



TOWN OF WARRENTON

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MINUTES
PLANNING COMMISSION
TOWN OF WARRENTON
September 15, 2015 – 7:00 P.M.

The Town of Warrenton Planning Commission convened on Tuesday, September 15, 2015 at 7:01 PM in the Municipal Building.

The following members were present: Ms. Brandie Schaeffer, Vice Chair, Mr. John Kip, Ms. Susan Helander, Mr. Ali Zarabi, Mr. Lowell Nevill, and Mr. Brett Hamby. Mr. Yakir Lubowsky, Town Council Ex-Officio member was present, and Ms. Sarah Sitterle, Director of Planning and Community Development represented staff. Dr. John Harre was absent. Ms. Schaeffer served as Acting Chair.

A Quorum was present.

Approval of Minutes

The following revisions were recommended to the minutes from the August 18 and August 25, 2015 minutes:

Mr. Lubowsky recommended the following revisions –

August 18, 2015 Meeting – Page 25 – Fourth Paragraph

As Chairman of the Utilities Committee the water problem is an issue for the Planning Commission and he encourages the Commission to continue to look at the water issue.

August 25, 2015 – Meeting - Page 6 – Third Paragraph

The word ready should be *read*

and not one *sufficient* to overcome the multitude and variety of *challenges*

Mr. Nevill recommended the following revisions

August 18th 2015 Meeting – Page 17 – Third paragraph – change CIP to *Comprehensive Plan*

August 25, 2015 Meeting - Page 5 – 2nd Paragraph – 14th line – Add *not*

Mr. Zarabi made a motion to approve the minutes of August 18, 2015 and August 25, 2015 as amended. The motion was seconded by Mr. Kip. All voted in favor. Minutes approved.

Public Hearing

- A. **Special Use Permit (SUP 15-07)** – Home Business use in the R-6 District. The owner is proposing to relocate a professional law office to their residence at 298 Falmouth Street (GPIN 6984-51-5891) per Article 3-4.3.3 of the Zoning Ordinance. The subject property is 0.5853 acres and zoned R-6 Residential. The owner would have two non-family staff members working at the property and operate the business on an appointment only basis. The Future Conceptual Land Use Map in the Comprehensive Plan indicates the property is identified as medium density residential use, suitable for single family detached residential dwellings at densities up to five dwellings per net acre. The applicant and property owner is James P. Downey, Esq.

Ms. Sitterle provided the following staff analysis.

Ms. Sitterle noted that this was a request for a Special Use Permit (SUP) in accordance with Articles 3-4.3.3 and 11-3.10 of the zoning ordinance. The applicant is proposing to relocate his law office to his residence at 298 Falmouth Street as a home business use. The applicant is also proposing to have two non family employees working at the property and operating the business on an appointment only basis. What separates this from a home occupation are the two non family staff members. With a home business or home occupation, the applicant could work at home with a zoning permit and business license. However, this process and a Special Use Permit are required because of the two non family staff members working on the premises.

The property is located within the R-6 Residential District and is surrounded by adjacent properties zoned R-6. The next adjacent residential zoned area to this particular property is Leeds Square, which is a combination of residential multi-family and residential townhouse.

There are requirements for Home Businesses in the zoning ordinance similar to home occupation. The limitation on the number of non family staff members is three (3) and they are permitted to work on the premises up to 40 hours per week each, subject to the requirements for parking and traffic as provided herein.

The total area used for the business on the site shall not exceed 25 percent of the gross floor area of the dwelling unit.

No changes shall be made to the outside appearance of the dwelling or lot, nor other visible evidence of the conduct of the home business, other than one sign that complies with the sign regulations in Article 6 of the Ordinance.

No traffic shall be generated by such home business in greater volumes than would normally be expected from a residential use (10 vehicle trips per day per dwelling). Any need for parking generated by the home occupation or business shall be met by off street parking. One additional off-street parking space shall be provided for each non-family resident employee. Such parking space(s) shall not be located in the front yard, unless located on an existing driveway and shall not result in any reduction in the normal minimum required parking for residential dwellings.

There shall be no client or customer visits that generate traffic in excess of what would normally be expected from a residential use (10 vehicle trips per day per dwelling).

No equipment or activity used or conducted in such home occupation or business shall create noise, vibration, glare, fumes, odors, or electrical interference detectable to neighbors or passerby or the use of radio, TV, audio, computer or telephone equipment off the lot or in adjacent dwelling units.

The Future Land Use Map of the Comprehensive Plan designates the subject property as Medium Density Residential. This designation includes single family detached residential dwellings at densities up to five dwellings per net acre, contingent upon pedestrian and vehicular access, compatibility with surrounding properties and mitigation of potential impacts. This is also recognized as a transition zone and areas that border the Central Business District (CBD).

There are changes permitted to occur provided that the use of the area is economical feasible. Since area adjacent to this property is predominately of single family houses, that character must be protected, and approving non-residential uses should be done in a very limited fashion and in a manner that maintains the essential character of the residential areas. Small scale non-residential uses and home occupations and offices may be appropriate in some of these areas.

A home occupation, allowed by right in the R-6 District, would be considered an appropriate accessory use of the subject property. The only reason the proposed use is not considered a home occupation is that two non-resident, non-family employees would work in the office in addition to the applicant.

Ms. Sitterle mentioned that the applicant indicated the hours of operation will be 8:30 AM to 4:30 PM Monday through Friday. The staff will consist of one attorney, the applicant and owner of the property, and two non-residents, non-family paralegals. Client appointments are estimated to be six per week at a maximum. The anticipated small number of employee trips and client visits would have a minimal impact on traffic and circulation.

