

MINUTES OF HARRISONBURG PLANNING COMMISSION

August 14, 2024

The Harrisonburg Planning Commission held its regular meeting on Wednesday, August 14, 2024, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Brent Finnegan, Chair; Adriel Byrd, Vice Chair; Vice Mayor Laura Dent; Richard Baugh; Heja Alsindi; and Kate Nardi. Valerie Washington was absent.

Also present: Adam Fletcher, Director of Community Development; Thanh Dang, Deputy Director of Community Development; Meg Rupkey, Planner; Wesley Russ, Deputy City Attorney and Anastasia Montigney, Administrative Specialist/Secretary.

Chair Finnegan called the meeting to order.

Chair Finnegan asked if there were any corrections, comments or a motion regarding the June 12, 2024, Planning Commission minutes.

Vice Chair Byrd moved to approve the June 12, 2024, Planning Commission meeting minutes.

Commissioner Baugh seconded the motion.

The motion to approve the June 12, 2024, Planning Commission meeting minutes passed (5-0) with Vice Mayor Dent abstaining.

New Business – Public Hearings

Consider a request from Paulin Mupenda Makungu and Beni Ndjoni Tamnwe for a special use permit to allow a major family day home at 1561 Gilmer Circle

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said major family day home (MFDH) is defined in the Zoning Ordinance as: “*A child day care program offered in the residence of the provider or the home of any of the children in care for five (5) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.*” MFDHs are permitted only by special use permit (SUP) in all residential districts, except the R-5 district, where they are not permitted.

When considering a MFDH it is helpful to know how it differs from a minor family day home. A minor family day home is allowed by right within all residential districts and is defined as: “*A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through four (4) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more*

restrictive than those imposed on residences occupied by a single family shall be imposed on the day home.”

The applicant has been advised by staff to work with the Virginia Department of Education (VDOE) for licensure requirements. The VDOE regulates licensing standards of family day homes and ensures that the facility and the operation of the MFDH are favorable to the welfare of the children in care. Approval and licensing from the VDOE require an applicant to maintain compliance with local ordinances and laws. VDOE requires applicants to submit a form signed by the locality’s Zoning Administrator to verify that the use is allowed at the requested location. Approval of the SUP would allow for the applicant to operate as a MFDH at the subject location with the proper licensing from the VDOE.

The applicant is requesting a special use permit (SUP) per Section 10-3-34 (6) of the Zoning Ordinance to allow a major family day home (MFDH) within the R-1 District. The +/- 16,140-square foot property is addressed as 1561 Gilmer Circle and is identified as tax map parcel 91-L-24.

The applicant is planning to care for a up to 10 children and to operate Monday through Friday from 6:00 am to 5:00 pm. Staff is not recommending conditions on the hours of operation or facility schedule, and therefore, if the request is approved as submitted, the hours of operation, facility schedule, and number of children in their care may change at times, up to 12 children.

Land Use

The Comprehensive Plan designates this site as Low Density Residential and states:

These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low-density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the SUP request.

Public Water and Sanitary Sewer

Staff has no concerns with the special use permit as it relates to water and sewer matters.

Recommendation

Staff believes the intended MFDH use should have little impact on the surrounding neighborhood and recommends approval of the SUP request with no conditions.

Chari Finnegan said just to clarify, when we were on the site tour yesterday, we saw the blue zone parking permits. There is a two-car driveway that might be big enough for two cars?

Ms. Rupkey said for this site, yes, they could fit cars and there is also a garage that they currently store a vehicle in as well.

Chair Finnegan said so to get cars in and out of there it would be using the driveway because people cannot park on the street. And the applicant is aware of that?

Ms. Rupkey said yes, I talked to him today.

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

Paulin Mupenda Makungu, the applicant, came forward to speak to the request. He said I have a strong accent. French is my everyday language. I am a production supervisor for Cargill. I requested an application for my wife because I do not want my wife to work anymore, I want her to stay home. That is why we submitted the application to see if we can get approved for five or six kids for daycare. Her and my mom are in the house, it is why we submitted the application, to see if we can get that. Before we came here, we talked to our neighbors and we informed everyone around to let them know that we submitted an application for a daycare. We think that everybody we saw around, they 100% agree with that. We went to a couple of houses, we knocked on the door, nobody opened the door, but most of the people for our street we talked to them, we explained to them [the request] and they said they are okay with it.

Vice Mayor Dent asked are there children in your neighborhood who you imagine would be children that you would watch in your daycare?

Mr. Makungu said the first thing you want to submit a request for permit. After that, we found out how we can get kids. We do not have any kids yet. We want to get the permit first and then after that we are going to be in contact with the Department of Education. After we get our permit, we can start finding kids, but we do not have kids yet. We want to make sure everything is approved with the government and then we can get the kids.

Chair Finnegan said we did receive some comments, concerns about parking and traffic in and out of there. Do you have any concerns about...people dropping off children can use the driveway but because it is a permit parking zone I guess you can park in the streets but the people dropping off the children would not be able to park on the street. Do you think that would present a problem?

Mr. Makungu said I think in my house, as you can see in the picture, I have big garage that can fit two cars inside, my car and my wife's car. Outside, when a visitor coming to see us, they can park like five cars. I already talked to all my neighbors because the first neighbor is the teacher of my daughter and he agreed. My right-side neighbor, I talked to her, and she said sometimes people can make traffic they say it is okay. In front of my house, five cars can park. They can do all traffic in front of my house. I talk to my neighbors, and they agree. They said it is okay, we do not have any problem with it.

Chair Finnegan asked if there was anyone in the room or on the phone wishing to speak to the request.

Barbara Keppel, a resident at 1510 Gilmer Circle, came forward to speak to the request. She said I have been working with Meg as a result of this request. [This request] increases a tremendous amount of traffic into our little neighborhood and if you have been into that neighborhood that would be very congested. It would be like adding 12 additional houses in that small little circle

with people trying to get in and out. Those are my concerns, the traffic and the safety. I am out there every morning and every evening walking as well as the rest of our neighbors.

Chair Finnegan asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Nardi said is it correct from the description that City staff has given that this designation can accommodate 5 to 12 children?

Ms. Rupkey said yes.

Commissioner Nardi said what I am getting at is the difference between five children and twelve children in terms of parking and traffic and safety is something I am concerned about but at the same time I understand the need for daycare. Just as a comment, I am balancing those two things as I confirmed how many children this designation allows.

Ms. Dang said if I may add that the designation would allow five to twelve children but if the number of children is of concern to the Planning Commission you all could recommend a condition that reduces the maximum.

Chair Finnegan said because this is a special use permit and not a rezoning?

Ms. Dang said that is correct.

Mr. Fletcher said and staff cannot speak to this, but I just want to acknowledge that the Department of Education has a system that I am not versed in about the number of children that can be provided by the provider based upon age, number of people caring for children. I cannot speak to what that is, but there is a system that the Department of Education regulated.

Commissioner Baugh said this system got put in place around 35 years ago but essentially what it is there are three levels to the system historically, and this is level two. It has taken this long for us to even see the trickle of applications because what has tended to happen was that people went into one of the other two categories. The five is sort of an upper limit of what you can just do essentially being unregulated.

Mr. Fletcher clarified that you could have four children with then by-right ability.

Commissioner Baugh said yes, four that is right. If you go over twelve you have to be a fully licensed accredited full blown regulatory process. This was the status that was created to have an interim where they basically told all of the local governments you cannot be more restrictive of this than a special use permit type item, you have to generally have some [unintelligible]. It is kind of an in between, you are not as unregulated as you are with four kids, but you do not have to go through all the full-blown separate building and everything. Historically, there were almost none of these because everybody looked at it and said I am either going to stay under the threshold to be unregulated or I am going to a full center. We do not have a ton of these. We have probably slowly seen more over time. Staff could speak better as to the exact of how many we have in town.

This is what this is somebody who has said they want to go for that middle ground. It is the regulatory system that creates the five to twelve.

Mr. Fletcher said in fact, the state dropped the number. It used to be over five and they dropped the unregulated number down to four. You can care for one to four children in the first category, and they changed the regulation and said now it is five to twelve and it used to be above five.. What I have observed over the years and what I have learned from applicants coming in, the younger the children, the more adults are needed. I never really versed myself well in that but that is what I have observed and learned from applicants over the years.

Chair Finnegan said that is instructive. Do we have an estimate or does staff know how many major family day homes [we have in the City]?

Mr. Fletcher said if I had to guess less than 10, maybe 10.

Chair Finnegan said I know that it has come up a few times.

Vice Mayor Dent said major daycare home is for children under the age of 13, is there a minimum age? If it is infants that is a different standard for how many people.

Commissioner Baugh said I do not remember what it is, but it is considerably more restrictive if you are talking about newborns and infants.

