

UNAPPROVED MINUTES  
PLANNING COMMISSION

January 14, 2009

A regular meeting of the Planning Commission of the City of Salem, Virginia, was held in Council Chambers, City Hall, 114 North Broad Street, at 7:00 p.m., on January 14, 2009, there being present all the members of said Commission, to wit: Gardner W. Smith, Terrance D. Murphy, Jimmy W. Robertson, Vicki G. Daulton, and Bruce N. Thomasson; with Gardner W. Smith, Chairman, presiding; together with James E. Taliaferro, II, Assistant City Manager and Executive Secretary, ex officio member of said Commission; Melinda J. Payne, Director of Planning and Development; Charles B. Aldridge, Sr., Acting Building Official and Zoning Administrator; Benjamin W. Tripp, Planner; and William C. Maxwell, Assistant City Attorney; and the following business was transacted:

ON MOTION MADE BY COMMISSION MEMBER DAULTON, AND DULY CARRIED, the minutes of the regular meeting and work session held on November 12, 2008, were approved as written – the roll call vote: all aye.

In re: Request of Marvin R. Clark, Whisman-Via Properties LLC, and Joseph Alfred & Treva Via Mullins Estate, property owners, for rezoning two parcels located at 1705 and 1719 Electric Road (Tax Map #s 258-3-9 & 258-3-17) and the rear portion of a parcel located at 1536 Cliffview Drive (Tax Map # 258-3-8) from RSF Residential Single Family District to HBD Highway Business District with proffered conditions

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of Marvin R. Clark, Whisman-Via Properties LLC, and Joseph Alfred & Treva Via Mullins Estate, property owners, for rezoning two parcels located at 1705 and 1719 Electric Road (Tax Map #s 258-3-9 & 258-3-17) and the rear portion of a parcel located at 1536 Cliffview Drive (Tax Map # 258-3-8) from RSF Residential Single Family District to HBD Highway Business District with proffered conditions; and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the December 31, 2008, and January 7, 2009, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed December 31, 2008; and

WHEREAS, Steve Mullins, realtor representing the property owners, appeared before the Commission in support of the rezoning request; he requested that the item be continued to the March 2009 meeting; and

WHEREAS, Chairman Smith asked the staff if there were any issues or concerns related to continuing the item, and Ms. Payne stated that there were none;

ON MOTION MADE BY COMMISSION MEMBER ROBERTSON, AND DULY CARRIED, the request of Marvin R. Clark, Whisman-Via Properties LLC, and Joseph Alfred & Treva Via Mullins Estate, property owners, for rezoning two parcels located at 1705 and 1719 Electric Road (Tax Map #s 258-3-9 & 258-3-17) and the rear portion of a parcel located at 1536 Cliffview Drive (Tax Map # 258-3-8) from RSF Residential Single Family District to HBD Highway Business District with proffered conditions is hereby continued to the March 11, 2009, Planning Commission hearing at the request of the petitioners – the roll call vote: all aye.

In re: Request of Barker Garden Apartments LLC, property owner, for rezoning the property located at 1139 Easton Road (Tax Map # 230-3-10) from RSF Residential Single Family District to RMF Residential Multi-Family District

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of Barker Garden Apartments LLC, property owner, for rezoning the property located at 1139 Easton Road (Tax Map # 230-3-10) from RSF Residential Single Family District to RMF Residential Multi-Family District; and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the December 31, 2008, and January 7, 2009, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed December 31, 2008; and

WHEREAS, staff noted the following: the subject property consists of one parcel, located on the north side of Easton Road, near the intersection with Midland Road, off Route 419; the property is approximately an acre, and is currently occupied by an 18 unit residential apartment complex and is currently zoned RSF; this request is to rezone the property to RMF, to bring the zoning into compliance with the existing use (multifamily); at the time the complex was constructed in 1965, multifamily residential was allowed within the R-2 zoning as a by-right

use; however, in 1972 the council removed all multifamily uses from the R-2 zoning; and the property was never rezoned and has existed as a grandfathered use since; and

WHEREAS, Lewis Barker, co-owner of Barker Garden Apartments, appeared before the Commission explaining the rezoning request; he noted that his father is also co-owner of the complex; further, he noted that the property has been used as an 18-unit apartment complex since it was constructed; they are requesting to rezone to the correct zoning; and

WHEREAS, Commission Member Daulton asked Mr. Barker if they had any plans to enlarge the complex, and Mr. Barker noted that they do not have any plans to do anything different than what they have been doing; he further noted that in the past three years they have been making improvements to the property;

ON MOTION MADE BY VICE CHAIRMAN MURPHY, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Barker Garden Apartments LLC, property owner, for rezoning the property located at 1139 Easton Road (Tax Map # 230-3-10) from RSF Residential Single Family District to RMF Residential Multi-Family District be approved as presented – the roll call vote: all aye.

