



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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December 3, 2021

**TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA**

SUBJECT: Consider a request from 7-Eleven, Inc. to amend the Zoning Ordinance to allow vehicle fuel stations within the B-1, Central Business District

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: February 12, 2020**

Chair Colman read the request and asked staff to review.

Ms. Banks said that before getting into the specifics of the request it is helpful to understand the history of how vehicle fuel stations have been regulated within the City's downtown. In 1939, the City's first Zoning Ordinance (ZO) defined "gasoline or oil filling stations" and allowed them as a permitted use within the downtown area. In 1958, after a comprehensive rewrite of the ZO, "filling stations" were permitted within the downtown only by approval of the Board of Zoning Appeals (BZA).

In February 1963, after the 1962 City annexation, a comprehensive rewrite of the ZO was approved. The 1963 ZO defined "service stations," however, service stations were still not a permitted use within the City's downtown and the ability to have a service station approved by the BZA was removed.

Comprehensive rewrites of the ZO were approved in 1969 and 1987; where again, the updated use regulations did not allow service stations within the downtown. In 1996, the City completed its most recent comprehensive rewrite of the ZO and it was at this time that the City added the ability for special use permits (SUPs) to be requested in all zoning districts. Vehicle fuel stations were not permitted by right or by SUP within the City's downtown as part of the 1996 ZO rewrite.

It should be understood that the first time the Zoning Ordinance identified portions of the downtown as the Central Business District (CBD) was in 1958. The CBD was bounded by Rock Street to the north, Bruce Street to the south, Mason Street to the east, and the C & W Railroad to the west. The 1958 CBD boundary remained unchanged until January 1981, when it was expanded north to Johnson Street and east to a line approximately 400 feet east of Mason Street. Since 1981, there have been numerous rezonings around the fringes of the original CBD, creating the current

district boundary. Over the years, filling/service/vehicle fuel stations within the CBD became nonconforming either due to being incorporated into the CBD during a comprehensive rewrite of the ZO or by a City-initiated expansion of the B-1 district approved by City Council.

The applicant is requesting two, separate but simultaneous requests, which include 1) to amend the ZO within the B-1, Central Business District Section 10-3-85 by adding vehicle fuel stations as an allowable use through approval of a SUP, and 2) applying for the SUP to allow a vehicle fuel station on a B-1 parcel. The specifics of the requested SUP are addressed in a separate staff report.

The applicant has proposed to allow vehicle fuel stations by SUP, which include regulations that are intended to mitigate concerns regarding the use. The ZO defines a *vehicle fuel station* as “[a]ny building, structure, or land used for the dispensing, sale or offering for sale at retail of any vehicle fuels, oils or accessories. The text proposed by the applicant to be added to Section 10-3-85 of the ZO is as follows:

(12) Vehicle fuel station as accessory use to a permitted use, subject to the following restrictions: (i) allowed only on corner lots; (ii) may have no more than eight (8) fuel dispensers; and (iii) the footprint of the area encompassed by the canopy over the pumps may not exceed the size of the footprint of the principal structure.

If approved as proposed above, B-1 property owners would be able to apply for a SUP to allow for a vehicle fuel station only if it was as an accessory use to a by-right use of the B-1 district, the parcel was a corner parcel, there were no more than eight fuel dispensers, and so long as the footprint of the vehicle fuel station canopy did not exceed the building footprint of the principal use. To be clear, one fuel dispenser generally has two fuel pumps and can serve two vehicles concurrently (meaning that eight fuel dispensers could serve 16 vehicles simultaneously); and, although the fuel station would be accessory, its canopy could be the same footprint as the principal building.

