



City of Harrisonburg, Virginia
Department of Planning & Community Development

409 South Main Street
Harrisonburg, Virginia 22801
(540) 432-7700 / FAX (540) 432-7777
www.harrisonburgva.gov/community-development

Building Inspections
Engineering
Planning & Zoning

August 31, 2018

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

SUBJECT: Public hearing to consider a request from TSU Holdings LLC with representative Steven Urglavitch to rezone a 2,376 +/- square foot parcel zoned B-1C, Central Business District Conditional to B-1, Central Business District by amending regulating proffers. The property is located at 245 East Water Street and is identified as tax map parcel 26-E-6A.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING
HELD ON: August 8, 2018**

Chair Way read the request and asked staff to review.

Mrs. Banks said in May 2016, the property at 245 East Water Street was rezoned from B-2, General Business District to B-1C, Central Business District Conditional. The one proffer with the rezoning was as follows:

- “[T]wo parking spaces shall be provided on site if the subject property (245 East Water Street) is used for commercial/business purposes, and if used residentially, one parking space per tenant will be provided on site.”

Staff supported the conditional rezoning request, noting that the submitted proffer helped to resolve concerns regarding increasing demands on the limited amount of public parking spaces in downtown when properties rezone to B-1. The Zoning Ordinance does not require properties zoned B-1 to provide off-street parking. Both Planning Commission and City Council unanimously approved the rezoning request to B-1C.

The Comprehensive Plan designates this area as Mixed Use Development. These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for “live-work” and traditional neighborhood developments. Live-work developments combine residential and office/service uses allowing people to both live and work in the same area, which could be combined in the same building or on the same street.

The following land uses are located on and adjacent to the property:

Site: Urgie’s Cheesesteaks, zoned B-1C

North: Across East Water Street, Urban Exchange mixed use building, zoned B-1

East: Office building, zoned B-2

South: Parking lot for adjacent office building, zoned B-2

West: Parking lot for adjacent office building, zoned B-2

The applicant desires to rezone the property at 245 East Water Street by removing the current proffer. The parcel is located along the southern side of East Water Street, midway between South Mason Street and Ott Street. The subject area was rezoned in May 2016 to B-1C, Central Business District Conditional and a subdivision creating the 2,376+/- square foot parcel was approved in December 2016. Currently, the site is improved with a 1,140 +/-square foot, two-story building and a 20-ft. by 27-ft. parking area.

The applicant has operated Urgie's Cheesesteaks LLC from the site since January 2018, and describe the use as "a one-of-a-kind, pedestrian friendly, downtown-Harrisonburg eatery, reminiscent of the famous, Philadelphia Cheesesteak take-out restaurants..." The ultimate goal of the applicant is to upgrade and enlarge the existing building and provide indoor and outdoor components, which would include restaurant counter service and seating offered outdoors, and table service/seating offered indoors. Table service will also be available for outside depending on the volume of customers.

As previously noted, the property was rezoned in 2016 to B-1C with a condition that "two parking spaces shall be provided on site if the subject property (245 East Water Street) is used for commercial/business purposes, and if used residentially, one parking space per tenant will be provided on site." Therefore, since the property is presently being used as a commercial restaurant, the property owners are required to provide two parking spaces on the site. Currently, the existing 20-ft. by 27-ft. parking area, is being utilized to meet the parking requirement for the restaurant.

The applicants have expressed that using this area for parking creates a dangerous situation for customers and for traffic traveling on East Water Street. Customers must back out into a busy traffic lane that has on street parking. Additionally, the close physical proximity of the structure to the street and location of the neighboring electrical box makes it difficult for oncoming traffic and for the driver of the vehicle backing out of the parking spaces to see each other. The applicant would like to close off the parking area entirely to vehicular traffic and use it for outdoor seating. The applicant has proffered the following:

- "I(We) hereby proffer to install new curb, gutter, and sidewalk across the frontage of the existing parking lot at 245 East Water Street, to match and tie-in with the existing curb, gutter and sidewalk along the remaining frontage of the property. Such improvements shall be completed within twelve months of rezoning approval."

