

**REGULAR MEETING OF THE  
LURAY PLANNING COMMISSION  
OCTOBER 13, 2010**

The Luray Planning Commission met on Wednesday, October 13, 2010 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 at which time there were present the following:

Commissioners Present:

Tom Potts  
Clifton Campbell  
Larry Hakel  
Pam Flasch  
Ronald Good

Absent: John Meaney

Others Present:

Bryan Chrisman, Assistant Town Manager  
Ligon Webb, Town Planner  
Town Attorney, Jason Spitler

Chairman Tom Potts called the meeting to order and everyone joined in the Pledge of Allegiance to the flag.

**APPROVAL OF MINUTES:**

A motion was made by Commissioner Campbell that the minutes of September 15, 2010 be approved as presented and seconded by Commissioner Hakel. The vote was as follows: YEA: Commissioners Hakel, Campbell, Potts, Flasch. and Good.

**APPROVED: 5-0**

**PUBLIC HEARING: SPECIAL USE PERMIT REQUEST**

Mr. Ligon Webb stated this is a special use permit request by Ms. Laurie Ryman. Ms. Ryman has applied for a special use permit to locate a single apartment in a B-1 (General Business) parcel. In the B-1 zoning district, an apartment is allowed by special permit. It will be located in an existing building. Mr. Webb doesn't see any issues but he believes she needs to get a certificate of occupancy from the building official for the apartment. It is roughly 800 square feet and she basically intends on residing upstairs from her current business. We need to review it and make sure the upstairs is adequate for a residence. She can utilize the back parking space. She has an agreement with the Page News for parking her vehicle there during business hours and believes she can park her vehicle there after 5:00 p.m. Certified letters have been sent to the two adjacent land owners.

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Commissioner Potts asked if anyone from the public wished to address the Commission. No one being present to address the Commission, the public hearing was closed.

Commissioner Campbell stated the only concern was the parking, and that seemed to have been addressed.

A motion was made by Commissioner Campbell that we recommend to Council that the lady gets her special use permit for living quarters over her business. Motion was seconded by Commissioner Good. The vote was as follows: YEA: Commissioners Hakel, Campbell, Potts, Flasch and Good. **APPROVED: 5-0**

**CLARIFICATION: TOWN CODE SECTIONS GOVERNING SPECIAL USE PERMITS**

Town Attorney Spitler stated he and Ligon wrote the current ordinance. Mr. Webb stated the question was whether an SUP transfers with the land. If somebody wants to purchase property and has a special use permit, as long as they follow the conditions that were on the special use permit, then there would be no reason for review. In case of a residential use, a house in B-1 for instance, that would also transfer with the land. Mr. Miller on Nunn Lane, if he was to sell tomorrow, then the person who purchased would have to follow the conditions of the property. Mr. Spitler stated essentially it's just the special use permits for business uses that would be subject to review based on that being an express condition when the permit was issued. However, the current ordinance still allows for business use SUP's to transfer automatically without review.

Commissioner Potts wanted to know whether Mr. Miller had recorded the SUP on the deed to both lots, and what the process for doing so was.

Mr. Webb responded that he had been given all of the documents, but that he wasn't sure if they had been recorded yet. Mr. Webb indicated that the current code requires all such SUP's to be recorded on the deed to all affected properties within thirty (30) days of issuance. He said he would check to see if this had been done.

Commissioner Potts stated we need to find an enforcement mechanism. He was concerned, especially in this case since there are two lots involved, not just one, and that all conditions noted would apply to all future buyers. He wanted to know how best to accomplish this task.

Mr. Spitler responded that the easiest way is to amend our current form to say that the SUP must be recorded within 30 days, and that a copy of the recorded SUP with the

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clerk's stamp, and a copy of the clerk's receipt are returned to the Town Office within 10 days of recording.

