



## PLANNING COMMISSION

AGENDA for May 11<sup>th</sup> 2021

***This meeting will be held in a hybrid format both in-person and via Zoom.*** The meeting will take place in Council Chambers, City Hall, 2039 Sycamore Avenue. Participants must wear masks and practice social distancing. Two-way communication will be provided via Zoom for Planning Commission members and the public.

**ZOOM call details:**

***Time: Tuesday May 11<sup>th</sup> 2021 7:00 PM***

***<https://us02web.zoom.us/j/86189807691>***

***Meeting ID: 861 8980 7691***

***(646) 558-8656***

### AGENDA

#### REGULAR MEETING

**Call to Order by Chairman and Roll Call**

**Public Comment**

**Review and Adoption of Minutes**

Minutes of April 13<sup>th</sup> meeting

**Report of Secretary**

**New Business**

- 1) Discuss Zoning Text Amendment for conditional use permit expiration
- 2) Discuss alley abandonment in 2400 block of Ash Ave
- 3) Discuss setbacks and house orientation

**Adjournment**

**Members and Term Expirations**

Dennis Hawes, Chairman, 7/31/2024

Mike Ohleger, Vice-Chairman, 6/30/2022

Sandy Burke, 8/31/2021

Marolyn Cash, 6/30/2024

Lucy Ferrebee, 9/30/2023

Melvin Henson, City Council Representative,  
9/30/2023

Kristie Gibbons, 12/31/2024

Timothy Petrie, 12/31/2024

Jason Tyree, Ex Officio member

**Staff**

Tom Roberts, Director of Community & Economic Development

City Hall, 2039 Sycamore Avenue, Buena Vista VA 24416

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**Meetings**

Members of the Buena Vista Planning Commission meet in Council Chambers, 2039 Sycamore Avenue, at 7:00 p.m. on the 2<sup>nd</sup> Tuesday of each month, unless otherwise announced. Meetings may be held and business conducted without a quorum, but no votes may be taken unless a quorum is present. A majority of members constitutes a quorum. A motion passes with a majority vote; a tie constitutes defeat of the motion.



## PLANNING COMMISSION

MINUTES of April 13<sup>th</sup> 2021

Members of the Buena Vista Planning Commission met in Council Chambers and via Zoom at 7:00 PM on Tuesday, April 13<sup>th</sup> 2021.

### **Members Present:**

Dennis Hawes, Chairman  
Michael Ohleger, Vice-Chairman  
Marolyn Cash  
Lucy Ferrebee  
Kristie Gibbons  
Sandy Burke  
Timothy Petrie  
Melvin Henson, City Council Representative  
Jason Tyree, Ex Officio member

### **Members Absent:**

### **Staff Present:**

Tom Roberts, Director of Community & Economic Development

Meeting is called into order and roll was called.

### **Minutes**

Mr. Henson moved to adopt the minutes of January 12<sup>th</sup>, 2021 as presented. Mrs. Cash seconded, Mrs. Ferrebee abstained because she was absent, and all voted yes.

### **PUBLIC HEARING**

#### *Conditional Use Permit for 245 W 21<sup>st</sup> Street*

First Mr. Roberts introduced Annette Patterson, Executive Director of the Advancement Foundation and Courtney Taylor, also with The Advancement Foundation (TAF). Mrs. Patterson summarized the overall project, using the presentation included with these minutes. She began summarizing TAF's main activities of programming, resource development, and placemaking. They work in the region doing business and entrepreneur development activities and operate the Innovation Mill in Vinton. She explained the concept of the project as including agricultural technology research and development, small scale manufacturing, business incubation, and loft apartments.

Mr. Roberts summarized the three conditional uses of small scale production, food and beverage production, and apartments. He then brought up a potential condition to apply that TAF would complete a wastewater discharge permit for any new industrial or laboratory use in the space, following the process already in Buena Vista's code. The purpose of this condition

would be to highlight and ensure that the City is reviewing and checking any potential problematic discharges from the site.

Mr. Petrie asked if the stormwater management plan would be updated. Mr. Roberts replied that probably not since the footprint will only be changed slightly, and that would not affect the impervious area since it would replace asphalt. He then emphasized that the only items under consideration now are the conditional use permits, and there would likely be a site plan review before Planning Commission in the future.

Mr. Roberts also reported that the City is about to submit a grant application to fund a Phase I and II environmental study on the property, and that because of the Federal and state funds involved in the project, construction would require compliance with applicable environmental regulations.

Mr. Hawes closed the public hearing, and opened Commission discussion.