As described by the ZO, “[t]he B-1, Central Business District is intended as an urban and regional center for the conduct of commercial, financial, professional and governmental activities to which the public requires direct and frequent access. [The B-1] regulations are intended to protect and improve activities, and to prevent uses not requiring a central location which would create friction in the efficient performance of the primary activities of an urban and regional center.” Most of the CBD is designated in the Comprehensive Plan’s Land Use Guide as Mixed Use. Mixed Use areas are areas where more walking, biking, and public transit is encouraged; where community members, if they must drive, should not have to drive directly to a use but could park on-street, in a public parking lot, or in a privately owned but publicly accessible parking lot and walk to their destination. Vehicle fuel stations specifically serve people who are driving cars to and from that specific site and who generally are there for a short period of time. This brings increased traffic generation and frequency of vehicles crossing and disrupting pedestrian spaces (i.e. sidewalks) and generally places the vehicle uses (parking and fueling stations) between pedestrian spaces and principal buildings. In downtown areas, communities typically desire to mass buildings close to the street to promote a more pedestrian friendly design. As well, the City’s B-1 zoning district is relatively small; +/- 97-acres, which is approximately 1 percent of the City’s land area not in roads or railroads. Staff has identified 17 vehicle fuel stations within two miles of Court Square by way of driving on City streets.

As stated above in the background information, vehicle fuel stations have not been a use permitted by-right within the City's downtown since before 1958. The few vehicle fuel stations located in the CBD that were nonconforming to the ZO, are now all closed and have lost their nonconforming status.

Staff believes it is not in the best interest of the City's downtown to add vehicle fuel stations in the B-1 district and recommends denial of the request to amend the ZO to add vehicle fuel stations as a use permitted by SUP.

However, should there be a desire to approve the ZO amendment to allow vehicle fuel stations by SUP, staff suggests the following amendments, which could help to further reduce the impacts of a vehicle fuel station located in the B-1 district:

(12) Vehicle fuel station as accessory use to a permitted use, subject to the following restrictions: (i) allowed only on corner lots; (ii) may have no more than four (4) fuel dispensers; and (iii) the footprint of the area encompassed by the canopy over the pumps may not exceed 75 percent of the size of the footprint of the principal structure.

Comparing the applicant's proposed amendment and staff's suggested amendment, both would only allow vehicle fuel stations on corner lots and as an accessory use. The differences include that staff recommends reducing the maximum number of fuel dispensers from eight to four (meaning that eight vehicles could be served simultaneously), and rather than allowing the canopy over the fuel pumps to be of equal size to the principal structure, staff recommends limiting the canopy to 75 percent of the size of the footprint of the principal structure. Being that the vehicle fuel station is to be an accessory use to a permitted use, staff believes that the vehicle fueling area should be of a smaller footprint than the principal building.

Chair Colman asked if there were any questions for staff.

Commissioner Ford-Byrd asked how many dispensers were in place, previously.

Ms. Banks said that there were two dispensers, so four pumps.

Vice Mayor Romero asked what the reason was for closing the gas station.

Ms. Banks said that she did not know.

Commissioner Finnegan asked why staff chose 75%. I understand that you do not want the canopy to exceed the size of the building. Could we say "no larger than the footprint of the building?"

Ms. Banks said that it is an accessory use. It is not as large as the principle use that is there. It is a number that could be changed.

Mr. Fletcher said that it gives an indication that it is a secondary use; that the principal building has its main footprint, then the canopy has a lesser size indicating that it is supposed to be a secondary. It is not a principal use.

Ms. Banks said so it does not dominate the site.

Chair Colman asked if the accessory structure has to comply with accessory structure requirements, such as setbacks and location.

Ms. Banks said that there are no requirements in B-1 regarding location.

Chair Colman asked if they can be in the front of the principal structure.

Mr. Fletcher said that the B-1 setbacks would apply. There are zero setbacks. They could not encroach the property lines.

Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to the request.

