

**Christiansburg Planning Commission
Minutes of May 31, 2016**

Present: Matthew J. Beasley
Harry Collins
David Franusich
Hil Johnson
Craig Moore, Chairperson
T.L. Newell
Jennifer D. Sowers, Vice-Chairperson
Sara Morgan, Secretary ^{Non-Voting}

Absent: Ann Carter
Virginia Peeples
Joe Powers

Staff/Visitors: Andrew Warren, Planning Director
Randy Wingfield, Assistant Town Manager/Zoning Administrator
Will Drake, staff
Eric Griffith, Tow 360, LLC
William Grubb, 409 Roanoke Street

Chairperson Moore called the meeting to order at 7:01 p.m. in the Christiansburg Town Hall at 100 E. Main Street, Christiansburg, Virginia.

Public Comment

Chairperson Moore opened the floor for public comment. With no comments, Chairperson Moore closed the floor for public comment.

Site Visit at 409 Roanoke Street – Planning Commissioners will travel to site and conduct visit of the proposed Conditional Use Permit request to be discussed in item #4. Meeting will reconvene at Town Hall after site visit.

Chairperson Moore introduced the discussion. Mr. Warren stated Planning Commission would remain in open meeting during the site visit to 409 Roanoke Street. Planning Commission and staff traveled to 409 Roanoke Street. The property owner, Joe Curtis, was on site.

Mr. Griffith stated activity from the storage units at 405 Roanoke Street generates the noise issues discussed during the previous Planning Commission meeting.

Mr. Warren indicated the general vicinity of the boundary between the R-2 Two-Family Residential District and the B-3 General Business District on the property.

Site Visit at 409 Roanoke Street – Planning Commissioners will travel to site and conduct visit of the proposed Conditional Use Permit request to be discussed in item #4. Meeting will reconvene at Town Hall after site visit - (continued).

Commissioner Collins inquired about the location of the residential areas adjoining the property. Mr. Griffith indicated the placement of the homes on Miller Street, S.E. and Circle Drive, S.E.

Planning Commission viewed the separate impound lots and examined the visibility of the property from Roanoke Street and the adjoining residential properties.

Commissioner Fransich asked if a towing business currently operates on the property. Chairperson Moore stated an existing, grandfathered towing business operates out of Suite B-2 and identified the impound lot utilized by the existing towing business. Mr. Warren stated a Conditional Use Permit is required in order to permit a second towing business to operate on the property.

Vice-Chairperson Sowers asked if a person is living in the recreational vehicle (RV) parked on the property. Mr. Warren stated he was not aware of anyone living in the RV.

Commissioner Newell noted the property had been cleaned since she last viewed it.

Commissioner Johnson inquired if there was a limit on the number of stored vehicles. Ms. Morgan stated there is a limit on the number of inoperable vehicles.

Commissioner Newel inquired about the setbacks for the B-2 Central Business District and B-3 General Business District. Ms. Morgan stated both districts have 0-foot side and rear setback. Ms. Morgan noted the B-2 Central Business District requires a 10-foot setback from the boundary of a residential district and the B-3 General Business District requires a 20-foot setback from the boundary of a residential district.

Planning Commission returned to Town Hall.

Approval of Planning Commission Minutes for May 16, 2016 meeting.

Chairperson Moore introduced the discussion. Commissioner Newell made a motion to approve the May 16, 2016 Planning Commission meeting minutes. Vice-Chairperson Sowers seconded the motion, which passed 5-0. Commissioners Beasley and Fransich abstained as they were not present for the previous meeting.

Discussion on a Conditional Use Permit request by Tow 360, LLC, agent for Curtis Properties, LLC, for a towing service at 409 Roanoke Street (tax parcel 527 – ((A)) - 210) in the B-3 General Business District. The public hearing for this item was held at the Planning Commission meeting on Monday, May 16, 2016.

Chairperson Moore introduced the discussion. Ms. Morgan reviewed the memorandum to Planning Commission which provided additional information requested by Planning Commission at the previous meeting.

Commissioner Collins asked if multiple towing businesses are allowed on a single property. Ms. Morgan stated the Police Department allows multiple towing businesses on a single property if the property contains different addresses.

Commissioner Newell inquired about the grandfathered towing business. Mr. Warren stated a towing use is grandfathered on the property. Mr. Warren stated the Conditional Use Permit approved in 2005 permitted the towing of repossessed automobiles and contractor equipment.