Parking requirements for the office use would involve one (1) space per three hundred (300) square feet gross floor area per Article 7-6 of the Zoning Ordinance. The proposal indicates that the office would occupy a portion of the first floor, which is 1879 square feet. If the office occupied half of the first floor three (3) spaces would be required. The applicant indicates that resident vehicles will be parked in the garage. The two non-resident, non-family employees would reasonably require two (2) spaces and clients would likely require (1) space at a time. The applicant indicates that a parking area behind the house can accommodate three (3) cars. If additional parking is needed there is parking available along Falmouth Street.

There will be no exterior alterations to the house. Lighting is a non-issue as the use will be internal and no additional outdoor lighting is proposed. The applicant has proposed to place a small name plate sign on the gate to identify the home business. Any signs under two (2) square feet in area are considered to be a display by definition in Article 12 of the Zoning Ordinance and not subject to regulations for signs in Article 6. This will require review by the Architectural Review Board, will likely fall within the administrative criteria, and will be reviewed by staff before it is installed.

Any interior modifications will require a building permit and all building code requirements must be met before occupancy may occur. The Building Official has been contacted by the applicant for

guidance on the specific code requirements.

It is anticipated that noise from this office use will not differ from the current residential use.

Ms. Sitterle indicated that the application was provided to all Town of Warrenton Departments and there were no comments from the Fire, Police, Parks & Recreation or Public Works & Utilities. The Economic Development Department recommended approval.

Staff Recommendation

Based on the criteria it is staff opinion that this is appropriate use for the R-6 Residential District, and recommends approval with the following conditions:

1. A building permit is required for any interior changes to the structure
2. Any signage will require a separate permit prior to installation
3. A Site Development Plan is required in accordance with Article 10-2.1 (2) of the Warrenton Zoning Ordinance.

Planning Commission Comments

Mr. Zarabi recalled similar applications the Commission had reviewed with mixed outcomes. For example, Ms. Maybach property on Winchester Street and the law practice of Devonshire in the Brookshire neighborhood. He indicated he was trying to find out if this was being reviewed in comparison to some of the other recent applications where two were approved and one denied and asked what the standards were. He indicated he did not have an issue with the application, but as a matter of precedence he asked for clarification on how the language is interpreted. If this was to become further evidence of precedence, then how do we control potentially over whelming additional Special Use Permits that may come forward as a result.

Ms. Sitterle stated that as a standard, each case is reviewed on a case by case basis, based on its location, appropriateness of the propose use, and potential impacts. She indicated this has to be considered for both short term and long term, because it will go with the land. There have been applications in the past, such as Dr. Maybach property, where a sunset clause was set with a five year time period and an evaluation would occur after a certain period of time to determine operation impacts. Ms. Sitterle indicated this was something that has been used in the past, not just on that occasion, but others as well. Each time these are reviewed impact, location and appropriateness for the setting, and particular area where other type of this use has occurred are all considered.

Mr. Zarabi stated sunset clauses have become a favorable way to regard these applications because of past legal interpretations of sunset clauses. However, he remembered sunset clause was not an option for the Winchester Street application based on legal advice. He asked if there is clarification on the statue to make the Commission more comfortable in taking these steps.

Ms. Sitterle stated there was a provision in the ordinance that allows a sunset clause, but it has to be determined on a case by case basis. She referred to Article 11-3.10.5, page 11-35, *Period of Litany which states as condition of approval a Special Use Permit may be granted for a specific period of time with expiration of the approval to occur at the termination of a stated period. In such cases the extension may be granted prior to expiration by the original approval body upon written application without notice or hearing. After expiration no extension may be granted without*

complying with the requirements for an additional application for a special use permit unless the qualified application for renewal is actively under consideration by the approving body.

Mr. Zarabi asked if the applicant has agreed to a time limitation.

Mr. Downey (applicant) stated yes.

Mr. Zarabi stated that the Commission just went through a large project for Falmouth Street, and there is still some unknown about the future impact of the houses that will be built across Oliver City Road. He stated he was cautious about Falmouth Street and the increasing encroachment and utilization of Falmouth Street for additional parking. He indicated he would be comfortable if these types of uses and impacts could be limited. He stated he assumed it would not be a problem for the applicant but expressed concerns for the other residents that do not have the long driveway and ability to stack vehicles, and it would become an issue if this business utilized on street parking. On street parking on side of Falmouth Street is challenging especially with all the impact that is yet to be determined.

Mr. Nevill asked Ms. Sitterle what was implied by the statement on the property being within a transition zone.

Ms. Sitterle stated that the areas adjacent to CBD have opportunity, if appropriate, for some transition to occur. For example small scale non-residential uses and home occupations and offices may be appropriate in some of these areas.

Mr. Nevill thought there were transition zones not far out, because when coming into town along the historic artery of Falmouth Street to Main Street it is not until you reach Fifth Street that a transition occurs. There is the church, businesses and offices directly across the street. He stated he did not want to push the transition out further then they already are. There are issues in other areas where we have a duty here to protect our historic corridors and entrance ways. Waterloo Street, Culpeper Street, Falmouth Street, Winchester Street, and Alexandria Pike (to some extent) are all character elements of Town and we do not want to push transition. He stated he takes this seriously when one of the criteria is to protect and enhance these areas and is cautious about anything that is not protecting or enhancing.

Mr. Nevill stated that page 3 of the staff report states the proposed use should be considered compatible with existing and surrounding uses, as well as the Comprehensive Plan. He asked Ms. Sitterle to define compatible.

Ms. Sitterle stated there are limitations on this scale of the business to 10 vehicle trips per day which is similar to a single family dwelling estimated vehicle trips per day. It has to have limitations on it per the ordinance and it cannot expand beyond that to where more staff could be added or additional appointments scheduled, making the trips increase. This is a very limited type of use, just as there is with home occupations.

Mr. Nevill stated that the first line of the staff recommendation stated the propose use was appropriate and he asked her to define the elements she used to define appropriate.

Ms. Sitterle stated the fact that the impact is limited.

Mr. Nevill asked if compatible could be used as opposed to appropriate.

Ms. Sitterle stated yes.