Lori Schweller, an attorney with Williams Mullen, representing 7-Eleven, came forward to speak to the request. I have a presentation to bring up for you. (Throughout the presentation, Ms. Schweller pointed to images in the presentation slides.) We have representatives of the applicant here, including Charlie Carpenter, with Creighton Development, who is managing the project for 7-Eleven; and, Jeremy Yee, civil engineer with Kimley-Horn. We are requesting a Zoning Ordinance amendment and a special use permit. The reason for those requests is that 7-Eleven would like to improve and modernize the existing store to better serve the City and the neighborhood. This is the existing store. As you can see it is pretty much a blank canvas. The store is set back on the paved part of the parcel, with very little landscaping. It is a small store without many amenities. Looking north, you can see the Rockingham County government center, to your left, and the Roses shopping center to your right. This is also a hub for Harrisonburg's transit. All lines of transit meet at this parking lot. That is why those buses are there. There are some shelters for travelers, as well. Looking south, you can see our closest neighbor, the AutoZone, to the left. This is the block. 7-Eleven shares this block with AutoZone, on your left, and on your lower right, a fire company. That green area, the grassy area, is part of our parcel. The entire top portion is the subject parcel.

This is the general area of the City. You can see that all this central area, which happens to be B-1, has a large number of government office uses. You have Rockingham County government offices, the Post Office, Social Security, the Police Department, Fire Department, and then interspersed with that, are commercial uses. All of this to the east is residential.

Referring to an older aerial photo, Ms. Schweller said the fuel pumps here are very small. There are two pumps, presumably four dispensers. Those were removed in October 2014. The plan for improving this site is to shift the building back about 15 feet to the East. Provide a little bit more room in the front, more landscaping, trees, flowers. There has been a lot of interest especially at the community meeting. We had two representatives from Harrisonburg Downtown Renaissance

who wanted to talk about the layout of the site. We also had a local architect Mr. Sites, who came to talk about the layout of this site. We can talk about that with you, if you have questions.

With the proposed new development, we are offering right-of-way along North Mason Street. It is ten feet, which would provide 17-1/2 feet from the curb to the end of that right-of-way to provide for your future multipurpose path along North Mason Street. There is a sight distance easement that would be offered to the City. That would be an easement here on the intersection. We are proposing a pergola along this corner here. The reason for that is because we cannot move the building to the street to provide that urban walkable feel. What we are proposing is more landscaping and an architectural element to help give it more of an urban feel and to beautify the streetscape so that people walking along North Mason Street and East Gay Street have a better pedestrian experience. This is the canopy, here. This is conceptual. It can shift around. We would install a new sidewalk along Community Street. This area is residential. There would be a sidewalk here and here. This driveway onto East Gay Street would be aligned with the driveway at the Roses shopping center for safety purposes, as was suggested during our traffic analysis. There will only be one driveway here, on North Mason Street. This is the proposed streetscape. You can see the pergola in the foreground to give it a more urban feel and to provide some architectural element up close to the sidewalk. This is a rendering of the improved site.

As part of this modernization we want to improve the store. The store is currently around 2,500 square feet. It would be a 4,050 square foot building. It would have hot foods. It would have fresh foods. It would have cold case and a coffee bar. In order to improve the store, the first step is the Zoning Ordinance amendment. This entire area is zoned B-1. We are on the edge of that zone. That was expanded a little bit around 1981. We are on the edge of B-1 and fuel stations are not permitted in B-1. They are permitted in some of the neighboring areas zoned B-2, B-1A, which I understand has not been implemented, and M-1. Existing land uses in the area are primarily public facilities and commercial retail. We understand that your Comprehensive Plan and your future land use map calls for mixed use in this area. If you look on your future land use map in the Comprehensive Plan, you see all those government uses are still government uses, but all of that remaining B-1 area is shown as mixed use. We understand that as your desire for the future of uptown Harrisonburg, rezoning is required for mixed use. No residential, of any sort, no mixed use is permitted in B-1. We are not proposing a rezoning at this point. We are not proposing a redevelopment of this site. We are proposing improving an existing use to make it better for the community and to make it better for those coming into town and leaving town. The fueling stations at a 7-Eleven do not draw people into an area to go to that fuel station. They serve those who are already there, close by, such as those who are going to the County office buildings, the Post Office. We think that it is appropriate to have, as an accessory use incidental to permitted use, a fueling station.

