

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**May 14, 2025**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, April 09, 2025, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Chair; Brent Finnegan, Vice Chair; Heja Alsindi; Shannon Porter; and Valerie Washington. Councilmember Laura Dent arrived late. Kate Nardi was absent. Also present: Adam Fletcher, Director of Community Development; Thanh Dang, Deputy Director of Community Development; Wesley Russ, Deputy City Attorney; Meg Rupkey, Planner; Nyрма Soffel, Planner; and Anastasia Montigney, Development Support Specialist/Secretary.

Chair Baugh called the meeting to order.

Chair Baugh asked if there were any corrections, comments or a motion regarding the April 9, 2025, Planning Commission minutes.

Vice Chair Finnegan moved to approve the April 9, 2025, Planning Commission minutes.

Commissioner Porter seconded the motion.

The motion to approve the April 9, 2025, Planning Commission meeting minutes passed by voice vote (5-0).

Chair Baugh said before we move onto new business, the applicant for item 5.b. (request to close an undeveloped alley between 291 and 295 Franklin Street) had contacted us and indicated that they had some other things come up this evening and wanted to know if we could take them out of order and let them be the first thing on the agenda. That request has been made, are we okay with that?

The commission agreed.

Chair Baugh said it is item 5.b. under new business will be taken up as our first item this evening.

Councilmember Dent arrived at this time.

**New Business – Other Items**

***A request from John S. McGehee and Sandra L. Quigg to close an undeveloped public alley between 291 and 295 Franklin Street***

Chair Baugh read the request and asked staff to review.

Ms. Rupkey said in 1901, a subdivision was recorded that created lots within the City along Franklin Street. In 1907, an existing 10-foot alley that was a part of the 1901 subdivision was closed by the existing property owner (K. Lineweaver). That property owner and an adjacent owner

(J.W. Lovegrove) each dedicated an easement for five feet of width as a public alley on their property. Since then, the alley's access has continued to be maintained by the property owners of 291 and 295 Franklin Street. While on GIS it appears that the existing property lines end where the alley begins, the property line extends to the center of the alley and the underlying land belongs to the property owners of 291 and 295 Franklin Street.

The applicant is requesting to close +/-2,500 sq. ft. of undeveloped public alley located between properties addressed as 291 and 295 Franklin Street and identified as tax map parcels 26-L-11 and 12, respectively. The applicant owns 295 Franklin Street. In the applicant's letter, they describe that they wish to limit the ability of people to cut through the property. The alley serves as the driveway for 295 Franklin Street and provides access to the rear yard of 291 Franklin Street and 294 Campbell Street. The applicant is in discussion with their neighbors to continue providing access to their properties.

The City has no plans to construct this alley nor maintain it. Additionally, there are no utilities in the alley. Staff supports the alley closing request with the following condition:

A private shared access agreement shall be established among the owners of 291 Franklin Street (TM 26-L-11), 295 Franklin Street (TM 26-L-12), and 294 Campbell Street (TM 26-N-11) to maintain the ability to access the rear yard of each of the three properties from Franklin Street.

*Recommendation*

Staff Recommend approval of the alley closing request.

Chair Baugh asked if there any questions for staff.

Vice Chair Finnegan said can you go back to the image with the alley outlined. Ash Tree [Lane] in the lower left corner kind of takes a hook there off to the left. Did Ash Tree [Lane] originally go up to Ott [Street]?

Ms. Rupkey said yes, in 1990 that portion of Ash Tree [Lane] was closed.

Mr. Fletcher said which, then, this alley would have connected. This alley dead ends.

Chair Baugh invited the applicant or applicant's representative to speak to their request.

John McGehee, the applicant, came forward to speak to the request. He said I did not have prepared remarks, but I do appreciate you all considering this. I think there is really no public interest in the alleyway. The alley dead ends at the [294] Campbell Street property. It is really shared by my neighbor, John Little, at 291 Franklin Street. I think it makes a lot of sense to close off any potential access to people who would want to walk down the alleyway or something. There is no endpoint to it. It would dead end at somebody else's property where they would have to trespass to be able to get anywhere on it. That is really the reason we are asking to close it. I appreciate your consideration.

