

The following minutes are a summary of items on the agenda. This meeting may 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 September 15, 2021, at 7 PM.

ROLL CALL – Determination of Quorum

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

Staff: Lauren Kopishke, Planning Director/Zoning Administrator
Alfredo Gutierrez Velasquez, GIS Coordinator / Planner I
Christopher Brock, Code Enforcement Officer
Connie L. Potter, Executive Assistant

CALL TO ORDER

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

APPROVAL OF MINUTES

- August 18, 2021, Planning Commission regular meeting minutes.

Vice Chairman Marshner moved, seconded by Commissioner Gordon to approve the meeting minutes as written.

VOTE: Yes – Ingram, Marshner, Gordon, Merchant, Jones
No – N/A
Absent – N/A
Abstain – N/A

ROLL CALL

CITIZEN COMMENTS

There were no speakers.

PUBLIC HEARINGS

- **FRSPU-2829-2021** a Special Exception application submitted by Poe's River Edge, LLC requesting a new, non-dedicated private street pursuant to Town Code Chapter 148-820.N.1.b.

Ms. Kopishke explained this was a Special Exception application submitted Poe's River Edge, LLC requesting a new, non-dedicated private street pursuant to Town Code Chapter 148-820.N.1.b. The Special Exception is required prior to the approval of the minor subdivision of parcel tax map #20A1-3-5A1, zoned I-2, which states "subdivisions on new non-dedicated private streets may be permitted upon the approval of a Special Exception by Town Council". A private street is required prior to the approval of the subdivision because the proposed lot cannot satisfy Town Code Chapter 148-830.D.2. which requires lots to abut a street dedicated to and accepted by the Town of Front Royal.

Chairman Jones opened the public hearing.

William Biggs, 64 Old Browntown Road, Front Royal, VA expressed two (2) concerns. 1) They do not have a maintenance agreement with the Poe's; and 2) there is a storm drain problem at the underpass leading into it. Recently the Police Department had to close entering and exiting at the location.

William Barnett, 1115 Buck Mountain Road, Bentonville, VA spoke in favor of the Special Exception application.

There were no additional speakers. Chairman Jones closed the public hearing.

Mr. Biggs was asked to give a little more detail regarding his concerns. He said there is a storm drain problem at the railroad underpass ever since the Town put storm sewer pipes there years ago. It floods when there is a heavy rain downpour. Mr. Biggs stated he has complained to the Town many times about the drainage problem.

Commissioner Merchant gave a brief history of the properties in that area. This application is for a subdivision on an existing private street which Town Code lists 2 types of street. An existing and a proposed. This is also land zoned industrial. Commissioner Merchant asked if the occupants of the Old Virginia utilize the 25-foot-wide strip to access their property. Audience speaker answered yes and as well as the parcel referred to as the white parcel shown on the screen.

Commissioner Merchant said that the 25-foot-wide strip there appears to be a yellow stripe delineating the 25-foot gift of that easement and noticed that all the sub-businesses located in the Old Virginia actually use that 25-foot strip to access their property. Town Code is clear calling for a 50-foot-wide right-of-way. He was concerned on how to accomplish that in this particular scenario. Town Code also calls for a plat or dedication note regarding private maintenance when private streets are utilized. Town Code clearly states the Town does not maintain a private street. Other issues are health department approval. Alfredo Gutierrez Velasquez explained he had contacted Jim Davis from the Health Department and staff has received a tentative approval by

email but nothing formal. Commissioner Merchant asked if the Town Energy Services Department and Public Works Department were aware of the situation at the location of the proposed private street. Staff answered yes. Energy Services can service parcel 5A2 from south of Avtex north to the site. Public Works stated they could run water to the site up to a water meter denoted in the sketch plat. Thereafter would be the responsibility of the property owner.

Staff displayed on the map where utilities could be extended.

Commissioner Merchant's last concern is the access point at Kendrick Lane. A previous speaker spoke about the drainage issue at the bottom of that point. He expressed he did not have a problem recommending approval of the application however another note that needs to be on the plat or in the dedication is the concern of the overburdening of the intersection. If the access point is deemed to be overburdened, he does not think improvement to that intersection should be the responsibility of the Town and he does not know how to resolve that.

Mr. Napier explained that because it is not the Town's responsibility the only way would be to add a note on the plat or in an agreement that the Town would not be responsible.

There were no additional speakers. Chairman Jones closed the public hearing.