Vice Mayor Dent said it says that the applicant has been advised by staff to work with the Virginia Department of Education for licensure requirements. Licensure might require a minimum age.

Ms. Dang said as the applicant had explained they were seeking to get a special use permit first because the Virginia Department of Education will not issue the license without zoning approval. They will go through those steps with them.

Vice Chair Byrd said a citizen, a resident in Harrisonburg, has concern about an active special use permit, what department do they go to?

Ms. Dang said Community Development.

Chair Finnegan said I just wanted to enter this into the discussion that during the ARPA [American Rescue Plan Act] discussions that were had that ICAD [Institute for Constructive Advocacy and Dialogue] was doing in 2022 there were more than 3,000 people in Harrisonburg who engaged with the process to kind of identify the needs in the City. Accessible childcare for working families was one of the top three needs identified by folks in that ARPA process. I want to keep that in mind as we are having this discussion too, this is something the City has a real need for. I know of plenty of families in Harrisonburg that are having a hard time getting their child into daycare.

Vice Chair Byrd said I am in favor of this special use permit. Even if they were able to get to the maximum, it is child daycare which means there are no cars being parked there it is more of cars coming there picking up their kids. So, there is a traffic thing the neighborhood needs to be aware

of it and keeps an eye on it. If it does become a nuisance, then they know who to report to about that. Outside of that, taking care of children in a formal manor by classifying themselves under that puts them under other laws and other governmental bodies that they have to answer to. Those are the reasons why I would be in favor of this.

Chair Finnegan said any other thoughts or motions on this? Is there an appetite to put, as staff has mentioned, there is a potential middle ground here to approving it as submitted and putting suggested conditions on such as capping it at ten instead of twelve. Is that something we want to do?

Vice Chair Byrd said I have not heard any ideas; I would like to make a motion to recommend approval of the special use permit as submitted by the applicant.

Vice Mayor Dent seconded the motion.

Vice Mayor Dent said to Chair Finnegan's remark, affordable accessible childcare is one of our top priorities in the City. The reason I asked if you have neighborhood children is because I really like the model of in neighborhood daycare so that the burden does not fall on the much steeper climb of setting up whole childcare facilities. The more we can have distributed childcare in the neighborhood, the better. As for the traffic, I see that as a minor inconvenience to a few people compared to a major need for a lot of people.

Commissioner Baugh said I think I have voted for everyone of these that have come up. I think that we mentioned yesterday we actually drove by the one time we ever had one that we were probably going to not approve, staff was going to recommend against it. Given where that property is located relative to some major roads, that was the driver on that and that applicant actually pulled the application so it never actually came to a vote. I think we have approved every one that has come up. We have had some that have had more opposition to it than this. This is a special use permit item so if it starts to create a problem, we can always go back and look at it. To my knowledge, there has been a lot of concerns about things, but we never had one where anybody ever filed a complaint. We had one that we agonized over and it was because it was located very close to a fairly major road, the opposite of this. They actually reconfigured their driveway. The other thing I would say from experience a lot of times, not just with things like this, I understand when you fear the worst you start saying if you can have twelve kids there and they are all from different families and they all showed up at one time and you look at it...if it is actually causing a problem we can revisit it but it does not really happen because people have different schedules and come at different times. It is sort of unrelated but in a way it sort of is not I am reminded of some discussions that the County was having about these major storage units. One of the things that was put forward was look at the number of units and when all these people show up at the same time to get their things it is going to change the character. It is like, have you ever seen one of those? They are the most desolate looking things in the world because you never have everyone show up.

Ms. Rupkey said the condition that are on some special use permits about recalling it if it becomes a nuisance is not conditioned on this special use permit.

Commissioner Baugh said I will defer to Mr. Russ. There has always been a debate about whether we [include that]. My sense has been that we put that on there for ones where we kind of want notice on things. The nature of a special use permit is once you determine the property owner is not living up to the obligations you can look at it.

Mr. Russ said just to be safe we typically we have to include it on the list of conditions if any concerns at all.

Vice Chair Byrd said if the commissioners are concerned about that, we can easily vote down this motion, I will just make another motion that has the condition on it.

Chair Finnegan said can we do a friendly amendment to this?

Vice Chair Byrd said I will take a friendly amendment to add the condition.

Ms. Rupkey said if in the opinion of Planning Commission or City Council the use becomes a nuisance, the special use permit can be recalled for further review which could lead to the need for additional conditions, restrictions, or revocation of the permit.

Vice Chair Byrd said therefore the motion would change to actually add that condition?

Chair Finnegan said are we okay with that?

Vice Mayor Dent seconded the amended motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the special use permit with suggest conditions passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

Consider a request from Concepcion Ortiz Vasquez to rezone 895 North Liberty Street

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the existing structure addressed as 895 N Liberty Street is believed to have been built in 1945 before the property was annexed into the City in 1983. When the property was annexed, it was zoned M-1, which did not at the time allow dwellings, and the existing dwelling would have been considered nonconforming at the time.

A 1993 plat recorded in deed book 1235 on page 766 (a copy of the plat is attached) shows a two-story dwelling setback 25-feet and 2-inches from the public street right of way. It is unknown when the structure began operating as a duplex. The current property owner/applicant purchased the property in February 2024.

In June 2024, the applicant met with Community Development staff to discuss adding an addition to the rear of the building to expand one of the presumed dwelling units. During the meeting, it was discovered that the structure has been operating as a duplex. Since then, staff has been working with the applicant to verify the structure's nonconforming status. The applicant has been unable to prove that a duplex was legally established and is nonconforming.

The Zoning Ordinance states that “[w]henver a nonconforming use is enlarged or extended beyond the size, character, or intensity of the use as it existed at the time that it became nonconforming, the nonconforming status of such use shall terminate and become unlawful.” Additionally, the purpose of the nonconforming principle is to preserve rights in existing lawful buildings and uses of land, subject to the rule that public policy opposes the extension and favors the elimination of nonconforming uses. Nonconforming uses are disfavored because they detract from the effectiveness of a comprehensive zoning plan.¹

Staff has determined that the structure has lost its nonconforming use status as a single-family detached dwelling when the structure was converted to a duplex.

After discussing options with staff, the applicant is requesting to rezone the property to allow for a single-family detached dwelling in the R-8 district. The applicant is aware that if the request is denied that the residential use cannot continue on the site.

The applicant is requesting to rezone a +/- 10,312-square foot property from M-1, General Industrial District to R-8C, Small Lot Residential District Conditional. The property is located at 895 North Liberty Street and is identified as TM 40-Z-54 and 55.

Proffers

The applicant has offered the following proffers (written verbatim):

1. There shall be no more than one dwelling on the site.
2. The setback off of North Liberty Street will be no closer than 15 feet.

The R-8 district is intended for medium- to high-density residential development including single-family detached, duplex, and, in special circumstances, townhouse development with an approved special use permit. If rezoned, although the dimensions of the property would allow for a total of two units (either two single family detached units or a subdivided duplex structure), Proffer #1 prohibits more than one dwelling on the site.

¹ Albemarle Land Use Law Handbook, <https://www.albemarle.org/government/county-attorney/resources/land-use-law-handbook>

The R-8 district typically requires a minimum 10-foot front yard setback, however, proffer #2 further restricts the front yard setback to 15 feet.

Land Use

The Comprehensive Plan designates this site as Industrial and states:

These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. They include the major existing and future employment areas of the City.

Staff does not believe this specific site is appropriate for a residential use. Not only is the subject site planned and zoned for industrial uses, but all properties on the same side of the street extending from the North Liberty Street/Edom Road intersection north to the City/County jurisdictional line are also planned and zoned for industrial operations. While it is presumed that the adjacent properties to the north and south are nonconforming residential uses, the site is also adjacent to a presumed nonconforming junk yard, which raises concerns about potential issues such as noise, odors, and other factors that are incompatible with residential uses and that impact the safety and quality of life for individuals that live near such areas. Staff understands a residential use has existed for many years on the subject site; however, the property has lost its nonconforming status. Staff believes approving a rezoning to continue a residential use at this location would be inconsistent with the goals and intent of the Comprehensive Plan's Land Use Guide.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the rezoning request.

Public Water and Sanitary Sewer

Staff has no concerns with the requested rezoning regarding water and sewer matters.

Housing Study

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject property within Market Type D, which notes that "[m]arket type D has lower market activity as well as lower access to amenities. This could be because the areas are stable residential neighborhoods or because the area is less developed and therefore has fewer sales and fewer amenities. Strategies that would be appropriate in the latter case include concurrent development of the housing and economic opportunities through mixed-use developments to build commerce and housing centers across the City.

Public Schools

If the rezoning is approved, no additional dwelling units would be added to the property; therefore, the student generation is zero. Based on the School Board's current adopted attendance boundaries, Waterman Elementary School, Thomas Harrison Middle School, and Harrisonburg High School would serve the students residing on this property.