Commissioner Potts asked about whether a SUP expires in two years if it has not been acted upon. Mr. Spitler and Mr. Webb responded that this was not the case unless that was a specific condition of the SUP.

Commissioner Campbell and Commissioner Potts both wanted the process to be clear and complete to ensure that all current and future owners are held to the conditions.

Bryan Chrisman stated he had a couple of questions. Jason, specifically under Section (a) of the current SUP ordinance (this is something that Town Council discussed) the Planning Commission can recommend and the Town Council can require any condition, correct? So if you folks want to recommend a time limit for a non-transferability clause or anything like that, any condition can be recommended and adopted for a special use permit. If this ordinance, the way it is currently written, doesn't give the Commission satisfaction, you can always say we want an annual review of the SUP, and we want this not to be able to transfer with the title to the property, or that we want this to have a term limit of two years. My understanding is, and Jason you can correct me if I am wrong, but under article (d) if they don't record the special use permit within thirty days of issuance, it is null and it is my understanding that means that the applicant would have to reapply and go back through the process again.

Mr. Spitler stated he wouldn't say it is null, but what he would say is that at the end of paragraph (d), it has been thirty days and we have had no recording of that permit, then we go right up to paragraph (c) which says if you violate any condition of the permit, you are subject to automatic review which could include revocation of renewal.

Mr. Chrisman stated that since there is no two year limit, it's a thirty day, if they don't record the SUP within thirty days; it's subject to an automatic review. What he did not understand since Jason and Ligon worked on this, under article (b) midway through that section, it talks about any residential or industrial special use permit shall transfer with the title and not be subject to an automatic review and then it also says that any business use of a special use permit shall transfer with the title and not be subject to an automatic review, unless it's a special condition based on like a specific other portion of the Code. Can you give me an example where an automatic review of an SUP would occur?

Mr. Spitler stated he thinks that Council spoke very clearly to the Commission and to Mr. Webb and himself in that they didn't want to see people coming back in here for reviews on residential special use permits simply because, as Ligon pointed out, you don't anticipate there being a significant change in use from one family household to another.

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They felt pretty much the same way about the industrial side of things, simply based on the amount of investment that someone would have to make to be involved in manufacturing and how can we attract a manufacturer to come here and develop their facility and maybe it has no value because they are not able to sell it, they are not able to change their management without risk of losing their permit. At the same time he felt like we were given sort of a different direction concerning business uses; the business ones have always, at least certain categories, have always been the more sensitive issues that really led to the express conditions and the reviews.

So essentially we can always redraft the ordinance if that is your pleasure and the Town Council's, but his interpretation at this point has to be that any residential SUP and any industrial SUP are perpetual transfers with title to the property period. For a business SUP, we could have discretion; we can issue the permit without express conditions or put the express conditions without requiring such a review or alternatively, we can express those conditions and require an annual or other timeframe for review. So he thinks in terms of the issue of transfer, review, etc., we are really only going with the business special use permits for any type of review, and not the residential or industrial.

Mr. Chrisman stated say we have an investor and he'll use waste by-products as an example. We know that there was a case that came before the Town a while back. Say you have an industrial company comes in and gets a special use permit for an M-1 zoned parcel, such as down in the business park on Stoneybrook. They build a manufacturing facility with recycled materials. They build big warehouses and everything is done inside and there's no storage outside. They have enclosed tractor trailers coming in and coming out; say maybe 50 trips per day. All of their equipment is state-of-the art, no loud noises, no fumes and nothing like that.