Vice Chairman Marshner moved, seconded by Commissioner Gordon that the Planning Commission forward a recommendation of conditional approval provided that the existing variable width and 40-foot roadway be increased to a 55-foot right-of way and extended along the eastern property line of parcel and a turnaround be provided for emergency response vehicles.

Vice Chairman Marshner asked that the Planning Commission include a memo to respectfully ask Town Council to pay attention to the request for help regarding drainage.

Commissioner Gordon asked for clarification on the motion and asked Vice Chairman Marshner to clarify that the end of the motion was a comment rather than part of the motion regarding the memo. Vice Chairman Marshner said that was correct.

VOTE: Yes – Gordon, Marshner, Ingram, Merchant, Jones

No – N/A

Absent – N/A

Abstain – N/A

ROLL CALL

- **FRSPU-2859-2021** a Special Exception application submitted by Chris Holloway Construction requesting a new, non-dedicated private street pursuant to Town Code Chapter 148-820.N.1.b. to service parcels T.M. #20A7-15-3-5A1, 5A2, 5A3, 5A4, 5A5, and 5A6, all zoned R-3, accessed off of Carter Street.

Chairman Jones opened the public hearing.

Karen Tinkham, 139 Steele Avenue explained that she and her neighbors live just down the hill from the site on Steele Avenue. Their main concern is runoff, and they hope there will be stormwater management to catch the water, so their yards are not continually flooded with water and mud which currently occurs. Ms. Tinkham shared pictures with the Planning Commission of the current situation.

Christopher Settle also provided pictures and expressed concern for flooding of water and mud during heavy rainstorms. He explained that once Mr. Holloway put up the silt fence it helped some, but the mud is running underneath the silt fence causing damage to his yard and flowing to the right of his yard and downhill to the townhouses to the right of him.

The applicant Chris Holloway acknowledged he was aware of the runoff problem and said it was due to where the proposed townhomes are to be built. Dirt was stockpiled there from the lots below and there was no vegetation there to keep it in place. Mr. Holloway explained there were originally 10 lots subdivided in the 80s. He did boundary line adjustments because there was no way to build with the existing 10 lots. On Steele Avenue he made 4 lots which left them with 5 lots on top. Being there was enough room they created six lots which put them back to ten lots. There is access on Steele Avenue onto the property and Scott Street. The only way to make it work was a 20-foot-wide private street.

Joe Brogan, Brogan Land Surveying, 143 Brogans Lane, Bentonville, Va conducted the survey on the lots and stated he was available to answer questions.

Chairman Jones asked if there was a way to correct the runoff.

Mr. Brogan said the silt fence might need some maintenance. The plot plan for the townhouses calls for swales to take the runoff along the ends of the townhouses to the east to the rear of the properties at a natural drainage. Once the townhouses are constructed, seeded and strawed and all the runoff gets sloped down established grass it should take care of the runoff problems.

There were no additional speakers. Chairman Jones closed the public hearing.

Commissioner Merchant mentioned that the subdivision had taken a very circuitous route since June 26th. If he understands correctly this plat of subdivision showing a 25' wide private street was approved June 25th signed by the Town Manager, Interim Planning Director and Finance Director. Recently it was noted that any subdivision on a new private street requires a Special Exception to be reviewed by the Planning Commission and Town Council. For a normal minor subdivision, the situation is such that the Planning Director can approve that plat. For a private street a Special Exception is required. Once the applicant was made aware of that, this plat has since been vacated at the courthouse. Ms. Kopishke confirmed that was correct and noted the plat was vacated September 14, 2021. Commissioner Merchant confirmed that the plat recorded on June 25th, recorded on July 26th has been vacated and now the public hearing before us tonight was for the Special Exception for a private street and renaming of said street.

A subdivision on a new nondedicated street may be permitted upon the approval of a Special Exception by Town Council. The regulations are very clear in Town Code as to the roles of the

Planning Commission and Town Council. The Planning Commission will recommend if this private street in fact should be approved for that purpose.