Mr. Nevill stated that other applications have been reviewed and granted in this type of zoned area and asked what method was used to enforce the limitations that are imposed on SUP because it does stay with the land, whether it be with sunset clause or indefinite. Is it filed by SUP15-07, and it is tied to that parcel and anyone that has that land in the future knows what the limitations are.

Ms. Sitterle stated part of the conditions limitations could be added as part of Article 9-7.2, for the Home Business to be applied and continue as long as the business is established.

Mr. Nevill asked for the limitations of by-right home uses.

Ms. Sitterle stated it is the regulations listed in 9-7.2 for Home Business that would apply for this application, which is not by-right thus the SUP process, and as part of this approval process the regulations in Article 9-7.2 apply to this business.

Mr. Nevill stated he was thinking of Home Occupation which is a by-right use. If desiring compatibility of impact and uses of the surrounding area, then limit it to by-right impact and uses.

Ms. Sitterle stated the difference between Home Occupation and Home Business is the non-resident, non-family staff members which would apply in this case, and that would be the only reason to include that part of it. Vehicle trips are the same for Home Occupation and Home Business. The amount of use of the home remains the same, which is limited to 25 percent.

Mr. Nevill stated the trips per day for Doctor Offices and other uses that have come before the Commission have more vehicle trips per day and greater impact on the character of the surrounding neighborhood than this proposal would have. As stated by the applicant, there will probably be less activity than at previous times because there are fewer family members living there. He asked what method was there to specify the conditions for this SUP. When a SUP is granted for a permissible use such as clubs, family care, hospitals, clinics, and libraries within R-6 zoning, it is tailored to that particular property. What method is used so that anyone that looks at that parcel in the future is aware of the limitations of that particular SUP.

Mr. Kip suggested that the applicant and neighbors be provided opportunity to make their comments to the Commission before get too caught up on details that may not be relevant.

Mr. James P. Downey, Esq. applicant and resident of 298 Falmouth Street. He stated he was very sensitive in making sure all concerns are addressed both of the Commission and of his neighbors. He indicated he attempted to meet with his neighbors but was not able to meet with everyone. He indicated the neighbors that live directly across the street from him have no problems with his proposal.

Mr. Downey stated he would like to present to the Commission the following three issues which he believed are important in consideration of this application.

1. His House

2. His Practice
3. How Practice will be Conducted in the House

His House:

Mr. Downey indicated he has lived at 298 Falmouth Street for 37 years and knows a lot about the house and is very proud of it. He indicated he purchased the house in 1978 from Dr. Anderson who was well known in town. The house had fallen into disrepair and had been in the estate for three years with no maintenance. He learned very quickly how difficult it is to work on it when it has been neglected for three years. The gutters had weeds growing in them, the shutters were depilated and the whole house needed repair. He indicated he got on a ladder with a blow torch and started to work and quickly learned he had a challenge. At that time there were three young children and was told by the realtor not to worry he could afford this house because he could rent out the second floor. He did that with two teachers for about two years. It is a three story house, and at the time he brought it there was nothing on the third story. At the turn of the century there was a school conducted there in 1890, and in the attic he found evidence of the old school. When he purchased the home there was no insulation, no air-conditioning, no storm windows, and all the shutters needed replacement. Mr. Downey stated he built the inside of the house and on the third floor is main master bedroom, bathroom, and a study. After the teachers moved out, his family continued to grow to include six children and his wife's parents and sister. Meals would be made for 10. It was a busy time going in and out for various children activities and this went on for years and the house was fully utilized.

The entire house has been repainted including the roof. Shutters have been replaced with quality shutters. The interior has been redone gradually and it has been beautified. The house has been insulated and now has central air-conditioning and heat. Mr. Downey stated he once served on the Architectural Review Board, helped develop the ordinance, and as result is sensitive to historic nature of the property and the need to keep it up. He stated his home is his pride and joy and he loves the house even though it did and continues to require a lot of effort. He indicated he has been before the ARB a couple of times, once for garage doors and another for a gazebo.

His Practice:

Mr. Downey indicated he has been practicing law for 41 years. He was admitted in October 1974. He spent 9 years representing the county and during those years he was living on Falmouth Street, with an office near the library. He indicated his wife has been Director of the Public Library and served in the front office of the school system for 37 years before retiring. His practice has taken him to 41 different jurisdictions in Virginia and he is out of his office a lot. His practice is not strictly local and most of his clients in those 41 jurisdictions have never come to his office. Today, his practice is done over internet and phone; clients do not come to the office. His practice relates to property, municipal law, trusts and estates, real estate tax, evaluation of property, business law, corporation formation, and partnerships. Mr. Downey does not do criminal or domestic relation work. He does not have walk-in clients at his current office on Main Street and has been by appointment only for a long time. A typical day may have one or two appointments between 10 to 11 AM or 2 to 3 PM. This does not occur every day and there may be at most two appointments on three days of the week. Normally the clients that come are one or two people for a Will signing or Real Estate closing, resulting in five people at the conference table for about half hour. He indicated that once in awhile there may be a large conference of eight or more people, but not often. He can have the large conferences at the live/work space provided by George Mason University on Main Street at a very reasonable rate or another attorney's office. His largest conference was at his office

on Main Street and involved multiple parties situated in several different offices that occupied the entire building, taking 12 hours. He stressed this was a very unusual and stressful situation and assured the Commission these types of conferences would not be held in his home office. Normally it will require one or two people coming to his office in one car, and they would use the driveway and park at the gate, on Falmouth Street, by the garage. Clients would come in at the front door.

How Practice will be Conducted in the House:

Mr. Downey stated his office would be on the first floor and it would occupy what is now the living room. He stated his occupancy in that room would not be that much different than it currently is because he reads and studies a lot in that room, which is essential what he does at his desk in his current office. The dining room on the left will become the conference room with chairs and there will also be two paralegal workspaces, one in the very back and one on the side facing the bay window. Each will be typical secretarial stations with phones, monitor, printer and scanner. The files will be located next to the two work stations. The kitchen will be shared and there will be no exterior or interior changes made to the house.