Recommendation

Staff realizes how difficult of a situation the details of this case present, which is further complicated by the demand for housing in the City. While the City is working hard to find

solutions for more opportunities for housing in the City, from a land use perspective, staff cannot recommend in favor of this request given that the current zoning aligns with the future plans for the area and because we do not want to promote residential uses adjacent to the existing industrial uses.

Chair Finnegan asked the proffer is that not more than one dwelling. Is a duplex one dwelling or two dwellings?

Ms. Rupkey said that would be two dwellings.

Mr. Fletcher said [a duplex] it is two dwellings and what the proffer is intended to mean is that only one dwelling can be on site.

Ms. Dang said so you cannot have a duplex.

Commissioner Nardi said it would remain single family.

Mr. Fletcher said it must revert to a single family.

Chair Finnegan said just to clarify what we are dealing with here is either this gets approved and it reverts back to the single-family use if it gets approved by City Council that way or it cannot be used for residential at all.

Ms. Rupkey said correct.

Mr. Fletcher said unfortunately that is the case.

Vice Chair Byrd said the dwelling today... is one of them an accessory dwelling unit or is it just treated as two dwelling units? Does it meet all of those legal requirements of being physically two dwelling units?

Mr. Fletcher said I would answer it by saying we do not know all of the specifics of the structural integrity of the type of dwellings that they are. It kind of gets us to the complicated nature of this request. Staff, correct me if I am wrong, but our recorders indicate a single-family unit, a single-family structure is what our records show.

Ms. Rupkey said from what we could find that is what we came to determine.

Mr. Fletcher said nonconformities are very rigid. It is very narrowly tailored. You have to maintain the thing you have and you cannot expand it. We would go through this series of questions trying to determine can you add an addition to this unit? Can you not? We thought it was single family but you are telling us it is a duplex, when did it become a duplex? To get back to your question, that scenario gets debated a lot about what is a duplex because people refer things as duplexes that might not meet today's criteria as being a duplex -where they are fire wall separated, separate units, roofline to the floor, from a building code perspective, considered

two separate things. There are no doubt structures all across the City that have in some way shape or form have been operating as two separate units that casually get referred to as duplexes.

Ms. Dang said in this case it does not meet the current building code requirements for a structural duplex, and for years it has been operating effectively as two units, a two-household structure.

Mr. Fletcher said they were effectively operating like two separate units. Whether or not they met any building code requirements to meet the safety requirements to these two separate units, we cannot say.

Vice Chair Byrd said that explains the comment that was in the report from staff because I was curious about that because that was an uncertainty in the written report and I am hearing the same.

Mr. Fletcher said when you said accessory dwelling unit, what did you mean by that?

Vice Chair Byrd said last month in our meeting there was a lot of discussion on what a lot of different structures were. My main concern was one structure having two dwelling units how would we as the City know what...

Mr. Fletcher said we do not define an accessory dwelling unit today, therefore, in my view it is a duplex, it has been operating as two units, so it is just a duplex.

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

Concepcion Ortiz Vasquez, the applicant, came forward to speak to the request. Ms. Vasquez via interpreter Maria Cardosa said I bought this property in February of 2012, they gave me the property. Seeing that the property was big, I requested to see if I could add an addition or something on the property, so I came and put in the application. That is why I am here. Well, I bought it for a necessity to be with my family. I have been living here for 18 years and the owner put it for sale and I tried to talk to him to see if he would leave me the property, he left it and he financed it and all. They told me when I put the application, they told me I had to put in an application to see if it qualifies or if it does not qualify. That is when they told me that the property is in an industrial zone. I do not know what that is. I had been living there for 18 years but I did not know what zone it was. I bought it to live there and because everything is close by, my work, things to do, and anything I need to go buy. I do not drive, I walk. While I am walking around everything is close by to the bus. I bought it because I had a necessity. Now I am fixing up the house because I got it and it was a little bit damaged and now, I am investing money in it so that it is a pretty house. I am asking you to please if you can understand and comprehend if you can change the zone to a residential zone, which is what I need to live.

Vice Mayor Dent asked if this is approved and you have to revert from two units to single family, are you capable of doing that?

Ms. Vasquez said what I do not understand is the one singular family if it is technically only one home?

Commissioner Baugh asked are there two families living there now.

Ms. Vasquez said no, it is just me with my family.

Vice Mayor Dent said I am trying to understand why it is two units now.

Ms. Vasquez said I honestly do not know because the guy that was renting [to me] was renting to different people and now that I got it, I live by myself with my family.

Vice Mayor Dent said in that sense it would not be a hardship to go from two units to one for the family.

Ms. Vasquez said yes that would be better.

Vice Chair Byrd said can you repeat again when you were informed that the property was in an industrial district, before or after your purchase?

Ms. Vasquez said after the purchase because I came to ask for an addition for a room and that is when they, in their office, explained it to me that the zone was industrial. It was after because before that I did not know that.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said if this was BZA it would be open and shut... I agree with staff it is nonconforming and it lost its nonconforming status, but we are not the BZA.

Vice Chair Byrd said I would not make declarations about what the BZA would and would not say.

Chair Finnegan said my comment meaning if we are trying to determine if it has lost its nonconforming status. I agree with staff that if it was being used as a duplex it has lost its nonconforming status.

Vice Mayor Dent said lost its nonconforming status, that means that what is going on there is no longer legal so no longer permitted. If it were officially nonconforming it could be allowed to stay that way.

Mr. Fletcher said nonconforming uses are legal uses, so start with that understanding. The way that the code is written is that if you increase your nonconformity... lets say you have a nonconforming home with eight people living in it, you are legally nonconforming and you add two more people, you have now lost all of your nonconformity because you increased it and

therefore you have to revert all the way down to the number that is required by the current code. If you were R-1 and you had nonconforming 8 and you went to 10, now you have to go to a family or two [unrelated persons]. The awfulness of this case is she bought a property not knowing that there was an illegal unit that was added at some point in time. Someone before her added a unit with no permissions and they would not have been given permissions because it was nonconforming and because they added it, they lose all residential abilities.

Chair Finnegan said there are trailers right next door, those are nonconforming residential. I think the ones further towards Ashby Avenue are also nonconforming.

Vice Mayor Dent said legally so?

Mr. Fletcher said as much as we know.

Chair Finnegan said I think that is what makes this tough. There are nonconforming dwelling units there that are residential on either side of it.

Commissioner Alsindi said before we, if we are going to make any decision on it, is there anything from the legal point of view that could be at the benefit of the resident now before this complicates a decision?

Mr. Russ said there is nothing at this point that is left. It is just a rezoning opportunity.

Commissioner Baugh said I have had two thoughts along those lines and I am going to kind of throw them out there. One is we got the looming Zoning Ordinance rewrite. I do not know that anything like this is addressed there either and it is a tentative draft but it is worth thinking about. The other issue is while this is the most extreme example I have seen. We kind of just did one of these on the other end of this area. We do have this industrial swath on the north end of town that does have a fair amount of nonconforming residential. I am just working back to downtown. I have talked with residents over the years about it and you sort of scratch your head. The people who comfortably at a nonconforming use where they can stay. I do not know if we would want to go down this path, but as I am sitting here trying to think the same things. We knew the answer to the questions about is there any way to make this work and that is the reason we have the recommendation from staff that we do, there is not any way to make it work under the existing zoning. I am going to say something, food for thought, but given that there may be some other spots like this, would there be any rationale for creating a special use permit category under M-1 that might allow something like this?

Vice Mayor Dent said I kind of like that. The way we have started to allow mixed use residential in business districts, can we do something similar in the industrial districts? Not today but once we redo the zoning?

Chair Finnegan said that is a good suggestion. I would also say if in the context of doing a Zoning Ordinance and updating the Land Use Guide, I would think this would still remain Industrial. I am 51% in favor of this rezoning request. Staff's not wrong. If we rezone this, that is going to be a different color and it is going to make it harder... The whole purpose of a Land Use Guide

is we are aiming towards what do we want the City to look like in the future and it complicates it. I do think that Commissioner Baugh your suggestion it is not something we can do tonight but it is something worth thinking about so that we can avoid this situation in the future where we are having to chose between making that a place that no one can live or messing up the zoning map.

Commissioner Baugh said my recollection is that if we were willing to consider going down that path [this is] not the first time that we had someone come in and we thought sometimes even with recommendation of staff that the way to deal with this particular issue is an ordinance amendment. Historically, what I believe has happened is once it is identified that you are in that world, everything kind of goes on hold for enforcement or anything with this while this gets sorted out. Whether that is something that we could not just ask for right now or whether we feel it needs to go to Council for that decision to be made. That, maybe, I am not so clear about I can affirm that there are situations that you knew was not allowed under your existing ordinance, but once the decision was made to at least consider an ordinance amendment, that then went into limbo or whatever pending the resolution of the ordinance amendment process.