Commissioner Merchant reviewed sections of Town Code 148-830.D.2 regarding street standards. He questioned as to why the street standards should be modified for this development. The normal street in the Town of Front Royal is a 50-foot-wide right-of-way with a 36-foot of pavement. The intent of the ordinance was not to encourage private streets. Nothing in the Town Code states that private streets should be constructed less than what the public standards are for streets anywhere else in the Town. When you have a private street there is no trash removal, no snow removal and utility access is a problem. Commissioner Merchant expressed concern about the 20-foot street that is before the Planning Commission for review. There are existing concerns about drainage in the area. A normal street scenario has curb and gutter and calculations by an engineer to determine if storm drainage flows into an adequate channel. The plans submitted to date do not indicate how they are tying into Carter Street or Scott Street. The Town has recently put curb and gutter in this neighborhood and doesn't know how they can justify not requiring the applicant to install curb and gutter for this development. In addition, the Deed of Dedication should list the maintenance and private deed restriction regarding notice to the property owners regarding said limitation of services which he has not seen with the application submitted.

Commissioner Gordon asked if a site plan would need to be approved/reviewed following review of the special exception.

Ms. Kopishke explained that typically you would have the special exception approved first. If you don't have road frontage the lots are technically not legal. After approval of the special exception and recordation of the plat then site plan review would occur followed by an application for zoning and building permits.

Commissioner Gordon said that once that plan comes forward that would address drainage issues on the site. The County Inspector would be the appropriate person to address E&S issues.

Ms. Kopishke stated that the Planning Commission may recommend approval and suggest Town Council require landscaping and buffer to help eliminate drainage issues.

Commissioner Merchant asked again, do we want private streets in residential areas of less than the required if it was a public street and noted he was not for that.

Commissioner Ingram asked if there had been any consideration to emergency vehicle access and noted this needs to be addressed.

Ms. Kopishke said that staff has issued a letter to the applicant and surveyor regarding concerns about emergency vehicle access.

Commissioners agreed they would like to see the drainage issues addressed. There was a consensus among the Commissioners they were not in favor of a 20-foot street nor going from a 40-foot right-of-way to a 25-foot and that is assuming you have pavement across the entire right-of-way. In addition, there was no justification as to why it shouldn't be a standard street. Some expressed

opposition to the name of the proposed private street. As an extension of Carter Street, the ordinance calls that an extension of a street is to be named what the existing part of the street is named.

Commissioner Merchant moved, seconded by Commissioner Gordon to deny approval of FRSPU2859-2021 for both the private street width and the renaming of the street.

VOTE: Yes – Ingram, Jones, Gordon, Merchant, Marshner

No – N/A

Absent – N/A

Abstain – N/A

ROLL CALL

- **FRSPU-2880-2021** a Special Use Permit application submitted by Allen Walters requesting to construct a new single-family dwelling on a nonconforming lot of record T.M. #20A3-4-55-22, zoned R-1, fronting Warren Avenue.

Ms. Kopishke explained this was before the Planning Commission because the lot area is less than 80% of the required minimum lot width.

Mr. Velasquez clarified this was in the nonconforming section of Town Code. It applies to both lot width and area. This application applies to both. If the variance in the lot width that the applicant is requesting exceeds greater than a 20% variance it requires a Special Use Permit. In this case the lot area doesn't exceed a 20% variance, but the lot width request variance does exceed the 20%.

Commissioner Merchant said the applicant is not combining two (2) 25-foot lots to create a 50-foot lot. These are 50-foot lots. Houses on each side of the site are located on 50-foot lots. The proposed structure meets the required side and front yard setbacks. The only requirement for this "shot-gun" style house is that the front façade face the front of the lot which the plans show that it does. He believes the ordinance was created to permit use of these existing 50-foot lots. Its compatible with the neighborhood and he would vote to support the application.

The public hearing was opened.

William Garfield Jackson gave a brief history about the property. His family had paid taxes on the lot for 40-50 years but because there was no deed, they were unable to provide proof of ownership, so he stopped paying taxes on it and the Town put it up for public auction. The applicant Mr. Walters purchased the property. Mr. Jackson spoke to Mr. Walters the day he purchased the lot and asked him what he was going to do with the land. Mr. Walters said he'd like to put a house on it and that he might need a variance. Mr. Walters said he planned on selling the house once constructed. Mr. Jackson expressed concern of how close the proposed house would be to the existing houses and that the lot was really more of a space for animals. He was against approval of the Special Use Permit.

Denise Howard expressed concern that the house will be too close to her house, and she was against approval of the application.

Licette Gonzalez, 317 Warren Avenue lives across the street from the proposed house. She expressed those living on the block pride themselves on how they take care of the houses on that block. All houses are 100% homeowners and expressed concern of possible renters moving into the proposed house who typically will not care about maintaining the house like a homeowner would. The proposed house will basically be on top of the existing neighboring houses, and she is against approving the application.

