

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 December 15, 2021, at 7:00 PM.

CALL TO ORDER

Vice Chairman Marshner called the meeting of the Planning Commission to order at 7:00 pm. Chairman Jones was unable to attend the meeting.

ROLL CALL – Determination of Quorum

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

Absent: Douglas Jones, Chairman

Staff: Lauren Kopishke, Planning Director/Zoning Administrator
Connie L. Potter, Executive Assistant

CITIZEN COMMENTS

Matt Tederick, 21 Edgewood Street expressed concern regarding an article in the November edition of the Warren Report that quoted Stevie Hubbard and Christine Nelson noting he had never met Ms. Nelson. In this article Ms. Hubbard and Ms. Nelson alleged that Planning Commissioner Darryl Merchant leaked a report requested by Mr. Merchant regarding activities of Mr. Holloway and that he leaked this report to Walt Mabe, Board of Supervisors who has had it for weeks. After contacting Walt Mabe, he said he wasn't sure what to do with the report now that he wasn't running for mayor. In a later conversation he said what if the report didn't say what it needed to say. Ms. Hubbard said she was very alarmed by that. She had believed Chris Holloway probably did something wrong, however now she is not sure and thought that it may be a manufactured scandal to help Walt in his bid for mayor. When Ms. Hubbard saw on the television a request of the Planning Director to look into this matter and see what procedures had broken down Ms. Hubbard thought that was a good request. However, this appears to be much deeper than that. The article goes on to state how this operation took place whereby there were secret text messages back and forth. Ms. Hubbard also alleges the report was hidden under a newspaper at 10:30 a.m. on October 29th at the Daily Grind. For full disclosure, Mr. Tederick stated he had nothing to do with the report. He had no conversations with Ms. Hubbard or Ms. Nelson and stated no one could claim this was a right-wing conspiracy or that Matt Tederick had any involvement in exposing this. Mr. Tederick said the following were undeniable facts according to Ms. Hubbard and Ms. Nelson:

- Mr. Merchant and Mr. Mabe conspired to leak the report that was fully identified as attorney/client privilege.
- Exchanged coded messages so that Mr. Mabe would know that Mr. Merchant had placed this confidential report under a newspaper at the Daily Grind at 10:30 a.m. on the 29th of October.

According to statements in the article they believe this “operation” was orchestrated this way to bypass FOIA. The bottom line is that Mr. Merchant and Mr. Mabe got caught and they were exposed by two (2) of their friends. These are the facts according to Ms. Hubbard and Ms. Nelson.

An additional fact that is not in this article is that the Town actually released the report in due time on the 17th of November. This “operation” never needed to happen, and this is embarrassing to him as a citizen of Front Royal. Mr. Merchant can deny what is in the article or claim that the ladies are misrepresenting the facts, but what he can’t do at this point is to claim he was some kind of hero by leaking the report in this way or claim to be a victim or some kind of martyr. These were not actions of “heroes” to conduct themselves in this way.

Mr. Tederick voiced his opinion based on previous statements, observations and third-party people communicating to him. Ms. Hubbard stated that she eluded this was “politically manufactured”. In his opinion a political narrative was created that the mayor and town manager did something truly inappropriate but rather than understanding and accepting a simple mistake from the previous Planning Director, a narrative had to continue and be driven home. When the report didn’t “nail” the town manager it had to be leaked to create political damage regardless. It appears, as the article stated to be used against Chris Holloway’s bid for reelection and possibly help Walt Mabe. Mr. Tederick said he would ask Mr. Merchant to do the honorable thing and admit what he did was wrong, apologize to this Commission and town for your lack of judgement and resign your office at the meeting tonight. If you don’t resign, what you did was a malfeasance of office, quasi criminal according to code and a lawsuit can be filed against Mr. Merchant for malfeasance. Mr. Tederick again asked Mr. Merchant to do the honorable thing, admit your wrongdoing and resign.

Vice Chairman Marshner asked Mr. Tederick why he brought this up. Mr. Tederick said he just outlined what caused him to bring it up and said he thought this was a politically motivated initiative by Mr. Merchant and Mr. Mabe by leaking this report in the manner he did is horribly dishonorable in his opinion. Vice Chairman Marshner said she is trying to figure out the motivation behind this discussion.

Vice Chairman Marshner proceeded to say that she did not know those two (2) women except they showed up at a Planning Commission meeting in an advanced state of intoxication the night that story was written. If you take their statements as gospel, which might be subject to doubt.

MINUTES

- September 15, 2021

The Vice Chairman referred to page 4, regarding two (2) typos and noted the corrections.

Commissioner Gordon moved, seconded by Commissioner Ingram to approve the minutes of the Planning Commission September 15, 2021, as amended by Vice Chairman Marshner.