Fueling stations are customarily associated with convenience stores and convenience stores are permitted by right in B-1, as with these other uses listed here. No type of residential or mixed use is permitted. Nothing we are suggesting today would prevent this site from being redeveloped in the future with a mixed-use condominium or for a portion of this parcel to be developed in the future. We are only talking about improving the use that is there today by making fueling stations accessory uses, and only by special use permit. You have the conditions or the factors that would be required for vehicle fueling station in the B-1 district. They would only be on corner lots, which

is necessary for the circulation of traffic and trucks. It may have no more than eight fuel dispensers. The footprint of the area encompassed by the canopy, which you saw on our concept plan, may not exceed the size of the footprint of the principle structure. Obviously, a canopy is completely see-through. It is going to be 15 feet high. You are not going to see that. The area that the fuel pumps sit on is not going to be 4,050 square feet. It will not appear to be as large as the store itself. In fact, what I showed you on our concept plan is showing you an area that can accommodate eight fuel dispensers. It is about 230 or 250 square feet larger than the building, so that would have to change given this last condition.

That is my presentation regarding the first component of our request. I would love to take your questions.

Commissioner Finnegan said that staff has recommended to allow no more than 4 fuel dispensers. How does that affect this particular project?

Ms. Schweller said that this redevelopment would not be economically feasible with just four dispensers at this site. We can do this project with six dispensers. If that were a requirement for the language of that Zoning Ordinance amendment, we could do that with six. If we did that with six, we could do a canopy that did not exceed the size of that 4,050 square foot building. That would work for us, but four would not work for this applicant.

Commissioner Finks asked that the applicant speak a bit more about the decision process to not ask for a rezoning on a specific project. What was the thought process?

Ms. Schweller said that one of the options that we did think about and we did discuss with staff, extensively, was the option of rezoning to B-2 because fuel stations are permitted by right in B-2. If you look at the zoning map, it looked like there was not very much B-2 in this area. There are only a few parcels remaining B-2. It did not quite feel appropriate to rezone to a higher density right there. With B-1, you can keep the zoning. The parameters here would not apply to every parcel. We have so many parameters here that there would not be many parcels that can meet the requirements of a corner lot, the necessary size for the circulation for that many fuel pumps. We thought that it was more flexible to leave it as B-1, consistent with the rest of the surrounding parcels, and add the various provisions that we added to our Zoning Ordinance amendment and special use permit request.

Vice Mayor Romero asked if the applicant had an opportunity to be involved in a dialogue with the community, especially the residential area around the site.

Ms. Schweller said yes. We had a community meeting that we conducted at a local community gathering place. Ms. Ford-Byrd was there. Mr. Sites, who is a local architect came, and two members of Harrisonburg Downtown Renaissance came, one of whom is also an architect, Mr. Stoltzfus. A lot of the discussion had to do with the layout of the project, but no one from the residential community. I think that is what you are asking me. No one from the residential community along Community Street or that area came to that meeting. We did send out letters inviting them.

Vice Mayor Romero asked where the meeting took place.

Ms. Schweller said that it took place at Westover Park.

Vice Mayor Romero said that Westover Park is at the other side of town.

Ms. Schweller said that they explored about five or six different places for the meeting. Many of them were booked. We chose the only one that was available. I can get the information for you.

Vice Mayor Romero said that it makes a big difference if it was Lucy Simms versus Westover Park.

Ms. Schweller said that they were hoping to have one much closer to the site. Unfortunately, there was nothing available.

Chair Colman said that what is interesting is that you had fuel pumps in the same location, before, and they did not succeed. There was another fueling station down the street, maybe two blocks away. It closed not too long ago. I find it interesting that they are proposing to put back a fueling station there.

Ms. Schweller said that our 7-Eleven folks might be able to speak to that more. The environmental requirements become more stringent over time. Our guess is that they were removed because it was too expensive to upgrade those existing pumps. What we are putting in would be a more modern, completely up-to-date version.

Commissioner Finks asked, when you are looking at the conceptual phase of what to do with the property, was there any discussion about leaving an area on the property for a charging station and not just focusing on gas pumps?