Chair Finnegan said are you suggesting potentially that we table this?

Commissioner Baugh said I do not know the answer to that question. Off the top of my head that is certainly one way to do it. Again, I think that with some of these things if you table them...the applicant would have to ask for it to be tabled. If the applicant does not ask for it to be tabled, we cannot force it into limbo.

Mr. Russ said you could for another meeting or two, there is a limitation on the number of days.

Commissioner Baugh said and then it is deemed approved and goes up to City Council.

Commissioner Alsindi said I am not sure how valid the question is but I have to ask it. Listening to the applicant and I do not want to draw any conclusions or imply anything. Would the value be higher for an industrial piece of land as compared to residential? Either way the answer has the applicant gotten enough consultation and advice before taking this decision.

Mr. Fletcher said I do not have the answers to those.

Commissioner Alsindi said at least I am able to draw the question with not necessarily having an answer to it.

Vice Mayor Dent said for one thing on the question of tabling, what that does is stall it from going to City Council? It is interesting to hear that after a certain number of days it is considered approved and goes to Council anyway.

Commissioner Baugh said if the applicant asked us to table it, then it would. But by the same token unless staff had some reason to think that we were seriously going to look at something like an ordinance amendment that just puts staff in the position of they voluntarily tabled something that we know is an illegal use.

Vice Mayor Dent said that is just sort of a technical point, I have another point here. Setting aside the technicalities of the zoning and the industrial and what not, from a human level this seems cruel and I think that is why it is so tough. They come trying to improve their house and are told that there is a possibility they could be kicked out.

Vice Chair Byrd said we have discussed before this kind of concept of proactive rezoning and one of the concerns I heard when that was brought up was that it was just the zoning done for what we genuinely with good thought wanted to see what the City looked like in the future. Then the time being there are certain spots where things are not as smooth and clear cut. The more I look at this area I just go “this area does not look like one of those clear cut places.” Does the City have all of its industrial space filled out that some companies would just be willing to buy up that land and tear those houses down? Is there that type of demand in the City? When I see many areas that are zoned for industrial there is still grass and nothing built on it, it becomes my concern. I understand wanting to keep to our guide of what the future is but I see certain spots in the City where I just think having a plan of what it will be in the future and what it should be zoned at now in the present I see those as two things that could exist in the same world. When we zone things for the future but currently people are doing one thing, those individuals are going to act on what thing exists as now and then they bump into the law and they go this is your plan in the future. All of my thoughts were more focused towards the future legislative body that has to look at this and go what are we saying as a City. These words are for the legislative body that has to actually make the decision that we would rather people who are still living somewhere not live there when we know that we are already talking about housing issues anyway in the City. It is not like we would be encouraging displacing people to somewhere we know where they are going. It is just one of those matters that just is going “we displaced them because we made a decision at some point in the past and we have good reasons why we made that decision.” I do not disagree with those reasons but at the current point in time are those reasons needed to be acted on now. When I look at this situation, I do not see the industrial usage of that area as vital now.

Chair Finnegan said it is industrial all up and down that street.

Vice Chair Byrd said I know the zone and what most of the structures there are.

Chair Finnegan said it smells industrial; it sounds industrial; and it looks industrial.

Vice Chair Byrd said like I said there are good reasons that someone would zone that industrial. I am not saying that those reasons are not valid. I am just going if currently people have decided to put up with the negatives of being there, unless there is something that would really move me to go “oh wow, we really need these people gone so that we can put that thing there.” I have a hard time going why can we not accommodate people being there?

Chair Finnegan said I think to Vice Chair Byrd’s point, I do have a question, I am assuming those lots next to it are owned by a different property owner?

Mr. Fletcher said correct.

Chair Finnegan said so it is not one owner that owns several lots. To your [Vice Chair Byrd] point if at some point in the future someone wants to put something industrial there, they would have to buy up each individual lot.

Vice Chair Byrd said if they buy up one lot, they could build their industrial thing there.

Chair Finnegan said by right.

Vice Chair Byrd said what I am saying is that the resident who is still living there would go “oh my goodness, my neighbor is doing this thing.” I go well you live beside an industrial area that the City has said for years should be an industrial area. Therefore, the onus the City should just stop it. I think they should decide to stop themselves.

Chair Finnegan said like I said, I am more in favor of this than I am against it but I do think there are good reasons to vote against it and I do understand staff’s recommendation and I think that they are not wrong about that but also we are taking into consideration some other things tonight.

Mr. Fletcher said I have a few points that might help a little bit for some clarification on things. First, I wanted to back up to the tabling matter just so that there was clarity on that. If Planning Commission tables it there is a time period in which you must act. If you do not act in that time period then it is assumed approved and it moves onto City Council. If the applicant tables it, it is in that limbo period. It is in their court to bring it back. I do not want to leave that to say that they can just be forever in limbo. They need to sort of make a decision about how to move on. We definitely have worked with people on that. In fact, this was scheduled to come before you last month and they decided to table it to this month just to push it off. For historical purposes, there are already two special use permits that were ordinance amendments that we did a few years ago to allow for residential uses in M-1, they are very specific. One is that you can have residential uses when they are attached to a recreational use. That is an M-1 special use permit you can apply for. A second is associated with boarding and rooming houses. We made an amendment to allow a boarding and rooming house in M-1. It is not like it is out of left field and not something that has been done before. Chair Finnegan is correct that these are very tough. We debated and challenged among each other, brainstormed trying to find different solutions, trying to find different things and we kept coming back to the science of planning and being like this is where we have to end up. I think it is probably clear to your terminology that it almost seems cruel and is very difficult. To the point of the undeveloped M-1 properties, you always have to remember what is available for M-1 properties to develop, maybe the infrastructures not in place. In fact, you are going to hear a preliminary plat this evening that they intended to develop it into three lots but only are doing two. Some of it had to do with utility infrastructure. Undeveloped fields could be because of infrastructure. As I noted earlier, we do not define accessory dwelling units, I just wanted to be clear on this. Oddly enough we do define accessory living unit but when this body talks about accessory dwelling units, we are talking about something a little bit different. That accessory living unit is like an entirely different thing.

Ms. Dang said the term is not used anywhere except in the definition section. I think it is a holdover from something else.

Mr. Fletcher said from a previous iteration of an ordinance. My last point is that if you are interested in staff investigating a special use permit option, you could table it if you wish. We can discuss and draft something up. In the meantime, the applicant, if they wanted to, could even call us at some point before the next meeting and say actually [they] would like to table it to actually talk to staff more, I would welcome the opportunity for the applicant to chat with us a little bit more and we can delve into it. It is entirely up to you but there was this question that was not directly asked of staff of is staff interested in doing this and it definitely something we can investigate.

Vice Chair Byrd said I want to be clear that as far as how we currently have things written in our ordinance, I understand staff's recommendation. I would agree with how staff have done their job. Which is why my comments were more to the legislative body who are elected. They have to make a decision based on how the residents and the voting citizens of the City might react to the choices made. If we think that staff would be able to come up with... without putting too much pressure on the other things they have also have to get done... By tabling it, a better solution, I would be in favor of that. But currently I am against denial. I would be in more favor of approving the request to just press City Council to have to make a decision.

Commissioner Baugh asked is there any particular reason that adjusting M-1 is...does staff have concerns about that? If so, what are they at this stage? I will put it bluntly, how bad of an idea do you think that is to even consider?

Mr. Fletcher said your second question is easier to answer. Special use permits are designed, it says it in the code, they are uses that are not to infringe upon the use of the adjacent properties abilities to use their by right abilities. It should not infringe upon their ability to be used. I do not think it is a horrible idea for us to investigate. I do not think we even talked about an ordinance amendment in M-1 for something like this because it was so much for us to look at what is going on with this area. A lot of people in Harrisonburg probably drive through this area and they sort of have their blinders on just thinking I am in the industrial zone and not realize that there is not even just this one and the adjacent property and the mobile units. There is a property across the street that is nonconforming to the best of our knowledge. It is zoned M-1, it is planned for business but there are residential uses. These things are all over the place and when you take even a bigger picture this is just a tiny little block of residential. We talked inside, outside, upside down trying to figure out different ways because we knew the sensitivity of this situation and you cannot help feeling for folks. I think we can welcome the opportunity if that is where you are headed. We can discuss different options. We can bring you an option and I do not know if we will recommend in favor of the option, but you could like the option. There is so many different iterations to the way this could play out, but we can draft something.

Commissioner Baugh said if I have to vote on this right now, I think I am going to vote against it, but I think I am going to vote against it because I am not convinced that we have exhausted the options of trying to do it. I prefer for us to back up and take a look at it because I will say this, the planning nerd in me really does not like that R-8 sitting there. Here is my stupid question, does R-7 work?