Mr. Hawes asked about the workforce training component. Mrs. Patterson explained that they would be working with Dabney Lancaster to partner with courses and certificates. He then expressed his support and high hopes for the project.

Mr. Ohleger stated that he is cautious about the residential component and does not want to see the apartments “take over” the building, and recommended that it be capped at 20% of the square footage. Mrs. Patterson pointed out that the rental income was very important to the pro forma for the property and the financial stability of the project in the early years as the programming gets up and running. She asked that they keep the cap at 24-25%.

Mr. Hawes agreed that we need to make sure there aren’t any environmental issues, and also noted air quality. Mr. Petrie asked if our wastewater plant has excess capacity, to which Mr. Roberts responded that no, we have a decent amount of capacity. He also noted that the City is completing in the next month an extensive preliminary engineering report on the water and wastewater systems in preparation for seeking funding. Mr. Roberts said he was not sure how air quality review could be codified in an conditional use permit.

Mr. Hawes asked for motions from the floor. Mrs. Cash motioned to recommend approval the CUP for food and beverage processing as presented, Mrs. Ferrebee seconded, and all voted yes.

Mr. Petrie motioned to recommend approval of the CUP for first-floor multifamily residential with the following conditions, modified from the staff report:

1. Housing may occupy no more than 25% of the square footage of the existing building
2. Housing will consist of between 8 and 20 apartments
3. No housing unit will be less than 320 square feet

Mrs. Cash seconded the motion, and all voted yes.

Mrs. Ferrebee motioned to recommend approval of the CUP for small scale production, Mr. Henson seconded, and all voted yes.

## **Minutes**

Mr. Ohleger motioned to approve the minutes of the February 9<sup>th</sup> 2021 meeting, Mrs. Cash seconded, Mrs. Burke and Mr. Petrie abstained due to absence, and all voted yes.

**Other Items**

Mr. Hawes raised to Mr. Roberts the property maintenance issue of Grace Automotive, stating that its appearance was worse. Mr. Roberts explained that he just met with the owner the day and talked about the various issues. The main issues are parking vehicles on the street, too many vehicles on his lot, unlicensed/unregistered vehicles on the lot, and major work not within a permanent enclosed buildings. The owner is working on getting an additional building, and Mr. Roberts is trying to find an off-site lot for vehicle storage. There was some discussion of details of his site, including underground gas storage tanks.

Mr. Ohleger asked about 708 E 25<sup>th</sup> Street and about the former Fastenal space which is now a boarding house.

**Adjournment 8:30 PM**

Approved: \_\_\_\_\_



## MEMORANDUM

TO: Planning Commission  
FROM: Tom Roberts  
DATE: 5/6/2021  
SUBJ: Secretary's Report

### *1) Town Square*

We have formed a subcommittee of Action BV, the community organization, to plan and design the Town Square. We have a decent membership including strong representation from City Council but would like to have more folks so you are welcome to join. We have had two meetings so far. Our next step is drafting a vision document which articulates the intended uses of the space, goals, and facilities it will have. This will guide a design professional (e.g. landscape architect) to help actually design the space. We know we want some kind of pavilion, we know we want seating, we know we want trees—but how do we lay all those things out in the best way?

We are also running events in the space. The first was a movie night last Saturday. Folks on the committee are planning a farmers/flea market and a concert this summer, and we hope to have more events. Each of these events will be a learning experience, helping understand how the space works with different users. For example we already learned at the movie night that bathrooms are essential.

Funding for the actual development is uncertain. The City submitted for a grant through Kubota which is a long shot but we'll see. We know that there are some people/organizations who would donate.

### *2) Next tree planting*

We received another Virginia Trees for Clean Water program grant for tree planting. This time we will add some trees on the 29<sup>th</sup> Street corridor going west between the railroad and the Jesus Christ Church of Latter Day Saints. This is one of the locations recommended for corridor enhancements by the Downtown Revitalization Plan.



## PLANNING COMMISSION Staff Report

Zoning Text Amendment

Section 802 Zoning and building permit procedures

5/6/2021

### Synopsis

Clean up administrative items in procedures for zoning permits, especially conditional use permits.

### Summary:

- Change term “zoning and building permit” to “zoning permit” because they are separate permits
- Remove reference to prominently posting zoning permit on premises
- Expand conditional use permit evaluation criterion from only traffic volume to provisions of other City services
- Repeal expiration of conditional use permit upon change of ownership

### Analysis

#### Overview

This text amendment was spurred by discovering a provision of our code that is not allowed by Code of Virginia. Staff then found a few other minor administrative items to clean up in this section.