In continuing this example, let's say that a different company buys that same parcel. They want to do a similar thing but they can't afford all the automated equipment that left with the previous manufacturer, so they employ lots of people to do the work by hand-sorting instead of using the machines. They have 200 open bed trailers every 24 hour period on average visiting the site. They emit dust, and noise, and have large external storage piles of material exposed to the weather and its associated run-off. Technically, they are still doing a metals and materials recycling business, but there are apples and then there are oranges. His question would be if the permit automatically transfers with no review, and there are no special conditions attached recommended by this group or required by the Council, how is that use the same use as the previous one? Some potential conditions could have been that the business can have no more than fifty truck trips in a day; you have to use enclosed trailers; you can't store your materials outside; you can't put off any noxious fumes or run your business 24 hours a day, 365, disturbing your local residential neighborhoods in the vicinity. If none of those special conditions

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were applied, that permit was just granted because the company that applied was pristine; everything was sparkling, everything was indoors, they didn't emit any issues but if that thing transfers, where is the town's control to say this is not an apple anymore; this is an orange and what you are proposing to do here is significantly different than your predecessor, the previous owner of the property, did.

Mr. Spitler replied you just answered your own question. First we look to the express conditions; that's the easy one. That's black and white; they are either there or they are not. If they are not there, then as you have indicated, we have to ask ourselves is this the same use that was approved as part of the permitting process or is this distinguishable from the use that has been permitted. Mr. Chrisman stated that if no automatic review is required, how do we have the legal right to do so. The current ordinance says there will be no automatic review of residential, industrial, and most business uses.

Mr. Chrisman thanks Mr. Spitler and Mr. Webb for the job they did in drafting the current ordinance, because he knows some of the conditions and directives they were given to work under.

Mr. Chrisman continued by saying that if there were no express conditions imposed, then the new applicant would not be "in violation" of the previous permit, so they wouldn't be subject to an automatic review. There doesn't appear right now to be a back door for the town to say this is not an apple anymore, this is an orange. We have looked at your application and when we find out that it is a significantly different type of operation, then we have the ability to trigger an automatic review under the Commission's recommendation and the Council's decision.

Mr. Spitler stated in paragraph (c) "notwithstanding the foregoing, any special use permit shall be subject to an automatic review upon the violation of any condition thereof." Typically that is going to be a violation of an express condition, like you are going to have covered trailers on your trucks; you are only going to have a certain number of people working per shift, whatever.

Mr. Webb stated if we all looked at it and said you have a great process, but we want to make sure that you (1) do not store materials outside, that (2) you have all your processes done within the confines of the building; if we were to let them just breeze through and not have any conditions, then we have failed to do our job correctly.

Commissioner Campbell stated that we have to ensure that the Town (Commission and Council) retain control over the review and permitting process, regardless of the type of use that was there, is there now, and is proposed to be there. He thinks that in some situations, we need to protect the residential areas from business and industry.

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Mr. Chrisman stated he thinks the Commission and the Council have done a good job in the past, but the point he is trying to make is if we don't have anything from a statutory standpoint that would cover a unique situation like those discussed, we are hard pressed to step in and take a type of control that our Code does not expressly allow. A significant concern is that when the Town issues a special use permit that is automatically transferable without a review, we are not only issuing it to the current applicant, we are issuing it to every buyer that comes in the future.

Mr. Chrisman continued that we have to continue to be very careful to make sure that we are thinking about current and future applicants for that piece of property and some of the things we talked about last time were off site water, sewer and storm water issues. These are some of the biggest issues we deal with in town. It doesn't just have to do with that applicant's property; how does their use impact the rest of the town, not only in that immediate vicinity but everywhere all over town.

Mr. Spitler stated first of all in answering Bryan's initial question, I would suggest that there is always one condition to these permits regardless of what we really think of in terms of the normal express conditions; that is the specific use for which the permit is intended. That may not be as black and white as we would like it to be, but nonetheless, in most cases, we are going to be able to distinguish one use from another and if they are not using the property in compliance with the permit, then that in itself is a violation of a condition of the permit which brings us right back down that same road. With respect to Commissioner Campbell's comments, I understand exactly where he is coming from but I think we also have to do the same balancing act that it seems like we always play; we have to balance private property rights with the public interest and in addition to that we have to balance wanting to be able to exercise discretion and control while at the same time making properties in town attractive to new business and industry who we hope are going to be willing to make an investment in our community. With all that being said, the Commission can at any time recommend that the Town Council modify this ordinance, or any other, if you feel like it's not a good fit for the proposed use that's before you.