In re: Request of Paul D. and Claudia Richards, property owners, for rezoning the property located at 1325 Boulevard-Roanoke (Tax Map # 196-1-4) from RSF Residential Single Family District to RMF Residential Multi-Family District with proffered condition

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of Paul D. and Claudia Richards, property owners, for rezoning the property located at 1325 Boulevard-Roanoke (Tax Map # 196-1-4) from RSF Residential Single Family District to RMF Residential Multi-Family District with proffered condition; and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the December 31, 2008, and January 7, 2009, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed December 31, 2008; and

WHEREAS, staff noted the following: the subject property consists of one parcel, located on the north side of Boulevard-Roanoke, between the Salem Civic Center and Route 419; the property is approximately an acre, and is currently occupied by a single family

residence; it is currently zoned RSF; this request is to rezone the property to RMF, in order to allow an assisted care residence on the property; the applicants have stated that they would like to have three elderly people residing there, along with two caretakers; the applicants also state that future remodeling might allow for five or six residents, in addition to caretakers; the petitioners have proffered the only RMF uses will be either an assisted care residence or a single family residence; the applicants have stated that they plan to have three elderly residents and two caretakers living at the facility; however, the city code does not limit the maximum number of residents for this use; and a maximum number of residents has not been proffered and future changes could increase the number; and

WHEREAS, Dr. Paul Richards, property owner, appeared before the Commission explaining the rezoning request; he noted that he and his wife have proffered that the property will only be used for an assisted care residence or single family residence; and

WHEREAS, Commission Member Thomasson asked Dr. Richards if he could tell them what type of residents would be living in the facility, i.e. ambulatory, non-ambulatory, critical, etc., and Dr. Richards noted that the residents would be ambulatory; he stated that the residents would probably need some assistance in preparation of meals, medications, etc.; Commission Member Thomasson asked if they would be able to drive, and Dr. Richards noted that he did not think they would be able to drive; and

WHEREAS, Dr. Richards further noted that the patients would not be under hospice care or a nursing home, Medicare, etc.; and

WHEREAS, Commission Member Thomasson asked if they would be able to walk around the property, and Dr. Richards noted that this was correct; and

WHEREAS, Commission Member Robertson asked Dr. Richards if he presently had any other properties that were being used for this purpose, and Dr. Richards noted that he did not; he stated that the idea came to mind as he has a 91-year old father who would like to live in a home; he saw this is as a need for people who do not necessarily want or need a nursing facility and would prefer to live in a home; and

WHEREAS, Commission Member Thomasson asked Dr. Richards what he envisioned for the future; Dr. Richards stated that he is allowed up to three residents without licensure;

however, there are quite a number of steps that must be taken in order to get licensed; he noted three residents would be the limit for now until such time that he might have the energy or wherewithal to proceed with licensing; if he were to apply for a license, the property would possibly accommodate maybe five residents plus a caretaker, but this is down the road and is only a possibility; and

WHEREAS, Commission Member Daulton asked if the caretaker would live there, and Dr. Richards noted that they would; Commission Member Daulton asked there would be one or two caretakers, and Dr. Richards noted that this would depend on whether the caretakers were married or not, so it could be one or two; he further noted that he would probably have someone to come in and assist but they would not live there; Commission Member Robertson asked if the caretakers would be medically trained or nurses, etc.; Dr. Richards noted that they would not have to be medically trained unless the facility would become licensed; he would prefer that they have some medical knowledge or maybe be a certified nursing assistant, etc.; and

WHEREAS, Commission Member Daulton asked if the patients were to get to a point that they needed assistance from hospice or etc., would they need to be moved from the assisted care residence; Dr. Richards noted that if they required more care, they would probably have to be moved from the residence; some patients could possibly have outside agencies providing care, but they would not be a nursing home type of patient; and

WHEREAS, Commission Member Thomasson noted that he sees these patients as being pre-social worker need and then perhaps progressing to more need; he asked if this is the case, would there be an exit strategy for each of the candidates for future care as it becomes necessary; Dr. Richards noted that he did not have all the answers, but he felt like it would be on a case by case basis; obviously, if someone needed 24 hour assistance, then they would have to go somewhere else that could provide that type of care; he noted that a lot of people in nursing homes ambulate around and take care of their own things for the most part and just need assistance with some details of life; and