#### *“Zoning and building permit” terminology*

It appears that at one time, zoning and building permits were the same piece of paper and issued through the same process. This is no longer true. Different state and local codes apply to zoning permits and building permits. Staff propose removing the words “and building” from the phrase “zoning and building permit” where it occurs in this section to make it clear that these administrative procedures do not apply to building permits.

Additionally, staff propose removing language about permittees posting zoning permits in a prominent place on premises, like a building permit. This has not been the practice for a long time, if ever.

802.01 *Issuance and display.* The zoning administrator shall issue a zoning ~~and building~~ permit for any permitted use or structural alteration, provided such proposed use of land or structure, or structural alteration, is in conformance with the provisions set forth herein. ~~The zoning and building permit shall indicate whether the use is a permitted use, a conditional use, or a variance and shall be conspicuously posted and displayed on the premises during the period of construction or reconstruction.~~

### *Conditional Use Permit criterion*

One of the criteria that the governing body must address when evaluating conditional use permits is the effect of the proposed use on traffic volumes. This is important but should be expanded to include other services such as utilities and emergency services.

- (a) ~~The effect of the proposed use or special exception, on existing and projected traffic volumes in the neighborhood;~~ The provision of adequate public services including streets and other trafficways, utilities, and emergency services;

### *Conditional Use Permit expiration*

Current code states that upon change of property ownership, a conditional use permit expires. It recently came to staff's attention that time limits for conditional use permits granted by City Council are not allowed by Code of Virginia. This makes sense in the context of other zoning law, because zoning is about the use—not the owner. If a use is permitted, then it doesn't matter who is doing it, generally. Staff propose repealing this one provision of the ordinance.

~~802.03-12 Upon change of ownership, any conditioned use permit for the property shall expire.~~

Below is an excerpt from the *Albemarle County Land Use Law Handbook* explaining this specific issue, with key phrases underlined. (The *Land Use Law Handbook* is the go-to reference for all Virginia localities on the ins & outs of Virginia land use law. I am happy to provide a link to this book if you want to go deep into the technicalities.)

One recurring issue of interest is whether a governing body may impose limitations on the life of a special use permit. BZAs have express authority to impose limitations on the life of a special use permit (*Virginia Code § 15.2-2309(6)*), local governing bodies do not have such express authority. The governing body of the City of Norfolk is enabled to impose a condition on any special use permit relating to retail alcoholic beverage control licensees which provides that the permit will automatically expire upon the passage of a specific period of time. *Virginia Code § 15.2-2286(A)(3)*. No similar express authority exists for other governing bodies for general purposes, and a number of localities have accordingly concluded that they do not have implied authority to impose such a condition. Some localities conclude otherwise. Under a Dillon Rule analysis, governing bodies are enabled to grant special use permits under "suitable regulations and safeguards." *Virginia Code § 15.2-2286(A)(3)*. The General Assembly has not directed how or what those suitable regulations and safeguards must be. Therefore, if a time limitation (or the authority in the zoning ordinance to impose such a condition) is reasonable, the condition should be considered to be within a governing body's authority. An alternative solution to this question is to obtain the agreement of the applicant for such a condition. See *Board of Supervisors of Prince William County v. Sie-Gray Developers, Inc.*, 230 Va. 24, 334 S.E.2d 542 (1985) (subdivider may voluntarily agree to make improvements to existing access roads and will be bound to that agreement, even if the county did not have the authority to otherwise require such improvements as a condition of subdivision approval).





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## City of Buena Vista Zoning Code Zoning and Building Permit Procedures §802.00

### Sec. 802.00. Zoning ~~and Building~~ Permit Procedures

Zoning ~~and building~~ permits shall be issued in accordance with the following provisions and procedures:

802.01 *Issuance and display.* The zoning administrator shall issue a zoning ~~and building~~ permit for any permitted use or structural alteration, provided such proposed use of land or structure, or structural alteration, is in conformance with the provisions set forth herein. ~~The zoning and building permit shall indicate whether the use is a permitted use, a conditional use, or a variance and shall be conspicuously posted and displayed on the premises during the period of construction or reconstruction.~~

802.02 *Application procedure for permitted uses.* Applications for a zoning ~~and building~~ permit shall be submitted to the zoning administrator according to the following provisions:

802.02-1 An application for a zoning ~~and building~~ permit for a permitted use shall be accompanied by two copies of an acceptable site plan with such reasonable information shown thereon as shall be required by the zoning administrator. Such site plan shall include, as a minimum, the following: lot dimensions with property line monuments located thereon; location and size of existing and proposed structures; yard dimensions and the use of structures; easements (private and public); watercourses; fences; street names and street right-of-way lines; and such other information regarding abutting property as directly affects, the application;