There will be minimal trips up and down the driveway, far less than currently. He and his wife are transitioning because his oldest daughter and her two sons will be moving out, leaving only himself and his wife as the occupants of the house. He and his wife would occupy the second and third floor of the house. He stated he sees minimal impact and clients can park across the street and walk across the street to his office. He indicated his clients would be informed about the parking options available to them either on street or driveway.

Mr. Downey stated that he knows there is concern about a guarantee with the SUP, and appropriate conditions would be needed to ensure that the SUP is not transferrable. Mr. Downey stated he did not want it to be transferrable; he did not plan to have law office permitted and then 10 years from now market the property as a law office. He wanted a condition so that any use for this purpose would have to be reapplied for and the SUP would be personal to himself.

Mr. Downey recognized there is a potential problem with the law, but his interpretation is that he seen wording that clearly states the permit is for the applicant only and is not transferrable to any other person. Even though it runs with the land, these are provisions for reasonable conditions. Some jurisdictions feel they can do it and some think they cannot, but it is his understanding it is not unusual to impose conditions and agrees/consents to have it restricted to himself with the condition that the permit expires upon transfer of property.

Mr. Downey stated he would reluctantly agree to a time limit if it would make people happy, but he felt two years was too restrictive and he was okay with five years, but he is looking at a 10 year window for himself to continue to practice law. If five years is the period given, he would come in near the end of the fourth year and request an extension/renewal. He indicated he hoped this would be helpful towards the limitation concern.

In addition, he would also consent to record a restrictive covenant in the land records citing that the use will be restricted to law office use, restricted to the present occupant, and cannot be transferred to any other person. Therefore anyone looking at the property will know that the use is restricted by covenant. He stated he was willing to put that kind of covenant on record.

Mr. Downey suggested Commission read the Albemarle County Land Use Handbook which

provides a concise read on the question as to whether it will run with the land and if a time limit be imposed. An alternative solution to this question is to obtain agreement with applicant for such a condition (time limitations) and they cite a case Board of Supervisors versus **Sygrade Developers** of Virginia 2004. In other words if Mr. Downey agrees to it and the agreement is on record then all ills are cured. The applicant agreed to time limitation, put covenant on the record, and all questions as to whether the Commission had authority to do it, gets cured by the fact that the case upheld agreement that otherwise may have been outside of authority of Prince William County Board. Mr. Downey stated he was willing to agree to it and to these restrictions and is looking to continue to be a good neighbor. If the SUP is approved it will enhance value in the area because selling a large house is not easy with fewer large families. He indicated he does not intend to move and wants to stay where he is and if this SUP is approved it will allow him to do so. He stated he has looked around and his home is the ideal location for his office.

Mr. Zarabi asked Mr. Downey if there was any possibility of reducing number of work force and having his wife work for him.

Mr. Downey stated no. He indicated they have eight grandchildren and his wife loves being with them and she is not interested in hanging around the house.

Mr. Lubowsky asked Mr. Downey if the case he mentioned was a Virginia Supreme Court Case.

Mr. Downey stated it was.

Ms. Schaeffer stated the case clearly states that if the applicant publicly agrees, it then becomes part of the record.

Mr. Downey stated that the idea is that the conditions have to relate to land use concerns and not something wild and restricting it to him is consistent to the law. Who is to say some other business could not come in there and imposing the restriction to one person is consistent to the law that guides the limits of authority.

Mr. Zarabi stated the difference is that Mr. Downey is volunteering to impose these conditions.

Ms. Schaeffer stated the court looks more favorably as long as condition is tied to public safety concern and for the Commission to say Mr. Downey's law practice is one that lends itself to few clients throughout the day whereas another law office could potentially have clients every hour would impose a larger public safety concern. Imposing the condition to him as a person and tie it to public safety being transportation the court would look favorable on that.

Mr. Nevill stated that someone else in Town may look at this and identify it as a precedent.

Ms. Schaeffer stated that perspective has been addressed by Ms. Sitterle in her staff report. We look at this property as a very large home in the historic district question if we should be restricting these very large homes in the historic district to just a residence as the population ages and people look to work from home. However, we do need to be careful and not set a precedent in the way it is conditioned as this had extenuating circumstances.

Mr. Downey stated it had to be reviewed on a case by case basis and it is hard to generalize what

would and would not be compatible. In our neighborhood we have an architect, doctor and lawyer and it is a nice neighborhood with a professional cast. He indicated the neighbor on one side of him is a retired librarian and this type of law practice would have low impact and is low end of type of law practice. Mr. Downey took an analogy explaining that a long time ago his children went to Boxwood School on Winchester Street with a lot of people coming and going and there was a time when that was very busy with people coming and going to a pre-school in a residential neighborhood. He asked what made that compatible or incompatible and identified traffic, was it the family orientation of it, but some people would say that it is incompatible because of the noise and commotion. His point was that compatibility was subjective. He identified Mr. James Hricko as someone that has an architectural practice in a home surrounded by other homes near the cemetery entrance and it was found compatible. Mr. Downey stated he would not object to have architecture practice two door downs from him or anywhere in his immediate neighborhood even if it were next door to him. He also indicated he would feel the same way about a medical or dental practice being in his neighborhood.

Public Hearing Opened - 8:02 P.M.

