

**REGULAR MEETING OF THE  
LURAY PLANNING COMMISSION  
JULY 20, 2011**

The Luray Planning Commission met on Wednesday, July 20, 2011 at 7:01 p.m. in regular session. The meeting was held in the Luray Town Council Chambers at 45 East Main Street, Luray, Virginia at which time there were present the following:

Commissioners Present:

Tom Potts  
Clifton Campbell  
Larry Hakel  
Pam Flasch  
John Meaney  
Ronald Good  
Joey Sours

Others Present:

Bryan Chrisman, Assistant Town Manager  
Ligon Webb, Town Planner  
Jason Spitler, Town Attorney

Chairman Tom Potts called the meeting to order and everyone joined in the Pledge of Allegiance to the flag.

**APPROVAL OF MINUTES:**

A motion was made by Commissioner Campbell that the minutes of May 11, 2011 be approved. Motion was seconded by Commissioner Good. The vote was as follows:  
YEA: Commissioners Hakel, Sours, Campbell, Potts, Flasch, Meaney and Good.  
**APPROVED: 7-0**

**Election of Chair and Vice-Chair of Planning Commission for term ending June 30, 2012.**

Commissioner Potts stated there was a need to elect the Chairman and Vice Chairman. A motion was made by Commissioner Hakel that we re-elect both Vice-Chair and the Chair by acclamation. Motion was seconded by Commissioner Sours. The vote was as follows:  
YEA: Commissioners Hakel, Sours, Campbell, Potts, Flasch, Meaney and Good.  
**APPROVED: 7-0**

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**Public Hearing: Ordinance Amendment**

Mr. Webb stated the ad that ran in the paper was copied on your agenda. When we send these code changes we make to the community code, a copy is kept on-line. He hopes that people double check because he needs to go back and double check this to make sure the ordinances that were changed are included in the on-line copy. The State Code says that we don't have to publish that at the end, so we don't have to put a huge ad that costs thousands of dollars. He asked if the Commissioners had any questions or is there anything as far as the code changes. He will look at this again before it goes to the Town Council and the next Town Council meeting is August 10<sup>th</sup>. It will not be before the Town Council in August because of the advertising deadline.

Commissioner Hakel asked who created the memorandum of July 20<sup>th</sup> "Administration Comments". Mr. Chrisman stated he authored it this morning based on the discussion of the issue between Mr. Black and himself. He indicated that these are items of discussion for the Commission to consider because these are issues that have come up, or will come up, when this proposal makes it to Council.

Mr. Webb stated he thought we had talked about a lot of these and for the most part we had worked through a lot of these issues.

Commissioner Potts opened the Public Hearing. No one was present to speak at the hearing, so Chairman Potts closed the Public Hearing.

Mr. Webb reviewed the various changes within the proposal for the Commission.

Commissioner Campbell asked why it was proposed to allow home occupations in an R2 district. The Commission then discussed this issue at length. Mr. Chrisman clarified that the two comments being discussed were whether the Commission looked favorably on allowing business activities in residential districts without specific controls in place, and two, that allowing home occupations in an R2 district was a significant change.

The Commission then discussed whether moving items from by-right use to use by Special Use Permit was considered a "taking of rights". The consensus was that it was not a "taking", but rather a modification of the ability for a person to use their property. A discussion ensued about the importance of permitting these uses by SUP since that allowed the Commission, the Council, and the neighborhood to comment before such uses were allowed. The Commission then spent a great deal of time discussing the critical nature of mixing business activities into residential districts. Mr. Chrisman reiterated that this issue may be one of the most important that the Commission has dealt with since it will impact the nature and character of the Town's residential districts for a

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long time to come. The group agreed that only after careful consideration by the governing bodies, and after giving the neighborhood a chance to comment on such a proposal, should a permit be issued.

Commissioner Potts stated he agreed with the comment on electronic occupation, about ensuring that customer visits and traffic should not be allowed.

Mr. Webb stated that the definition, as currently written, says that customer and/or client visits shall not be integral to said service. The group expressed a desire to make that portion of the definition clearer to ensure that people understood that client visits to an electronic office are discouraged.

Commissioner Campbell stated that the definition should be specific and clear so that there is no confusion later. Mr. Chrisman advised that if visits are not prohibited or at least strongly discouraged, then the possibility of complaints, parking disputes and other issues arise.