As stated in their submitted letter, the applicant has reached out to Wharton, Aldhizer, and Weaver Law Offices, the adjacent property to the south and west, regarding parking and they have an informal parking arrangement; however, this is not a recorded shared parking agreement and could be removed at any time.

The existing structure on the subject property encroaches into the East Water Street right-of-way by 0.8 feet (10 +/- inches) and this encroachment creates a sight distance issue when attempting to back out of the property. The existing parking is non-conforming and any new parking area created on the site must meet the requirements of Section 10-3-25 (5) of the Zoning Ordinance, which does not allow on-site parking to depend on the public right-of-way in order to maneuver into or out of parking spaces; therefore, backing out onto East Water Street would not be allowed with any new parking arrangement.

During the 2016 rezoning of this parcel, staff emphasized that since there are no minimum parking requirements in the B-1 district, if the City approves any B-1 rezoning request, the City is also accepting the responsibility of the parking demand such properties place on the City's downtown area. However, the City does not want to place citizens or businesses in unsafe situations when maneuvering in and out of parking areas.

Given the size of this parcel and the location of the existing building on the site, creating a new parking area without redeveloping the entire site would be a challenge. On-street parking is available along East Water Street and Newman Avenue near the subject property. Staff has suggested to the applicant to continue working with neighboring property owners in an attempt to establish a shared parking agreement as per Section 10-3-26 of the Zoning Ordinance. Staff recommends approval of the conditional rezoning as requested.

Mrs. Fitzgerald said we received a letter just before the meeting started, it was hand delivered from the folks at Wharton, Aldhizer & Weaver and it refers to a parking agreement. Would you like for me to read it into the minutes?

Mrs. Banks said yes please.

Mrs. Fitzgerald read the following:

To the Members of the Commission:

It has come to my attention that the Commission may have received a letter to the effect that Wharton, Aldhizer & Weaver, PLC has "informally permitted" customers of Urgie's Cheesesteaks, LLC "to use [our] parking lot during non-business hours as well as throughout the day on weekends." This is not correct. WAW has not taken any position or made any commitments regarding the use of our parking lot, and WAW takes no position on the petition of Urgie's Cheesesteaks, LLC currently pending before the Commission.

*Very Truly Yours,
Jeffrey R. Adams
Managing Partner*

Chair Way asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if the applicant would like to speak regarding this request.

Steven Urglavitch, said I am both the owner and president of Urgie's Cheesesteaks and TSU Holdings, LLC. I appreciate the opportunity to speak to all of you. My brother and partner opened Urgie's Cheesesteaks in October of last year and we were lucky enough to identify 245 East Water Street as a potentially great business location. Our goal has always been to create an opportunity. A restaurant environment that was extremely pedestrian friendly. We both have grown up in Philadelphia, I have been here in the Valley for 14 years. We both grew up in the city and its common place in the city to have corner pubs, corner delis, corner bars, and everything is pedestrian friendly; they focus on pedestrian traffic.

As we have been here through the years and watched the increased traffic in downtown Harrisonburg – increased bicycle traffic and increase pedestrian traffic – we figured that this urban street location would be great for this idea. Mainly, because we have 550 pedestrians across the street at Urban Exchange that do not have to walk too far, and then secondly, we have a great neighborhood right behind us, from right on Water Street all the way back to the University. With a lot of college students, and with a lot of local residents we really envisioned an opportunity where people could walk to our location. We knew that when we purchased the building that there would be limited parking, we would only have two spots, and parking would not be advantageous for us. We know parking was not going to sell our business to begin with.