William Semple, 319 Falmouth Street stated he and Mr. Downey share the same desire to preserve their homes and indicated he was in the middle of a \$175,000 tax credit program with Commonwealth of Virginia and just put on a \$60,000 slate roof and by the time renovations are completed he will have invested \$275,000 in preserving his home that he purchased his half in 2011 at appraised value at \$425,000. He stated he was very committed to the historic district and to historic preservation. He stated his wife purchased the property in 1994 and the reason they are making this investment is to preserve it as a private residence and its use for the purpose of raising a family. He stated that he believed that was the character of Falmouth Street. He indicated that he was with the National Trust for Historic Preservation and for awhile he consulted with the National Association of Housing Redevelopment Officials and for the last twenty years he litigated his patent rights in Federal Court and has managed to achieve a certain degree of success so that now he can say he is retired, however he still maintains a realtor license. He stated he has familiarity with dealing with historic districts and agreed that special exceptions should be considered on a case by case basis.

He indicated he had not met Mr. Downey but has always thought his home was one of the most magnificent on Falmouth Street. It has type of characteristics that are important to the historic overlay and to Falmouth Street and believes that is true for every home on Falmouth Street. He and his wife have been advocates for preserving the historic area and living up to the standards. He stated he favored the Architectural Review Board because those people understand what it means for historic district to have vitality and life in the community. He stated that he thinks one thing that has traditionally been overlooked is to maintain prior use. The character of Falmouth Street has been identified in the transition zone and he stated he did not see Falmouth Street in the transition zone but as a residential street on the other side of Lee Street. Transition zone would be going into Town and allow neighborhoods to integrate in a pleasing way and he thinks Falmouth Street is a residential community. He compared it to Park Street in Charlottesville. He indicated he lived in Old Town Alexandria on Prince Street and there was mix use with a message parlor across the street, but if you go further down Old Town Alexandria to the historic part it is all residential. There are places for mixed use but he suggested that Falmouth Street is not one of them. The concept is that a Home Business is only marginal different from a Home Occupation. However the applicant is changing the entire first floor into an office and he will live on the second and third floor. There is a

difference between Home Office and Home Occupation, and it may seem minor, but he considered different perspective on use significant. Home Businesses can place signs but Home Occupations cannot. A sign means he is opened for business. Mr. Semple recommended restrictions on future use on anything and only allow the smallest identification sign possible. If that is not done, what will happen is that you will have the nose of the camel under the tent and a process will be started that will be irreversible. Mr. Semple stated in his opinion the application is fine, but he has concerns over what it will do to Falmouth Street in the long run. Mr. Semple stated that he believed most people that live on Falmouth Street do so because they see it as a residential family place. He felt Mr. Downey has good reasons to make his application, but he was concerned that if the Commission moves ahead without fully considering the implications the implication it has on other applications in the future which could dynamically change Falmouth Street.

Mr. David Norden, 318 Falmouth Street, stated he lived two doors up from Mr. Downey's residence and expressed being uncomfortable to speak towards his neighbors regardless of what the issue. He expressed concern over the precedent issue and has always had this concern even when he served on the Council and it is an issue the Planning Commission will have to address. Mr. Norden stated that if Mr. Downey gets approval then he could ask for approval to have home business for his architecture practice. Mr. Semple could come and request to have a consulting business in his home and before you know it the whole face of Falmouth Street has changed. Mr. Norden stated if the Commission does approve this application it needs to be done very carefully and in a way that will prevent the precedent because that is what will happen. He stated he agreed with Mr. Semple that Falmouth Street is not in the transition zone and does not want it to become anything more than a family residential place.

Mr. Norden stated that about five years ago he attended a Planning Commission meeting and found himself unknowingly speaking along with Mr. Downey about a SUP for a business on Lee Street. Mr. Norden stated both he and Mr. Downey spoke against the application. At that meeting Mr. Downey pointed out there was ample business space available throughout the Town that could be rented and that was what he suggested to the applicant. Mr. Norden indicated there was a big difference in that Mr. Downey owns and resides at this property and those people were only there on occasion. Mr. Norden remarked that there is a big difference between that application and Mr. Downey's application but he wanted to point out the ironic turn around. Mr. Norden also stated that in the late 1980's he fought very hard for someone that wanted to buy Mecca. The Nelson family that owned the property wanted to sell it, and the applicant wanted to purchase it and run a computer business out of it. Some members of Council, Mr. Carter for one, was adamant that no one could afford to take care of these properties and if Town did not start allowing businesses, in 25 years they will go downhill because families cannot afford them. It is 25 plus years and Mecca continues to be a private property and it looks beautiful. Mr. Norden expressed to the Commission to not use the no one can take care of the property argument or say they will all go downhill because there are not enough people to buy them. If Mr. Downey decided to sell his home Mr. Norden stated he was certain there was a family that would buy it.

Mr. Norden stated if the Commission does approve this, it needs the conditions and/or proffers that Mr. Downey has offered. Mr. Norden stated he knows Council has allowed proffers because of questions about how it is legally done. However the Commission can carefully implement it and he knows Mr. Downey will continue to do outstanding job of maintaining his property but you never know what comes behind it. Mr. Norden indicated the house should never be sold with the caveat that this comes with the property and it must terminate with him. Mr. Norden indicated he was less

concerned with a sunset time period, and he knows Mr. Downey's application indicates he will have only two employees, but Home Business allows up to three employees. Mr. Norden asked if Mr. Downey would volunteer to only allow two employees to help, because more employees use more square footage and requires another parking space. Mr. Norden stated he hoped Mr. Downey would agree to no signage. He indicated a sign on the gate that says Downey Law Practice with street address is fine, but nothing that indicates this is a business in the residential neighborhood. Mr. Norden stated Mr. Downey has indicated he would agree to all of these conditions including having large meetings elsewhere and asked the Commission to carefully construct them with him.