Commissioner Campbell stated it is my understanding that if they have a business license then they have off street parking period. Mr. Chrisman stated there are some exceptions to the parking requirements; correct me if I'm wrong Ligon, in 506 that allows certain businesses in certain areas to utilize on street parking or other parking areas within 1200 linear feet of their proposed business. Mr. Webb stated that was correct.

Commissioner Hakel stated it seems like the words "are not allowed" just tightens it a little bit, so I have no problem with adding that or changing it to that.

Commissioner Flasch asked if the words "are discouraged" is not tight enough.

Commissioner Campbell stated you could have the word "discouraged" and that should handle it by making the elimination of customer visits the responsibility of the electronic office user. It would revert to a self-policing activity where the Town would not have to be involved as much. The Commission agreed.

Commissioner Potts stated that it should be changed to "customer/and or client visits to the site will not be integral to, and shall be discouraged by, said service or said business".

Commissioner Potts stated that the next topic is home occupations. Chairman Potts agreed that if it's a home occupation, the business should be conducted by the folks living there, as opposed to day help coming in.

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Commissioner Sours asked what businesses could that affect, what type of business would that most readily adversely affect? The groups discussed the differences between electronic offices, home occupations and professional services.

Commissioner Flasch asked if it changes anything if it is an adult child not living in the home and helps with the family business. Mr. Webb stated that currently, anyone who is a family member living on the premises. Commissioner Flasch asked but what if it's a grown son and he lives somewhere else and he's coming there every day and working the family business, would he count as the employee? Mr. Webb stated it says here "Any professional service and/or business occupation within a dwelling and clearly incidental thereto carried on by a member, or members, of the family residing on the premises."

Commissioner Campbell stated this proposed change is something new, because we did not have the issue that "one outside employee" was allowed in the definition. He continued by saying this will lead us back to the off-street parking, and Chapter 506.

Mr. Chrisman stated currently 506 is not mentioned in the current definition nor in the proposed definition but it just came up in this morning's conversation that this body may want to consider requiring that 506 be applied to home occupations to keep as many of these vehicles off the streets and on the property.

Commissioner Campbell stated he thinks that is a good idea. He also agreed that having an intensive review through the SUP process would allow the groups to see if the home was capable of supporting the requested home occupation without raising any problems.

Commissioner Campbell stated like the last lady that wanted the child care thing on West Main Street. We had an opportunity to look at it and make some suggestions.

Commissioner Good asked Ligon do we know if other Town's ordinances generally restrict home occupation to just the people there, or do they sometimes allow for one outside employee. Mr. Webb said other communities are all over the map – some allow outside employees, some don't. Many do require SUP's, though.

Commissioner Campbell stated his feeling about home occupations is that you still need to protect the residential districts. If it's residential; it's not business and we have a lot of business area in Town that's vacant. If they want to do a home occupation with one or two people, then they need to be a business or professional service, and be located in the business district. It's just not feasible for me to see business popping up wherever they want to do business. That's why you have regulations.

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Commissioner Sours stated it does say there is no exterior evidence that the building is being used for any purpose other than a dwelling. So the public is not going to see anything.

Commissioner Campbell stated we need to guide people in the right direction. That's what these revised definitions should do.

Commissioner Meaney stated that the market forces in the community will also help to direct the actions of the people. The Commission then discussed the types of home occupations we will likely see, and the wording of the definition to help guide them to the desired ends.

Mr. Webb stated you could say that we are trying to be a very entrepreneurial town by allowing businesses such as home occupations in the residential districts all over Town.

Commissioner Campbell stated that he feels that if we let people do anything they want to, we might as well throw the planning & zoning book away and forget about having a Planning Commission. He stated that he has been around long enough to know how we planned the Town of Luray, and we didn't plan for businesses to be on every block.

Mr. Webb stated I think we are going to see that eventually.

Commissioner Campbell stated that we don't have to see it. All we have to do is control it. That's what the Planning Commission is about – planning and controlling growth and land uses so that they are compatible.

Mr. Webb agreed, but didn't want anyone to get upset about the topic.

Commissioner Campbell stated he's not getting upset. He just wanted Mr. Webb to understand what the Commissioners are thinking.

Commissioner Meaney stated that it is impossible to control everything, but that we should consider items that we are able to control, and try to limit their impacts.

Commissioner Potts brought the group back to the discussion point – does the Commission want to recommend allowing one outside employee for a home occupation, or restrict it to only the members of the family living in the home?