802.02-2 Each application for a zoning ~~and building~~ permit, upon issuance of the permit, shall be accompanied by payment of a fee;

802.02-3 If the proposed use or construction described in the application required by [sub]section 802.02-1 [of this section] are in conformity with the provisions set forth herein and other appropriate codes and regulations of the City of Buena Vista, including but not limited to the required:

- (1) Health department approval of septic tank system;
- (2) Highway department entrance permit;
- (3) Flood insurance, floodplain ordinance;
- (4) Erosion and sediment control ordinance plan;

The zoning administrator shall sign and return one copy of the site plan to the applicant and shall issue a zoning ~~and building~~ permit. The zoning administrator shall retain the application and one copy of the site plan for his records;

802.02-4 If the application and site plan submitted describes work which does not conform to the requirements set forth herein, the zoning administrator shall not issue a zoning ~~and building~~ permit, but shall return one copy of the site plan to the applicant along with a signed refusal in writing. Such refusal shall state the reasons for refusal and shall cite the portions of this ordinance with which the submitted plan does not comply. The zoning administrator shall retain one copy of the site plan and one copy of the refusal.

802.03 *Application procedures for conditional uses.* Applications for a conditional use permit for a conditional use shall be submitted to the zoning administrator, who shall refer the application to the governing body for a public hearing. Applications for zoning permits for conditional uses must be submitted in accordance with the following procedures:

802.03-1 An application shall be accompanied by two copies of an acceptable site plan drawn in accordance with applicable provisions of [this] section 802.00 of this ordinance, with such reasonable information shown thereon as may be required by the zoning administrator. Such site plan shall include, as a minimum, the following: the dimensions with property line monuments located thereon; location and size of existing and proposed structures; yard dimensions and the use of structures; easements (private and public); watercourses, fences, street names and street right-of-way lines; and such other information regarding abutting property as directly affects the application.

802.03-2 Each application for a zoning ~~and building~~ permit for a conditional use or other special exception shall be accompanied by payment of a fee as set forth in article 10 to help defray the cost of publicizing and conducting the public hearing;

802.03-3 The application shall be sent to the commission for review and recommendation, and said commission shall have 60 days within which to submit a report. If the commission fails to submit a report within a 60-day period, it shall be deemed to have approved the proposed conditional use;

802.03-4 The governing body shall consider the proposed conditional use or other special exception after notice and public hearing in accordance with Code of Virginia, § 15.2-2204, 1950, as amended, and shall take action on the proposed conditional use within 30 days from the date of the public hearing;

802.03-5 In evaluating the proposed conditional use or other special exception, the governing body shall address the following concerns:

- (a) ~~The effect of the proposed use or special exception, on existing and projected traffic volumes in the neighborhood;~~ The provision of adequate public services including streets and other trafficways, utilities, and emergency services;
- (b) The current and future need for the proposed use in the City of Buena Vista; and
- (c) The character of the existing neighborhood and the effect of the proposed use or special exception on existing property values;

802.03-6 Conditions set forth in [subsection] article 802.03-5 [of this section] for the various conditional uses are minimum. In approving a proposed conditional use or other special exception, the governing body may stipulate such additional requirements as are

necessary to protect the public interest. The governing body may require the applicant to furnish a performance bond in an amount sufficient for and conditioned upon the fulfilling of any and all conditions and requirements stipulated by the governing body;

802.03-7 If the governing body approves the application for a zoning ~~and building~~ permit for a proposed conditional use, the zoning administrator shall issue a conditional use permit, indicating the conditional nature of the use;

802.03-8 If the governing body disapproves the application for a zoning ~~and building~~ permit for a conditional use or other special exception, the governing body shall inform the applicant of the decision in writing within 30 days from the date of the public hearing, stating the reasons for disapproval. The zoning administrator shall retain one copy of the site plan and one copy of the refusal, and shall keep them as a public record;

802.03-9 A property owner, or his appointed agent, shall not initiate action for a conditional use permit relating to the same conditional use affecting the same parcel of land more often than once every 12 months;

802.03-10 A conditional use permit must be put into effect six months after the date the permit is issued, unless otherwise provided in the permit itself;

802.03-11 Renewal of a conditional use permit does not require a public hearing unless the original conditions in the permit are changed, however notice of the renewal will be shown on the agenda of the city council;

~~802.03-12 Upon change of ownership, any conditioned use permit for the property shall expire.~~

802.04 *Application procedures for ordinance or map amendment.* The Buena Vista City Council may from time to time, amend these regulations or district maps whenever the public necessity, convenience, general welfare, or good zoning practice require. Any resolution or motion by the governing body or planning commission proposing the rezoning shall state the above public purposes therefor.