We were able to get into the building in January and the City, the Planning Department, the Fire Department, they were all very supportive and they permitted us to build a cooking apparatus outside the building so we could get this business started. We were able purchase the building at the end of June. At which time our 180-day permit to continue to cook outside had expired. But, we were able to grow a really good customer base during that time and our business has grown dramatically and we have received very positive feedback from all the local universities, the local press, various leaders around the community and even outside of the Harrisonburg area. We really think we are onto something and providing something to the City of Harrisonburg to continue to help us become a destination town. And, considering JMU, almost 25% to 35% of their students are from the Tri-State area, Pennsylvania, New Jersey and even the New York and Maryland areas, they love cheesesteaks. We are growing a captive audience.

As we have grown, the fastest growing segment of our business has been the take-out segment. A lot of customers are driving up, ordering cheesesteaks, and pulling out. But, what we have found through time is that our customers were giving us feedback about how the challenges and the dangers associated with

simply backing out of that parking lot. There is very limited visibility on both sides and it is especially bad on the handicap side where we have an electrical box and a giant tree. You are almost in Water Street three to four feet before you have any visibility to see what is coming from either direction. I do not want to say worse, but of equal concern, is when traveling east bound on Water Street, if you are a commuter, a downtown resident, or a bicycle, you cannot see our parking lot until you are almost upon it. We have witnessed a number of close calls and then you add the additional off-street parking with Urban Exchange and we know how busy Urban Exchange is with a lot activity in the building. It has become a bottleneck and our business is not helping. We are not helping the situation.

Ultimately, we feel that the benefit of having that parking lot is clearly outweighed by the risk of having it as well. We realized that by removing the parking lot we are going to remove the fastest growing segment of our business, which is the take-out business. We know that, we have accepted that, but we also feel that there is an opportunity for us to shift our focus and create a safer environment for our customers, a safer environment for pedestrians, and a safer environment for bicyclists, by closing off that parking lot, putting a barrier, putting a curb there and providing an aesthetically pleasing outdoor seating area for folks to come and enjoy a cheesesteak at Urgie's. Ultimately, what we are asking is that you consider the rezoning from B-1C to B-1, to remove the parking lot so that we can continue with our goal to create a pedestrian friendly environment, keeping our college students, our commuters, and our residents safe as we continue to grow our business and thrive in this community and continuing to make Harrisonburg a destination.

Chair Way asked if anyone had questions for the applicant. Hearing none, he asked if anyone else would like to speak in favor or against this request.

Michael Layman, said I have a law firm that is next door. I am one of the biggest fans of Mr. Urglavitch and their Philly cheesesteaks, but I am also very concerned about the safety issues. First of all, there is a major problem with traffic coming up the hill from Mason Street to Ott Street. That street needs to be a one-way street just like it is below Mason Street to Main Street and that will eliminate the very horrible blind spot in terms of the parking lot.

We are a law firm that does a lot of estate planning and administration, and we have a lot of elderly people that come in to our lot which is right next door. We have four spaces right next to the building and five right above Urgie's. We have extra wide spaces so that our elderly clients, often driving bigger cars, can easily pull in. Since Urgie's has been open, they do have a lot of drive up parking and most of them park in our lot. Pull in for a few minutes, they pull in from all kind of directions. Urgie's has been very helpful in trying to avoid that, they will tell their customers, but we have four or five cars that have pulled in at a time. We have had two police cruisers at one time, and another attorney in town that pulled in, and they were saying "we are only going to be here a minute, we are just picking something up." Again, we have our staff, we have our clients coming to our office and the situation has created a safety concern for us.

Fortunately, we have an additional lot with 26 spaces on Ott Street. I have been trying to talk to Wharton, Aldhizer, and Weaver (WAW) about a possible win-win. They have six spaces below Urgie's right on Water Street. You cannot get into them from Water Street because they have blocked it off. But if you make Water Street one way going down and with proper signage, the folks will not come into our lot, often doing U-turns to get into our lot, but go on down and grab six spaces at WAW. WAW sold them the building in the first place, and we would be willing to allow WAW to rent six of our spaces up on our Ott Street lot.