Vice Chairman Marshner expressed compassion for the deed history of the property but said we cannot rewrite history

Commissioner Ingram acknowledged that the Commission could not decide based on sentiments and expressed sympathy for the situation regarding the problem with the Deed of Dedication. He said they are looking at this application objectively. Commissioner Ingram strongly suggested the concerned individuals show up at the Town Council public hearing and share their concerns. Commissioner Ingram expressed his appreciation for those that spoke at the public hearing.

Chairman Jones closed the public hearing.

Commissioner Merchant clarified that the Planning Commission will make a recommendation to Town Council and that the speakers could also attend the Town Council public hearing to share their concerns.

Commissioner Gordon said there are numerous other lots on the street that are also 50-foot width. This property meets the setbacks required by the code and meets the predominate nature of the houses on the street. He will vote in favor of the Special Use Permit based on these reasons.

Commissioner Gordon moved, seconded by Commissioner Merchant that the Planning Commission forward a recommendation of conditional approval of Special Use Permit FRSPU-2880-2021 to the Front Royal Town Council with the following conditions:

- 1. The house plan may be modified, provided that the finished floor area shall not be reduced to less than one thousand two hundred thirty-four (1,234) square feet; and***
- 2. The façade and main entrance of the home must front Warren Avenue.***

VOTE: Yes – Gordon, Marshner, Merchant, Jones, Ingram

No – N/A

Absent – N/A

Abstain – N/A

ROLL CALL

CONSENT AGENDA

There were no items for consent.

OLD BUSINESS

There were no items for old business.

NEW BUSINESS

There were no items for new business.

COMMISSION MEMBER REPORTS

Commissioner Merchant expressed his concerns with the subdivision application submitted by Chris Holloway. Allowing a subdivision of 6 townhouses on a 25-foot-wide private street without following Town Code for special exceptions is a breach of policy and of concern to him. It's imperative that the public has confidence in the zoning and subdivision review process and as said regulations are equally and fairly applied to all applicants. Mistakes in the application approval process can happen. He does not wish to hammer anyone if a mistake was made. Commissioner Merchant said he has so much conflicting information that he thinks it's something the Commission needs to look at. How did the application process fail? A plat was recorded that did not follow the standard procedures for plat approval for the special exception. That plat has been vacated. Did the applicant at some point receive information from staff that a 20-foot private street was okay? Was there a preapplication meeting? The plat was approved on June 25th, but the plat was not logged in for review until July 29th and no approval comments from staff came in until July 30th. He asked how that was possible. Was the original application complete? At tonight's public hearing there was no justification for why the street should be less than 50-foot wide with 36-foot of pavement. There was no dedication document attached for the Planning Commission to review to indicate who would be doing maintenance on said private street and review by other departments. Was the existing review process followed? Is the system broken? Were the other signatories aware of the circumvention of this? Three people had to sign the plat. The Interim Director of Planning, the Town Manager, and the Finance Director. Was it intentional? Is it because staff is not properly trained? Are improvements needed to review the process? He said he would recommend/direct that the Planning Director or designee to investigate and determine the facts.

It may be that it was a simple mistake that has a lot of implications and maybe all they need to do is retrain staff on the proper procedures for a minor subdivision with a private street.

Commission members held some discussion and ask that a written report of the events that occurred be given to them in the form of a report.

Commissioner Merchant moved, seconded by Vice Chairman Marshner that the Front Royal Planning Commission ask the Planning Director and/or designee to investigate and determine the facts surrounding the circumvention of the subdivision ordinance regarding minor subdivision application FRSUB2852-2021 and that the Planning Director and/or designee prepare a written report and facts for review by the Planning Commission and include recommendations, if any, that would prevent this situation from occurring again.

VOTE: Yes – Jones, Marshner, Gordon, Merchant, Ingram
No – N/A
Absent – N/A
Abstain – N/A

ROLL CALL

ADJOURNMENT

Vice Chairman Marshner moved, seconded by Commissioner Merchant to adjourn the meeting.

VOTE: Yes – Gordon, Marshner, Merchant, Jones, Ingram
No – N/A
Absent – N/A
Abstain – N/A

VOICE VOTE

The meeting adjourned at 8:39 pm.

Connie L. Potter

Connie L. Potter
Executive Assistant