WHEREAS, Commission Member Daulton asked if the patients would be strictly elderly or would he also consider mentally-challenged residents; Dr. Richards noted that he would not

have mentally challenged as he felt this would be a whole different area of care;

WHEREAS, Chairman Smith asked if there were attendees in the audience who wished to speak; after a show of hands, he asked the audience not to repeat what had already been said; it was noted that staff had received individual petitions from 75 neighbors, and a letter with concerns had been received from some of the neighbors; and

WHEREAS, Donald "Jim" Bean of 1235 Boulevard appeared before the Commission in opposition to the request; he noted that most of the neighbors surrounding his property are opposed to having a nursing facility in their block; he believes that the 70 some people who have signed the petitions are in agreement; they are not opposed to Dr. Richard's benevolence in trying to do a good deed for older people; he noted that his wife has worked as a dietitian at Brandon Oaks and Franklin Memorial Hospital, and she can tell everyone that they have a time maintaining people who are in this age bracket even with a full staff; he does not think that his neighborhood needs this type of facility; and

WHEREAS, John Richardson of 1306 Boulevard appeared before the Commission in opposition to the request; he noted that part of our civic duty as Salem residents is to accept some change, and when he moved to the Boulevard four years ago, he accepted the Civic Center, the baseball stadium, the football stadium, the horse show, the dog shows, the fireworks, and the Salem Fair; he believes that this is enough to expect out of the residents of the Boulevard, Park Place, and the side streets off the Boulevard; he believes that Dr. Richards will need to have a 10-foot chain link fence across the front of the property to keep the residents from wondering out into the Boulevard and getting hit; further, with .93 acre, he could build another house just as big as the one that is there and never cross over the boundaries; he noted what has happened by allowing business zoning on the Boulevard going east from Route 419; he further noted there is already a duplex on the corner of Pearl and Boulevard as well as other rental property, and he believes that enough is enough; and

WHEREAS, Nita Bailey of 1204 Turner Street, adjoining property to 1325 Boulevard, appeared in opposition to the request; she noted that she and her husband, Freal Bailey, are strongly against the proposed use for all the reasons that have been noted previously; she feels it will affect the value of their property, if they decide they want to sell; future owners who

might have children would not want to be subjected to an assisted living facility; she noted that they have had issues about the upkeep of the property with the previous owners; she feels that if the rezoning is granted, then Dr. Richards can construct other buildings on the property that would certainly take away from the properties around it; and

WHEREAS, Leslie Jones of 1225 Boulevard appeared in opposition to the request; he noted that he has worked too hard and has a lot invested in his property; he said that Dr. Richards stated that he will have three patients but how do the neighbors know if it will be three or ten or fifteen; he feels the request should be denied; and

WHEREAS, Courtney Pugh of 1305 Turner Street appeared in opposition; she noted that she had met with Ben Tripp yesterday, and she thought the Commission had received some notes from that meeting; after hearing Dr. Richards speak in regards to the type of patients and also having a mother who worked in the nursing facilities particularly with elderly patients, she noted that if they are ambulatory that they only need help with their wash or their meal, then this is what home health is for; this can be done in their own homes not a facility right up the street from her house with people having to come in and out to take care of them; he has not addressed how he is going to take care of the linen service or the cooking and the meals for the patients; she asked if there would be a caregiver there 24 hours a day if someone should have a stroke in the middle of the night; will the caretakers be medically trained in what to do other than to pick up the phone and call 911; she noted that fireworks and noises may set these residents off; she has a autistic child so she knows the type of conflicts that she deals with and she thinks this could be an issue for Dr. Richards; further, he has not addressed how he will handle the parking for these people; and further, her neighborhood in Park Place borders the back of this property and Dr. Richards did not talk to any of them in regards to this request; she feels this is not a good example of a good citizen; and

WHEREAS, Ann Thomason of 1320 Boulevard appeared before the Commission in opposition; she read to the Commission the letter Dr. Paul Richards delivered to the neighbors on Saturday, December 13, 2008 (a copy of which has been submitted for the record); she also read the letter of opposition submitted by several of the concerned neighbors (a copy of which has been submitted for the record); she further discussed the information noted in the letter

with regards to the types of patients, patient care, licensing regulations, fencing to contain patients, devaluing property values of adjacent properties, setting a precedent for business rezoning in this area; etc.; and