Mr. Fletcher said cannot even apply for it because they do not have enough property to apply for it.

Commissioner Baugh said that also does beg the question of whether you can change R-7 instead of M-1. The only reason I say that is because it is not a million miles away from a bunch of R-7.

Mr. Fletcher said it is not even that far from properties that we are planning for residential, you can see it on the map [referring to the map] that tan color is Medium Density Mixed Residential and where Commissioner Baugh is going is the fact that, for those that have been around for a long time, when that created it was in a time period in which we said R-7 is kind of like Medium Density Mixed Residential and that is where he is making that leap to R-7.

Commissioner Baugh said it was an evolution from the old R-3.

Mr. Fletcher said I do not remember exactly what the evolution was. Not only is it planned for Medium Density Mixed Residential, but it is zoned R-7 because that is Brookside Park and that was our first R-7 zoning. It is difficult and what Ms. Rupkey alluded to earlier is that even when you take a much broader view, that whole side of North Liberty Street from this nearby intersection of Edom Road all the way to the City-County boundary is zoned and planned for M-1. We can take a look.

Vice Mayor Dent said when you relayed the couple of examples where you have put a special use permit in M-1 for residential, they are very specific uses like next to a recreational. What I am kind of thinking off the top of my head is in this whole annexed area where long before zoning was a thing there were all sorts of things mixed together, do we really want to raze everything and make it all industrial, I do not think so. I think preserving some of the possibility for existing mixed use is beneficial for the City. Could the annexation have something to do with the rationale? Like existing buildings even if they are no longer legally nonconforming can still be accepted if they are brought in under some special use permit? Just a thought off of the top of my head.

Mr. Fletcher said it gets complicated. The whole rationale of nonconformities is that they disappear, that they conform at some point. The State Code says that they get to keep it, they get this private property right to maintain their nonconforming operation but there is this sort of background philosophy of they have to be careful maintaining exactly what they have and then if they do not have it anymore, it needs to conform.

Vice Chair Byrd said despite the fact that I was also in favor of tabling, if it was possible, that special use permit idea would be able to formulate in a reasonable amount of time? My concern is residential zoning negatively affecting industrial zoning. I do not want this area to be viewed like the R-7 area. I want to recognize that the City is going in the future we want this to all be industrial.

Chair Finnegan said that echoes the concern that I heard from Commissioner Baugh, which is we have already designated this as Industrial, let us not mess it up.

Vice Chair Byrd said I am just putting it out to the rest of the Commissioners that if there is a thought that we can come to on that, I would also be in favor of tabling it, if we can come up with a reasonable thought about what would we be asking staff about, concerning the special use permit.

Chair Finnegan said speaking for myself, I would be in favor of tabling it.

Commissioner Nardi said I would like to table it.

Chair Finnegan said it seems like there might be an appetite to table it.

Commissioner Alsindi said before we table it, I have a question, which one would benefit the applicant, if they ask to table it or us? If so in the first case, is it possible to do it now incase after hearing all this debate have they decided to?

Chair Finnegan said they have the option to. Regardless of how we vote whether we table it, whether we vote yes or vote no, the applicant has the opportunity after this meeting to table it themselves.

Commissioner Baugh said if they do not, that is effectively a decision of saying if you are not going to move on it, I want to move forward with it regardless.

Commissioner Alsindi said I am almost interested in knowing if the applicant in this case, listening to all this debate, if they think it would be in their best benefit truly to table or not. If they see the interest and where it is heading.

Mr. Fletcher said I guess indirectly it is probably to their benefit if they table it, but it gets into this weird category of how long we can administratively continue to allow an illegal use. I think that there is a general understanding. We do this, we do it all the time whenever somebody has some type of illegal operation we are like alright, let us get it figured out, let us find a solution and we bring you a rezoning or we bring you a special use permit or we bring our own Zoning Ordinance amendment. There is time that is occurring there, right? As long as it is within reason and that we are all actively working together to bring a solution, everybody is pretty comfortable with that.

Vice Mayor Dent said my hunch, staff can correct or confirm this, is that if we table it, it is with a specific request to staff to come up with an ordinance amendment for a specific kind of special use permit. If they table it, they are not giving that direction to staff the way we could. That would argue in favor of our tabling it with a request to staff, I think.

Commissioner Baugh said I think what we are saying here, somebody tell me if I am wrong, is that if we vote to table it, presumably staff will communicate with the applicant and then that issue gets sorted out at that level. The applicant is either going to have... to explain to her here is what happens if you table it yourself then that means that everybody has free time to work on it. If you do not, which is your right, you can insist that Council take this up within a couple of months and that is something we would work out.

Commissioner Nardi said I am just thinking about the difficulty at the same time of tabling and getting more information and the applicant. Again, the concern for the applicant in having to wait time for a decision.

Commissioner Alsindi said if we table, is there a possibility that the applicant might, after consulting, debating and contemplating on the whole debate here and afterwards want to change their thoughts on how they use this. Is it possible for the applicant afterwards to think of changing into a warehouse for example or storage?

Mr. Fletcher said I mean it is possible if they want to sell the property.

Commissioner Alsindi said I am just trying to understand if tabling might also open the door for the applicant to come up with some solutions in case.

Chair Finnegan said in my opinion, tabling it buys a little bit of time for staff, for us, for the applicant to try and figure out a solution. In my mind, I would like to see an outcome where a residential use can continue there but we are not rezoning that to residential. If that is a possibility, that would be my personal preference on that.

Vice Chair Byrd said if we were to table it, I would say that we would ask staff about a special use permit... is there a way to formulate a special use permit that has certain requirements that meet a number of the complexities that staff has mentioned that is related to that block? Further down North Liberty [Street] across from the manufacturing facility, we changed the zoning of a house on that property to R-8. If we had that tool available, I would have likely gone with a M-1 special use permit tool as opposed to changing that zoning. I am saying that as a person that just said earlier that I would be in favor of this person's application because of how I am trying to address, how I see it.

Ms. Dang said further south on Liberty Street, that property was not designated Industrial, it was designated Neighborhood Residential. That is why it is was easier to support the rezoning to R-8, it was in line.

Chair Finnegan said I will say, this stretch is a bit awkward here and the further you get down closer to the new [Liberty Street] Mercantile you are passing George's and then all of a sudden you are at a wine bar. There is a lot happening on this side of town and it is the result of lots of different uses over time. Do we hear a motion?

Vice Chair Byrd said I make a motion to table this matter. Asking staff about an M-1 special use permit that addresses the concerns that staff has. I am aware that you may come back and go "well this is a thing we came up with, it still does not address all of our concerns," but is that not what discussing special use permits is all about anyway?

Commissioner Baugh seconded the motion.

Chair Finnegan said we have a motion and a second with the understanding that staff will explore the possibility of some sort of M-1 special use permit that would allow the residential use to continue but not rezone it as residential.

Mr. Fletcher said I am confident we can come up with something.

Commissioner Baugh said this is just me speaking personally, if you guys can come up with something that works, bring it back to us it does not have to be the M-1. I encourage you guys to be as creative on this as you can be.

Vice Mayor Dent said the basic premise is let us find a way to allow this if possible, as far as possible. In the sort of human and housing and what the applicant described she can walk to work, she can walk wherever. Instead of saying let some chicken plant buy them out, that is also not a valid direction for us to go given that there nonconforming residences around there. Find a way to make it work please.

Chair Finnegan said I also want to add that Vice Chair Byrd did say I want to acknowledge staff's work on this and on everything else that you all are working on. This is not easy and I kind of loathe to ask you to do more. I do appreciate staff's willingness to work on this.

Commissioner Nardi said I can imagine myself coming back and saying there is not a way, this is what the bottom line is. As awful as that feels, I can imagine two scenarios so I just want to see them.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend tabling of the rezoning request passed (6-0).

Consider Zoning Ordinance amendment to modify regulations associated with the validity period of special use permits

Chair Finnegan read the request and asked staff to review.

Ms. Dang said during its 2024 Regular Session, the General Assembly passed, and the Governor approved HB 650, which specifies that in the case of a special use permit (SUP) for residential and electrical generation projects, the period of validity shall be at least three years. For more information, visit Virginia's Legislative Information System (LIS) – 2024 Session –HB 650 Zoning; residential and electrical generation projects; period of validity at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+HB650>

Within Harrisonburg's Zoning Ordinance (ZO), each zoning district's regulations identify uses that are allowed by right and uses that are allowed by SUP. Uses allowed by SUP are considered to have a potentially greater impact on neighboring properties or the public than those allowed by right in the district. The potential impacts warrant a case-by-case review and can be addressed through conditions.

