



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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March 1, 2021

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

**SUBJECT:**

Consider a request from SM Valley Mall, LLC to preliminarily subdivide a +/- 38.77-acre parcel into three lots consisting of a +/- 0.78-acre lot, and a +/- 0.75-acre lot, both fronting on East Market Street and a third lot consisting of the residual +/- 37.24 acres. The request includes variance requests from the Subdivision Ordinance for deviation from public general utility easement requirements and to not construct sidewalks. The property is located at 1915, 1925, 1945, and 2005 East Market Street and is identified as tax map parcel 78-C-3.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION  
MEETING HELD ON: February 10, 2021**

Chair Finnegan read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site as Commercial. Commercial uses include retail, office, professional service functions, restaurants, and lodging uses. Commercial areas should offer connecting streets, biking and walking facilities, and public transit services. Interparcel access and connections are essential to maintaining traffic safety and flow along arterials. Parking should be located to the sides or rear of buildings.

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

Site: Retail shopping center, zoned B-2

North: Across University Boulevard, business and retail/commercial uses, zoned B-2

East: Across East Market Street, business and retail/commercial uses, zoned B-2

South: Business and retail/commercial uses, zoned B-2; Warehouse and sales use, zoned M-1

West: Business and retail/commercial uses, zoned B-2

The applicant is requesting to preliminarily subdivide one parcel into three lots consisting of a +/- 0.78-acre lot (Wells Fargo) a +/- 0.75-acre lot (Popeye's), and a residual lot consisting of +/- 37.24

acres (Valley Mall). The first two lots will have frontage on East Market Street, and the third lot will have frontage along East Market Street and University Boulevard. The application includes variance requests from the Subdivision Ordinance for deviation from public general utility easement requirements and to not construct sidewalk along University Boulevard. If approved, the applicant intends to sell the two smaller lots and retain ownership of the residual Valley Mall parcel.

The subject property is an existing retail shopping center with public water and sanitary sewer currently serving the site. The mall building is served by a 10-inch private water line that surrounds the entire building. The proposed two “new” lots are served by a 12-inch public water main which runs along the length of the property frontage parallel to East Market Street. An existing 8-inch public sanitary sewer main runs along the northern property boundary within the University Boulevard right-of-way and serves the existing site through a series of private sanitary sewer easements. With regard to stormwater management, the site is developed with existing stormwater facilities.

As part of the preliminary plat, the applicant is requesting variances to Sections 10-2-43 and 10-2-61(c) of the Subdivision Ordinance. Section 10-2-43 requires a 10-foot wide public general utility easement along front lot lines and any lot adjacent to public right-of-way and requires at least a 10-foot wide public general utility easement centered on the sides or rear of lot lines. The applicant has stated that the land being subdivided is developed and all buildings are currently served by necessary utilities and easements. Therefore, new public general utility easements along interior and exterior lot lines are not needed. The applicant is proposing a variable width public general utility easement (labeled on the preliminary plat as a “permanent joint-use utility easement”) to extend the entire length of the property frontage along University Boulevard. Also, the applicant is proposing to dedicate a variable width utility easement along the entire frontage of East Market Street for the three proposed parcels. This easement will be at least 10-feet from the center of any public sanitary sewer or water lines, and 5-feet from the center of any other utilities (electric, cable, phone, etc.). Location of the proposed variable width utility easement will be delineated on the final plat once all the utilities are located. The title of the easement will be determined once it is known what utilities are there.

Section 10-2-61(c) of the Subdivision Ordinance requires sidewalk be constructed and, where necessary, right-of-way be dedicated when a property that is being subdivided fronts on an existing street and adjacent property on either side has an existing sidewalk. The residual Valley Mall parcel has +/- 700 feet of street frontage along University Boulevard and no sidewalk. The adjacent property, identified as tax map parcel 78-C-4, has sidewalk; therefore, construction of sidewalk and right-of-way dedication, if necessary, is required. The applicant has stated that construction of the sidewalk would impose a significant unplanned expense at a time when Valley Mall sales and income have decreased due to the pandemic. Also, there are existing utilities in the path of the sidewalk that would require relocation, adding significantly to construction costs.