Chairman Potts then took a poll of the members on this issue:

Commissioner Hakel stated he could agree with allowing one outside employee, but no more than that.

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Commissioner Meaney stated he agreed with Mr. Hakel.

Commissioner Campbell said no outside employee.

Commissioner Flasch stated she agreed with Clifton. I think if you are going to start hiring people, then they need to locate on Main Street where we need and want businesses to be. Commissioner Good stated no outside employee.

Commissioner Sours stated he didn't see any reason to add an outside employee.

Chairman Potts indicated that he did not want to see any outside employees allowed.

The consensus was 5-2 to remove the ability for a home occupation to have one outside employee. Mr. Webb said he would change it.

Commissioner Potts led a discussion on no exterior evidence that the home was being used for anything other than a residence. This includes storage and delivery of materials, equipment and machinery stored at the home, etc. All felt that the proposal was worded adequately.

Commissioner Potts then moved on to professional offices and professional services.

Commissioner Hakel stated it would be an appropriate thing to say professional is that which requires a license. I'm sure I wouldn't say just the State of Virginia but if they are required to be licensed by anybody, then they are a professional.

Mr. Webb asked was there a definition for professional services somewhere. Mr. Chrisman stated that DPOR in Richmond does not have a single definition for what constitutes a "professional service" that he was able to find.

Mr. Chrisman said that a concern had been voiced that unless we have some definitive language in one or the other of the definitions for either home occupation or professional services, it might be a very arbitrary interpretation at some point as to whether it qualifies as a home occupation or whether it qualifies as professional services.

Commissioner Campbell and Commissioner Hakel agreed that there needs to be something clear that easily differentiates the two types of occupations/services.

Commissioner Potts requested that Sections 506, 514, and 515 all be referenced in this definition. The group agreed that these Code sections needed to be specifically added for the sake of compliance.

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Mr. Webb asked if the group was OK with the proposed uses in the proposed zoning districts, and with the proposals for SUP's. The consensus of the group was yes, but there were still concerns about home occupations in R2 from at least two members.

Mr. Webb indicated that we would make the recommended changes, and re-submit them to the Commissioners before taking them to the Council.

A summary of the recommended changes by Mr. Webb:

Electronic Office – add that client visits “shall be discouraged”

Home Occupations – remove “one outside employee”, and add Sections 506 and 514 as requirements.

Professional Offices – add the list of sample services that qualify, but ensure that the list was not inclusive (limited to) in the definition, and ensure they comply with Sections 506, 514 and 515.

Commissioner Potts asked do we have a motion to recommend these definitions to the Town Council for adoption, as revised. Motion was made by Commissioner Hakel and seconded by Commissioner Good. The vote was as follows: **YEA: Commissioners, Hakel, Sours, Campbell, Potts, Flasch, Meaney and Good. APPROVED: 7-0**

Mr. Chrisman reminded the Commission that the discussion items and issues that staff provide, and those comments from Administration, are simply talking points for the Commission to consider.

Commissioner Potts stated that the Commission needs to have the insight of the Administration, Town Staff, and any Council thoughts and/or objections so that the Commission can take them into consideration in crafting what we send forward.

The group agreed that working together on all information sources would produce a better product for the Council to consider.

**NEW BUSINESS:**

**New Discussion Items**

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**Review – Height restrictions in all zoning districts**

Mr. Webb stated that an application has been made for a temporary cell tower. It's one of those things I suspect that a lot of communities are dealing with. We don't have the term "cellular communication tower or cellular tower" in our code. Maybe Clifton can inform us how this went back here.

Commissioner Campbell stated it was on a special use permit. Its state regulated as far as height. Our concern was if we want communications, then we have to bend a little. It would be bad to have a cell phone and not be able to use it. It's something that needs to be studied. We don't want them everywhere, that's for sure.

Mr. Webb stated there are two issues here:

- 1.) Our Code does not specifically mention cell towers, but it does mention radio (communication) towers.
- 2.) Our Code allows radio towers to be exempt from height limitations, along with other things like church belfries, etc. in all zoning districts.

Town staff and Town Administration would like the Commission to consider these issues, and consider revising our definitions, eliminating the exemptions, and/or requiring all structures that exceed the maximum height limit to have to obtain a SUP.