Chair Baugh said are there any questions for the applicant.

Chair Baugh said anyone in the room wishing to speak to the request. Hearing none he opened up the item for discussion.

Councilmember Dent said I guess alleys are all over the place and are often up for contention or what to do with them. This is a fairly unusual case in that it is an alley to nowhere. Apparently, it used to connect to the alley that became Ash Tree Lane but no longer does. As they say, it really only abuts three properties. I am gathering that is the reason that this time staff unusually recommends approval.

Vice Chair Finnegan said I understand the arguments for closing it. It seems like a reasonable request but what is unreasonable to me is that 1990 this other alley was closed. Part of my concern is we just keep saying “yes” to these alley closures. The more alley closures we say yes to, we are shutting off pathways for people to walk. I do understand that this particular alley does not connect into what used to be an alley in 1990. It feels like doubling down on the mistakes of the 90s. I do not know that I will be supporting this.

Commissioner Porter said I would only speak to it saying that when I approach these matters, I think about the folks that are most directly affected; which are the three property owners. I know that if I put myself in their place, I would be making the same request. I would also be of the mind of possibly agreeing with the opinion that these alleyways are important pathways, but this goes nowhere. I would be more inclined to accept this as an option than I would normally. If this was a pathway that was being used, and it had a clear direction to some destination other than the property line of another property that is closed off to it, I would be more inclined to have a different feeling about it. But I think in this particular case it seems reasonable.

Councilmember Dent said here is an off the wall question, would it be possible to reopen the alley that was closed that connects to Ash Tree [Lane]?

Mr. Fletcher said you would have to buy property from property owners.

Vice Chair Finnegan said once it is closed, it is closed. It does not come back.

Councilmember Dent said that is a hesitation.

Chair Baugh said of course because these are older ones, I assume, that was probably the same nature. That we did not own that any way, we owned the right to go over it. We would not be able to acquire that now. Now you could not just buy an easement, you would have to buy the property.

Mr. Fletcher said I suppose you could technically request to buy an easement from those private property owners to allow for public passage.

Chair Baugh said you could, but I do not think that is something that we do. I am not even entirely sure you could.

Vice Chair Finnegan said if property A and C agree and property B does not then...

Chair Baugh said I think what is getting me is... I think the answer is you could, but if you ever wanted to turn it into a street then you might have an issue. The rules have changed about how we go about acquiring property to make a public street. Mr. Russ is nodding his head like that sounds like that is probably right. That is where I was getting hung up. We could get an easement if we had some reason to use it other than bringing it into the street system. I hope that answers your question Councilmember Dent.

Commissioner Porter said based on where it is oriented and its location on this block, I cannot see a feasible reason why it would be in the public interest to have a passage way or reopening based on the fact that it is not even squared up in a manner that would be logical would be to have an access there.

Commissioner Porter continued I would like to make a motion to accept the recommendation of staff and approve the request for the closing of the alley with the condition of the agreement among the property owners.

That motion failed due to a lack of a second.

Vice Chair Finnegan said since that motion died, I will make a motion to deny the request.

That motion failed due to a lack of a second.

Chair Baugh said I am more with [unintelligible] than I with [Commissioner] Finnegan on this one. I think [the alley] does not go anywhere and I wish that street was still there but there is nothing for it to connect to. If a motion is appropriately made and seconded unless somebody changes my mind I am going to vote...

Commissioner Porter said I would just like to hear a further articulation of...and again I understand the initial point that you made Brent, but I would just like to understand the opposing argument a bit better.

