

The Department of Community Development

City Hall, Lynchburg, VA 24504

434-455-3900

To: Planning Commission

From: Planning Division

Date: May 11, 2011

Re: Zoning Ordinance Amendment – Section 35.1-20.1, Inspection Warrants

I. PETITIONER

City of Lynchburg, 900 Church Street, Lynchburg, Virginia 24504

Representative(s): Mr. Tom Martin, AICP, City Planner, Mr. Robert Fowler, Zoning Administrator, 900 Church Street, Lynchburg, Virginia 24504

II. LOCATION

N/A

Property Owner: N/A

III. PURPOSE

The purpose of this petition is to amend the *Zoning Ordinance* by adding Section 35.1-20.1, Inspection Warrants. The section would allow the Zoning Administrator to request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purposes of determining whether violations of the *Zoning Ordinance* exist.

IV. SUMMARY

- The amendment would allow the Zoning Administrator the ability to obtain an inspection warrant for dwellings.
- The amendment would provide an additional “tool” to address suspected zoning violations.
- Infrequent use of inspection warrants is expected.

The Planning Division recommends approval of the conditional use permit petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2002-2020* states “a comprehensive plan does little for a community if it is not implemented. The most important implementation tools are the City’s land use management ordinances: the *Zoning Ordinance*, *Subdivision Ordinance*, *Erosion & Sediment Control Ordinance*, and others”. (pg 5.9) Enforcement of the *Zoning Ordinance* is an integral part of implementing the *Comprehensive Plan*. While infrequent use is expected, the proposed amendment would allow the Zoning Administrator another tool in determining if zoning violations exist.
2. **Zoning.** The current *Zoning Ordinance* was adopted in 1978. The ordinance has been amended over time to address specific issues, maintain consistency with state code and provide for development proposals that would have otherwise been prohibited. In depth revisions have been adopted to Sign Regulations (2004), Landscaping (2006), Flood Hazard Districts (2008), Large Scale Retail Establishments (2009) and Off-street Parking (2009). The city is currently drafting language for the creation of Institutional Districts.
3. **Board of Zoning Appeals (BZA).** N/A
4. **Surrounding Area.** N/A

5. **Site Description.** N/A
6. **Proposed Use of Property.** N/A
7. **Traffic, Parking and Public Transit.** N/A
8. **Stormwater Management.** N/A
9. **Emergency Services.** N/A
10. **Impact.** Section 35.1-17, Amendments of the Zoning Ordinance states an amendment to the text or official zoning map of the ordinance may be initiated by the City Council or Planning Commission provided any resolution or motion proposing the rezoning shall state the public necessity, convenience, general welfare or good zoning practice constituting the public purpose of such rezoning. On April 12, 2011, the City Council passed Resolution #R-11-033 initiating an amendment to the Zoning Ordinance that would allow the Zoning Administrator the ability to request an inspection warrant from the court magistrate to allow entrance into a dwelling for the purpose of deterring whether violations exist. The resolution states that the text amendment was initiated in order to take advantage of the authority granted to the City by the General Assembly and to protect the character and the social and economic stability of all parts of the city.

Chapter 15.2-2286 of the Code of Virginia provides that the Zoning Administrator may request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purpose of determining whether violations (such as the number of unrelated people residing in a dwelling) of the Zoning Ordinance exist. Currently, when the Zoning Administrator receives a complaint regarding the number of people living in a dwelling the following actions are taken:

- Number of occupants is requested from the property owner
- License plates of cars at the residence are checked to determine ownership
- Water usage rates are checked to gauge the number of people living in the residence
- Police Department calls for service are reviewed for information relating to number of people in the residence

Often occupants do not own vehicles and out-of-state property owners are difficult to contact or are not cooperative in providing information concerning occupant information. There is a high turnover rate in the occupants of boarding/rooming houses which also makes it difficult to determine the number of people residing in a building. Neighbors of a property with a perceived zoning violation are often reluctant to testify in court. The majority of complaints are addressed through the actions listed above and violations are corrected. There are other situations where a violation is believed to exist and citizen complaints can not be resolved due to the lack of information needed to pursue legal actions through the courts.

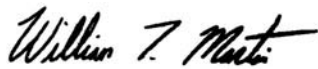
While infrequent use is expected, allowing the Zoning Administrator the ability to request an inspection warrant from the court magistrate would provide an additional tool to address suspected zoning violations when all other resources have been exhausted.

11. **Technical Review Committee.** N/A

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending the Zoning Ordinance by adding Section 35.1-20.1, Inspection Warrants to allow the Zoning Administrator to request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purpose of determining whether violations of the Zoning Ordinance exist.

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Ms. Bonnie M. Svrcek, Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. Kent L. White, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Douglas Saunders, Acting Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Mr. Jacob Dorman, Environmental Reviewer

VII. ATTACHMENTS

- 1. April 12, 2011 Council Agenda Item Summary**
- 2. Resolution #R-11-033**
- 3. Code of Virginia, Section 15.2-2286**
- 4. Proposed Section 35.1-20.1, Inspection Warrants**