Mr. Wingfield stated the repossession business was originally operated by Alpha 2 Omega from 2005-2010. Mr. Wingfield stated Bullet Recovery has operated on the property since 2006. Mr. Wingfield noted Extreme Trucking operated on the property from 2013-2014. Mr. Wingfield stated business license records only extend back to businesses that were active in 2006.

Mr. Wingfield stated there has been a towing business on the property for many years. Mr. Wingfield stated there was a towing business with a fenced lot operating on the property when he began working for Christiansburg in 1998.

Commissioner Newell stated the Conditional Use Permit was for repossession and storage and there have been three businesses operating under the repossession Conditional Use Permit from the date it was approved. Mr. Wingfield stated there have been three businesses operating under the Conditional Use Permit, but not at the same time. Mr. Wingfield stated no more than two businesses have operated on the property at the same time. Mr. Wingfield stated one business was considered grandfathered and the other business operated under the Conditional Use Permit.

Commissioner Collins noted the applicant was highly recommended by Captain Altizer and Sergeant Townley of the Christiansburg Police Department.

Mr. Wingfield stated the 2005 Conditional Use Permit would be considered void as it has not been used for over two years. Commissioner Newell inquired if Bullet Recovery was operating under the Conditional Use Permit. Mr. Wingfield stated Alpha 2 Omega was operating under the Conditional Use Permit and he would consider Bullet Recovery operating as the grandfathered towing business.

Discussion on a Conditional Use Permit request by Tow 360, LLC, agent for Curtis Properties, LLC, for a towing service at 409 Roanoke Street (tax parcel 527 – ((A)) - 210) in the B-3 General Business District. The public hearing for this item was held at the Planning Commission meeting on Monday, May 16, 2016 - (continued).

Chairperson Moore read the suggested conditions.

1. This permit shall be valid for a single business to operate a towing service.
2. This permit shall only be valid to the portion of the property zoned B-3 General Business.
3. The property shall be maintained in a clean, sanitary, and sightly manner.
4. All waste petroleum products and/or chemicals shall be disposed of properly and are not to accumulate upon the premises. Provisions shall be made for the capture of leaking petroleum products and/or chemicals.
5. There shall be no storage of vehicles upon the premises except for vehicles left for temporary storage. All vehicles on the property shall have a State inspection decal that is either valid or dated within 90 days of its expiration. Towed vehicles shall remain on-premises no longer than three months.
6. There shall be no loud offensive noises so as to constitute a nuisance to the residential properties in the vicinity.
7. There shall be no discernible noises to residential properties in the nearby vicinity between 7:00 p.m. and 7:00 a.m.
8. This permit shall be subject to review by the Planning Commission in one year.

Commissioner Newell inquired about restricting the Conditional Use Permit to a specific suite address. Commissioner Newell noted the State Police requirements presented during the Conditional Use Permit request for a towing service at 980 Roanoke Street appear to differ from the Christiansburg requirements related to the number of allowable towing businesses on a single property. Commissioner Moore stated limiting the Conditional Use Permit to a specific address may restrict the applicant if the business were to move or expand into additional suites on the property.

Commissioner Fransich inquired if the present Conditional Use Permit request would supersede the grandfathered towing business. Mr. Wingfield stated the Conditional Use Permit would not supersede the grandfathered status of the original towing business. Mr. Wingfield noted the existing towing business could continue to operate if the Conditional Use Permit request were denied. Mr. Wingfield noted the grandfathered towing business is not specific to a particular business and if Bullet Recovery were to leave the property another commercial towing service could operate under the grandfathered status if they commenced operations within two years of the current business leaving.

Discussion on a Conditional Use Permit request by Tow 360, LLC, agent for Curtis Properties, LLC, for a towing service at 409 Roanoke Street (tax parcel 527 – ((A)) - 210) in the B-3 General Business District. The public hearing for this item was held at the Planning Commission meeting on Monday, May 16, 2016 - (continued).

Mr. Wingfield stated two towing businesses could operate on the property if the Conditional Use Permit were approved. Mr. Wingfield stated if one of the towing businesses ceased operations and was not replaced by another towing business within two years the Conditional Use Permit would be void but the grandfathered towing business could continue. Mr. Wingfield stated he considers Bullet Recovery to be the grandfathered towing business and Tow 360 to be covered under the Conditional Use Permit, but he would need to consult with the Town Attorney.

Planning Commission discussed limiting the Conditional Use Permit to 409 Roanoke Street, Suite C. Mr. Wingfield suggested limiting the Conditional Use Permit to the tow lot designated for 409 Roanoke Street, Suite C.