Commissioner Potts stated as a last resort does it fall under the general welfare of the town? Mr. Spitler stated there is nothing in that ordinance that prevents us from putting express conditions on those other types of uses; that is, residential or industrial, in addition to the business uses and if we have concerns about being able to distinguish a permitted use to a non-permitted use, or if we have concerns about our ability to exercise control or discretion over these, then certainly one option that we have at our disposal is simply to make more express conditions, because the more specifically we define that use and the conditions that go along with that use, the easier it will be in the long run to distinguish that use from what we feel is a significantly different use.

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Mr. Chrisman stated it will start at the staff level. When it comes in and Ligon gets it and Ligon looks at this thing and says this previous special use permit was issued for an apple. He does his initial review, discusses the proposal with Rick and myself, and then he decides that this thing doesn't look to be like an apple at all. This is totally different. At that point, from an administrative standpoint, he should come to me and Rick and say, we have a special use permit; we have a new applicant but this doesn't look like a similar use to me and here's why. At that point the Town Manager can make an administrative decision to say this is no longer an apple; this is an orange, you need to put this on the Planning Commission's agenda, get their formal review and recommendation to Council that this particular special use permit be subject to an automatic review. That starts the wheels turning in that particular direction. So we need to do a good job at the staff level. Worse comes to worse, this is something more along Jason's line, say we make an administrative decision that this is no longer an apple that this is an orange, and the applicant contests that; I'm still a recycling business and that's all that this previous special use permit said, so I challenge the town; I don't think I should be subject to a review because I say when they asked me what type of business, I put the exact same type of business on my application as the previous applicant did. I say that I am not an orange; I say I am still an apple. When push comes to shove, if we ever got to that point, then it's going to be in Jason's court to advise the Planning Commission and Council the best course of action to take. I just want to make sure that if we need to have something like that, if we ever got to that unfortunate situation, that we would have a leg to stand on to say, this is not the same as the previous use; this is a different thing altogether.

Mr. Spitler stated it's going to depend on the permitted uses or conditions for the permit and what; in fact, the property has been devoted to as far as use. We are never going to be able to get away from having to use discretion and as you guys know, if we don't have good people sitting in your chairs and we don't have good people on the Town Council, it doesn't matter what town staff recommends.

Commissioner Hakel wanted more information on the Nunn Lane SUP to Mr. Miller, and did that have any possible repercussions for the Town.

Mr. Chrisman stated there were some very significant and specific expressed conditions that were attached to that particular special use permit.

Commissioner Potts stated they were proffered by Mr. Miller and his attorney, Mr. Smith, to get approval from the Town Council. Town Council accepted those proffers.

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Mr. Chrisman stated they are express conditions and any future owner has to abide by them, provided he has recorded the SUP within the thirty days.

Mr. Spitler stated we can't forget about that other side of the coin, on one hand there are going to be situations where it may appear, at least on the surface that this permit is going to be granted, in a sense, not even the property owner, but the property itself in perpetuity. It's going to be a covenant that runs with the property. On the other side of that coin though, you can say the same thing about each and every one of those express conditions no matter how burdensome, how specific, how detailed they might be. Those conditions will also run with that property as a condition of the permit.

Commissioner Campbell asked what happens to the SUP if the applicant doesn't act on it within two years.

Mr. Chrisman stated he didn't read in the current ordinance where there was a two year time limit anywhere in this section of the code.

Mr. Spitler stated if you abandon a non-conforming use for two years, or greater, then it reverts back to a non-usage issue.

Commissioner Campbell stated he is talking about any special use permit that is issued. If we gave a special use permit for a house to be built on that property, then I would expect the house to be built on that property within a reasonable time. The man sat right there in the chair and told us he was building a house for him to live in.

