

**MINUTES  
LURAY PLANNING COMMISSION  
MAY 16, 2007**

The Luray Planning Commission met on Wednesday, May 16, 2007, 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 opened the meeting.

Commissioners Present:

Tom Potts, Chair  
Clifton Campbell  
Peyton Baughan  
Terry Dodson  
Larry Hakel  
Sam McNeely  
Judy Suddith

Others Present:

Rick Black, Town Manager  
Ligon Webb, Town Planner  
Jason Spitler, Town Attorney  
Andrew Jenner, 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 the Regular Planning Commission Meeting on April 11, 2007**

There being no additions or corrections, the minutes were approved as presented.

**New Business**

**Public Hearing:**

- SUP07-4, Robert and Tammy Falter's request for a special use permit to operate a bed and breakfast on a R-2 zoned parcel

Chairman Potts stated he must disqualify himself from the issue of the first application for a special use permit for a bed and breakfast on South Court Street. The Chair has a financial interest and other competing activity on South Court Street and may not sit or discuss this application. He then turned the meeting over to the Vice Chair Campbell to conduct the hearing and for the discussions related thereto.

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Mr. Webb stated he and the Commissioners took a field trip to look at this property. The applicants are requesting a special use permit to operate a bed and breakfast at their primary residence located at 128 South Court Street. The parcel is approximately 2.3 acres, and four cottages are located in the rear of the parcel. Three of these cottages will be utilized exclusively for the proposed bed and breakfast activities. If approved he will adhere to all provisions related to bed and breakfast operations detailed in Appendix A, Article IV, Section 402.2(d) of the Town Code. Additionally, he has agreed to abide by the following conditions:

1. The operation will be limited to three cottages, and no more than six guests will be on the premises at one time.
2. No meals will be served on the premises.
3. A total of four off-street parking spaces will be provided on the premises for guest cottages. Guest parking spaces will be clearly identified, total 800 square feet in size, and be constructed of gravel.
4. Guest will not be allowed to park on-street.

Mr. Webb also stated you may also apply for a business license or amend your current business license. From reviewing the property, it is well suited for this use and the cottages are in good shape. He then turned the meeting over for public comment.

Mrs. Margaret Henry commented some years ago a permit was turned down for a bed and breakfast on this property. It went to court here and then finally ended up in court in Richmond. The prior owner was operating without the proper business permits. At the time this took place Mr. Baughan stated he didn't think there was a bed and breakfast ordinance. It was adjudicated in court and they were told to cease and desist. This property is very close to her boundary line and she would like to keep the quietness.

Commissioner Campbell stated this request is unique and different from any we have had for bed and breakfast because it's all outside the home. Bed and Breakfast in the beginning was created with a home atmosphere and not for a motel type operation. We only have one other location in town that uses a cottage outside the home and this operation has a B&B in the home as well as one cottage outside the home. This came up in 2005 and the cottage part was added in because we had a request to use a cottage. We have options we can use which are: limit the number because of the area it is in, vote it down completely or table it for further study.

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Mr. Campbell asked if anyone else from the public would like to speak. Mr. Falter stated the reason they requested this is because they have owned a bed and breakfast before. The cottages are sitting there. They are not planning to serve food, since they have a restaurant where the guests can eat. This is for an overnight stay only and they are also allowed to eat at the restaurant.

Commissioner Campbell stated the intent of a bed and breakfast is to keep it as a residential area and not business. In the residential districts, the intent is that it remains residential and shows no signs of a business district. Commissioner Dodson stated there are several things he liked about this situation. The structures are already there and basically keep the same atmosphere. Commissioner Suddith asked if their guests would have pool privileges. Mr. Falter said he did not think so. Mr. Webb stated that if guests do use it, there may be a certain time which it would not be operational. Commissioner Campbell stated you can only hire one person to help in a B&B besides the family.

Commissioner McNeely asked if the Commission had any problem with this application. Mr. Spitler stated it appears that the problem Mrs. Henry cited was addressed by our Code in 1997, we have the amendment in 2005, and the property owner has proffered even more restrictions. He has no problem with it from a legal standpoint.

Commissioner Campbell asked if the Commission was ready for a motion or do you have more questions.

Commissioner Baughan stated his only observation is he likes the parking being on the side where it is designated because it is away from Mrs. Henry. He also likes the idea that they have restricted themselves to just three guest rooms for a total of 6 adult guests. South Court Street is one of the areas in the community that is indeed suitable for bed and breakfast and there are other people on Court Street who operate as B&B. He doesn't have a problem with it but thinks Mr. Webb's point is good and perhaps the special use permit should have language in it that restricts the activities outdoors after certain reasonable hours at night. His general impression is it is suitable for a Bed and Breakfast. It's half of what they could have under the ordinance and if the Commission wants to put a reasonable hour of operation for outside activities, he thinks it goes a long way toward making that a reasonable situation. Mr. Falter stated he would be very amenable to that.