Commissioner Franusich inquired why Bullet Recovery is grandfathered. Mr. Wingfield stated there has been a towing business operating on the property for decades and it predates the property's rezoning to B-3 General Business.

Mr. Warren stated Town Code distinguishes between a towing service and a repossession business. Mr. Warren noted a large portion of Mr. Griffith's business includes repossession.

Commissioner Newell stated there is an existing grandfathered towing business and there was a 2005 Conditional Use Permit for vehicle repossession which is now void. Mr. Wingfield stated a repossession business on its own does not require a Conditional Use Permit but the associated towing does require a Conditional Use Permit. Commissioner Newell clarified the present Conditional Use Permit is necessary because the 2005 Conditional Use Permit is void.

Commissioner Johnson asked if the entire property would become grandfathered if the grandfathered towing business were to merge with the new towing business. Mr. Wingfield stated the grandfathered towing business uses lot 2-B and lot 2-B would be grandfathered, but not the whole property. Chairperson Moore stated the grandfathered use could not expand and retain its grandfathered status.

Commissioner Newell noted the southern portion of the property zoned R-2 Two-Family Residential is landlocked. Commissioner Newell noted the residential zoning serves as a buffer to the adjacent homes. Commissioner Newell stated the property owner could request a rezoning to B-3 General Business. Commissioner Newell inquired if this would allow the applicant to utilize the entire property for towing under the Conditional Use Permit. Chairperson Moore suggested condition #2 be modified to read "This permit shall only be valid to the portion of the property currently zoned B-3 General Business". Planning Commission agreed.

Discussion on a Conditional Use Permit request by Tow 360, LLC, agent for Curtis Properties, LLC, for a towing service at 409 Roanoke Street (tax parcel 527 – ((A)) - 210) in the B-3 General Business District. The public hearing for this item was held at the Planning Commission meeting on Monday, May 16, 2016 - (continued).

Chairperson Moore asked if Planning Commission would like to consider a screening condition. Commissioner Johnson noted there was a fence along the property. Planning Commission did not feel a screening condition was necessary.

Commissioner Fransich stated he was concerned with the proximity to the homes and the implications to future land use.

Chairperson Moore asked if Planning Commission would like a map to denote the Suite C impound lot to which the Conditional Use Permit applies. Planning Commission agreed to limit the towing area to the gravel portion of the impound lot currently utilized by Suite C and to include an accompany map referenced by this condition. Mr. Griffith stated he was comfortable with this condition.

Commissioner Newell asked if the RV could be addressed. Chairperson Moore stated properly tagged and licensed personal property could be stored on the property. Ms. Morgan noted the Building Department responds to persons permanently living in RV's.

Commissioner Johnson made a motion to recommend Town Council approve the Conditional Use Permit with the drafted conditions, including the addition of the word "currently" to condition #2 noted above and the addition of a condition limiting the towing business to the gravel portion of the Suite C impound Lot with an accompanying map. Commissioner Collins seconded the motion, which passed 5-2. Commissioners Fransich and Newell voted no.

Chairperson Moore stated Planning Commission has recommended Town Council approve the request. Chairperson Moore encouraged the applicant to attend the Town Council meetings.

2017 Capital Improvement Plan – Review and Recommendation

Chairperson Moore introduced the discussion. Mr. Wingfield stated Planning Commission may review the Capital Improvement Plan (CIP) under the Code of Virginia.

Mr. Wingfield stated the department heads provide five-year capital sheets. Mr. Wingfield stated each department head provides their list of proposed capital expenditures with a priority ranking. Mr. Wingfield noted the Administration Department also includes budget items.

2017 Capital Improvement Plan – Review and Recommendation - (continued).

Commissioner Johnson inquired who has final say on the CIP. Mr. Wingfield stated Town Council makes the final decision on the CIP. Mr. Wingfield noted he works with the Town Manager and the Treasurer to produce the draft budget which is brought to the Finance Committee. Mr. Wingfield stated the Finance Committee will fine-tune the budget and bring it before Town Council.

Commissioner Johnson inquired if the CIP is based on previous spending. Mr. Wingfield stated there is a general spending target. Mr. Wingfield stated this year the amount is roughly \$5.5 million and next year is scheduled to be \$5.6 million. Mr. Wingfield stated the Town generally increases the amount each year. Mr. Wingfield noted the spending amount does not include grant or revenue sharing funds.