Vice Chair Finnegan said I generally do not support alley closures. We are using them. I understand that this one does not connect and that if City Council had not made the decision that they made in 1990, then the existing alley would connect in. I do not like the idea of doubling down on mistakes of that past. We are such a private property centric society. I am not objecting to this specific request; I am objecting to the idea that all land is private and cannot be walked on. I have a sidewalk in the side yard of my house; I live on a corner lot and people walk in front of my house all the time. There was a sidewalk that was added. Obviously, sidewalks are different than alleys; but I believe that public use makes my neighborhood better. On principle, I do not support alley closures.

Councilmember Dent said which part was closed in 1990?

Mr. Fletcher said the whole length.

Commissioner Alsindi said we have the chance to ask the applicant but if there is more explanation for the reasons for closing it. Is it noise or what? I am generally in support of what Commissioner Finnegan is saying here. Closing a place that is accessible for people to walk generally or to have any space. The reasons behind closing it, again, are they compelling enough?

Chair Baugh said their statement was it does not connect to anything and there are three property owners. So, at least I think for the person that is here and representing for, at least one of the neighbors that they would prefer it not to be public right of way.

Commissioner Alsindi said what are the negative implications of having this...

Chair Baugh said if somebody chooses to walk up in there and I guess we could go out there right now and just pace back and forth and as long as we are not doing anything to bother anybody by making too much noise or otherwise creating a nuisance; we are free to do that. It was certainly like that when they bought the property. It has been like that for over 100 years, but it is also atypical for residential areas. Particularly ones like this where you are talking about it in the middle of the residential area; and not something that is, maybe, on the edge and abutting other uses.

Commissioner Alsindi said if I am a resident and I feel safe to walk in such a space rather than somewhere else you are now prohibiting me from having another option or choice rather than walking somewhere else that might be riskier. I would also want to hear from Commissioner Finnegan more on when he said, "once it is closed, it is closed."

Vice Chair Finnegan said once it is closed it is closed. Any of these alley closures... they do not come back. It is not like the City says actually that thing we said yes to a couple of years ago, we would like it back. Mr. Russ could probably speak to the process. Eminent domain would not be a viable option to take it back, would it?

Chair Baugh said it would be. Typically, we do not do that in situations like that where the property owner is not in favor of it – unless it is for like a major road project.

Mr. Russ said yes, a major road project. Or it is the only viable way of getting a water line or something through somewhere.

Chair Baugh said Council could, but the long-standing practice would have been if confronted with something like this and the property owners would not agree to it voluntarily. Everybody would just look at the other stuff that they have to work on and decide to work on that. Especially since there is no money budgeted to go acquire property like that, unless you put some in there.

Vice Chair Finnegan said to answer Commissioner Alsindi's question, I think, on principle, I am opposed to this idea that the City has interest here. I know it only leads to one other property on the back on Campbell Street. Again, nothing against the applicant or the request. On principle I do not tend to support these.

Commissioner Washington said it says here that the City has no plans to construct this alley nor maintain it, so who is maintaining it as of now?

Chair Baugh said that was actually said in the report, I believe.

Vice Chair Finnegan said all alleys in Harrisonburg are not maintained by the City.

Commissioner Washington said so if the City vacates rights to this, how would they divvy up who is responsible for what?

Vice Chair Finnegan said it just becomes a yard.

Chair Baugh said which is really what it is now because the City does not own it.

Commissioner Porter said they are using it as a driveway.

Ms. Rupkey said the land underneath the alley... there are a couple of different types of situations that occur, this one is a relatively easier one. The land underneath the alley is in the name of the property owners that adjoin on the other side, it is split down the middle. Five feet on each side would go back to the property owner. There is also a process that involves having to buy back a portion of the alley, named for the easement, through the real estate office as well.

Councilmember Dent said if we close it as a City alley, does it revert to a line down the middle to each property owner and then it is up to them to create that agreement?