Ms. Schweller said that she did not know. I do not know that we have discussed that. It may have come up at the community meeting. I think it may be under discussion.

Commissioner Finks said that would be a concern for me. A lot of discussion, in the future, is going to be regarding electric vehicles. If we are currently looking at setting aside properties for gas pumps, you would want people to be looking at the future uses of the properties and allowing for the space for electric vehicles to be charged.

Ms. Schweller said that she would confirm with her team and come back to answer the question.

Eugene Stoltzfus, architect in Harrisonburg, with offices located at 61 South Main Street, came forward to speak to the request. I am concerned about the concept. I am concerned with how primary this is for automobiles. This is an urban setting. We did a study in 2008, Harrisonburg Urban Vision and Values, that was funded by the City and by Harrisonburg Downtown Renaissance. The City takes very seriously the idea that when we build downtown, in the B-1 area, that we bring our buildings, our stores, our shops, our commercial buildings out to sidewalk because that makes it readily accessible to pedestrians. The neighborhood that is to the east of this

parcel, has access to it, use public transportation a lot. They come down here a lot. This is not really addressed to the urban environment that you would want to have when an area is dominated by pedestrians. There are a lot of cars downtown and we all drive cars. I do not feel badly about having access to a fuel station downtown, but I think it should be built not primarily focused on a suburban model of catering primarily to automobiles.

If you look at this site, it strikes me that the patio that is shown there is going to be removed. As you look at the site, where is there a place for pedestrians? Where is there a place for social interaction? I think that there has been an attempt to remove that. I can understand where some of that may come from. There is a fair amount of drug activity in this area. However, we should not deprive the citizens of this large neighborhood from having normal interaction and places to gather and meet because there are a few people, a small minority, who the police want to be able to track, and everyone wants to be able to see. I think it would be much stronger if the store could be out on Mason Street, out on the sidewalk and hold that urban vision of how we want to build our City.

Panayotis Giannakaouros, resident of Harrisonburg, came forward to speak in opposition to the request. I will speak only to the matter at hand, right now. If it goes to the special use permit, I have some specific things to touch on some things that Mr. Stoltzfus said about the role of the green space and the present structure in the life of the community, and perhaps the relationship the City has to that with respect to the green space that has not been happening. I will focus on the first part, at this point.

In our Central Business District, we have a stream that runs through it. What I have not heard extensively addressed are the environmental repercussions of having a fueling station. There are a couple of factors to consider. One is the possibility of leaks, either during construction or after. There have been leaks by fueling stations that are on Blacks Run in Harrisonburg. Those are troublesome incidents. I appreciate that the technology may be higher now, but we have seen promises about technology with pipelines recently. Another element of environmental consideration is the spillage onto the sidewalk and the fumes. If the vision of the City moves forward, of having more residential presence near this site, then those people who live there will be exposed to this pollution. I would present these as considerations against this alteration of our Central Business District. It is a motion in the direction of supporting fossil fuel infrastructure, not only that there might be alternative fuels, different fuels that would be used, but it also presumes the single passenger fueled automobile as the mode of transport. There is motion in the direction of not depending as heavily on that kind of transit into the walkable, pedestrian-oriented central course. Granting this new type of usage within B-1 would be going against the direction of the general trend, not only in our City, but nationally.

Ms. Schweller came forward to respond to some of the concerns. 7-Eleven has begun providing alternative fueling in California. The first electric fueling stations have been put in 7-Elevens in California, as of December. Those are being run as test cases. That may be a possibility in the future. It is not out of the question.