Commissioner Johnson asked if grant funding has increased year over year. Mr. Wingfield stated grant funding may vary year to year, but the general trend has been an increase in grant funding.

Mr. Warren stated Planning Commission has been asked in previous years to review the CIP and make a finding that the CIP is in accordance with the long range goals of the Comprehensive Plan. Commissioner Beasley made a motion to affirm the 2017 Capital Improvement Plan is in accordance with the Comprehensive Plan. Vice-Chairperson Sowers seconded the motion.

Chairperson Newell stated she has a lot of respect for the effort Town Council, the Finance Committee, and the department heads put into the budget preparation process. Commissioner Newell stated she does not feel involved enough with the information to make an affirmative or negative vote and will abstain from voting. Commissioner Fransich agreed with Commissioner Newell.

Chairperson Moore stated he reviews the goals of the Comprehensive Plan and matches them to the general contributions of the line items in the CIP. Chairperson Moore noted there are line items for water, sewer, sidewalk, and trail improvements. Chairperson Moore noted funds are being allocated to line items that contribute to the goals and objectives of the Comprehensive Plan. Mr. Wingfield noted that Department Heads have input into the Comp Plan and all receive copies of the Comp Plan for consideration in developing their respective budgets.

Commissioner Newell noted Planning Commission is receiving this information at the end of the process. Mr. Wingfield noted the State of Virginia does not require a review by Planning Commission and there would not be a penalty if Planning Commission did not pass the motion.

Chairperson Moore stated there may be an opportunity for Planning Commission to review the CIP in greater detail in the future.

2017 Capital Improvement Plan – Review and Recommendation - (continued).

Commissioner Johnson stated a lot of hard work has gone into the CIP but he is not sure if Planning Commission has reviewed it thoroughly enough to affirm it is in line with the Comprehensive Plan.

The motion passed 5-0, with Commissioners Fransulich and Newell abstaining.

Chairperson Moore stated he appreciated the feedback. Mr. Warren stated the Planning Department can provide a future analysis of the CIP to highlight its general connections to the Comprehensive Plan.

Commissioner Newell stated the CIP contains items like snow plows with limited use and limited expense and longer-range items that contribute to the strategies and goals of the Comprehensive Plan. Commissioner Newell stated she would like the line item rankings proposed by the department heads to include a connection to the elements of the Comprehensive Plan. Commissioner Newell suggested a summary analysis of the CIP expenditures distributed among the goals and objectives of the Comprehensive Plan.

Mr. Wingfield stated he intends to work with the new Town Manager to develop a five-year outlook of the equipment and projects and will bring this information to Planning Commission. Mr. Warren stated a multi-year CIP outlook would assist future reviews of the CIP.

Commissioner Johnson noted the CIP demonstrates Christiansburg is making wise capital expenditures.

Commissioner Collins stated Mr. Wingfield and Mr. Helms are big proponents of infrastructure projects and the projects support the Comprehensive Plan. Commissioner Newell suggested planning commissioners highlight the amount of grants secured by the town as a way to stretch dollars when looking at the proposed budget items.

Other business

Chairperson Moore introduced the discussion. Mr. Wingfield stated the North Franklin Street/Cambria Street Interchange and North Franklin Street Entrance Consolidation projects were included in the House Bill Two (HB2) draft six-year plan. Mr. Wingfield stated the Connector Route was not included in the draft six-year plan, even though it scored very high. Mr. Wingfield noted the ramp off the 460 Bypass was also included in the draft six-year plan.

Chairperson Moore stated town staff did a superb job with the applications.

Other business - (continued).

Ms. Morgan stated a Conditional Use Permit for Ignite - Life Pacific College is scheduled for the next Planning Commission meeting on June 20, 2016. Ms. Morgan noted the B-2 Central Business District requires a Conditional Use Permit for classrooms and libraries. Ms. Morgan noted the Conditional Use Permit is on an accelerated schedule and Planning Commission and Town Council are both scheduled to hold their public hearing and decision on the same night of their respective meetings.

Ms. Morgan stated an Urban Development Areas (UDA) Open House is scheduled for June 20, 2016. Ms. Morgan noted the Open House will be held before the Planning Commission meeting, with the location and exact time to be determined. Ms. Morgan noted the Recreation Center is a possible location. Mr. Warren stated the UDA consultant will prepare conversational boards and staff is looking to schedule the open house from 3:00-6:00 p.m.