VOTE: Yes – Gordon, Merchant, Ingram, Marshner

No – N/A

Absent – Jones

Abstain – N/A

VOICE

PUBLIC HEARINGS

- **FRZORDAM 2976-2021** – An ordinance amendment to Town Code Chapter 175 ZONING pursuant to the action by the Front Royal Town Council on November 22, 2021, to permit short term rentals in the Town of Front Royal. The proposed amendment defines “short-term rental” and outlines the conditions and standards for Staff and Council to use when determining the appropriateness of an application for a short-term rental.

Vice Chairman Marshner opened the public hearing.

There were no speakers present. Vice Chairman Marshner closed the public hearing.

Ms. Kopishke explained that what was before the Commission at the meeting was the same ordinance that the Planning Commission had seen at their work session but with a few text changes the Commission had requested.

Commissioner Gordon referenced two (2) definitions of short-term rental listed in the document which needed to be corrected. In 175-151 short-term tourist rental is added and recommended striking “tourist” from the document.

From the audience, Steve Sill from the press referred to item O. which states: “The Applicant shall obtain a Town of Front Royal Business license prior to operating their property as a short-term rental.” The county commission chairman has pointed out to applicants and the public that the Virginia Legislature has determined that short-term tourist rental is a residential and not a business activity. He expressed concern of a possible legal problem requiring a business license which has been defined by the legislature as a residential and not a business or commercial activity.

Assistant Town Attorney George Sonnett said he had not taken a look at that. His advice would be to leave it in and send it on to Council as is. The issue could be vetted between now and final adoption.

Commissioner Gordon referred to definitions referring to short-term rental facility and then in 175-151.A it talks about the owner of the short-term rental dwelling unit. He recommended instead of calling it a dwelling unit refer back to short-term rental facility. In 175-151 the first sentence says “...by special use permit and shall meet the following requirements.” He recommended including “and shall at a minimum meet the following requirements.” Commission Gordon mentioned some additional typo’s to be corrected.

Commission members and staff discussed what might be required when an applicant lives in a development with an HOA. Ms. Kopishke explained the process for applicants to notify the HOA and show proof of that notification. Commissioner Gordon questioned if the special use permit could be approved if the HOA states it is not allowed.

Mr. Sonnet explained that Homeowner Associations (HOA) often deal with enforcement of covenants that are of record tied to the property. Those are contractual rights amongst the various owners within the given subdivision which is not a zoning issue. He advised it would be in the town's interest for the town not to be in between the applicant and the HOA. The special use permit could be approved even with the lack of approval by the HOA. Having the question on the application asking if they are in an HOA will alert the applicant, they may find themselves in an enforcement action with respect to their HOA for violating the covenants.

Commissioner Gordon stated that by putting a requirement in our zoning code that the applicant must notify their HOA the applicant would have to meet that requirement in order to obtain a special use permit. Town Council can't be less restrictive than the code allows. The intent is to make applicants aware they could be in violation of their covenants.

Mr. Sonnet explained the alternative could be that the applicant provide evidence that they have given certified written notice to their HOA.

Commissioner Ingram suggested the applicant provide an affidavit signed by a notary that they are aware of the HOAs covenants with regard to the special use permit application for the Town of Front Royal. He agrees with Commissioner Gordon that the town should not be adding the notification requirement for a recommendation of approval of the special use permit.

Commissioner Ingram referred to fire extinguishers and asked if there has been any discussion with fire and rescue.

Ms. Kopishke said she met with Fire Marshal Gerry Miatico to discuss the Building Department in general. Staff will be conducting the inspections. The Fire Marshal has provided a checklist he created for Warren County and the Town will also follow that checklist.

Commissioner Gordon recommended that the year of the Statewide Building Code being used for inspections be added to the document in item F.

Commissioner Merchant expressed concern with the short-term rentals being allowed in all zoning districts. This would be adding a residential component to Industrial property which he did not think was appropriate. As for residential properties in the R-1 District it would be adding a multifamily component to a single-family development. He is not sure short-term rentals creates the atmosphere we are looking for in our residential neighborhoods. Commissioner Merchant stated he was not opposed to short-term rentals where they are appropriate. He questions if the R-1, R-2, and R-3 districts could be subject to abuse under the short-term rental ordinance. Everyone assumes short-term rentals will be handled through Airbnb and Vrbo, etc. which has a rating system as well as a consumer portal to comment whether they had a good experience or not. There

is nothing in the proposed ordinance that states a short-term rental has to go through one of these agencies or any other facility. A property owner could have a 5-bedroom house and theoretically rent 5 bedrooms out on a monthly basis to five different groups of people. Commissioner Merchant said he would like to take the document back to a work session for further discussion.

Commissioner Gordon moved, seconded by Commissioner Ingram to approve FRZORDAM2976-2021 with the changes discussed including the two short-term rental definitions, striking the word tourist throughout, adding at a minimum to the first sentence of 175-151 so that it would read “special use permit and shall at a minimum meet the following requirements”, staff to address which version of the Uniform Statewide Building Code is to be used, modify the language of “I” for notification to be sent to the HOA or an acknowledgement of covenants in place in lieu of approval from the HOA and capitalizing the word “However” in B. of 175-151 to begin the second sentence.