802.04-1 Applications for amendments initiate by any person, firm, or corporation owning the subject property shall be submitted in writing to the zoning administrator and shall be accompanied by two copies of an acceptable site plan, where applicable, of the proposed amendment with such reasonable information shown thereon as shall be required by the zoning administrator. Where site plans are required, they shall show, as a minimum, the following: lot dimensions with property line monuments located thereon; location and size of existing and proposed structures; yard dimensions and the use of structures; easements (private and public) watercourses, fences; street names and street right-of-way lines; and such other information regarding abutting property as directly affects the application. Proposals for amendments not initiated by either the commission or the city council shall be accompanied by payment of a fee as set forth in article 10.

802.04-2 The commission shall consider the proposed amendment after notice and public hearing in accordance with Code of Virginia, § 15.2-2204, as amended. The commission shall then present the proposed amendment along with site plans and explanatory materials, where applicable, to the city council with its recommendations. If the commission fails to submit its recommendations within 60 days of the first meeting of the

commission after the proposed amendment has been referred to it, the commission shall be deemed to have approved the proposed amendment.

802.04-3 The Buena Vista City Council shall consider the proposed amendment after notice and public bearing in accordance with Code of Virginia, § 15.2-2200, 1950, as amended, and shall take action on the proposed amendment within 30 days from the date of the public hearing. The city council and the commission may hold a joint public hearing in accordance with Code of Virginia, § 15.2-2204;

802.04-4 Any petition, for an amendment may be withdrawn prior to action thereon by the city council at the discretion of the person, firm or corporation initiating such a request, upon written notice to the zoning administrator;

802.04-5 No more than one application for any amendment affecting a specific parcel of land may be initiated during any single 12-month period.

802.05 *Procedures for proffering conditions to zoning district regulations.*

802.05-1 *Intent.* The intent of this section is to provide (pursuant to Code of Virginia, §§ 15.2-2296 through 15.2-2303, 1950, as amended) to the zoning district regulations or the zoning district map;

802.05-2 *Proffer of conditions.* An owner may proffer reasonable conditions, in addition to the regulations established elsewhere in this ordinance, as part of an amendment to the zoning district regulations or the zoning district map. The proffered conditions shall be in writing and shall be made prior to the public hearing before the city council. In addition:

- (a) The rezoning itself must give rise to the need for the conditions.
- (b) The conditions proffered shall have a reasonable relation to the rezoning.
- (c) The conditions proffered shall not include a cash contribution to the city.

802.05-3 *Expiration.* Any zoning permit shall automatically expire six months from the date of issuance if the person, firm, or corporation to which the permit has issued has not clearly demonstrated that the permit is being exercised for the purpose for which it was issued, or if the work so authorized is suspended or discontinued for a period of one year.



## **PLANNING COMMISSION Staff Report**

ROW Abandonment

Alley in 2400 block of Ash Ave

5/6/2021

### **Synopsis**

Applicant Michael Martin requests abandonment of 200' of alley running through block bounded by 24<sup>th</sup> Street, 25<sup>th</sup> Street (undeveloped), Ash Avenue, and Hickory Avenue (undeveloped)

### **Overview**

The applicant desires to build a new house fronting on Ash Avenue. He owns multiple lots in the block and wishes to site the house in the middle of the block, likely encroaching on the alley or at least encroaching on what would be lot setbacks.

As shown on map, Mr. Martin owns the eight lots on either side of the alley on the south end of the block.

### **Analysis**

This site is entirely wooded and at the edge of the City. It is highly unlikely that this alley would ever be developed. In part this is because of the unified ownership of lots by Mr. Martin. The contour lines indicate the significant slope of these blocks also, which make them poorly suited for much development.

Even if the lots at the north end of this block were developed in the future, an alley would not be necessary for trash pickup or utility access.

There are no existing or anticipated utilities in this alleyway.

Lots 5-8 and lots 13 & 14 are owned by David Dickinson. Lots 15 & 16 are owned by Comcast Corporation for the satellite transmission facility.

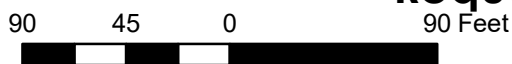
### **Next Steps**

Staff recommend abandonment as presented. City Council will hold a public hearing on this abandonment on May 20<sup>th</sup>. Planning Commission may share with Council a recommendation on this abandonment.





Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.



## 2414 Ash Ave Requested Abandonment

Planning & Zoning | 4/27/2021