Commissioner Newell asked if the Open House will be marketed to the community. Mr. Warren stated staff will work with the Public Relations Director to publicize the event.

There being no more business, Chairperson Moore adjourned the meeting at 8:43 p.m.

Craig Moore, Chairperson

Sara Morgan, Secretary ^{Non-Voting}

AN ORDINANCE TO AMEND CHAPTER 42, ZONING, -ARTICLE I, IN GENERAL, SECTION 42-1, DEFINITIONS, ARTICLE XIX, PROVISIONS FOR APPEAL, SECTION 42-566, MEMBERSHIP; TERMS; REMOVAL AND DISQUALIFICATION OF MEMBERS; OFFICERS; SECTION 42-567, POWERS AND DUTIES; SECTION 42-571, APPEAL FROM DECISION OF BOARD; AND TO ADOPT SECTION 42-572, BOARD OF ZONING APPEALS, EX PARTE COMMUNICATIONS, PROCEEDINGS; TO CONFORM THESE SECTIONS OF THE TOWN'S ZONING ORDINANCE TO THE APPLICABLE PROVISIONS OF THE VIRGINIA CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the General Assembly of the Commonwealth of Virginia amended Article 7, Zoning, of Chapter 22, Planning, Subdivision of Land and Zoning of the Virginia Code to change the definition of "variance," amend the powers and duties of the board of zoning appeals, and prohibit certain ex parte communications with the board of zoning appeals; and

WHEREAS, the Town Council determines that it is in the best interest of the Town to amend its Zoning Ordinance in the Town Code to conform to the legislative changes; and

WHEREAS, notice of the proposed changes to the zoning ordinance were published pursuant to Virginia Code § 15.2-2204 and public hearings were advertised and held on _____ and _____; public comments having been considered by the Planning Commission and Town Council;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Christiansburg that the Chapter 42, "Zoning," Article I, "In general," Section 42-1, "Definitions;" Article XIX, "Provisions for Appeal," Section 42-566, "Membership; terms; removal and disqualification of members; officers;" Section 42-567, "Powers and duties;" and Section 42-571, "Appeal from decision of board," is hereby amended and reenacted; and Section 42-572, "Board of zoning appeals, ex parte communications, proceedings," is hereby adopted as follows:

ARTICLE I. – IN GENERAL

Sec. 42-1. – Definitions

Variance means a reasonable deviation from the provisions of this chapter regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of this chapter would ~~result in unnecessary or unreasonable hardship to the property owner~~ unreasonably restrict the utilization of the property and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and purpose of the ordinance, and would result in substantial justice being done.~~ The term "variance" shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

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ARTICLE XIX. - PROVISIONS FOR APPEAL

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Sec. 42-566. – Membership; terms; removal and disqualification of members; officers

- a) ~~A~~ The board of zoning appeals shall consist of five members and shall be appointed by the circuit or corporation court of the county or town Montgomery County Circuit Court. At the request of town council, the circuit court may also appoint not more than three alternates to the board of zoning appeals. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term. The qualifications, terms and compensation of regular and alternate members shall be the same. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.
- (b) The term of office for all regular and alternate members shall be for five years.
- (c) Members may be removed for cause by the appointing authority upon written charges and after a public hearing.
- (d) Members may be reappointed to succeed themselves.
- (e) Members of the board shall hold no other public office in the locality, except that one may be a member of the local planning commission.
- (f) A member whose term expires shall continue to serve until his successor is appointed and qualifies.
- (g) Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.
- (h) The board shall choose annually its own chair and a vice-chair who shall act in the absence of the chair.
- (i) The board may elect one of its members or a qualified individual who is not a member of the board as secretary, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board.

Sec. 42-567. - Powers and duties.

The board of zoning appeals shall have the ~~following~~ powers and duties as set forth in § 15.2-2309 of the Code of Virginia (1950) as amended from time to time.:

- (1) ~~To hear and decide appeals from any order, requirement, decision and determination made by an administrative officer in the administration or enforcement of this chapter or any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the zoning administrator was correct. The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision.~~
- (2) ~~To hear and decide applications for special exceptions upon which the board is specifically authorized to pass under this chapter. The board may impose such~~

~~conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with.~~

~~No variance may be granted except after notice and hearing, as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.~~