Commissioner Campbell stated technically we should only allow those through professional businesses. In other words, like Century Link over here; it should be a professional business.

Mr. Chrisman stated right now the Code says if I am a regular home owner and I live in an R3 district and I want to put a 50 foot CB radio antenna in my back yard, my neighbors and you – Town of Luray – can't stop me because it is currently an exempted use.

Commissioner Sours reminded the group that cell towers are, in fact, radio/communication towers.

The Commission then discussed building/structure height limitations as a whole. The current allowance for parapet walls to be 4 feet higher than the main structure, was reviewed and mentioned for removal.

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In the end, Chairman Potts focused the discussion on the Commission's preferences. The consensus of the group was that if an application was made for any structure of any type over 35 feet in any residential district, or over 45 feet in B1, M1 and PND, then a SUP should be required.

Mr. Chrisman agreed that this was the simplest and easiest way to address any height issue that planned to exceed the maximum structure heights in every district. Regardless of what the structure is, if it is taller than what is allowed they need a SUP.

Mr. Webb indicated that he would consolidate the discussion points, and bring something back at the next meeting.

Commissioner Campbell stated this cell tower information provided by Mr. Webb is very good in that it discusses the various types of towers, how they can be disguised, and to essentially prohibit them in residential areas. He continued by saying that we as a Town should encourage placement of towers in industrial and commercial zones, limit the height of the tower to that needed by the wireless carrier; and require security fencing .

These would all be a part of regulations for them under their special use permit. Mr. Webb stated I think wherever we put it; it could be a Special Use. Commissioner Campbell agreed.

Mr. Chrisman stated we agree totally with Ligon. The B1 and M1 is the obvious place to require these towers. Applications should be for a Special Use.

Mr. Spitler stated in addition to defining the towers and speaking to which districts it might be allowable by special use permit, we will also need to come up with some supplementary regulations in terms of construction, etc. Page County's Code is actually a pretty good model in terms of the cell tower issue.

**Review – The keeping of animals/livestock within Town limits**

Mr. Webb informed the Commission that there was currently not a restriction in the Town Code against the keeping of agricultural livestock animals within Corporate Limits. A complaint about horses in Town started this discussion item.

The Town staff, Administration and Council would like the Commission to look at this and make a recommendation.

Commissioner Campbell said he would check in one of his old Code books, because he, like many people, thought it was in there at one time.

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Mr. Spitler stated I think what you may be thinking of is the reference in the zoning appendix to non-conforming uses and essentially grandfathered agricultural uses. There is a provision in the code that says if you basically ceased the use for a two year period, then you are deemed to waive any right you have to those agricultural activities.

Commissioner Campbell stated we had a couple cases involved in livestock. Mr. Spitler stated the section that I am referring to was actually drafted as part of the annexation that included Fairview in roughly 1985. Commissioner Campbell stated that's right; and that was grandfathered. If there is an animal there, as long as they don't add to, and if they take them away, they can't add them back and this type thing was part of it.

Mr. Webb reviewed his proposal with the Commission and indicated that he got the sample from the Town of Berryville.

Mr. Chrisman asked Mr. Spitler if it would be wise to maybe lump all of our animal and livestock code sections into one section.

Mr. Spitler stated we need to make sure that the various sections are harmonized, but we also have to distinguish between I guess keeping or maintaining animals.

Commissioner Campbell stated that the Town should have included an agricultural zone when they annexed farmland to cover these types of issues in specific places.

Mr. Chrisman pointed out that whatever proposal is made, it should include all types and manner of agricultural animals, including those that people want to keep, but call them "pets".

Mr. Spitler agreed and urged the Commission to incorporate these comments into Ligon's initial proposal and refine it from there.

Commissioner Campbell asked Mr. Spitler to look into the legality of current agricultural uses in Luray, especially those on Fairview Road since they may not be in compliance.

Mr. Spitler stated you may want to consider one other part there at the bottom of subsection (a) limiting it to one animal per four acres. You might just give a little bit of consideration to the idea that there is obviously going to be less impact to one chicken,

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one horse. You might have a limit for hoofed animals and then for fowl, you might categorize it somewhat. Mr. Webb stated he will make some more reasonable limits.

Commissioner Potts asked if there was anything else. A motion to adjourn was made by Commissioner Campbell and seconded by Commissioner Good. Motion carried. The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Bryan T. Chrisman  
Assistant Town Manager

ATTEST:

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