Strategy 13.1.5 of the Comprehensive Plan encourages measures to expand the network of pedestrian infrastructure (sidewalks and shared use paths) so that streets will have pedestrian accommodations on both sides of the street and staff supports sidewalk construction throughout the City. Currently, the City has a fully funded project for sidewalk construction within this area

which includes the Valley Mall frontage along University Boulevard. The project is funded by the Virginia Department of Transportation (VDOT) with funds becoming available in 2023. The project includes sidewalk along University Boulevard and Evelyn Byrd Avenue with an estimated completion date around 2026-2027. Although staff does not agree with the applicant's reasoning for the variance to Section 10-2-61(c), staff supports the variance because the sidewalk construction funds are already secured. The applicant has agreed to dedicate a variable width (12 to 15-ft.) public sidewalk easement along the University Boulevard street frontage. This will allow construction of the new sidewalk without the need for the City to obtain right-of-way and will also allow for relocation of utility junction boxes outside of the sidewalk area and into the new easement.

The buildings on the proposed new lots (Wells Fargo and Popeye's) meet current setback regulations for the B-2 zoning district. Staff has discussed with the applicant that off-street parking and parking lot landscaping requirements must be met for each of the new lots. The applicant has stated they intend to create a shared parking agreement between Valley Mall and the new lots. This will resolve any parking or landscaping deficiencies and the applicant is aware that the shared parking agreement will need to be in place prior to approval of the final plat.

Additionally, located on the subject property is a non-conforming billboard sign. When a property has non-conforming signage and the property owner desires to subdivide the property, then the subdivision will trigger the requirement for signs to conform to the current sign regulations. The applicant has been informed that the non-conforming billboard sign will need to be removed. The applicant is aware that removal of the billboard sign will need to occur prior to approval of the final plat.

Staff recommends approval of the preliminary plat and variances as requested.

Chair Finnegan asked if there were any questions for staff. Hearing none, he invited the applicant or applicant's representative to speak to the request.

Hillary Zahm, Macerich, 500 North Michigan Avenue, Chicago, Illinois spoke in support of the request. I have nothing more to add. We have worked closely with staff and will continue to do so through the process. We are grateful for the staff support.

Justin Lipka, Macerich, 1162 Pittsford-Victor Road, Pittsford, New York, spoke in support of the request. I have nothing further to add, but I am happy to answer any questions you may have.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he opened the matter for discussion.

Chair Finnegan said that it has been too long. I do not remember what was there along Route 33 before Popeye's. Were there always buildings there?

Ms. Banks said that Popeye's redeveloped a bank parcel.

Chair Finnegan said then there have always been buildings there on Route 33.

Ms. Banks said yes.

Commissioner Whitten said that there are more buildings. There was a Suntrust, Crestar at one point. A smaller amount of that property was used by the bank than is there now.

Chair Finnegan said that it seems that there is more parking being converted into other buildings or other lots. It does make sense. I do not remember the last time that parking lot was full. I do not remember the last time the parking lot at Valley Mall was at 75% capacity. It makes sense. I do not have any objections to this request. I do agree with staff. I do not agree with the applicant's reasoning that they need a variance because of the expense. It just so happens that they got lucky and there is already funding in place for this.

Commissioner Byrd said that a better reasoning would have been to cite that the City already plans on building a sidewalk there and has the funding to do that in the recent future. When I was reading the request, I was trying to figure out what was causing all the triggering. I realized that the variance was causing the billboard to be a concern and bumping into the need to finish the sidewalk. It seems that most people's concern was the reasoning for not building the sidewalk being presented, as opposed to the matter of the sidewalk already being constructed.

Chair Finnegan said that it is important that the public record show that this is not a precedent for foregoing building sidewalks. This is a special case where the VDOT funding for this sidewalk has already been secured. We are not making an exception to that.

Commissioner Whitten said that is very important. We have lobbied for those sidewalks out there. I would never want to go on record as voting for something that allowed someone to not build sidewalks. This is a special case. Is everyone in Planning comfortable with what you referred to as a pinched-down area for the utilities? Do you foresee any issues with that?

Ms. Banks said that staff is comfortable. Staff and the applicant worked closely with Public Works regarding the easement size and the location. We are comfortable with what is laid out.

Commissioner Baugh said that there is precedent on this, and the precedent is that we make people put in sidewalks unless they can show there is a good reason not to. I agree with what has been said, including that with us controlling it and already having planned for the sidewalk. One thing that they did mention that is relevant is the easement. It allows us to control the interaction with the existing utility easement. I move that we approve the preliminary plat, as submitted, with the requested variance.

Commissioner Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Whitten	Aye
Commissioner Baugh	Aye
Commissioner Orndoff	Aye

Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Hull	Aye
Chair Finnegan	Aye

The motion to recommend approval of the preliminary plat, as presented passed (7-0). The recommendation will move forward to City Council on March 9, 2021.