- ~~(3) To revoke a variance previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the special use permit. No special exception may be revoked except after notice and hearing, as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.~~
- ~~(4) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the chapter will result in unnecessary hardship; provided, that the spirit of the chapter shall be observed and substantial justice done, as follows:
 - ~~a. When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation or development of property immediately adjacent thereto, the strict application of the terms of the chapter would effectively prohibit or unreasonably restrict the use of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant; provided, that all variances shall be in harmony with the intended spirit and purpose of the chapter. No such variance shall be authorized by the board unless it finds:
 - ~~1. That the strict application of the chapter would produce undue hardship.~~
 - ~~2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.~~
 - ~~3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~~~
 - ~~b. No such variance shall be authorized except after notice and hearing, as required by Code of Virginia, § 15.2-2204, as amended. However, when giving~~~~

~~any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.~~

~~c.—No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the chapter.~~

~~d.—In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being, and shall continue to be, complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.~~

~~(5)—To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice, as required by Code of Virginia, § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.~~

~~(6)—No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the town council.~~

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Sec. 42-571. - Appeal from decision of board Certiorari to review decision of board.

~~(a)—Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer, officer, department, board or bureau of the town may seek a writ of certiorari to review the decision of the board pursuant to § 15.2-2314 of the Code of Virginia (1950), as may be amended from time to time. file with the clerk of the circuit or corporation court of the county a petition that shall be styled "In Re: [date]~~

~~Decision of the Board of Zoning Appeals of [locality name] " specifying the grounds on which aggrieved within 30 days after the final decision of the board.~~

- ~~(b) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals, or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.~~
- ~~(c) Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The town council, the landowner and the applicant before the board of zoning appeals shall be necessary parties to the proceedings. The court may permit intervention by any other person, or persons, jointly or severally aggrieved by any decision of the board of zoning appeals.~~
- ~~(d) The board of zoning appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof, or of such portion thereof, as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.~~
- ~~(e) If upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~
- ~~(f) In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to Code of Virginia, § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.~~
- ~~(g) In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, or application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance.~~
- ~~(h) Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court~~

~~finds that the appeal was frivolous, the court may order the person, or persons, who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.~~

Sec. 42-572. -- Boards of zoning appeals, ex parte communications, proceedings.

- (a) The non-legal staff of the town may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner, or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner, or his agent or attorney are all invited.
- (b) Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under Code of Virginia § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant, or other person aggrieved under Code of Virginia § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to Code of Virginia § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of Code of Virginia § 2.2-3707.
- (c) For the purposes of this section, "non-legal staff of the town" means any staff who is not in the office of the attorney for the town, or for the board, or who is appointed by special law or pursuant to Code of Virginia § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.
- (d) This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of Code of Virginia § 15.2-2309.

This ordinance shall become effective upon adoption. If any part of this ordinance is deemed unlawful by a court of competent jurisdiction all remaining parts shall be deemed valid.

Ord. 2016 - ____

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held _____, the members of the Council of the Town of Christiansburg, Virginia, present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mayor D. Michael Barber*				
Samuel M. Bishop				
Harry Collins				
Cord Hall				
Steve Huppert				
Henry Showalter				
Bradford J. Stipes				

*Votes only in the event of a tie vote by Council.

SEAL:

Michele M. Stipes, Town Clerk

D. Michael Barber, Mayor

**Christiansburg Planning Commission
Minutes of June 20, 2016**

Present: Matthew J. Beasley
Ann Carter
Harry Collins
Hil Johnson
Craig Moore, Chairperson
T.L. Newell
Virginia Peeples
Joe Powers
Jennifer D. Sowers, Vice-Chairperson
Sara Morgan, Secretary ^{Non-Voting}

Absent: David Franusich

Staff/Visitors: Andrew Warren, Planning Director
Will Drake, staff
Mike Larkin, On Main Street, Inc.; Life Pacific College
Jay Dickerson, Kesler Contracting

Chairperson Moore called the meeting to order at 7:01 p.m. in the Christiansburg Town Hall at 100 E. Main Street, Christiansburg, Virginia.

Public Comment.

Chairperson Moore opened the floor for public comment. With no comments, Chairperson Moore closed the floor for public comment.

Approval of Planning Commission Minutes for May 31, 2016 meeting.

Chairperson Moore introduced the discussion. Commissioner Beasley made a motion to approve the May 31, 2016 Planning Commission meeting minutes. Commissioner Johnson seconded the motion. Commissioner Newell stated a section of the minutes contained an incomplete statement in regards to the expired status of the 2005 Conditional Use Permit for 409 Roanoke Street. Commissioner Beasley withdrew his motion to approve the May 31, 2016 Planning Commission meeting minutes. Chairperson Moore stated the action to approve the minutes will be postponed until the next Planning Commission meeting in order for staff to address the clarification requested by Commissioner Newell.