Our recommendations would be not to allow the elimination of the parking until a formal arrangement is made, not allow it until Water Street is one-way and then as a part of all of this with the increased traffic coming in, strongly encourage the City to eliminate the parking in front of WAW on Mason Street. If you are coming down the hill you look right to all the traffic turning left off of Market Street coming up Mason Street you look left and there is a slope on the road and it is very difficult to see traffic coming.

But, when you have three cars there you just cannot see the cars coming. Many of our staff are coming out of our lot, coming out the driveway and going down Newman Avenue to get home.

There are multiple things that need to be addressed, but for the elderly folks, for everybody that uses our parking lot, I strongly encourage that you deny this until a formal arrangement is made. It is a real safety concern.

Chair Way asked if anyone else would like to speak in favor or against this request.

John Schuster, 539 South Dogwood, said I have been to the establishment before and have had their cheesesteaks since they have opened. I am familiar with what is going on there. I want to put my two cents in. From listening to both parties, I guess I do not see how, if the change were made, how that would not help the situation. Because, that parking lot is in a place that is difficult to get out. It is difficult to get out because you cannot see the traffic to the west. If they were to make that road one-way heading west, you would eliminate that, but that is a different process.

The signs at the offices, the attorney offices on the corner, they are well marked as to whose parking spaces those are, who they belong to. Every time I have been to the Urgie's, I have gone down Newman Avenue and I have yet to see somebody parked up against the establishment in order to get a cheesesteak. If Urgie's wants to establish a walking place, why not let him do that. I really do not see the conflict between the lawyer's office and his business. I have not seen that.

Mr. Layman said let me clarify the conflict is not in connection with the parking on Newman Avenue out in front, the parking is the conflict in the back where our major parking is. If they would park out on Newman Avenue that would be great.

Chair Way said I would like to invite the applicant if you have any comments to reply to this.

Mr. Ugrlavitch said I think that change takes time and culture change sometimes takes even more time and what my brother, my partner has committed to is creating this culture and a restaurant that people understand that there is no parking on site and we are going to educate our customers in time. We were gaining momentum with educating our customers not to park in Mr. Layman's parking, and I understand his concerns especially with his after-hours customers. But since we stopped cooking in June on site, we lost a little bit of that momentum and now we are at the Pale Fire Brewery as we begin the construction process.

We really believe that our cheesesteaks, we have a bit of a cult following, that is the best way I can describe it to you, and we truly believe in time that we will be able to educate customers to utilize the parking garages, to utilize the two-hour parking around, and to utilize their bicycles and to walk. I think that this City could utilize more of an influx of businesses encouraging patrons to walk and to utilize non-motor vehicle traffic downtown as we go through these growing pains and we all know how much Harrisonburg is growing. But ultimately my biggest concern is on Water Street, it is becoming a thoroughfare for individuals to leave the City, like Main Street, and traffic is increasing on there. I hope you consider my recommendation and I appreciate those people that have spoken. I think this is in the best interest of the City, and our patrons and customers.

Chair Way asked if anyone else would like to speak. Hearing none, he closed the public hearing and he asked Planning Commission for a motion on the request or for discussion.

Mrs. Fitzgerald said it is certainly true that we have talked for a long time with Harrisonburg Downtown Renaissance and any other kind of developmental ways about how the expectation that a lot of folks have that they can park right in front of the place they want to go. You are talking about downtown businesses and it is something that is going to have to fade. The idea of parking in a garage and walking to where you want to go is something that will, as we get more accustomed to it, help all the businesses downtown. That has been a point that we have been making around here for a decade and we are making some inroads but still, the expectation still seems to be that if I want to go somewhere I am going to be able to park right where I can see it and really close otherwise it is inconvenient. So, I take your point that this is

a change in mindset that is going to be helpful as we move in that direction. That is not just you saying that for your particular item, which it is in front of us today, but that has been something that we have talked about for a long time.

Mr. Colman said something that is happening also with First Fridays and the art shows through the City, is changing that. Because people have to park in one place to visit all the different galleries and walk around. I think that is happening, it is just taking some time, but I agree, ideally, we want to change that culture of wanting to park right in front, as much as we all like it, still convenience is not always the best thing.