Commissioner Potts stated he did not proffer that to the Town Council.

Commissioner Campbell stated this is a thing that concerns me. Did he sit here and do that so he can sell the property within two years, put a for sale sign on for somebody else to build a house on it? We are not in the real estate enhancement business.

Mr. Chrisman stated if the reasonable time limit was defined in the code at two years, what I can tell you is it is not in there now. The last time the code was amended, that two year limit was possibly dropped. It is under non-conforming uses, but doesn't say anything about that special use permit but there was nothing in there that he read about that two year window. If it was there, it's gone now.

Mr. Spitler stated we determined that's the best and highest use of that property. Ultimately does it matter whether he lives there or somebody else lives there, we think that the public interest dictates that the property should be devoted to residential use. Does it matter whether he lives there or whomever?

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Commissioner Campbell stated he is concerned about people using us.

Commissioner Hakel stated he was concerned that it is zoned business and that one day someone will want to convert the house that is built there into a business, given the sub-standard access, etc.

Commissioner Potts asked do the conditions attached to the special use permit evaporate or even if he puts up a business, has he always got to keep the road graveled and clear the snow? Mr. Chrisman stated if he changes the use, if it goes to a by-right use, then the special use permit is gone. Commissioner Potts stated the special use permit may have evaporated but the liability of the owner to do those things which are recorded against the deed have not evaporated. Mr. Webb stated for business use, he has to submit a site plan that we review access roads and we can say we still have the same concerns for your site plan and that is you need to maintain this road.

Mr. Chrisman stated he thought that Mr. Spitler should consider the last example between now and maybe the next time this group gets together, and bring back a response. If, in that particular case, the new owner says no, I don't want to do a residence here, I don't need a special use permit or any of the conditions that are attached to that; I want to apply for a by-right business use and they provide a site plan to Ligon and we review it and we have our administrative concerns and things like that. Due to the conditions that were recorded against the deed with the special use permit for a residential use can currently apply to a by-right business use that does not require a special use permit.

Commissioner Campbell asked what happened if a residential SUP comes back to be changed back to business, don't we have to have a special use permit to change that back the same as we do to change it in the beginning.

Mr. Webb stated no, the business use is by-right in the Miller case, and any others where the underlying zoning is B-1.

Mr. Chrisman stated his zoning is still business, it's just that he's obtained a special use permit to put a residence on a business zoned lot. So his underlying zoning is still zoned a business. The issue Jason brought up is a good one. When we issued these special use permits with conditions, but now we are going to require that they be recorded and that a certified copy be brought back to us. When we revise an existing special use permit, that also will be recorded and a copy back to us. What if we revoke one? I think that Ligon needs to create a form of revocation or something like that, and we would have Jason

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record on the deed to show that the special use permit that was issued in 2002 has been revoked now and is no longer a part of the chain of title.

Commissioner Potts stated that one of the stipulations of the proffer put forward says I commit myself to this and every person who ever owns the property again. He didn't say for business or anything else.

Commissioner Hakel asked what happens to a neighbor now that it is residential but they are still in a business zone and now they want to come in and change their residence to a business so they had by-right.

Mr. Webb stated obviously if you have a house in a B-1 zone and you want to make a car dealer, you probably are not going to have the room to adequately make it a car dealership or even a convenience store but if you make a law office, you could probably beat the site plan requirements, so just because you are a business zoned lot does not mean you can just put a business there or any type of business. You are going to have to meet site plan requirements, parking, etc.

Commissioner Hakel asked if they intend to use Nunn Lane, then do we need to come back and have it a special use permit.

Mr. Webb stated in the likelihood of Nunn Lane being used for anything even a house, is fairly low. I think one day it might be a house there; I doubt anytime soon, and the likelihood of it really being a business is probably zero because of the fact that there are other properties that would be much more suitable, like the one right in front of it that has access.