Public Hearing on a Conditional Use Permit request by Kesler Contracting, agent for Michael Larkin, On Main Street, Inc., for a Private School [Zoning Ordinance Section 42-305(14)] to consist of classrooms and a library at 100 W. Main Street (tax parcel 527 - ((A)) - 66) in the B-2 Central Business District.

Chairperson Moore opened the public hearing. The applicant, Mike Larkin, introduced the request. Mr. Larkin stated he established Life Pacific College-Ignite in California in 2008 with support from the Foursquare Church. Mr. Larkin stated Life Pacific College-Ignite relocated to the CrossPointe property in Christiansburg two and a half years later. Mr. Larkin noted Life Pacific College-Ignite is a separate entity from L.I.F.E. Bible College East, which previously occupied the CrossPointe property.

Mr. Larkin stated the school is growing and enrollment is expanding by a minimum of ten percent annually. Mr. Larkin stated the property at 100 W. Main Street offers the opportunity for the school to expand and also improve the structure without disrupting its historic value.

Mr. Larkin stated students will arrive on August 20, 2016. Mr. Larkin stated the Conditional Use Permit request is for classrooms and a library and requested it be amended to include offices for administration of the school. Mr. Larkin stated they intend to add sprinklers to the sanctuary during a second phase of improvements to increase the rated occupancy. Mr. Larkin noted this will allow the sanctuary to accommodate various community events. Mr. Larkin stated the proposed use fits well with the original design of the building and noted Life Pacific College-Ignite is a Christian college and will hold service in the sanctuary.

Jay Dickerson, Kesler Contracting, stated he has evaluated the building in regards to safety issues. Mr. Dickerson stated he met with Billy Hanks, Christiansburg Fire Chief & Fire Marshall, and has addressed the safety concerns raised by Chief Hanks. Mr. Dickerson stated the proposed use will be an asset to Christiansburg.

With no further public comments, Chairperson Moore moved to close the public hearing. With no objections, Chairperson Moore closed the public hearing.

Planning Commission agreed to discuss the request. Chairperson Moore noted the safety and structural issues will be handled by the Fire Marshall and Building Official and stated Planning Commission should focus discussion on the land use application.

Commissioner Newell noted the staff report should be amended to state the property is within a Historic District. Ms. Morgan noted the error would be corrected.

Public Hearing on a Conditional Use Permit request by Kesler Contracting, agent for Michael Larkin, On Main Street, Inc., for a Private School [Zoning Ordinance Section 42-305(14)] to consist of classrooms and a library at 100 W. Main Street (tax parcel 527 – ((A)) - 66) in the B-2 Central Business District - (continued).

Ms. Morgan stated the single condition suggested by staff is a review of the Conditional Use Permit by Planning Commission in one year. Commissioner Newell stated the Conditional Use Permit for her property at 41 W. Main Street contained a single condition requiring conformity with all Building and Fire Codes. Commissioner Newell noted the property will house young people and requested a similar condition for the current request.

Commissioner Powers noted Planning Commission previously agreed to stop including redundant conditions in reference to other, current Code requirements. Commissioner Newell stated the project is phased and will be occupied before fire suppression has been installed. Commissioner Newell stated she would like a condition to help Planning Commission ensure the required building and fire safety provisions are being met.

Mr. Warren stated staff could bring any violations to Planning Commission's attention during the one-year review, at which time Planning Commission could determine if the violations would be cause for revocation of the Conditional Use Permit.

Commissioner Carter asked if the Conditional Use Permit would be immediately revoked if a violation was issued. Mr. Warren stated the property would have an opportunity to come into compliance. Commissioner Johnson asked if a year would be adequate time for the applicant to come into compliance with the Building and Fire Codes. Chairperson Moore stated the applicant would need to meet all applicable Code requirements before a Certification of Occupancy would be issued by the Building Official. Chairperson Moore noted the Building Code requirements may change as the use is expanded.

Commissioner Newell stated she would like the condition to reference "conformance with all applicable public safety requirements" and noted "conformance" implies due process will be given for violations. Commissioner Peoples inquired why this additional verbiage falls under the oversight of the Conditional Use Permit. Commissioner Collins stated enforcement of the Fire and Building Codes is the responsibility of the Building Official and Fire Marshall. Commissioner Collins stated Planning Commission should concern itself with the land use. Commissioner Newell stated part of Planning Commission's review is to ensure public safety and general welfare are being maintained.