Section 10-3-130 (c) of the City's Zoning Ordinance states that:

“Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within twelve (12) months from the approval date of such permit.”

This means that unless City Council determines a longer time period, the applicant must continue to demonstrate diligent pursuit of the project starting within 12 months of City Council approval of the SUP. Diligent pursuit can be demonstrated with submittals, that include but are not limited to a preliminary plat, a preliminary fire review, a preliminary engineering report, an engineered comprehensive site plan submittal, or an application for a building permit. If staff determines that an SUP has expired, the property owner wishing to restart a project that required an SUP would have to reapply for SUP approval, which requires new public hearings at Planning Commission and City Council.

Note that due to Virginia Code Section 15.2-2209.1, which was first adopted in 2009 during the Great Recession, and now Virginia Code Section 15.2-2209.1:1, which was adopted in 2020 during the COVID-19 pandemic, SUPs that were approved within certain dates received an extension and may still be valid after the typical 12-month period.

Staff is proposing to amend the Zoning Ordinance (ZO) to be consistent with State Code. The following is the proposed amendment to ZO Section 10-3-130 (c):

Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within thirty-six (36) months from the approval date for residential projects and within twelve (12) months from the approval date for all other projects. ~~of such permit.~~

While State Code requires SUP validity for at least 36-months for both residential and solar projects, staff has only proposed amending the ZO to address residential SUPs. This is because there are no solar-related SUPs available in any zoning district. Attached herein is a Zoning Determination dated November 6, 2023, which describes zoning regulations effecting solar photovoltaic (PV) installations, specifically describing where solar PV is allowed by-right as utility-scale and by-right as accessory uses.

Examples of SUPs that might be applicable to residential projects that would receive the 36-month approval time period include, but are not limited to:

- In all zoning districts – Reducing required parking areas.
- In all zoning districts - Walls and fences greater than the height otherwise permitted.

- In all zoning districts - Recovery residences that have more than eight adults and any number of minor dependents of those residents.
- In R-5 - Multiple-family dwellings of more than 12 units per building.
- In R-5 - Multiple-family buildings greater than four stories and/or 52 feet in height.
- In R-8 - Reduced required side yard setbacks to zero (0) feet, when single family detached dwellings or duplexes meet certain National Fire Protection Association requirements or exterior walls meet certain standards.
- In B-2 - Multiple-family dwellings and/or mixed use buildings.

The 36-month minimum period of validity would apply only to SUPs for residential projects approved on or after July 1, 2024, which is the effective date of HB 650.

Staff recommends approval of the Zoning Ordinance amendment.

Chair Finnegan asked if there any questions for staff.

Commissioner Baugh said now I am being a legal nerd because I have no idea whether they really thought about this in Richmond but my assumption would be for a mixed-use proposal that had a residential component of any kind, that would be considered residential.

Mr. Russ said that frustrated us as well. Residential project is not a defined term. We are thinking that it is any sort of proposal that comes before this body and City Council that has a residential component.

Chair Finnegan said similar to the one we heard recently across from the wine bar that has business on the bottom and residential on top, it is residential.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Nardi said I move to approve staff's recommendation of 36 months from the approval dates for residential projects.

Vice Chair Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

New Business - Other Items

Consider a request from Everence Foundation Unique Assets LLC to preliminarily subdivide 210 Mount Clinton Pike

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in July 2018, City Council approved a rezoning from B-2C to M-1C for a +/- 19-acre site that included the +/- 6.402-acre parcel that the applicant is now requesting to preliminarily subdivide. During the 2018 rezoning, the applicant proffered to dedicate right-of-way along Mount Clinton Pike, Acorn Drive, and North Liberty Street. The proffers were fulfilled and recorded in deed book 5039 page 747.

The applicant is requesting to preliminarily subdivide a +/- 6.402-acre parcel addressed as 210 Mount Clinton Pike (tax map number 45-D-2). The purpose of the subdivision is to create smaller lots to sell for future development.

The property division is considered a major subdivision and requires preliminary plat approval, because the original tract of land is larger than five acres; therefore, it exceeds the requirements for administrative review as a minor subdivision and must be reviewed by Planning Commission. No variances are being requested; therefore, no action is required by City Council.

Land Use

The subject property is currently zoned M-1, General Industrial District and is designated in the Comprehensive Plan as Industrial, which states that:

“These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. They include the major existing and future employment areas of the City.”

Transportation and Traffic

The Determination of Need for a Traffic Impact Analysis (TIA) form (“TIA determination form”) for the proposed preliminary plat is attached. The TIA determination form indicated that the project will not generate 100 or more peak hour trips, which is the threshold for staff to require a TIA. Therefore, a TIA was not required.

Staff recommended the applicant consider dedicating a private access easement to Parcel “A.” At this time, the applicant is unsure of the proposed use of the property and plans to dedicate an access easement during the Engineered Comprehensive Site Plan phase of the project.

Public Water and Sanitary Sewer

As required, all lots would be served by public water and public sanitary sewer. The preliminary plat illustrates where water and sanitary sewer lines would be provided so that each new lot would have access to public water and sewer.

Recommendation

Staff recommends Planning Commission approve the preliminary subdivision plat of 210 Mount Clinton Pike.

Chair Finnegan asked if there any questions for staff. This is not a public hearing but if the applicant is here and would like to add anything about this request. This would also be an opportunity for us to ask the applicant any questions that we have.

Daniel Hansen from Balzer and Associates, the applicant’s representative, came forward to speak to the request. Mr. Hansen said I think Meg pretty much summed it up, I do not really have a whole lot to add but I am certainly here to answer any questions or comments you all might have to move forward.

Commissioner Baugh said I move approval of the preliminary plat as presented.

Commissioner Nardi seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to approve the preliminary plat request passed (6-0).

Consider a request from MILA LLC for the City of Harrisonburg to provide water service onto property located at tax map number 108-A-29 within Rockingham County (Granite Farm)

Chair Finnegan read the request and asked staff to review.

Ms. Dang said individuals owning property located outside the City of Harrisonburg may request to connect to the City’s water and sewer system. Per Section 7-2-4 (b) of the City Code, connection requests for all uses located outside City limits, other than residential uses involving fewer than ten units, shall be reviewed by Planning Commission and then forwarded to City Council for final approval or denial. This request is for a non-residential connection; thus, Planning Commission review and City Council approval is required.

The Rockingham County portion of this development received City Council approval on April 27, 2004 for City public utilities (water and sanitary sewer) for a then proposed development of 285 single-family residential lots. The subject property was part of a rezoning approved by the County Board of Supervisors on October 25, 2006 from A2 to R3-Conditional. A copy of the 2006 Approved Rockingham County rezoning proffers is attached.

While the County’s 2006 rezoning remains valid, the City’s approval of the 2004 Public Utility Application approval is no longer valid and the property owner is required to seek new approvals for City public utilities before they can receive City services.

The Granite Farm project proposes up to 225 single-family detached units on approximately 87.79-acres located in Rockingham County and 4.16-acres within the City of Harrisonburg. (When the property was rezoned in 2006, the applicant proposed 285 units; when the public utility application was first submitted in 2022, the applicant proposed 242 single-family detached dwelling units with some additional units in the City of Harrisonburg. Since that time, the applicant is now proposing up to 225 single-family detached units all in Rockingham County.) The development is located north of West Market Street (US Route 33), east of Switchboard Road, and west of Brickstone Court.

Water and Sanitary Sewer

In 2022, at the request of the Department of Public Utilities, the applicant prepared a sanitary sewer analysis that evaluated the existing sanitary sewer system and the proposed Granite Farm project. The purpose of the analysis was to model the addition of proposed flows from the project on the existing downstream sanitary sewer system. The analysis determined that Granite Farms would cause 1,999 feet of sanitary sewer lines, which are scheduled for replacement around 2060, to need upgraded sooner to coincide with the buildout of the development. An additional 252 feet of sanitary sewer lines will be added to the replacement schedule to coincide with the buildout of the development, and the expedited schedule would forego about 50-percent of the useful life of existing pipe. Through the Infrastructure Interconnection Agreement (attached herein), the applicant has agreed they must obtain approval of construction drawings for the sanitary sewer upgrades from the Department of Public Utilities prior to receiving approval of the engineered site plan from Rockingham County (agreement item #6) and to construct and dedicate to the City all offsite sanitary sewer improvements identified in agreement item #6 (agreement item #7). Agreement item #7 also allows the possibility for the Director of Public Utilities to approve share funding, schedule of payments, and substantial completion for partial improvement at the Director's discretion. At this time, the applicant has indicated they are willing to pay for and complete all engineering and construction necessary.

Additionally, water main extensions into the development will be installed by the applicant (agreement item #4) and the applicant will provide a 30-foot-wide public waterline easement as generally depicted in Exhibit A (agreement item #5).