Mr. Webb stated a fifth condition will be added and he will talk with Mr. Spitler. It will basically say the pool or outdoor activities will cease past 9:30 p.m. Mr. Webb stated when it is forwarded to Town Council we will revise the conditions and add that as well.

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A motion was made by Commissioner Dodson that we send this to the Council as long as the five conditions are met and motion was seconded by Commissioner Hakel. Commissioner Campbell stated he had a motion properly supported that this request be sent to Council for approval. The vote was 5-0. Commissioner Suddith declined to vote.

Commissioner Campbell then declared the public hearing closed and the meeting was turned back over to Chairman Potts.

**Mr. Scott Sellers, P.E.: Review of Stephen and Bonnie Kaufman's Preliminary Plat Submission**

Mr. Webb stated next is the review of Stephen and Bonnie Kaufman's Preliminary Plat submission. This is not a public hearing and there will be no public comment. He stated there are a few items to be discussed with regard to the plat. We have done a cursive review in-house and talked with the Kaufman's engineer. At this stage we are reviewing the basics, realizing that the next submittal will be the final plat. We will do a more formal engineering review and get comments regarding utility plans, storm water plans, etc. Our first concern is with regard to the pavement section that has been submitted. This was taken to VDOT for review. Our concern from the town's perspective is if we do build streets in the town, they are built to VDOT standards. Right now the road is 22 feet in width and the typical width of roads in town are 30 feet. This is one item to be addressed. Mr. Kibler at VDOT gave a cross section of the asphalt that would be VDOT standard and this is obviously different from what Mr. Sellers is showing. There also were some concerns from VDOT on the roll top curb. They did recommend a standard curb face and the town has officially accepted this. With regard to the sidewalk, the town's standard is concrete, they had a pervious sidewalk. All of these will be reviewed more in depth at the next phase.

Commissioner Campbell stated in order to proceed with a subdivision, it requires a public hearing. Mr. Webb stated this is a by-right subdivision. Commissioner Campbell stated it is not by-right; it's a subdivision that requires a street, its subdividing property. Anytime you have 3 or more parcels, it's a subdivision and according to our code it requires a public hearing for its approval or disapproval. Mr. Webb then referred it to Mr. Spitler and he stated he was not aware of any requirements of a public hearing until we got to the final plat approval stage. **Mr. Spitler stated you have 45 days from tonight to either approve or deny it, so if you are not comfortable with it, it would certainly be the time to advise them of any concerns and have an opportunity to schedule a public hearing.** Mr. Campbell stated this has been up for public hearing once before. This same plat, although platted differently now from what it was originally, was a recorded plat at the Clerk's Office for a subdivision which came before us in public hearing.

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Chairman Potts stated he didn't see a particular requirement for a public hearing. We are here tonight to be educated on this proposal. We need to know what you are proposing because the next step will be doing a public hearing.

Mr. Scott Sellers stated the existing property is zoned R-2. They plan on developing most of Lot 4 in the Fairview Section 3 subdivision and take part of Lot 5 and part of Lot 2 and subdivide to have uniform lots that would meet the town code. They are proposing doing private streets which would be maintained by a homeowner's association. They tried to keep the asphalt to a minimum to keep the run off from being so intense and not absorbed back into the ground. They want a low impact development. The rain gardens will catch the run off from the street and also from the house driveways and house lots. The cul-de-sac has a 30 foot unpaved area just to keep it as green as they can. VDOT standards were met for the turn-around. It has to have a minimum of 30 feet in the center and we have a 50 foot radius. We have public water and sewer.

Commissioner Campbell stated 402.3 Construction of Streets says that all street construction shall conform to specifications and standards of the State Department of Transportation. On secondary streets the construction shall be subject to approval of the State Department of Transportation and you have already been to them.

Mrs. Kaufman stated when Allen Nichols owned this property, he did not want to put in streets. The way he got around it was to subdivide it and it was still a private subdivision. So he wouldn't have to put the streets and guttering in, he subdivided it into 3 acre lots. They have since purchased it and are now subdividing one of the three acre parcels into 10,000 square foot lots.

Mr. Webb stated there are several questions regarding the private streets. We have some basic design questions that we would normally get into at the final plat submission. We need to find these answers in the next month. The Code states that once we render a decision, we have 45 days to render a vote. Between now and then we can look at some of the issues with regard to the streets, private roads, and what we want for a construction standard for the roads.

