway. Commissioner Baughan noted that they are probably now in violation. Mr. Webb stated when the application came in, it was an accessory building.

Commissioner Baughan stated that he felt the concept of requiring a special use permit, or increasing setbacks for larger accessory buildings, had merit. The Commission just needs to decide what is most appropriate. Commissioner Potts concurred that setbacks regulate the primary structure size and location, but that these proposals were directed at accessory buildings. He also agreed that joining them made them one whole primary structure. He proposed that the concept of lot coverage be further examined.

Commissioner Baughan stated he would agree on say 6 percent and if it goes over 6 percent of the lot, then you have to go get a special use permit. If somebody has a two acre lot maybe we will let them build a bigger accessory building than 6 percent, provided he puts it on the lot somewhere where it minimizes the impact on the neighbors.

There being no one else who wished to speak, Commissioner Potts then closed the public hearing.

Commissioner Baughan stated he thought you ought to consider adding a maximum size and you can vary that by R-1, R-2 and R-3 so that if they want something larger than 4 percent or 6 percent, wherever we are going with the lot size.

Commissioner Baughan proposed a clarification in paragraph (b) the language is that "An accessory building and/or detached private garage erected in a side or rear yard must adhere to the underlying zoning district's setback regulations as pertains to accessory buildings".

The Commission, by consensus, recommended the removal of paragraph (f). Mr. Webb agreed.

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Mr. Chrisman stated so there will be a fixed maximum based on the minimum lot size in the zoning district – a percentage of that, is that what you are saying Mr. Baughan? Commissioner Baughan replied yes. Mr. Chrisman stated that under that model, 6 percent of 15,000 would be the maximum for R-1 even if the guy has an acre in R-1, until he comes back and applies for a special use permit to do more than that. Mr. Dovel stated then you have an opportunity to talk about setbacks and property lines. Commissioner Baughan stated exactly. Mr. Dovel stated he liked that. Commissioner Baughan stated then you would end up with a public hearing; you give the neighbors a chance to say yes, I don't mind him building a six car garage as long as its 100 feet off the property line. Mr. Dovel stated then pretty much what you are talking about is 6 percent of 15,000. Commissioner Baughan stated yes, and maybe you may want to go only 4 percent and make it 600. That can be debated.

Mr. Chrisman recommended keeping the percentage the same in each zoning district. The minimum lot size is going to bring that square footage maximum down as you work your way down through the zoning districts. Commissioner Baughan and Commissioner Campbell agreed that the Commission just needs to select a percentage of maximum coverage for accessory structures.

Commissioner Potts and Commissioner Hakel agreed that keeping to a set percentage, and then requiring a special use permit for everything else, kept things simple and fair.

Commissioner Baughan stated the proposal should contain both a lot coverage maximum per zoning district, and some sort of setback adjustment for larger structures. The majority of the Commission recommended publishing a schedule to make interpretation easier.

Commissioner Potts asked for Mr. Webb to forward the concepts to the Council and get their input before the Commission proceeds.

Commissioner Baughan stated that a better definition of how to measure height is needed. Commissioner Hakel asked how that definition can be changed. Commissioner Baughan recommended the use of the average of the major corners of the primary structures to the roof line, but there may be other suitable definitions out there. The Commission agreed that a better definition is needed, and soon.

Commissioner Baughan questioned the provision that allows a person who owns two adjacent lots to possibly put their primary structure on one and their accessory structure on the other. Right now, that is prohibited. Mr. Chrisman stated that if they combined the two lots, it is possible. Currently, there can be no accessory structure on a lot that does not have a primary or principal structure. Each individual lot has its own setback requirements and zoning.

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Mr. Spitler stated if we are going to define accessory building, it seems that we should define principal structure. If we do that, the easiest way to define accessory building would be to say anything located on this lot that is not the principal structure.

Commissioner Baughan questioned if a garage was still considered an “accessory structure”. The Commission continued the discussion of the various definitions. Mr. Webb indicated that he would clarify that in the next draft.

Mr. Webb stated he will forward it to Council at their next work session and they can decide what direction they think is best. Commissioner Potts also asked Mr. Webb to get guidance to set up maximum lot coverage for house and accessory buildings combined.