In view of concerns expressed by another member of the Commission, Vice Chairman Marshner asked if the Commission would be willing to table a decision until another work session could take place for the amended language to be reviewed and the issues raised could be discussed further.

Vice Chairman Marshner moved, seconded by Commissioner Merchant to table the motion on the floor.

Mr. Sonnett said he preferred the language to say postponed to the next regular meeting or a date certain rather than a general tabling if the intention is to put off to another date.

Vice Chairman Marshner amended her amendment motion to “postpone”.

Commissioner Gordon moved, seconded by Commissioner Merchant to amend the motion on the floor to postpone the question until the January 19th regularly scheduled meeting

The following vote is on the amendment to Vice Chairman Marshner’s amendment and set a date.

VOTE: Yes – Ingram, Gordon, Marshner, Merchant

No – N/A

Absent – Jones

Abstain – N/A

ROLL CALL

The following vote is on the motion to postpone until the regular meeting on January 19th.

VOTE: Yes – Ingram, Gordon, Marshner, Merchant

No – N/A

Absent – Jones

Abstain – N/A

ROLL CALL

At this point Stevie Hubbard entered the meeting and denied the fact of an earlier statement by Vice Chairman Marshner that she saw her highly intoxicated. Ms. Hubbard denied that Vice Chairman Marshner had ever seen her drunk in public and accused Vice Chairman Marshner of slandering her on public television of being highly intoxicated. She demanded an apology from Vice Chairman Marshner or her immediate resignation. Ms. Hubbard was advised several times that she was out of order, however she would not stop speaking.

The Planning Commission went into recess at 7:46 p.m. and the police were called to the meeting to bring Ms. Hubbard into order. Ms. Hubbard was escorted out of the meeting without incident.

The Planning Commission reconvened at 8:00 pm.

CONSENT AGENDA

There were no items on the consent agenda.

OLD BUSINESS

- Formal Acceptance of the Planning Commission Report dated October 7, 2021, updated October 21, 2021.

Commissioner Merchant moved, seconded by Commissioner Gordon that the Planning Commission accept the informational report titled 'Planning Commission Internal Inquiry Report', containing 20 pages, dated October 7, 2021 (Revised 21 October 2021), as prepared by Douglas W. Napier, Town Attorney, retired. This report was requested by the Planning Commission regarding Minor Subdivision Application FRSUB-2852-2021 by motion approved on September 15, 2021. I further move that Policy Recommendations outlined in said report be forwarded to the Planning Director for implementation as policy or as part of the Town Code in the Subdivision and Zoning Ordinance.

Commissioner Merchant clarified that the report was not a criminal investigation. No one was being investigated. This had nothing to do with the applicant, with the town manager or the Director other than the actions they took that arrived at this circumvention of the ordinance. The purpose of the report, which was very clear in their original motion was to determine the facts of the matter in the case so that we could determine what happened and see if we needed to review and change any of our procedures. It did in fact determine that the proper town code procedure was not followed by town officials resulting in the vacation of the original plat and that is the extent of the report. Mr. Napier was very clear in the report that 1) the Planning Commission does not have the authority to investigate personnel which is a Town Council matter; and 2) the report was not that. If anything, it would have been a conflict for Mr. Napier to represent both the Planning Commission and the town manager. You cannot investigate both sides in a criminal investigation. For that reason alone, that was not the case.

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

ROLL CALL

CONSENT AGENDA

There were no items for consent.

NEW BUSINESS

Commission members agreed to hold a work session on January 19, 2021, at 6 pm before the regular Planning Commission meeting on January 19, 2021, at 7 pm.

DIRECTORS REPORT

- Comprehensive Plan Update.

Ms. Kopishke noted the following:

- 300-350 written responses have been received from the survey.
- There have been 804 views of the survey.
- Received over 12,000 total answers.
- The interactive map has been launched where someone can mark their favorite places in Front Royal, mark areas they perceive as high crime, and mark areas that may need improvements such as potholes, etc.

It has been decided to keep the survey open into January while starting to compile the data and report for the current state of affairs in the town. In the next couple of months, the Planning Commission will receive deliverables from Summit.

COMMISSION MEMBER REPORTS

Vice Chairman Marshner spoke about a meeting that herself, Ms. Kopishke, and Council Woman Thompson attended with about 9-10 non-profit organizations to discuss the Comprehensive Plan and receive their input from their perspective of helping people in the area who need help. What are the barriers/obstacles to be addressed in the Comprehensive Plan? She noted it was a very educational and constructive meeting.

ADJOURNMENT

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

VOTE: Yes – Gordon, Merchant, Ingram, Marshner

No – N/A

Absent – Jones

Abstain – N/A

VOICE

The meeting adjourned at 8:14 pm

Connie L. Potter
Executive Assistant