Commissioner Potts stated if this is the first of 24 lots of 3 acres that are to be divided, then we have to be careful that we don't start this process without full attention to what the eventual impact will be. The issue of the connector streets becomes a critical issue, how a private neighborhood might be established, that the cul-de-sac roads are private responsibility and also the connector roads. All of those are things we have to think about because in 5 or 10 years when homeowner's associations fall apart, the town is faced with citizens demanding that we do something that was not provided for them. All that has to come into play as we are looking at the Code and what we are undertaking.

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Commissioner Baughan stated that the town is going to insist that you do this development to end up with public streets. The question becomes in what shape the town is going to receive those public streets and what conditions are they going to place on you. While you have a desire to do this type of streeting, it falls back on the town if they accept them as public streets. Also the town has a great interest in seeing how these roads are developed and how they are going to lead the future roads through this area of the town and provide connector roads. Even though you might want to do 8 lots right now you have to be committed to a master plan and stick to it. You may have to give a little on some of your ideas because the town is going to insist that the roads be public and they are going to have certain basic standards you are going to have to meet so that they can be accepted into the system and made public streets.

Mrs. Kaufman asked what is the difference between a private and public street and what would we be giving up and what consequence is there for us to give it over as a private street.

Mr. Spitler stated private roads are basically a driveway. He also stated it is a gated community unless you can convince the town to establish some particular regulation respecting that road.

Commissioner Campbell asked Mr. Spitler if in order for us to go any further on private roads, we need to change the ordinance to allow it and if we do that, then we have a long drawn out process because it's not allowed under the present zoning ordinance. Mrs. Kaufman stated it was her understanding from the code that it has not been addressed. She stated she doesn't know if there are any private streets in the Town of Luray. Commissioner Campbell stated there are private driveways but no private streets that he is aware of. With 8 houses on it, it's not a driveway. It's a driveway leading to but not a driveway. Mrs. Kaufman stated VDOT explains a private street as less than 20 lots, 500 feet with a cul-de-sac and that is called a secondary private road and is in the VDOT code. Commissioner Baughan stated it's not in our code and you may have that discussion with the town. Your 22 foot wide road is not adequate enough and that gets into public health and safety. If the subdivision is within the town limits, then we have a responsibility to look at those things.

Mrs. Kaufman stated she feels this is something that Luray has to decide because the people want private communities. Commissioner Campbell asked what about the part of our code that requires residential to be on a public street and that's in the code. Mrs. Kaufman stated it refers to VDOT. Commissioner Campbell stated it does not refer to VDOT. Mr. Spitler stated it is his belief that Appendix A, Sections 202 and 505 as well as Appendix B, Section 502, all require public streets.

Commissioner Potts stated he doesn't think we are making much progress. Commissioner McNelly made a motion that we table it at this juncture for further study by the appropriate parties. **Mr. Spitler stated this means you are going to have to approve or deny it at our next meeting.** Commissioner Potts stated our motion is out of order since we are not having a hearing; all we've done is take public comments and he is going to close the discussion. There is nothing for us to table.

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**Mr. Baughan asked if the 45 day limit is extendable by mutual agreement by the parties. Mr. Webb stated after application fee, it shall be reviewed for the first time by the Commission at its meeting, the Town Planning Commission shall render its decision and communicate to the applicant within the time (45 days) after application or viewed as officially reviewed for the first time by the Commission at its meeting. Failure of the Commission to render its decision and communicate to the applicant within the time and in the manner required shall be deemed approval unless the town requests an extension of time and the applicant has agreed in writing to such an extension.**

Commissioner Campbell stated the Town Council can review it and send it back to us and that's the extension they are asking for. Mr. Webb stated, once it's submitted to the Commission, you have 45 days. Mr. Webb stated we might be able to get an agreement but at least we can know what we will agree to. He asked the Commission if they wanted to hold a public hearing next meeting. We are going to do an in-house review and design of the streets and look at the roads and try to get close to what we want.

Mr. Spittler stated the Code is very clear in saying your approval would only be considered the approval of a general plan which would be used in coming back with a final plat. Commissioner Campbell stated he thought it would be a good idea to ride through the private subdivision.

**OLD BUSINESS**

- Comprehensive Plan: Discussion related to the draft plan submitted to Comprehensive Plan Committee

Mr. Webb stated the Comprehensive Plan Committee will meet Friday. They are going to review it, edit and make some changes. The plan is to have members of the Comprehensive Plan Committee give a presentation to the Planning Commission at their June 13 meeting. At the end of June we will have a work session to go over issues you want to see put in, taken out, changed, or altered. If a month is enough time, then maybe in July we can hold a public hearing of the Planning Commission. That all depends on if a month is enough time for you to feel comfortable with making changes, etc. to the policy part of the plan.