Mr. Spitler asked if there is a motion to refer it to the Council for their review prior to advertising. Mr. Webb stated with the changes we have made tonight. Motion was made by Commissioner Campbell that we refer this to Town Council for their review prior to advertising. Motion was seconded by Commissioner Hakel. The vote was as follows: YEA: Commissioners Potts, Campbell, Baughan, Hakel, and Meaney. **APPROVED: 5-0**

OLD BUSINESS:

RZ08-2, Delton and Desiree Anglin: Request to rezone two M1 (Industrial) zoned parcels to R3 (High-Density Residential)

Mr. Webb stated we have a copy of the survey and on the survey that was provided, the one lot that says “Dean” is where the other house is located. The two lots, as he has noted in his revised report, B is about 5,600 square feet, B2 is about 7,800 square feet. The house is not shown on the first one, but he thinks it’s safe to say that it does not meet the setbacks. It might meet the rear setback but that would probably be it. He indicated he had discussed the issues with Mr. Spitler on several occasions. He thinks the only concern was in regard to the adjacent property owners.

If this was rezoned to R-3, it would come in as a non-conforming use. If it was to burn down, they could build it back; they just would have to build back what is there as far as the setbacks, they wouldn’t be able to encroach any closer. They would be able to build a house back but it would not conform to setbacks. They would not be able to expand as they cannot now. Mr. Webb indicated that one neighbor, Mr. Lancaster, has established a set-back of three (3) feet. Commissioner Campbell stated he thought we should leave the zoning of these two parcels like it is right now. Mr. Webb stated and that’s absolutely your decision as a Commission.

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Mr. Spitler asked is the town staff's position with respect to Mr. Lancaster's property, if he was to expand his business in the direction of Mechanic Street where currently no structures are located, that he could continue to build up to three feet of the property line. Mr. Webb answered yes. Commissioner Baughan asked do they have a partial setback in a residential area. Mr. Webb answered yes it does, but he has established a setback that was probably there prior to zoning as three feet. It is his opinion that as long as he does not encroach further than three feet, then he's OK. Commissioner Baughan asked is it your interpretation that if Mr. Lancaster expanded, he wouldn't be caught by a setback adjacent to a residential area of 25 feet. Mr. Webb stated no, because he is already three feet from this property and has been there for many years, but if he wants to expand it as long as he does not encroach closer than three feet. Commissioner Campbell asked what is the advantage to change it, except for the one thing that the man that's selling the other lot and that's just asking for more problems. The Town of Luray has no advantage to change it. Mr. Webb stated he didn't think there was any disadvantage either. The applicants have requested it because of the issue with banking.

Mr. Webb invited Mr. Lancaster to share his comments. Mr. Lancaster said one concern he has is Desiree and D.J. asked to have it rezoned because of financing when they go to sell it. He spoke to two of the local banks, and the banks could care less whether it is zoned R-3 or M-1. Their concern is where secondary lenders may be concerned, but they had no concern. Their concern is that it is insured and if it burned down, they didn't care if it was put back or not as long as there is insurance money to cover the loan. Mr. Spitler stated he couldn't imagine that the secondary lenders would be too concerned. Mr. Webb stated those houses are on a right-of-way, it's a very unusual situation and we don't have too many situations like that in town. It's a little messy. Mr. Lancaster stated its M-1 but it would be awfully hard to get it zoned back down from R-3 to M-1 if for some reason that property was sold and someone wanted to put something in there.

Commissioner Potts asked Mr. Spitler if he agreed that there is no impediment or infringement on Mr. Lancaster and Roy Jenkins' operation as long as it stays in that three feet. Mr. Spitler answered that he doesn't think there is anything to prevent him from rebuilding a structure if it was damaged or destroyed, but he thinks as far as what we sometimes call a "grandfathered situation" on use, he doesn't think it allows him to do anything but continue that same use.

Commissioner Potts asked if there was any discussion. Commissioner Baughan stated he did not see any real pressing reason to rezone this parcel. He was principally concerned with possible infringement on adjacent property owners.