We were pleased to hear the concerns about more neighborhood-model principles on the site. We do understand, but fueling stations are special in that there are a lot of security concerns about the parcel. We have been working with the City of Harrisonburg police, as well as speaking with

Harrisonburg Downtown Renaissance, about this site and how this site is laid out. There are several reasons that the pumps need to be in front of the building. From the applicant's point of view, it is a matter of safety and security. The person or people working in the store need to be able to see the entire front of the parking lot. They need to be able to see the entire fueling area. That is a matter of safety. The police also want to see all the way to the front of the store. You have people in the store who have to see through to the right-of-way and people in the right-of-way who need to see through to the store. That is why the canopy has to be tall enough and we are talking about slanting the fuel pumps so that there is better visibility between the fuel pumps. That is something that is very important to the police. Unfortunately, that is the reason that they have suggested that we remove the patio. They are concerned about loitering on the property. There is a large green buffer area in the back. What you cannot see from the concept plan is that this has a higher elevation than the level of the store. It is like a berm. It obscures most of the back of the store from the residences along Community Street. Our initial thought was to enhance that area, to plant more, and make it more beautiful along the sidewalk. The police's guidance was that we should not do that. We want to keep that area clear so that they can view that area. They do not want to encourage people to spend time on the site, other than coming to the store and using the amenity there. Those are some of the reasons that it is important to have the pumps in the front. One of the conditions is that the pumps be only on the western side of the parcel and not behind the building. You also would not want to have the pumps on the residential side of the building because that would put them closer to the residences. Currently, they will not see them from where they live. We wanted to offer the pergola and maybe some wrought iron fencing. We cannot put a building there, but we can have an architectural element that gives a sense of enclosure as you walk along North Mason Street.

Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Ford-Byrd said that she did not get into the details because the health concern was not in this particular application, but it did come up. I was able to read where the staff talked about the traffic, noise, lighting, and smells. We have heard that from some members of the audience, as well. That is a big concern for me. I do not see where the beautification and the healthy 7-Eleven food outweighs those concerns. I would be leaning towards moving to deny the application.

Commissioner Finnegan said that he is also leaning towards denial. It sounds like if there is some modification, such as the recommendation by staff to limit it to four fuel dispensers, we heard the applicant say that would make it economically unfeasible. It does not sound like that is a good compromise solution either. This is part of the land that was redeveloped during Project R-4. Right behind it is a street called Community Street. We are saying that we do not want people gathering there. Something does not sit right with me about that. I am leaning towards denial, as well.

Commissioner Finks said that specifically addressing the ordinance amendment, I do not feel that even with the proposed text added, I still do not feel comfortable allowing gas stations in B-1. Even with it being a corner lot, even with the amount of pumps, there are plenty of other corner lots where I would not want to see a gas station. This opens up potential issues down the road, as we start to redevelop different sections of B-1. I would not want to open that up, regardless of

whether or not this is a good location for a gas station. I am not comfortable with making that change.

Chair Colman said that it does not align with the Comprehensive Plan. We want to make it more walkable. This goes in the opposite direction. We are talking about renewable energy and being environmentally friendly. As technology improves, these types of services are improved protecting the environment to the extent that they can, but they are still a risk. My main concern is that it does not align with what we are looking for on our Comprehensive Plan or with our environmental recommendations for the City to take advantage of renewable energies. I do not feel inclined to support this request.

Vice Mayor Romero said that he agrees many of the things that have been said already. In addition, I think that it is critical, incredibly important, that we involve the community when it comes to putting this kind of service right next to a community that has traditionally and historically not been treated in a way that any person should be treated. I have talked with multiple people in the northeast neighborhood. Every person I have talked with is not in favor of this application. It would make sense that there would have been further outreach into that community, to have had some effort to involve them, especially considering the fact that there is an active organization, the Northeast Neighborhood Association (NENA). I have heard from the members of that community that there is not a desire for this to happen. I would say no, as well, because that community has been left out.

Commissioner Finnegan said that when you look at the auto-centric development that has been taking place in Harrisonburg for the last hundred years, as in most American cities, if you look across the street from that building, it is one giant open parking lot, that is now used for a bus stop. We took a community, bulldozed it, paved it and now... I am not in favor of encouraging more car-centric development.

Commissioner Finnegan moved to recommend denial of the request.

Commissioner Finks seconded the motion.

All members voted in favor of recommending denial of the request (6-0). The recommendation will move forward to City Council on March 24, 2020.