Chair Baugh said I think that is the piece where we are getting confused. I am not sure why it matters that much, but we will go with this. For some of these streets and alleys that were dedicated long enough ago, the City only required an easement. When you acquire an easement, the City does not own the property. What we own is a right to relatively, unfettered use of that property for public purposes. I want to be clear of this because there seems to be some confusion as what we are or are not doing or what the City does not have. I think it was some time in the 1920s that process sort of stopped. The only time you run into this is with some of these older dedicated streets; forward to now if you are developing the property and putting in the streets or alleys, it is actually dedicated as a public street and the property belongs to the City. So when you abandon those, then you do have an element of okay the City now sells the property back to adjoining landowners or works out something that we see on those. You do not do that here because we do not own it. It is giving up a right to go over it. Does that help clear it up for you? Most of the time when we abandon interest in an alley that property goes up for sale because we owned it and we are now giving up the right to actual ownership to the land but that was not the case here.

Vice Chair Finnegan said you can actually see an alley on the lower right side, is that correct? That little section between those two properties that is a more modern alley?

Ms. Dang said I do not know. We would have to do some deed research to verify that.

Vice Chair Finnegan said there is a gap between those two properties.

Ms. Dang said I understand but without doing some research...

Mr. Fletcher said the alley we are speaking of would look the exact same as the other. Our map is inaccurate in the way that we represent alleys in these particular cases.

Ms. Dang said alleys are represented as the same shape as the public right of way regardless of ownership. Every time somebody comes to us with a request like this, we have to do research to figure that out.

Councilmember Dent said you find these 1907 things.

Mr. Fletcher said if I could maybe ask a clarifying question or confirmation to Ms. Dang, I thought I heard a comment said that the City does not maintain any alleys and I do not know if that is 100% true because there are a few alleys probably in the Downtown that are paved that the City might be maintaining.

Ms. Dang said I believe you are correct about that statement but speaking just about this property you are correct. If the statement was implied for just this one then generally speaking the City does not maintain alleys, there are exceptions. In this case, the City does not maintain this one.

Vice Chair Finnegan said I do feel like this comes up every time the alley closure comes up. It is always like well why does the City not maintain the alleys? Well that is just not what alleys are here. What is the plan for the alleys? We do not have a plan, but I do think when I look at lack of safe routes to school these are pathways that could be utilized and activated in the future for either paved, gravel, or dirt paths to get around. They are all over the place in my neighborhood.

Commissioner Porter said I think we are back at a place of principle versus practicality. If I thought there was any possible reason why it would be in the public interest to maintain this space as an alley and it would eventually be reconnected to something, I would feel very differently about this. The reality is that it is likely not. It dead ends at a private property. I have heard that it does not seem like there is going to be much interest in going through the process of trying to acquire that land to be able to reopen an alleyway, or an easement, that would get us to this particular strip of land. I have a hard time restricting and impacting three households for a principle that may not even be in play in this particular case. I think this is one of those odd things that happens over time when properties get placed and we have these little lines that just do not quite line up and this is one of those times. If I was parking my vehicle on this piece of property, I would want to know that I could limit people from passing through that area. If I was the Campbell Street owner and this was coming directly into my backyard, I would feel better knowing that this was not a public access. If there is anything in the public interest that this closure would impact I would be more inclined to say no. But in this circumstance, it just seems like a commonsense issue related to what is really an anomaly in our City planning.

Councilmember Dent said I guess I am not an enthusiastic yes, but as you say not a real reason to say no. Which inclines towards yes.

Chair Baugh said I am not taking issue with any of the general statements about liking and to preserve these things and wanting to air on the side of preserving them and seeing some of the

decisions of the past as being not what we should have done. A lot of things in my life it is hard to get me to use words like “always and never”. I personally would not phrase it as I see no public interest in maintaining this. I would say that I see whatever public interest there would be in maintaining this to be small enough that I am not inclined to see us going the effort to insist on keeping this open.

Councilmember Dent said small enough probability that it could ever be really used for what it is intended for is the easement.