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Commissioner Hakel made a motion that the Commission recommend to Council that we deny this request. The motion was seconded by Commissioner Campbell. Chairman Potts stated a motion has been made and seconded to deny the request to rezone. The vote was as follows:
YEA: Commissioners Potts, Campbell, Baughan, Hakel, and Meaney. **APPROVED 5-0**

Mr. Chrisman stated one other issue that came up at Council was about a situation like this. If the Town is looking at a rezoning, it is the opinion of several of the council members that you would strongly consider not allowing non-conforming uses to be up zoned or down zoned just simply for the precedence it sets for the Planning Commission and Town Council. If anything gets rezoned, it should at least be able to conform to the zoning requirements of that district that you are bringing it into. If it can't, then that would be strong reason to not consider it.

Mr. Webb stated that as far as the other issue (infringement on neighbors), he thinks it is debatable. He thinks he could expand his building but he also totally understands. Commissioner Campbell stated if he would have to get an attorney and pay an attorney to prove that he can, then that's not fair to him. Mr. Webb stated he didn't disagree at all.

Review of a proposed B2 (Highway Commercial) Zoning District

Mr. Webb outlined the proposed changes and upgrades to this proposal for the Commission. He outlined possible inclusion of some basic architectural review and building materials.

Commissioner Campbell asked what is the reaction staff is getting from Council on this issue, and indicated that it might be wise to gain their input before advertising this item.

Commissioner Potts stated he would like to see the section of manufactured homes and small country inns removed from the B2. Mr. Webb agreed to strike them.

Mr. Chrisman stated there is another issue to consider. He and the Town Manager were listening to a comment that the minimum lot size in a commercial zone is currently set at 16,000 square feet. That may be too small. Commissioner Potts agreed.

Commissioner Hakel stated if you increase the lot size, then you are not going to have the smaller businesses, whereas, a bigger business could combine several lots. Mr. Chrisman stated the intention would be not to discourage small business owners. Maybe you would want to have a collection of small businesses along this strip. That's something for the Commission and Council to figure out – what kind of look do you want in this B2 district. Commissioner

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Potts stated his thought of it is not a series of free standing buildings surrounded by a parking lot, but instead much more of a mall with parking in the center. He agrees that 16,000 square feet is an invitation to the small businesses that will take up a lot of space, but not contribute much to the overall appearance.

Commissioner Baughan stated he thought you better take a look at your setbacks and settle on those before determining minimum lot size. Mr. Webb concurred, and stated maybe something on the order of 40,000 square feet or even an acre. He indicated that he would re-visit that issue.

Mr. Webb stated the sign issue could possibly be eliminated altogether, but may need more defined restrictions.

Commissioner Potts stated he hoped that some sort of guidance can be provided on building design, landscaping layouts, site layouts, and signs/lighting.

Commissioner Potts stated he is assuming that the Code on historical sites is included as a response to his discussion about us doing something about a historic district. Mr. Webb stated this is part of the Code that enables us to review the historically significant issues. The Commission and Mr. Webb discussed the benefits and hazards of architectural review, and a suggestion was made to review the possibility of an overlay district.

Short Term Rental definition and guidelines

Mr. Webb stated that last time we talked about this issue was October 2007. This item is not trying to prohibit such rentals, but rather define them and provide some minimum things they must do. The basic premise is that such rental is considered a "business". You must have a business license, transient occupancy taxes must be paid, they must provide adequate off-street parking, not exceed the overnight occupancy of the dwelling, and the owner cannot reside in the rental unit.

Commissioner Potts brought up the issue of liability insurance and how much risk a person wants to take. Mr. Chrisman stated currently in the Town, if a person comes in and applies for a business license as a professional occupation, we do not require proof or verification of their professional license. If they apply and pay their fee, we will issue them a business license. If they do not have a professional license and they practice in the Town of Luray without a business professional license through the State, that's between them and the Department of Professional Occupation and Regulation.