Mr. Ken Hinson, 308 Falmouth Street. When he received notice from the town that Mr. Downey was applying for SUP he indicated he had some significant concerns and ironically one of them was not the number of vehicle trips, because he had become accustomed to vehicles coming and going because of the size of Mr. Downey's family. He indicated he leaves his home at 5 am and does not return before 6 or 7 pm and the number of vehicle trips his business may have will have very little affect on him and his family. He stated his biggest concern is the negative affect this will have on his property value when the time comes for him to sell. Mr. Hinson indicated he was comfortable with the SUP conditions that the SUP will not transfer to another owner or business. As long as this condition can be legally binding then in his opinion the impact to the neighborhood will be minimal. He urged the Commission for the approval to include concrete conditions that it will not transfer to another business or owner. Mr. Hinson stated he also has same precedent concern as has been expressed earlier by Mr. Norden and Mr. Semple and urged the Commission to make it as minimal affect on the surrounding neighborhood as possible.

Ms. Laura Hinson, 308 Falmouth Street, wife of Ken Hinson. She indicated they live right next door to Mr. Downey and indicated most of the neighbors work full time and she volunteers full-time. She indicated that today she had to leave her home ten different times and the issue of cars coming back and forth was not an issue. She indicated Mr. Downey came to her home and talked to her and her husband and informed them that if he sold his house he would not transfer the SUP, their biggest concern. She indicated she did agree with her neighbors Mr. Semple and Mr. Norden about the precedent, however she stated she would prefer to see young families moving in, having a residence, and maybe having a small business Monday through Friday, 9 am to 5 pm as opposed to what is directly across the street, which Malcolm Alls has turned into apartments that causes all kinds of problems on the weekend usually after 11 pm until 2 am and in her opinion that is a bigger problem.

Public Hearing Closed – 8:20 P.M.

Ms. Helander asked Mr. Downey how many employees he currently had.

Mr. Downey stated two.

Ms. Helander asked Mr. Downey if he expected to increase or downsize his staffing.

Mr. Downey stated no.

Mr. Downey stated he understood the concerns that had been expressed by his neighbors and he plans to do the best he can. He stated as far as signage goes, his plan is to have a small sign placed on wrought iron front gate with gold lettering that states James Downey, Attorney at Law and his

address 298 Falmouth. The sign will be more of identification as opposed to advertisement. He indicated signage was not a big deal because he does not need a lot of advertising.

Mr. Hamby indicated that two people that live in his neighborhood were not present but had discussed with him and expressed concern about deliveries. He asked Mr. Downey if he would have Fed-Ex truck come to the driveway, stopping in the middle of Falmouth Street, or would use his Main Street Office. Mr. Hamby stated that a lot of time when driving down Main Street there are a lot of deliveries stopping in the middle of the road. He asked Mr. Downey if he expected to have more volume at his home than he would have at his office on Main Street.

Mr. Downey stated there would be no more volume and he does not get deliveries every day. Normally it may be once a week or every two weeks because deliveries are not that frequent. When deliveries are made at his current office on Main Street, the truck is parked on Fifth Street in the loading space next to his building. He stated he could picture the delivery truck being parked on the other side of Falmouth Street and the delivery person coming up the front sidewalk and laying the package on the front porch and ringing the doorbell.

Mr. Hamby stated a lot of the people on Falmouth Street have expressed concern about traffic in previous meetings for several hours in regards to Orchard Ridge development down the street. Mr. Hamby noted that the application states Mr. Downey would not exceed 10 trips per day but he is not sure that is enforceable but thinks everyone would be concerned if all of a sudden residents of Falmouth Street start having problems getting in and out. He asked Mr. Downey if he anticipated his clients parking on his property or will he be lining up the other side of Falmouth Street with cars. He asked if parking was allowed on his side of Falmouth Street.

Mr. Downey stated no parking is allowed on his side. He stated what he pictured was his clients coming one or two at a time typically in one car for about half hour to one hour only and they would park on the other side of the street, walk across Falmouth and into the front gate. Mr. Downey stated that would be the prefer way but they could also come down the driveway and stop at the gate which is a short distance in, and come through the gate onto the front porch. When they leave they will go down to back of driveway turn around and come out. Mr. Downey indicated he did not want clients coming to the back door.

Ms. Helander asked Ms. Sitterle if there was only one employee would there be a discussion.

Ms. Sitterle stated not if it was a family member but the fact that it is a non-resident, non-family then he has to have a SUP. Home Occupations are limited to family.

Mr. Nevill stated that all the discussion of proffers and covenants and summarized by Mr. Norden being terminated by Mr. Downey with restrictive covenant relating to the larger meetings off site asked if Commission is in a position to enumerate those or should the Commission suggest that be something worked out prior to going to Town Council.

Ms. Schaeffer indicated she thought the Commission could put some together that Mr. Downey could publicly agree to, and over the next 30 days work with Town Attorney to confirm before it goes to Town Council. Commission can address those issues and concerns that have been addressed this evening with Mr. Downey and see he agrees and then the Commission can include them as part

of the recommendations. Then Mr. Downey and Mr. Robinson could work on it for the next 30 days.

Mr. Nevill asked what the procedure was because at times he feels the Commission is voting for something with sense of the conditions and not proffers because they are two different things. We will be voting that certain things will be happening that are not completely ironed out and as result voting seems awkward. However if there is a process where Commission is comfortable in doing that then he can see the need for a motion for approval with those sort of things worked out between now and then. However, before getting to the motion identify the issues, which are precedents, transition zone, and it not being a transition zone, nose of the camel under the tent, all of that he indicated he worries about anywhere within the Town's historic residential corridors that are stately homes. He identified two sides, one we have a resident that has been a good neighbor and done great service to the Town and we want to accommodate the economic viability he has and the uniqueness of this case and we all feel compel to reward that service and commitment to the Town. However, we have concerns over the precedent and erosion of distinct areas. Falmouth Street has recently had a lot of activities, and a lot of things coming up in the future and one of the things that keeps coming up is greater intensity of uses. This is not greater use of intensity but it is a movement from pure residential and as a result it is in direction of greater uses. We have been consistent with other application processes stating Falmouth Street is too small and as result he feels Commission is contradicting itself. He stated he knew it was a very small and unique situation but the contradiction appearance bothers him. In addition, he stated that through the years there have been applications that show office vacancy rate in Town is 15%, according to Mr. Alls in January when he was looking at the Third Street first floor conversion of office to retail. These are issues that we have to consider in everything we do. Are we contributing to the surplus when we are looking at vacating a main street office space that will increase the vacancy? Mr. Nevill asked Mr. Downey about the other options of sharing space at the George Mason Center and if there were any other options he had considered.

