

This meeting can be viewed in its entirety by accessing the video of the same date online via the Town's website at www.frontroyalva.com.

The Planning Commission meeting of the Town of Front Royal, Virginia was held on November 18, 2020 at 7 pm.

CALL TO ORDER

Chairman Jones called the meeting of the Planning Commission to order at 7 pm.

ROLL CALL – Determination of Quorum

Present: Douglas Jones, Chairman
Connie Marshner, Commissioner
William Gordon, Commissioner
Darryl Merchant, Commissioner

Absent: Joseph McFadden, Vice Chairman

Staff: Timothy L. Wilson, Director of Community Development and Planning
Alfredo Gutierrez Velasquez, GIS Coordinator / Planner I
Connie L. Potter, Executive Assistant

APPROVAL OF MINUTES

- October 21, 2020

Commission Merchant moved, Seconded by Commissioner Gordon to approve the meeting minutes as submitted.

**VOTE: Yes – Marshner, Jones, Gordon, Merchant
Absent - McFadden**

CITIZEN COMMENTS

There were no speakers.

PUBLIC HEARING

- **Special Use Permit Application FRSPU 2331-2020** submitted by Richard Spiewak. Proposed construction of a single-family dwelling on R-1 District legal nonconforming lots of record located on Grand Avenue, Tax Map Parcels #20A6-6-5 Lots 11 & 12.

Mr. Wilson explained that a special use permit application was submitted pursuant to Zoning Ordinance Section 175-128(A), Nonconforming Lots of Record, for the proposed consolidation of two (2) adjoining undeveloped, legally non-conforming lots of record (both in area and width) into one (1) legally nonconforming lot of record (in width only) for the purpose of constructing a single-family detached dwelling in an R-1 Zoning District.

In this development proposal, the combining of the two legally nonconforming lots will result in a lot that is 11,035 in area and 50 feet in lot width. This combination will result in a lot that exceeds the applicable minimum R-1 District lot area requirement (10,000 square feet), but not the minimum lot width requirement of 75 feet.

Ordinance Section 175-128(a) sets forth criteria by which proposed new development is reviewed and compared to homes in the surrounding area. The proposed dwelling has a finished floor square footage area of 1,852, exceeding the minimum required comparative house size (1,107) by 745 square feet and exceeds the 90% comparative home minimum amount of floor area. The proposed dwelling is larger than 5 of the 14 homes in the review area. Of the 14 comparative homes there is a variety of architectural styles and home building materials. Staff did not find that the proposed home was incompatible with the different varieties of housing, architectural styles as well as materials along the course of Grand Avenue.

Staff received five (5) letters and one (1) petition, and all were in rejection of the proposed request. The letters and petition will become an official record as part of the files. These letters will be forwarded to Town Council, who is the final reviewing authority.

Chairman Jones opened the public hearing.

There were five speakers that were all against approving the Special Use Permit application. The public speakers were as follows:

Derrick Green, 327 Grand Avenue.
Karissa Green, 327 Grand Avenue.
Ray Ruhling, 301 Salem Avenue.
Pattie McHugh, 334 Grand Avenue
Mary Bird Wood, 413 Grand Avenue

The public speakers expressed the following concerns:

- Drainage, specifically 327 Grand Avenue.
- Proposed house does not fit in with the houses on Grand Avenue.
- Applicant is not invested in preserving the current value and ambiance of the properties on Grand Avenue.
- 2-Story “Shotgun” house.
- New build is not compatible with the spacing between the other homes on Grand Avenue as Town Code Chapter 175-B recommends.
- Will reduce the value of the existing homes.
- If this is granted it will create a precedent that will potentially destroy neighborhoods throughout the Town.
- Build will affect the overall appearance of Grand Avenue.
- Creating small lots for small homes in a long-established residential neighborhood devalues everyone’s properties and in the long term, will decrease total tax revenues, due to the negative impact on the value of the existing homes.
- Town Code stating Special Use Permits are not transferrable to a third party.

The applicant, Richard Spiewak said he had been doing remodeling and new construction in Front Royal for 15-20 years. He lives in Front Royal and stands by the houses he constructs. Mr. Spiewak expressed that he understands the concerns and he will be extra cautious to be very aware of the property lines of the neighbors and the road being clear of debris at all times. Any drainage concerns will be addressed in the proposed house plans and site elevations. If they are given the opportunity to build at the location on Grand Avenue, they will do their best to make sure it conforms to the community.

The public hearing was closed.