Chair Baugh said if you are going to go there, you are actually in a part of the City that is, for a lot of these issues, about connectivity that you cannot make now without a lot of difficulty because you did not do it in the first place. I think that is right. We should be slow to give that up, but this is not really an area where I see is suffering from connectivity. I think if you never expanded alleys or anything in this part of the City...it is hard to see anything that would do that. There are times when it is a whole lot harder to get from point A to point B than it should be because the planning was not done initially. This is a pretty older, dense residential area. I am just not seeing this situation where this keeps somebody from having to go eight blocks out of their way to get from point A to point B. It is just not something you are going to see there.

Commissioner Porter said I would like to renew the motion to approve the request with the condition that has been set forth by staff that there is an agreement among the affected property owners.

Councilmember Dent said fine point, our motions are to recommend approval.

Councilmember Dent seconded the motion.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	No
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Commissioner Porter	Aye
Chair Baugh	Aye

The motion to recommend approval of the alley closing passed (5-1). The recommendation will move forward to City Council on June 10, 2025.

**New Business – Public Hearings**

***A request from Winchester Equipment Co for a special use permit to reduce required parking areas at 160 Carpenter Lane***

Chair Baugh read the request and asked staff to review.

Ms. Soffel said the property is addressed as 160 Carpenter Lane and is located at the end of Carpenter Lane adjacent to Interstate 81. Winchester Equipment Company, doing business as Valley Equipment Company, sells, rents, and services compact construction and agricultural equipment. On January 28, 2025, City Council approved a rezoning of this property from B-2, General Business District, to M-1, General Industrial District. The applicant is requesting a special use permit (SUP) per section 10-3-97(8) to reduce the required number of parking spaces from 51 spaces to 28 spaces.

Section 10-3-97(8) of the Zoning Ordinance (ZO) allows for a property owner to request a SUP for a reduction of the required parking areas provided an equivalent amount of open space remains available for future parking if deemed necessary by City Council. A deed delineating this open space must be recorded before the issuance of a new Certificate of Occupancy.

The applicant has provided a layout indicating that 28 parking spaces are to be delineated, including accessible parking. The submitted layout shows the open space would be equal to the required number of off-street parking spaces that would be required if the SUP were denied or if City Council were to require them in the future. If parking spaces are constructed in the reserved open space, landscaping islands and street trees will be required per Section 10-3-30.1(16) of the ZO.

The existing parking lot is nonconforming to the parking lot landscaping requirements in Section 10-3-30.1 of the ZO. The ZO requires that trees be planted when a nonconforming parking lot is expanded. The applicant's layout shows a planned expansion of the parking lot travelways in the rear of the property, which would give rise to the requirement to install trees along the public street. However, if the applicant later chooses to not expand the travelway, then trees would not be required. It should be noted that the layout provided does not reflect the total number of trees that would be required. The applicant will be expected to work with staff to verify the number of trees to be planted.

Since the approval of the SUP allowing reduced parking would otherwise relieve the applicant from meeting parking lot landscaping requirements, staff recommends that the installation of trees along the public street right-of-way be a condition of the SUP. Therefore, staff proposes the following condition:

Trees shall be planted and maintained within the landscape borders adjacent to the public street right-of-way in accordance with Section 10-3-30.1(4) of the Zoning Ordinance.

#### *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.

*Recommendation*

Staff recommends approval of the special use permit request with the suggested condition. Chair Baugh asked if there any questions for staff.

Councilmember Dent said I see there is a mature walnut to remain a street tree. I like that, keeping existing trees where possible. There are dots out in the diagram, are those existing trees or what?

Ms. Soffel said some of them are. The dots that exist there represent some evergreen bushes that were previously existing on that location. Maybe about half or more of those remain, some of them do not. There have been other trees or bushes. I am not sure if they are ornamentals or if they will grow big, but there are some small trees planted intermixed among where those dots are. They do not necessarily represent everything that is there.

Councilmember Dent said what is that red outline part?

Ms. Soffel said that is the expanded parking lot. They are proposing to expand that area so that they can reach the bays in the back.