Public Hearing on a Conditional Use Permit request by Kesler Contracting, agent for Michael Larkin, On Main Street, Inc., for a Private School [Zoning Ordinance Section 42-305(14)] to consist of classrooms and a library at 100 W. Main Street (tax parcel 527 – ((A)) - 66) in the B-2 Central Business District - (continued).

Chairperson Moore suggested the condition be worded, "This permit shall be subject to review by the Planning Commission in one year, including review of documented noncompliance with Town Code." Commissioner Newell stated the wording was satisfactory. Planning Commission agreed. Commissioner Newell stated a business license application will often uncover issues with non-compliance and noted a church does not need to apply for a business license. Commissioner Newell stated she would prefer a condition that gives the applicant adequate time to complete the improvements and also provides Planning Commission an opportunity to review any safety issues. Commissioner Newell noted she does not anticipate any issues.

Commissioner Carter stated she is very excited to see the property utilized. Planning Commission agreed.

Commissioner Johnson asked if it is the Fire Marshall's responsibility to halt the use of the property if there is a Fire Code violation. Commissioner Newell stated the property would be given time to come into compliance.

Commissioner Johnson inquired why a sprinkler system is required. Commissioner Moore stated the Building Code changes over time and the building may need to meet current fire suppression requirements. Mr. Dickerson stated the church has an occupancy rating of 500 occupants with the pews installed. Mr. Dickerson stated the occupancy rating will be reduced to 299 occupants when the pews are removed. Mr. Dickerson stated they will improve the egress and safety of the building by removing the pews and reducing the occupancy. Mr. Dickerson stated a sprinkler system will need to be installed in the sanctuary in order to bring the occupancy rating back to 500 occupants. Mr. Dickerson stated they plan to have the sprinkler system installed by mid-2017.

Commissioner Beasley requested details on the project phases. Mr. Dickerson stated phase one includes occupying the classrooms within the 299 occupancy limit and phase two includes adding a sprinkler system to the sanctuary in order to return the occupancy to 500 occupants.

Mr. Larkin stated phase two will also include remodeling the restrooms to make them compliant with the Americans with Disabilities Act (ADA). Mr. Larkin stated the purpose of phase two is to improve the safety of the building and increase the occupancy rating of the sanctuary. Mr. Larkin noted the increased occupancy rating will allow the sanctuary to be utilized by the greater community for various events.

Public Hearing on a Conditional Use Permit request by Kesler Contracting, agent for Michael Larkin, On Main Street, Inc., for a Private School [Zoning Ordinance Section 42-305(14)] to consist of classrooms and a library at 100 W. Main Street (tax parcel 527 – ((A) - 66) in the B-2 Central Business District - (continued).

Chairperson Moore asked Planning Commission if the proposed office use needs further clarification. Mr. Warren stated offices are incidental to the proposed use as a private school and an amendment to the request would not be necessary.

Commissioner Powers made a motion to recommend Town Council approve the Conditional Use Permit with the drafted condition. Commissioner Carter seconded the motion, which passed 9-0.

Chairperson Moore stated Town Council will hold the public hearing for the Conditional Use Permit request on Tuesday, June 28, 2016. Chairperson Moore stated Town Council will take Planning Commission's recommendation into consideration. Chairperson Moore advised the applicant to attend the Town Council public hearing.

Other business

Chairperson Moore introduced the discussion. Chairperson Moore stated the membership of the Development Subcommittee and Comprehensive Plan Subcommittee will be restructured and will include a chairperson and co-chairperson. Mr. Warren stated the standard meeting time for the subcommittees will be 6:00 p.m. before regularly scheduled Planning Commission meetings. Chairperson Moore asked the commissioners to submit their committee preference.

Chairperson Moore stated the subcommittees are designed to advance the planning process and allow specific issues to be explored in greater detail before bringing them to Planning Commission. Chairperson Moore noted the subcommittees are not intended to exclude discussion from Planning Commission.

Mr. Warren stated the revised sign ordinance will be the first order of business for the Development Subcommittee. Mr. Warren stated the amendment to incorporate Urban Development Areas into the Comprehensive Plan will be reviewed by the entire Planning Commission.

There being no more business, Chairperson Moore adjourned the meeting at 7:50 p.m.

Craig Moore, Chairperson

Sara Morgan, Secretary^{Non-Voting}