WHEREAS, Diana Thomason, co-owner of the property located 1320 Boulevard, appeared in opposition to the request; she noted she would like to read into the record a letter she had left with staff earlier in the day; she read the letter to the Commission (a copy of which has been submitted for the record); she noted that the letter submitted to the City with the rezoning package indicated that Dr. Richards might in the future apply for licensure as an assisted living facility, which might house as many as five or six residents; however, the note that was left with the neighbors in December did not indicate this; she feels this is misleading; she noted that before she retired, she was a licensing specialist for the Virginia Department of Social Services in Richmond; her job was licensing for child day care centers, however, they shared offices with the licensing specialists who did licenses for homes for adults, which is now assisted living facilities; she noted that they were each required to be "in charge" one day a month; it did not matter whether the person was a children's licensing specialist or adult licensing specialist, the person in charge took all the calls that day that came in regarding any type of licensing; she noted that some of the complaints that came in regarding assisted living facilities were almost unbelievable; to say that a neighborhood can be disrupted and behavior can be dangerous is an understatement; she further discussed problems associated with homes for adults; she noted that they have a nice neighborhood, and they feel that to approve this request will be a big mistake; further, they believe it will destroy the flavor of their neighborhood; and

WHEREAS, Chairman Smith noted that some things had been said that are not accurate; the Commission is here related to the rezoning of the property; he stated that the issues related to care, etc. are outside the scope of this body, but they understand what the neighbors are saying; he noted that he wanted to give everyone an opportunity to speak but that he also wanted to avoid a back and forth contentious situation; he felt that everyone who wanted to speak had spoken, and he asked Dr. Richards if he would like to clarify or discuss any of the issues; and

WHEREAS, Dr. Richards noted that he understood the concerns of the neighbors; he stated he had visited a few of homes that care for adults; if you are driving down the street, these homes appear just like any other home other than they are caring for elderly people; he noted that they do not need fencing, the properties are in order, etc.; he does not foresee any real change to the flavor of the community as such; he also felt that it is a nice way to care for the elderly in this type of environment; this type of residence does not seem like an institution but rather more like a home; it is his understanding, if the property were sold, the same conditions would apply; he noted that he had mentioned the possibility of licensing to be truthful, but he considers that a whole different step he does not necessarily want to take; and

WHEREAS, Commission Member Robertson noted he wanted to clarify a comment that was made that he considers to be a little gray; the point was that once a property is rezoned, then the zoning is with the property forever; he noted that properties are always being rezoned and it goes along with the need and how it fits in the community; further, properties can be rezoned again and again, and as the need changes, it is subject to being rezoned; and

WHEREAS, Commission Member Robertson noted that he had some serious concerns about this request, and he knew that this is a pretty solid neighborhood; the neighborhood is directly across from the Taliaferro Complex and was there before the complex was even built; further, they have endured with the project and have done it well; he seriously questions the City even considering rezoning in this area because he feels that once we rezone properties, we will see more people come forward and ask to rezone; then we will begin to see it change up the Boulevard; he personally feels the property in question is best suited for residential;

WHEREAS, Vice Chairman Murphy noted that he applauds Dr. and Mrs. Richards for their attempt; he noted that in his current occupation he calls on this type of business; there are a number of homes that he calls on exactly like what is being proposed, and just like Dr. Richards noted, it is hard to distinguish this from any other home in a neighborhood; this is an alternative to nursing homes; he takes issue because he feels that the problem is only going to get worse; he further discussed the problems associated with caring for the elderly, etc.; however, he personally feels this is a zoning issue, and he believes that the property is better suited for single family residential; and

WHEREAS, Commission Member Daulton stated that she agreed with Commission Member Robertson and Vice Chairman Murphy; she noted in the City we have always prided ourselves that we have not allowed spot zoning, and to start allowing spot zoning only sets a precedent that could start the ball rolling further down the road; she also applauds Dr. Richards, but she agrees that this is a zoning issue, and it is a single family residential neighborhood; she further noted that when the City last updated the Comprehensive Plan and the Commission was looking at the land use maps, staff and citizens felt this was the best use of the properties in this area;

ON MOTION MADE BY COMMISSION MEMBER ROBERTSON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Paul D. and Claudia Richards, property owners, for rezoning the property located at 1325 Boulevard-Roanoke (Tax Map # 196-1-4) from RSF Residential Single Family District to RMF Residential Multi-Family District with proffered condition be denied as presented – the roll call vote: all aye.

There being no further business to come before the Commission, the same on motion adjourned at 8:02 p.m.

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Executive Secretary

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Chairman