Councilmember Dent said that would be accessed through the parking lot and around?

Ms. Soffel said the driveway is there towards the left side of the image and the parking area is shown in the dotted spaces.

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

Jonathan Garber, applicant's representative with Lineage Architects, came forward to speak to the request. He said I have really nothing to what Ms. Soffel and staff have given to you except for two small things. First, in the spirit of complete transparency my narrative indicates that there will not be a need for any utility work. I found out today that is not the case. We are going to have to upsize the meter so there will be some linear utility work associated with this project that has no impact whatsoever on the parking request per se. The second item and ma'am [referring to Councilmember Dent] you had noticed the existing walnut; we will absolutely defend that. From an owner's perspective something like this is primarily a financial consideration. They do not want to spend the money if they do not have to and I respect that. From the get-go we have been making them aware of the proximity to Blacks Run, the concerns associated with that waterway, and the fact that reducing the amount of soil we are going to disturb and hardscape that we would introduce

is going to go toward what they are able to do in this case to provide further protection for Blacks Run. I am happy to answer any questions that you may have. Thank you.

Councilmember said for example I see that this new turn in for the bays is gravel instead of asphalt paved so it is pervious in that sense, right?

Mr. Garber said we do anticipate gravel. There will be concrete pads right at the very entrance to the door to keep from tearing things to pieces.

Councilmember Dent said I am a little confused where the entrance to the driveway is. Is that on the property?

Mr. Garber said it is to the west, to the left side of the diagram you can see the existing walnut and three new street trees down along the bottom along the cul-de-sac and then there is a gap between with one new street tree at the top. We are not making any changes to the existing access to Carpenter Lane. It is more than sufficient. The idea here is to touch as little as possible.

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

Vice Chair Finnegan said when did this come up for rezoning it was less than a year ago right?

Ms. Dang said I think you all had it in December.

Councilmember Dent said is this the one that is moving from Charles Street to here?

Staff responded yes.

Chair Baugh closed the public hearing and opened the matter for discussion.

Vice Chair Finnegan said Mr. Chair I am never going to miss an opportunity to support less parking and I also appreciate staff's recommended condition. We do need more trees and less parking.

Councilmember Dent said I agree. I will make a motion to recommend approval of the special use permit with the suggested condition.

Vice Chair Finnegan seconded the motion.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	Aye

Commissioner Alsindi	Aye
Commissioner Washington	Aye
Commissioner Porter	Aye
Chair Baugh	Aye

The motion to recommend approval of the special use permit with the suggested conditions passed (6-0). The recommendation will move forward to City Council on June 10, 2025.

***A request from Paul C. Riner to rezone 302 West Bruce Street***

Chair Baugh read the request and asked staff to review.

Ms. Rupkey said the applicant is requesting to rezone a +/- 5,397-square foot property from R-2, Residential District to R-8C, Small Lot Residential District Conditional. The property is addressed as 302 West Bruce Street and is identified as tax map parcels 25-A-1. The applicant's letter states that the existing unit is unoccupied and has received building permits for internal renovations to include an additional bedroom and bathroom. The applicant is unsure if they would like to sell or rent the home in the future.

The applicant's letter also explains that they would like to rezone the property to conform to zoning lot size regulations. Under the R-2 district regulations, a single-family detached dwelling is required to have a minimum of 7,000 square feet of lot area. In the R-8 district, the lot area requirement for a single family detached dwelling is a minimum of 2,800 square feet per unit. If rezoned, the property would become conforming to lot size requirements.