Traffic and Transportation

A traffic impact analysis (TIA) was accepted by the Department of Public Works on April 23, 2024. The Infrastructure Interconnection Agreement provides the necessary mitigations to address the development's impact on existing City streets. Vehicular access to the site will be provided by an extension of Shenstone Drive and Stonechris Drive (both of which are existing public City streets) and a connection to Switchboard Road located in Rockingham County. In addition, the development will include a street stub and shared use path stub for connecting into future development on City tax map parcel 37-C-2.

Know that the design of streets internal to the development are regulated by Rockingham County and the Virginia Department of Transportation (VDOT).

Recommendation

Given that the Department of Public Utilities and Department of Public Works have determined that the applicant's commitment through the Infrastructure Interconnection Agreement to make necessary sanitary sewer, water, and transportation improvements is satisfactory, and that staff has no concerns from a land use planning perspective, we recommend in favor of the request.

Chair Finnegan asked on the public utilities part... It says to supply 15 million gallons of water per day, is that the estimated amount of draw?

Mr. Fletcher said let us have Mr. Gray come up just so he can clarify a lot of these. That is why we recommended that he join us this evening.

Dave Gray, Deputy Director of Public Utilities, came forward to speak to this request. He said what you are seeing there, the 15 million gallons is our business model for total buildout of the City. We are building a water system, in terms of water supply and treatment and delivery, for 15 million gallons a day. Our projection of the City's buildout is much less than that. We are building in...we have an agreement with Rockingham County that we have to provide to them wholesale, we have the City buildout, and then we have this excess capacity that is marketable. What this project would utilize is that marketable available water.

Vice Chair Byrd said when it says open market available, that number is the number you are referring to.

Mr. Gray said yes and that is what is available to us in our model the way we are building our system. We have this excess capacity and we are just looking what to do with it.

Chair Finnegan said this is in the memo "per their current zoning the calculated demand is much less, 1.75 MGD..." I am seeing a lot of numbers here and I am just trying to ask, what is the estimated draw of this development?

Mr. Gray said at the time of the application, I think it was 63 thousand. Their application that they turned in, which was 242 units, was about 63 [thousand] gallons a day.

Ms. Dang said it was 62,920 [gallons a day].

Mr. Gray said that table shows we have 370,000 available and they are asking for 63 [thousand gallons a day].

Chair Finnegan said you or your department do not have concerns about this impacting...my biggest question is this might be okay for now but 10, 20, 30 years down the road we are in a drought and oh shucks we cannot provide water to the people in the City. I guess I am trying to get a sense of how easy is it to predict how much water the City is going to need and our ability to continue to serve the residents of the City.

Mr. Gray said I will go back to the 15 million gallons a day, that is what we are building a system for. That number that you were referencing that talked about different land use, we know what our existing demand is. We know what lands are undeveloped and City staff got together and we said

okay, well if the undeveloped lands develop based on zoning, that gives us one number of what we need to reserve for future capacity. However, [Future] Land Use is a different animal. Land Use gives us a different number and then there is this question of which number is right. We have built this around the assumption that the Land Use is really the way things are going to go. The City wants to see things grow that way, so that is what we built our model around. That is why you see the different numbers on the table, depends on which way things go. If things go the way we want, buildout the way we expect them to, we are going to have this excess capacity. We are building our raw water supplies, our water treatment plant, everything is built to deliver 15 million gallons a day. In non-draught scenarios we have our Shenandoah River source available, we have 34 million gallons a day available. Build a plan for 15 [million gallons a day] but we have 34 [million gallons a day] available. If we look back at the drought of '02 and we look at our water withdrawal permit restrictions, we are looking at 11.6 [million gallons a day] as what is available during the worst drought we have seen but we have a contingency plan for that. We are working on a project for some offline storage, which is kind of like a savings account. We have that 34 million excess that is set aside and when we need it, we will put it, we will use it and then we will put it back. It is a large offline storage project to kind of buffer that. It is almost a belt and suspenders approach. To answer your question, we feel pretty comfortable that we are going to be able to deliver the 15 [million gallons a day].

Vice Chair Byrd said I just wanted to make sure that I was understanding the table provided. It says drought season peak, is that what you are referring to? Is that what you are working on to make sure you have things set aside...

Mr. Gray said it has been a long time since Mr. Collins prepared that. I do believe that is what that is. We have normal domestic demands and then what we are seeing right now is increased demands because of drought or water irrigation.

Vice Chair Byrd said if City Council approved it then its amount would be removed from the open market, and it would be moved to rural water sales? Current rural water sales are .88 MGD.

Mr. Gray said that is a little bit of an older number, again this was written in 2022. The Director and I looked today and in fiscal year '24, which we just closed out, we sold 830 thousand gallons to rural customers last year. That generated \$1.8 billion in revenue to the City's water fund. There is a reason we like to sell water to the County customers; it is a big revenue source for us.

Vice Mayor Dent said as I sort of understand it, water is not the problem we are concerned about. We are looking at this huge new raw water supply. A possible tighter constraint is the sewer capacity. What can you say about that?

Mr. Gray said our allocation at HRRSA [Harrisonburg Rockingham Regional Sewer Authority?] right now is 12.8. Our buildout projection for the entire City is 10.5million gallons a day. That gives us some capacity to work with. You are right that the sewer system, I liken it to the I&I which you have heard us talk about, the infiltration and inflow, that wild water gets its way into the sewer. It is kind of like a thief, it steals our capacity and that is what we are fighting constantly, that is just typical of anyone operating a sewer system.

Vice Mayor Dent said is that why we want better stormwater management for example, so it does not infiltrate the sewer?

Mr. Gray said it is not tied to that. This is just an effect of an aging infrastructure.

Mr. Fletcher said and maintenance of existing facilities.

Mr. Gray said some of the City's system was built in the 1870s, very old stuff. There are things that we can do to renovate it and rehab it in place, some of it has to be remove or replaced. As it ages, cracks develop. Stuff was built with brick manholes, sometimes water finds its way in. Our charge is to find those places that it is coming in and seal them up and get it back out. We would rather sell that sewer capacity to a customer and not pay to treat that wild water at HRRSA. Everyday we are chasing that wild water out of our system.

Chair Finnegan said on the point of future upgrades, they are going to pay for some of the upgrades that are needed to take water to this. What is the lifespan of that? Let us say in a couple years it is built. It is brand spanking new, they put it in, how long until it needs to be replaced?

Mr. Gray said that is hard to say. We anticipate a 100-year service life is pretty typical for us but that is 100 years we are collecting this revenue. That revenue has that component of replacing those assets as they age.

Chair Finnegan asked if there were any other questions for staff.

Commissioner Baugh said this is something that I did not know until I was on Council that your water and sewer money goes for water and sewer. They do not take excess money and allocate it. You can in sort of lump sums at time or two in years where you have actually seen a buildup, I think that has actually happened a time or two. This is not part of the general revenue from a budgeting standpoint. Enterprise fund was the term I was looking for, the money that you pay for this goes into a system that is dedicated to this that includes maintenance long term for replacement, expansion, all of that stuff. It is not a part of the general budget.

Vice Mayor Dent said the idea of an enterprise fund is a sort of self-funded, utility subdivision of the City. They fund themselves by water rates. It is interesting to hear "we want to market this water" okay, fine if that works for you. It is run like its own business in that way.

Chair Finnegan said it is not a public hearing, but you are welcome to speak if there is anything you would like to add.

Bryan Lily with Dewberry, applicant's representative, came forward to speak to the request. He said I think staff did a good job of representing the application. Dave Gray gave some good information on the numbers so nothing really to add but if you have any questions, we are here.

Chair Finnegan asked if there were any questions for the applicant's representative.

Vice Chair Byrd said I will make a motion to approve the public utility application request as submitted by the applicant.

Commissioner Nardi seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the public utility application request passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

Unfinished Business

Consider Zoning Ordinance amendments to allow and regulate urban honeybees

Chair Finnegan read the request and asked staff to review.

Ms. Dang said on June 12, 2024, Planning Commission held a public hearing to consider a request to amend the Zoning Ordinance (ZO) to allow and regulate the keeping of urban honeybees. Planning Commission tabled the request to allow staff time to further research and respond to public comments received. Please refer to the June 12, 2024 agenda packet and staff memorandum for details about the request available at <https://harrisonburg-va.legistar.com/Calendar.aspx>.

After drafting some changes and responses, staff met with Dorn Peterson and Mike Hott, two local beekeepers. In brief, after seeing staff's updated proposal, Mr. Peterson expressed that he understood staff's concerns about staff safety, not waiting to open up beehives to determine if they are occupied or how many frames are inside ... and he thought the changes we proposed were a good compromise.