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Commissioner Baughan asked if it concerned anybody here that we are introducing a business activity in all residential zones in the community. Commissioner Campbell stated he did from the beginning. Commissioner Baughan stated we started out this conversation wondering if we need to put limits on short term rentals, define them and perhaps control them in certain areas of the community. This reads that it is the vested right for anybody to have short term rentals anywhere in our community. There is no attempt here at all to regulate them other than to get their money from a business license. Mr. Webb stated it is a vested right from what he understands, unless you control it with requirements. Mr. Chrisman stated it also brings us back to the issue of equity and is it fair to say that short term rentals are allowed in R3, R4 and R5 but never in R1 and R2 because people in the houses there deserve much more privacy than people that live in R3, R4 and R5. Mr. Webb stated the Town's original definition was they are prohibited in R1 and R2, and allowed by special use permit only in R3, R4 and R5.

The Commission then held a lengthy discussion on the various intentions and directions that should be pursued.

Mr. Chrisman stated since it's a business activity, would it be something to consider allowing it in the business B1 district by right, but not in the R districts. There are a lot of houses in the B1 district right now that could be utilized for this purpose. In this way, you would allow a business use in a business district, and if someone wanted to do this sort of thing in a residential neighborhood of any zoning, it would require a special use permit to examine occupancy, off-street parking, etc. Such a special use permit would require a public hearing and allow the neighborhood to be present and comment.

However, it was noted that in Virginia renting for one night is the same as renting for one year, so it is possible that it can not be restricted anywhere in Town. Commissioner Baughan noted that there are areas in Town where possibly the residents and business owners and neighbors would welcome such activity. Regardless of where they operate, they should follow the same basic items as outlined by Mr. Webb previously.

Mr. Chrisman stated we talked about it earlier, and he thinks Mr. Baughan brings up a good point. It is a business activity, no matter how you look at it and allowing it in the B1 district would be totally separate from your residential districts. He knows that nobody wants to review or publicize or go through the process of a special use permit but if someone wanted to do a short term rental in a residential zoned district, have them come and get a special use permit. It is allowable in B1 by-right, but if you wanted to do it in any residential district, you had to get a special use permit. That triggers several things. The process of a public hearing, notification to all the neighbors in writing so that all the neighbors can come in and give their viewpoint. You use that information to decide whether or not to grant it or not. Mr. Spittler

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stated that at that time and in that forum, the Commission and Council can recommend and place any restrictions as appropriate (respectively).

Commissioner Baughan stated he liked it because we did put reasonable restrictions on bed and breakfasts; what time the lights go down and the people quiet down, etc. Mr. Webb stated that is what we talked about last time was to have a special use permit in all districts. Commissioner Baughan stated what are you going to do with off street parking – some of those things could be enumerated. We could recognize the fact that they are there, but he would far rather have them come and have a public hearing.

Commissioner Potts asked Mr. Webb to re-write the definition to include the discussion items of tonight, and enumerate the specific requirements of all short-term rentals. He added to allow by-right in the B1 district, and available by special use for residential. Mr. Chrisman stated we have to define short term rental as a business operation. Mr. Spitler stated if it is a commercial use, we need to make that explicitly clear in the definition. Mr. Chrisman stated defining it we are allowing it; we are just putting some primary guidelines in place to allow staff to direct the application of it in the corporate limits.

Commissioner Potts stated then you will come back to us with a much expanded proposal next month. Commissioner Campbell stated come back to us with it, and bring input from the Council before we advertise it. Mr. Webb stated he is not going to advertise this until it is clear.

Mr. Chrisman stated under old business items - No. 1 is RZ08-2 which you have acted on; the other two you would like us to modify as directed and take those to the Town Council at their work session in October for their comments and then bring them back to this group. Commissioner Potts stated yes.

Commissioner Potts stated the one thing that he did raise in an email, and we need to find out, is that he read in the Harrisonburg paper that the Rockingham County Board of County Commissioners was appealing to the state legislature for relief from legislation that exempts short term rental from transient occupancy tax. Mr. Chrisman asked Mr. Webb to research this and provide information to the Commission and staff.

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~~There being no further business to come before the Commission, the meeting was adjourned at 9:00 p.m.~~

~~Respectfully submitted,~~

~~Bryan T. Chrisman
Assistant Zoning Administrator~~

~~ATTEST:~~