***Proffers***

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

1. Upon request and upon the completion of necessary plats and deeds by the City, the property owner will dedicate a variable width public sidewalk easement along Academy Street for future sidewalk construction by the City. The easement will extend 7.5 feet from the existing back of curb into the property. The property owner has the option to dedicate public right-of-way in lieu of the public sidewalk easement. In addition, a variable width temporary grading easement up to 5 feet beyond the 7.5 feet public sidewalk easement will be provided to the City for sidewalk installation.
2. Upon request and upon the completion of necessary plats and deeds by the City, the property owner will dedicate a variable width public sidewalk easement along West Bruce Street for future sidewalk construction by the City. The easement will extend 5.5 feet from the existing back of curb into the property. The property owner has the option to dedicate public right-of-way in lieu of the public sidewalk easement. In addition, a variable width temporary grading

easement up to 3 feet beyond the public sidewalk easement will be provided to the City for sidewalk installation.

3. Permanent structures, landscaping features, fences, and walls are prohibited in the areas proffered for public sidewalk easement (or public right-of-way).
4. If the property is subdivided by the property owner before the City completes the necessary plats and deeds, then the property owner will be responsible for completing the necessary plats and deeds to dedicate public sidewalk easements (or public right-of-way) and temporary grading easements described above.

Along with proffer #4, which requires the property owner to dedicate the easement or right-of-way if they subdivide the property, the property owner/applicant has been made aware that future subdivision would require them to construct sidewalk along Academy Street in accordance with Subdivision Ordinance Section 10-2-61 (c) because sidewalk already extends along West Bruce Street to its intersection with Academy Street.

#### *Land Use*

The Comprehensive Plan designates this site as Neighborhood Residential and states:

These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

Considering the size of the existing parcel and the alignment with R-8 district regulations, staff finds no significant adverse effects on surrounding properties and believes the request is consistent with the Comprehensive Plan's Land Use Guide. The R-8 district is intended for medium- to high-density residential development including, single-family detached and duplex dwellings, and, in special circumstances, townhouse units by special use permit. Staff believes the flexibility offered by the R-8 district's minimum area and dimensional requirements can work well within areas designated as Neighborhood Residential.

If the rezoning is approved, it appears that the parcel could contain a subdivided duplex structure if the existing single family detached dwelling was removed. The existing single family detached dwelling could not be converted to a duplex because the R-8 district requires all units to be positioned on their own lot.

#### *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, Keister Elementary School, Thomas Harrison Middle School, and Harrisonburg High School would serve the students residing on this property.

For total student population projections, the City of Harrisonburg and HCPS both use the University of Virginia's Weldon Cooper Center for Public Service's projections. These projections are updated annually and are available at: <https://www.coopercenter.org/virginia-school-data>.

*Recommendation*

Staff recommends approval of the rezoning request.

Chair Baugh asked if there any questions for staff.

Councilmember Dent said this final statement before the Transportation and Traffic portion of the report, "the R-8 district requires all units to be positioned on their own lot." That is weird I thought R-8 meant to include duplexes, which would be on the same lot.

Ms. Rupkey said with a duplex they would have to be on their own subdivided, individual lots so the property line would go through the building.

Mr. Fletcher said side-by-side duplexes rather than up and down duplexes.

Vice Chair Finnegan said townhouses have property lines running through the building.

Councilmember Dent said all of this is just easements in case we ever build a sidewalk.

Ms. Rupkey said at this time there would not be any plats or easements dedicated, but upon request and completion of the necessary plats by the City those easements, or rights-of-way, would be required..

Chair Baugh said going back to some of the stuff we had on the prior matter, what it amounts to is that it is very unlikely the City would ever put sidewalks there unless everybody in the affected area agreed to do it. They are giving their permission now. That is binding and it runs with the property. If we get enough requests at some point, and can fill it in because everybody on that part of the street wants it, it is already banked basically.

Ms. Rupkey said we would have the ability to request that the necessary space to do the easement as well as temporary construction [easements].

Chair Baugh said it has never come up, that I know of, but conceivably you could have a point where the neighborhood wanted to do it and you had one hold out and that might be that rare circumstance that we talked about earlier where maybe City Council would think about doing eminent domain if 95% of the neighborhood wants it and there is just one person doing it. For these purposes it just means they have already said yep, if it ever comes up, we are good. Just give us notice and we understand you are going to put a sidewalk in.