Mr. Finnegan said this is the second agenda item that has to do with parking. I think this one in particular, looking at the way that cars pull out there, they are pulling directly onto a road as opposed to a parking lot and I agree with what Commissioner Fitzgerald said about we have to get away from this idea of everything is pull right in front of the business and walk right there. I am definitely inclined to vote in favor of this.

Chair Way said it seems the walkability factor is involved in encouraging those kinds of uses. I hope, if possible, the neighboring property owners could talk with the businesses there and come to some agreement to facilitate a little bit of that. I think some of the ideas about the one-way on Water Street makes sense. We also received a letter here from the owner of Urban Exchange and I think they make some interesting points, and this may be more for the City's perspective, about the parking on Water Street and reopening that and try to think as that area is developed now making it walker friendly. Again, it is tricky when I see the problems that might happen with the neighbors, just the way people use those lots.

Mrs. Banks said not all of you were on the tour yesterday when we were at this location, but, I shared that I reached out to the Public Works Department regarding some of the comments about the street and the parking situation. They are going to provide comments, they are a little busy right now, so perhaps by the time this moves forward to City Council we might have some more input from Public Works on some of these comments.

Mrs. Whitten said I have not even thought about delivery trucks trying to get down through there.

Mrs. Fitzgerald said the growing pains of a developing city center or a redeveloping city center.

Mrs. Whitten said it is and it would seem taking out those two parking spaces might actually eliminate the problem rather than make it worse. It seems counterintuitive.

Mr. Finnegan said it really is in the businesses best interest to work out things with the neighbors.

Mr. Colman said I want to comment also on the fact that we rezoned this a year ago and we rezoned it to B-1C and the condition was that two parking spaces were provided. Now we are going back and saying how they are dangerous and we do not want these parking spaces here. I guess this is more to caution our decisions, that we look at something much more in depth than, we need more parking there and we are going to fit it where ever it fits or now we feel like we do not need it. I think that is something that we need to be careful about. It is dangerous when we rezone something in one way with conditions and then we come back and say we are going to rezone this totally with no conditions. Why did we not do it from the beginning, what are we missing now that we feel comfortable removing that condition, what was the heavy argument at the time that moved us to decide we wanted this condition here? Now we do not need them anymore, that concerns me. However, I agree with removing the parking there. Again, the comment goes also for myself for this.

Chair Way said I think they figure out through experience, I agree with what you said, some things just come through experience.

Mrs. Fitzgerald said had it turned into a residential unit we would have never taken the parking away, we would have kept the condition, but it did not.

Mrs. Banks said there was always the possibility that it could have been demolished and redeveloped and the parking could have been located in a different way.

Mr. Colman said I think as a side comment on that too, I was never comfortable with the fact that the property line was right around the building. It seems like it should have been considered, if you are going to subdivide why not a typical City lot, not just, we just want to cut up this building lot. There is not room for setbacks.

Mrs. Banks said there are no setbacks in our B-1 Central Business District, buildings are constructed property line to property line.

Mr. Colman said no parking and with all that said, I like the idea. I think it is a great idea to turn that parking area into more of a sitting area. It is a great downtown opportunity for a restaurant and I am supportive of it. I think they should work out the parking issues with the neighbors that is critical, but other than that I like the idea.

Mr. Finnegan moved to approve the rezoning at 245 East Water Street (Proffer Amendment B-1C to B-1C) as presented by staff.

Mr. Colman seconded the motion.

Chair Way said we have a motion and a second. Is there any more discussion?

Chair Way called for a voice vote on the motion.

All voted in favor (6-0) to approve the rezoning at 245 East Water Street (Proffer Amendment B-1C to B-1C) as presented by staff.

Chair Way said this will move forward to City Council on September 11, 2018.

Respectfully Submitted,

Alison Banks

Alison Banks
Senior Planner