Mr. Downey did look around and did not find anything feasible or economically practical.

Mr. Nevill stated, as it relates to office use and a vacancy rate of 15%, it has consider in the contents of the Comprehensive Plan as to whether Town has the right balance of uses and he liked to get feedback. Commission needs to be concerned that we do not continue to do an exit from Central Business District because we want to keep that district as vital as possible.

Mr. Kip stated he has been on the Planning Commission for 15 years and he only recalls four cases of Home Business applications. Two were approved and they never materialized and the other two were denied. All of them were reviewed totally on input from the neighbors. Office occupancies are all good marketing terms and understanding how a law office operates the concerns about traffic are insignificant. Mr. Kip stated he felt this was a benefit to the surrounding community and other than having a small sign in front public would not know a business was going on.

Mr. Zarabi stated in his experiences during his number of years on the Commission that at the end of the day what distinguishes one application against the other is the individual that is requesting it. All things being equal, I think the Commission could unanimously say there was guarantee the Maybach's would back their word with action because they have shown continuous commitment to this community and if something is wrong Mr. Downey qualifies in the department to have it rectified, as far as he is concerned. All of the conditions that Mr. Downey has volunteered and

proffered should apply because he is committed to making this project work. In his opinion, he would be more comfortable with the utilization of the driveway as main mechanism than Falmouth Street and that should be encouraged. Mr. Zarabi stated he was in favor of granting this application and is comfortable in including the many conditions. He is in agreement with a five year sunset clause with a renewal.

Mr. Nevill asked Mr. Zarabi about a 10 year sunset clause and termination of the SUP with the property owner.

Mr. Zarabi stated he was okay with both.

Ms. Schaeffer stated that she did not think both would be needed because if it is tied to the applicant then it would expire with the termination of his business if Commission is comfortable with the applicant setting a timeframe and applicant would come back. Commission needs to determine one or the other.

Mr. Nevill stated termination comes as result of his ownership not termination of his business.

Ms. Schaeffer stated there are two legal thoughts on that and she had always operated under the assumption that SUP related to land use and this is being looked at from a zoning perspective. With voluntary conditions offered by the applicant and backed by a Supreme Court case, the Commission can say if an applicant is willing to do this on their own then it is not a condition the Commission is imposing that the applicant has not agreed to. She indicated she thought Mr. Robinson would agree. She suggested that Mr. Robinson and Mr. Downey discuss this over the next 30 days. She stated she did not believe this is the way land use decisions should be made and not applicant decisions.

Mr. Nevill stated he agreed with the property issue but the other reason the five year sunset clause was discussed because as Mr. Kip has addressed, most of the issues are about the neighbors and a mechanism was needed to allow for feedback and to remind someone of the initial conditions that was offered for the SUP and allow opportunity to correct any deviations. Mr. Nevill stated he did not anticipate any problems with Mr. Downey but he was considering other applicants and compliance issues that have occurred. Given what Mr. Kip stated that it is an issue for the neighbors and if is just with the property and owner and it is voluntarily proffered what mechanism does the Commission have to hear from neighbors if there is an issue.

Ms. Schaeffer stated that perhaps the condition will need to state the five year will include a review to examine any issues. She stated she did not think there could be a five year sunset and then have another condition that states that it does not expire until the applicant sells his property. Those are conflict with each other but a five year review is not part of the ordinance but it makes sense to state the condition is a five year review. If there have been no complaints there shall be administrative approval by the Zoning Administrator. Therefore the applicant will not be required to come back for another public hearing. If complaints have been received from a neighbor during that five year period, then a public hearing would be required.

Mr. Nevill stated he agreed with Ms. Schaeffer's recommendation but he wanted to have communication to the neighbors and other property owners in the neighborhood and request they

submit any concerns/comments. He asked Ms. Sitterle if a notice of expiration and pending administrative action could be communicated to the neighbors.

Ms. Sitterle stated yes.

Mr. Zarabi stated that since Mr. Downey is volunteering to terminate the use and record it on the deed, as result that is not a condition that is being imposed by the Commission, but we are requiring a five year sunset with administrative approval.

Mr. Kip stated in additions to the conditions recommended by the staff we also have a five year review and agreement with the conditions Mr. Downey has volunteered as it relates to the restriction and termination.

Mr. Nevill stated he thought large meetings being held off site should be formalized and made into a condition.

Mr. Lubowsky suggested this is not a home use but it the ability to use the home as a office on the first floor and suggested condition be that the conjunction be that as long as the home is Mr. Downey's home and the office is his office. He stated in his opinion this is pretty central and it is not contradictory and having a few extra hoops to jump through is particular onerous because the applicant is offering it and it also speaks to everyone's concern about precedent. The more the Commission makes this with many moving parts the more difficult it becomes for someone to come in and indicate they want a separate arrangement. The record has been made and the situation Mr. Downey has brought forward is unique and as result he did not think there should be concern about making this a precedent that could be used.

Mr. Nevill stated clarification was needed in the volunteer proffer with the covenants.

Ms. Schaeffer stated it is a condition not a proffer because it is a SUP. She stated that Mr. Downey is volunteering conditions to offset concerns and it would be enforced through a SUP.

Mr. Nevill stated that the business owner is the primary resident, not joint residents and no joint partnership in the business. This needs to be articulated so that it stays with the SUP.