Commissioner Merchant directed a question to Mr. Napier or Mr. Wilson. He said that normally a request for a variance under 175-128 for a 50-foot-wide lot would typically be in a subdivision that was platted with 50-foot lots, such as Royal Village or Warren Park where there are multiple 50-foot-wide lots that people buy and build on. Some have bought two lots and built on a 100-foot-wide lot or they split one of those and make a 75-foot lot. A lot of the units are on a 50-foot-wide platted lot. The application before them is: 1) the performance standards; and 2) consolidation. Commissioner Merchant addressed Mr. Napier and said these are a request for 25-foot nonconforming lots, which have to be consolidated. The consolidation in itself, does that create a new lot? Town Code has a statement that the minimum lot width and lot area shall be required for the establishment of any new lot in the R-1 zoning district. Here we are creating a nonconforming lot before it is officially on record.

Mr. Wilson responded that concerning the question of a new lot being created, staff’s answer would be no. Presently there are two lots. By this process one lot that is

eliminated, and the result will be one lot remaining. The one remaining lot will be a larger lot but there is no new lot being created. It would be similar to a boundary line adjustment where instead of moving the boundary line the line will be eliminated.

Commissioner Merchant confirmed with Mr. Wilson that he is saying a lot consolidation does not create a new lot by this ordinance.

Mr. Wilson confirmed that was correct. It is a lot consolidation, and no new lot is being created.

Commissioner Merchant said that part of the performance standards is the grading of the site. The Planning Commission was not provided with any grading information or site plan. How can they make a judgement on that without proper engineering plans?

Mr. Wilson stated that when looking at other homes developed on Grand Avenue, it is Atypical that fill has been brought in to create a level building site for the home and that would be reviewed under the Zoning Permit approval process. Staff did not see any characteristics that were not uncommon to how other properties had used the use of fill and this would also be the same requirements for lot drainage not having any negative effect on adjoining properties. This would also be part of the Zoning Permit review.

Mr. Napier referenced Mr. and Mrs. Green's letter dated November 16th where they point out Town Code 175-136 which states that special use permits are not transferrable to another party. He himself had not researched this and was not sure Mr. Wilson had either. If the Planning Commission recommends approval and Town Council approves the special use permit, would the owner of the property be able to transfer a home on the property to a third party if this is granted. Mr. Napier stated he had not come across this until now.

Mr. Wilson commented that he had just become acquainted with that provision of the Town Code in terms of the transferability of special use permits. He has not seen where that has been the practice of the Town. His understanding is that the permit approval runs with the property, not with the property owner. If special use permits were not transferable, then every time a use of property that was originally approved by a special use permit by the governing body went for sale that would trigger the need for an application to the governing body to authorize the transferring of that permit to the new party. He has not seen evidence that practice has been done by the Town, nor has he seen that practice by any other local government.

Commissioner Merchant said he would move to make a motion of denial so that a yes vote would equal denial of the application.

Commissioner Merchant moved, seconded by Commissioner Marshner that the Planning Commission forward a recommendation of denial for application FRSPU2331-2020 as submitted by the applicant for the identified new single-family dwelling on proposed newly combined lot.

Commissioner Gordon expressed that the Town Attorney raises an interesting point of whether or not the special use permit would transfer with the property. Aside from that, he stated he was in favor of the application and feels that it meets the criteria laid out in the Town Code. Commissioner Gordon said he would like to table the application and have the Town Attorney and Planning Director look into the issue further. It did not make sense to him to grant a special use permit to build a structure, sell the lot and then the structure no longer could be there. He clarified he would be voting “no” on the motion.

**VOTE: Yes – Marshner, Jones, Merchant
No – Gordon
Absent - McFadden**

OTHER APPLICATIONS

There were no additional applications.

OLD BUSINESS

There were no items for old business.

NEW BUSINESS

Commissioner Merchant noted that at the last meeting the Planning Commission had directed staff to start coming up with a Comprehensive Plan amendment. At the next Planning Commission work session, he would like to begin forging ahead with the Comprehensive Plan updates, streamline those updates and establish what they need to accomplish the final review of that. He would also like an update on the status of the 5-member Planning Commission new membership criteria.

Mr. Wilson answered by saying his understanding was that Town Council was taking up the issue at their December meeting.

Commissioner Marshner asked what the procedure was for someone to apply to the Planning Commission under the current administration.

Mr. Wilson explained they would make application with the Clerk of Council in the Town Manager's office.

Commissioner Gordon requested that the Planning Commission get a legal opinion that would deal with the issue of the special use permit. He could see the issue coming up in the future. The way he reads the code, a special use permit would not transfer on a sale. He would like to understand from a legal perspective, is that how it reads or is he possibly misinterpreting.

Mr. Wilson said they can discuss this with Town Council and bring an opinion back.

COMMISSION MEMBER REPORTS

There were no additional comments.

ADJOURNMENT

Commissioner Merchant moved, seconded by Commissioner Gordon to adjourn the meeting.

**VOTE: Yes – Jones, Marshner, Gordon, Merchant
Absent - McFadden**

The meeting adjourned at 8:07 PM.

Connie L. Potter

Connie L. Potter
Executive Assistant