Below is a summary public comments received on June 12, 2024 and staff's recommendations:

1. **Comment:** Comment at the June 12, 2024 Planning Commission public hearing from Dorn Peterson included in the minutes extract attached herein. Mr. Peterson suggested for properties under 10,000-square feet to allow three to four hives and to not count hives that are smaller than 10 frames.

Staff Response: Staff recommends keeping the limit of 2 beehives on a parcel up to 10,000 square feet, which is supported by best management practices described in 2VAC5-319-30. - Best management practices for the keeping of honeybees,² and which states:

“An apiary operator shall limit the number of colonies that he places in his apiary as follows:

1. If the property on which the apiary is located is 1/4 acre or smaller, the apiary shall not have more than two colonies. The apiary operator may increase the number of colonies up to four colonies for not more than 60 consecutive days for the purpose of queen mating and swarm control.
2. If the property on which the apiary is located is more than 1/4 acre, but less than 1/2 acre, the apiary shall not have more than four colonies. The apiary operator may increase the number of colonies up to eight colonies for not more than 60 consecutive days for the purpose of queen mating and swarm control.
3. If the property on which the apiary is located is 1/2 acre or more, but less than one acre, the apiary shall not have more than six colonies. The apiary operator may increase the number of colonies up to 12 colonies for not more than 60 consecutive days for the purpose of queen mating and swarm control.
4. If the property on which the apiary is located is one acre or more, the apiary shall not have more than six colonies per acre. The apiary operator may increase the number of colonies up to 12 colonies per acre for not more than 60 consecutive days for the purpose of queen mating and swarm control.
5. If all colonies are placed at least 200 feet from all property lines, there is no limit on the number of colonies that an apiary operator may place in his apiary.”

Note that Virginia’s Best Management Practices cites “colony” whereas the City’s ordinance regulates “beehive” structures. Staff recommends regulating beekeeping based on the number of beehives rather than whether or not the beehive is occupied by a colony or the size or number of frames inside the beehive. For the safety of staff, we do not want to open up beehives to determine if they are occupied or how many frames are inside. Additionally, staff believes it would be easier to review and approve permits and conduct enforcement by beehive and not the number of or type of colonies, or number of frames within a beehive.

² 2VAC5-319-30. Best management practices for the keeping of honey bees.
<https://law.lis.virginia.gov/admincode/title2/agency5/chapter319/section30/>

In addition, to address queen mating and swarm control, staff recommends modifying proposed Section 10-3-219 (2) (b) which previously stated:

For the purposes of subsection (a), the temporary housing of a swarm for no more than 30 days from the date the swarm was acquired shall not count toward the maximum number of beehives on the property.

to state:

For the purposes of subsection (a), the persons keeping honeybees may have two additional beehives above the minimum allowed for not more than 60 consecutive days for the purpose of queen mating and swarm control.

Know also that the Shenandoah Valley Beekeepers Association and other beekeeper associations in Virginia have listings of local sellers of nucleus colonies, also called nucs or splits, and queens.³ Staff is also aware of other local beekeepers who may not be listed, but will provide or sell nucs and queens to other beekeepers.

The Virginia Bee Law⁴ requires honeybees on combs, hives and equipment with combs be accompanied by a certificate of health issued by the Virginia Department of Agriculture and Consumer Services' Office of Plant Industry Services prior to being sold in Virginia. In addition, any person who brings honeybees on combs or used equipment with comb into the Commonwealth must first obtain an Entry Permit from Virginia's State Apiarist. Queens and packaged honeybees brought into the Commonwealth must be accompanied by a certificate of health issued by the state of origin.⁵

Additionally, this ordinance is not meant to allow large apiary production, but rather to allow for backyard hobby beekeeping. It understandably may be limiting to someone who is on the production side of beekeeping and seeking to do so from their single-family detached dwelling.

2. **Comment:** Comment at the June 12, 2024 Planning Commission public hearing from Commissioner Byrd is included in the minutes extract attached herein. Commissioner Byrd questioned whether the term "temporary housing" in Section 2 (b) is clear.

Staff Response: Staff has modified Section 2 (b) and the term "temporary housing" is no longer used.

3. **Comment:** Written comment from Amy Mercer received by staff following the June 12, 2024 Planning Commission meeting is attached herein. Ms. Mercer requested

³ Shenandoah Valley Beekeepers Association, Call Lists. <https://shenvalleybeekeepers.org/who-to-call-for-honeybee/>

⁴ Code of Virginia, Chapter 44. Beekeeping. <https://law.lis.virginia.gov/vacode/title3.2/chapter44/>

⁵ Virginia Department of Agriculture and Consumer Services, Beekeeping & Apiary Inspection. <https://www.vdacs.virginia.gov/plant-industry-services-beekeeping-apiary-inspection.shtml>.

consideration to reduce the minimum distance that beehives can be from property lines from 10-feet to 5-feet.

Staff Response: Staff recommends keeping the requirement for beehives to be no closer than 10-feet from property lines, which is supported by best management practices described in 2VAC5-319-30. Best management practices for the keeping of honeybees:

An apiary operator shall maintain all colonies at least 10 feet away from property lines to prevent an individual from impeding normal bee flight activity from a hive.

Staff recommends approving the ZO amendments as presented.

Chair Finnegan asked if there were any questions for staff.

Vice Chair Byrd said since my concern was addressed, I will make a motion to approve the Zoning Ordinance amendment.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

Public Comment

None.

Report of Secretary & Committees

Rockingham County Planning Commission Liaison Report

Commissioner Alsindi said I attended the meeting on August 6th and they had one case under the public hearing. It was a rezoning from A-2 general agriculture to R-2 medium density residential. The Planning Commission approved the rezoning with some debate on usage. The applicant wanted to build two duplexes on those two parcels and it seems there was not enough frontage. As far as the rezoning that was approved. The other issue they had was under the new business and they approved renewing the appointment of Kevin Flint for the Capital Improvement Program.

Board of Zoning Appeals Report

Vice Chair Byrd said that the BZA did not meet.

City Council Report

Vice Mayor Dent said I was asking Adam when I first got here, how far back do I go given that I have not been here in three months. One was that there was not a meeting in July and in June I was at a conference and May I was not feeling well.

Chair Finnegan said Mr. Fletcher did give some updates in your absence.

Vice Mayor Dent said at the July 9 meeting since there was not a meeting the next day here at Planning Commission. We did ultimately pass the request from...when did we do the request from Farhad Koyee...

Mr. Fletcher said the special use permit for manufacturing on the south end of the City on Baxter Drive. We may have covered some of that. I cannot remember.

Commissioner Nardi said that was the supplements and the housing.

Vice Mayor Dent said I mentioned it again in Council even though I had not been here for that. There was some public comment concerned about manufacturing and its noisy and has smoke and stuff and no it is not because it is essentially a high-tech kitchen. More recently, last night there were not any public hearings since we had not been fed anything from no July meeting. There were several things that presumably affect Planning Commission. We had a resolution declaring a drought warning for the City. Voluntary conservation and a good presentation from Mike Collins on what that means and what their concerns might be. If the drought continues when the students come back, it could become even more of a stress on the system. Otherwise, let us hope for rain. Over long term, scant rain depletes the aquifer anyway. Combined Erosion Control and Stormwater Ordinance to simplify the regulations. The SPARC, Sponsoring Partnerships and Revitalizing Communities program, which is basically funding to help make home buying more affordable, Liz Webb presented by knocking off 1% of the interest rate on a mortgage. It does not sound like much, but it adds up over the years. The idea is that they would work to layer that with things like the fee waiver program to help make it more feasible for local developers to create affordable housing, that is my interpretation. There was an ARPA update. The big news is we appointed Tyler Blanks as the new Zoning Administrator. I was very thrilled to hear that because we can keep the momentum for the zoning update among other things.

Ms. Dang said we still have a vacant position [to fill] since he was promoted.

Ms. Dang said we did the work session just last month and our staff continues to meet each week. Now that Tyler's added to the [Zoning Ordinance Rewrite] team and we are going to continue to keep our prior Zoning Administrator, Evan Winkler, onboard to assist us part-time. He is remotely assisting us on continuing to keep the momentum going. It is still a lot of work and there is still

much to be done and it takes us a long time to get through these sections of ordinances. To the point of Mr. Blanks being appointed our Zoning Administrator, we are very excited to have him be in that position.

Vice Mayor Dent said just out of curiosity, he has been on staff for some time, what was his position before?

Ms. Dang said he started with us in 2021 as a Zoning Technician, he was then promoted in 2023 to Zoning Specialist, and now he is Zoning Administrator. He has prior experience with the City of Lynchburg where he did an internship working with the Zoning Administrator there for a period of time before coming here to us.

Other Matters

Review Summary of next month's applications

Ms. Dang said we have four rezoning applications, so we recommend just having one meeting in September.

Adjournment

Brent Finnegan, Chair

Anastasia Montigney, Secretary