Ms. Schaeffer stated many things have been addressed by the citizens and the Commission members and she pointed out that this is something the planning field is starting to examine more as the baby boomers start to age and look to continue to work unlike the generation before them. A big component of this is that sometimes the most favorable thing is retaining the knowledge and experience in your community and allowing people like Mr. Downey or Mr. Norden to age in place. Most often people will pick up and go to a retirement area and that is a brain drain and loss of valuable knowledge to the local community and as result if we can find ways to be flexible to work with your neighbors and find ways within the ordinance to maintain the people that have a history of our community and contribute to the community is something the Commission needs to continue to look to do. Ms. Schaeffer stated that she read in the minutes that a similar proposal such as this had been considered by Mr. Norden and Mr. Downey and as result she immediately called her knowledge base to find out what the situation was when that application was submitted. The answer she received was that the two were very different because the earlier proposal was for deliveries,

sales, and more retail by nature. Ms. Schaeffer stated it is important to find ways for people to be able to continue to live in their community that they have contributed to over time.

Mr. Zarabi stated that Commission makes a certain call be it right or wrong but feels this proposal is something the Commission could support.

Ms. Schaeffer asked for a motion

Mr. Kip made motion for SUP 15-07 be approved subject to the conditions of the staff and in addition Mr. Downey's volunteer conditions

1. Number of employees will be limited to two (2)
2. Large meetings of eight (8) or more individuals will be held off site.
3. SUP is limited to the applicant as long as he continues to reside as a resident in the home.
4. Applicant is primary owner of the business
5. Five (5) year review will be conducted. If there are no complaints or violations the Zoning Administrator will waive this condition.
6. Recording Deed of Covenant and is only subject to Mr. Downey, applicant.
7. Signage shall be placed on Front Gate of Walkway. (It was recommended that before this goes before Town Council, Mr. Downey and Mr. Robinson meet to determine size and location.

Ms. Helander seconded the motion.

All voted in favor. Motion passed unanimously.

WORK SESSION

Ms. Sitterle informed the Commission that she had received a letter from Mr. Fallon regarding postponing Orchard Ridge going to Council and has stated he would like to come back with a revised proposal. Question is whether he will have to come back to the Commission and that has to be determined by Mr. Robinson as to whether it is a substantial change.

Ms. Schaeffer stated if it was a substantial change it would have to come back to the Planning Commission and that is the law.

Mr. Kip stated the application was denied on five points and the first being the comprehensive plan has to change and what is brought back has got to be real substantial change.

Ms. Schaeffer stated that if it is a substantial change the law states it has to come back to the Planning Commission and if Mr. Fallon addresses specific things the Planning Commission said in the application that was the intent of the denial based on specific factors and subsequently being addressed prior to go forward to Town Council. If Mr. Fallon states he cannot address the Commission concerns would further the application not being able to meet the needs of the Commission. As result, Mr. Robinson needs to take a close look at the revised proposal.

Ms. Sitterle stated it will be interesting to see what is submitted.

Ms. Schaeffer stated that in the past when she has had to make changes on applications because of it being denied and indicated she would be more concerned if the applicant was making substantial changes after an approval. As commission, if she does not like the proposal and they make a ton of changes to address those concerns to take to Town Council and they have done what was requested but to get approval from Planning Commission and then subsequently make changes before going before Town Council.

Mr. Lubowsky stated he has requested the Commission in the past not to send proposals to Town Council unless they are ready. There are material things expressed as concerns of the Planning Commission and they should come back to the Planning Commission to determine if those issues have been addressed and not come to Town Council which is not even familiar with the Commission concerns to begin with except for reading them in the staff report. He stated there is a Planning Commission process and expertise and the body is not political.

Ms. Schaeffer stated she appreciated Mr. Lubowsky's comments but there is a timetable situation that the Commission has to adhere to and as result the Commission had to take a vote and the applicant was asked by this Commission to withdraw his application and he did not. As result, the Commission voted to deny and now the applicant is taking his opportunity, to say the Planning Commission voted to deny but I am still bringing it to Town Council. This is a procedure the Planning Commission cannot impact. The applicant has decided on his own to move forward.

Mr. Lubowsky asked why this conversation was being held if the applicant is bringing it to Town Council.

Ms. Schaeffer stated because the applicant is making substantial changes and Mr. Robinson needs to look into the rules on how much the applicant can change before he automatically has to come back to the Planning Commission. What he is presenting to Town Council no longer represents what was originally presented to the Planning Commission. Therefore the town attorney has to determine if there is a substantial change that would warrant it coming back to the Planning Commission.

Mr. Lubowsky asked if it comes back is it considered a new application.

Ms. Schaeffer stated yes and would have to come back to Public Hearing.

Mr. Kip stated it is unknown what changes have been made but one of the things everyone was concerned about was the scope of the project. He stated he could see perhaps four buildings but not nine buildings and to him this situation is very similar to the American Legion proposal. Because during that hearing he asked about reducing the capacity from 120 beds to 90 beds and would that bring them closer to the sewer conditions and she rolled her eyes and said absolutely not and now it is his understanding the American Legion is now 90 beds. Mr. Kip stated he wondered if Mr. Fallon will come back with a project for five buildings rather than nine.

Ms. Schaeffer stated that she assumes that is one of the primary concerns of the Planning Commission that would be something he would want to address before going before Town Council and she anticipates that is one of the changes.

Mr. Nevill stated if that is the case then how that can not be a substantial change.

Mr. Zarabi stated if that is the case then he would be reducing the impact.

Ms. Schaeffer stated that density was the Planning Commission's concern for both of those projects and they both downsized before going before Town Council. She does not consider downsizing a substantial change but a substantial change would be movement of an entrance, or a different layout configuration, to name a few.

Mr. Nevill asked who makes the determination of what is considered substantial.

Ms. Schaeffer stated that would be the Town Attorney.

Ms. Schaeffer stated applicants should not be penalized when they make changes that address the Planning Commission's concerns.

Meeting Adjourned at 9:09 PM

Minutes Approved on February 16, 2016.