- Discussion relate to Town Code provisions governing dilapidated structures

Mr. Black stated we had this discussion about two years ago. The only way he knows you can do it in the State of Virginia is to get a unified state building code which means you have to adopt all of it. Commissioner Potts asked at what point does a dilapidated building become a public nuisance. Mr. Spittler replied when it becomes a danger to health, safety and welfare. He believes that the state wide building code actually requires them to adopt a property maintenance code that we have to hire a property maintenance official. He knows that the Town Council was somewhat interested in the idea and as soon as we got to that step that was the end of the discussion. Mr. Baughan stated the County Building Inspector is enforcing the code in the Town

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of Luray. It seems that he is already enforcing the Boca Code and is your official for the town. Wouldn't he have the authority to enforce the Boca Code with regard to dilapidated buildings? Mr. Black stated he believes the County could also refuse that service. It seems to him they tore down one building recently. Mr. Spitler stated it wasn't condemned, it wasn't purchased by the Town, it was sold by foreclosure. The town had it demolished because the Page County Circuit Court deemed it to be a hazard to the town's health, safety and welfare. Mr. Spitler stated he would be happy to look into it one more time but he thinks we will run into that enforcement issue. Mr. Spitler stated it would be a good topic of conversation at the next Certified Planners seminar he will be attending.

Commissioner Potts asked Mr. Webb to make copies of the handouts they received at Charlottesville, particularly the ones talking about aligning comprehensive plan and zoning. He and Ligon went to Charlottesville to a one day session sponsored by the Association for Planning in Virginia. They covered the changes that had taken place in legislation at the last meeting of the State legislature and how they improved the ability for local control on growth. There was also a lot of discussion about transfer of development rights where you identify land you don't want developed and you identify areas that you want developed. You then get the land owners who had the land you don't want developed in a position where they financially gain by transferring those rights to somebody else and it becomes tied to the deed on the property and can never be changed after that – can never be developed.

Also discussed cluster development, something we may want to talk with the County about when we are working on our new comprehensive plan. The best thing we heard was the Supreme Court saying you are responsible as a planning authority and as an approving authority for arguing well a discussion and making an informed decision. Received a hand out on reviewing a check list for your zoning – whether or not your zoning ordinances match what they need for good legal enforceability and defense and another one on comprehensive plan. If you want to do anything, the first thing you need to ask is what function in your comprehensive plan are you trying to implement.

Commissioner Potts stated the Town Council approved Mr. Louderback's request to build on the edge of the Greenway. The primary reason that was cited: (1) The Planning Commission didn't do its job and didn't tell us a reason why. We don't understand what the Planning Commission did and they failed to communicate to us. Mr. Potts said he would take responsibility for that.

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(2) You say you are talking about precedent; changing and allowing a house to be built in this area, when in fact there are lots of places in town where this precedent is already set and  
(3) Nobody could remember why it was even zoned M-1. We ought to approve it anyway because it will look better with a house up there than it would with a building. The vote was 5-1 to approve the request.

Commissioner Hakel stated two meetings ago we were considering Luray Heights. The call for the question occurred before the motion. He thought the call for the question was after a motion. We stopped the discussion and didn't allow any discussion after the motion was made. Is that the proper steps?

Commissioner Potts stated he had asked for a copy of Robert's Rule of Order so next time we encounter it, we will have a better feel for it. The call for the question was to end the discussion. A call for the question is in order any time you are discussing anything and so it's not debatable. The Chair can rule and someone can challenge the ruling, in which case you vote, but you vote then on the question or on the challenge and then you go immediately to the motion at hand. Commissioner Campbell stated once you have a motion properly supported, then you can have discussion. Commissioner Hakel stated the motion was not on the floor at that time. Commissioner Potts stated he thought it was. Commissioner Hakel stated once the motion is on the floor then you can have discussion and you can also call for the question and then call for a vote. Commissioner Campbell stated after the motion is properly supported, you can have discussion before the vote. Commissioner Potts stated he would have to look at it. He recalls that we had the motion and second and then the call for the question basically eliminates discussion immediately.

Commissioner Baughan complimented Commissioner Potts and Mr. Webb on their display downtown at the Luray Festival. He heard a lot of good comments about it.

There being no further business to come before the Commission, a motion to adjourn was made by Commissioner Baughan and seconded by Commissioner McNeely. The meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Bryan T. Chrisman  
Assistant Zoning Administrator

ATTEST:

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