Commissioner Potts stated under subparagraph (b), please look at the last sentence and tell me whether it is a cut and splice error. As I read down through it, all of a sudden I stumble across this reference to "and shall not be subject to an automatic review, unless a condition of the permit expressly provides for such review of any ....." and why those are called out there.

Mr. Chrisman stated those uses such as billiard parlor, poolroom bowling alley, dancehall or similar form of public amusement; if you go look at those specific things in the code which we just did with the definition change, I think there is a statement in there that requires an automatic review upon change of ownership. There was a statement in there that required that and hopefully is still there. That's why they were specifically mentioned. There is another place in the code where it said you shall do this – you shall be subject to an automatic review if you have this type of amusement.

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Mr. Spitler stated of course the reference to the general health, safety and welfare of the Town was simply to keep the door open to express conditions for other types of uses.

Commissioner Potts brought up an issue about a potential grammatical error in the wording, and this was discussed by the Commission and the staff.

Commissioner Potts asked Mr. Chrisman if he wanted to talk about the Planned Neighborhood Development ordinance.

Mr. Chrisman stated as we talked about last time, the Commission made a recommendation of at least one section of the PND which we should probably look at which was the accessory building height, changing that from 7 feet to 10 feet. What he would ask that this group do is to please read the PND section of the code because if there are things in there you think should be altered or changed or eliminated or added or whatever, if we are going to do a public advertisement and a change to one portion of the PND if there are other sections that we would want to do, let's try to do them all at one time.

Mr. Webb stated if we don't have any public hearings, perhaps we can do it next month.

Mr. Chrisman stated it's not critical; it's not something that we have to do; we have an ordinance on the books but I just want to give you time because it is very complex. If things don't make sense, jot them down, make a note in the margin, make a list and get them to Ligon and we can put them together and then as we come together in November or January. We can chew on them as a group and then whittle them down. If we get 4 or 5 things that we decide need to be changed and everything else in the PND is perfect, we don't touch it and leave it as is, then we can advertise one time, make the recommendation for 4 or 5 changes, whatever you folks recommend and go from there.

Commissioner Campbell stated he has a question on this Fairview development. After reading the paper today and it was expressly written that of the 65 units or whatever goes in out there, Century Luray – 10 lots in Luray and everything is to exit on Fairview Road.

Mr. Chrisman stated there is another planned exit on South Antioch.

Commissioner Campbell stated this is what I was hoping. He asked how involved will the Town Planning Commission be with that project.

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Mr. Chrisman stated that for the 10 lots, 100 %. The 10 lots, the 6.5 acres that are within the corporate limits right now, that application for subdivision has to come before this group and Town Council.

Commissioner Campbell asked is that considered a PND. Mr. Webb stated they are under 15,000 square foot lots and the town will be a by-right subdivision, 10,000 square foot lots in the county. We sent them a list of 7 or 8 things they need to think about before they go forth. But to answer the question, no they are not currently considering a PND.

Commissioner Potts stated he asked their attorney whether they had considered approaching the town and asking for a friendly inclusion in the town limits so that they could request a PND development there. You could certainly have upped the density of housing considerably. Their attorney couldn't imagine why the town would ever consider anything like that to be to the detriment. Mr. Spitler stated he didn't think the town is that friendly at all to such an idea, and then have to be responsible for providing the infrastructure. Of course there is a provision in the county code that allows them to apply town zoning ordinances to any property that is adjacent to the town.

Commissioner Hakel asked is there anything happening with this urban development area – the UDA study? Mr. Webb stated he told them we are ready, willing and able at any time and they came in and talked to him about a month ago, it was a rush and he hasn't heard a word from them.

A motion to adjourn was made by Commissioner Hakel and seconded by Commissioner Campbell. Motion carried. Meeting adjourned at 8:07 p.m.

Respectfully submitted,

Bryan T. Chrisman  
Assistant Town Manager

ATTEST:

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