Councilmember Dent said or if they ever do a subdivision front to back then they would have construct it right?

Ms. Rupkey said correct, the Subdivision Ordinance would require that.

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

Paul Riner, the applicant, came forward to speak to the request. He said we have undertaken the renovation of the current dwelling unit there with the proper permits from the City and are essentially just requesting the change to the R-8 zoning [district] so that we come within conformity. We are essentially a nonconforming use in the current R-2 district.

Chair Baugh asked if there were any questions for the applicant.

Vice Chair Finnegan said how long has that building been unoccupied?

Mr. Riner said as far as we can tell the previous owner purchased it with plans to renovate and we purchased it from them when they did not proceed with the plans. I am not sure how long it has been vacant. I know at least the preceding six months to our purchase and that is a guess just based upon conversation with the previous owner.

Councilmember Dent said you are expanding it from a two to a three bedroom?

Mr. Riner said correct. Actually, a three bedroom and two bathroom. There will be a full bedroom and bathroom on the first level of the home just to make it more accessible.

Councilmember Dent said are you planning to sell it or rent it?

Mr. Riner said sell it is the plan now after the renovations are complete. Honestly, that is why, as far as the proffers for the sidewalks, we would love to see that neighborhood more walkable. We think it would add to this subject property in a single-family use.

Councilmember Dent said staff is not requiring the building of the sidewalk at this point. Just to leave the easement open.

Mr. Riner said yes.

Chair Baugh asked if there were any questions for the applicant. Hearing none, he opened the public hearing and invited anyone in the room or on the phone wishing to speak to the request.

Todd Rhea, a resident at 2322 Alston Circle, came forward to speak to the request. He said since we are killing a little time here as it is germane to Mr. Riner's request and he probably does not need me to speak. As an example of the utility of the R-8 zoning district versus some of your legacy R-1, R-2, and R-3 zoning districts, this, and many other examples coming before Planning Commission, should be a good example for you all and food for thought as staff and Planning Commission continue to evaluate Zoning and Subdivision Ordinance matters within the City. These modernized ordinances, R-7 and R-8 districts, are really much easier to work with and provide a lot of public benefit.

Chair Baugh closed the public hearing and opened the matter for discussion.

Councilmember Dent said I have become a fan of R-8. For awhile I was perplexed by why do we keep doing R-8 for porches. It has to do with the setbacks and so on. I think it fits well through older neighborhoods that do not have the more modern, expansive yard setbacks. It is more of an adaptation to the reality of how houses have been built to be on smaller lots and smaller setbacks, it works.

Chair Baugh said I am even going to take that a step further. Some people might think this is an overstatement, but my view has been for a good while that if you look at a residential zoning ordinance... When I first came on it went up to R-4 and that was it. We still have a handful of R-4 but it never became a functional category. We even talked about getting rid of it at one point and decided since you have already have some zoned that way, that would not be as easy of a lift as you would think. Basically, you had R-1 which was the modern residential from a 20th century perspective. R-3 which we called Medium Density because we did not have anything called high density. Anything with any density was in R-3. R-2 was sort of what was left over. What R-2 became was the older, developed residential areas that usually, because of lot size and setback, would not fit into that then kind of classic R-1 description. Which, to me, translated to it has never really been a meaningful planning category. It was when they zoned residential that just where they put the older residential neighborhoods that were fully developed because they did not meet R-1 standards. This idea of these R-2 properties that are nonconforming is quite common, it may be the majority of them. In many respects it is interesting how the R-8 has become...we have added these various zoning categories over the years, starting with R-4, where you sort of are hoping that it would sort of catch on and spur some things and they kind of never really have except for this. This is the one that we found where suddenly not only does it allow people to do the things that you explicitly said you want to do with smaller lot sizes, but it is where you go the flexibility for the sidewalks. It is where we can take R-2 properties and make them conforming; pending the ultimate ordinance revision that we are going to get to. R-2 is just sort where...somebody who was around then might throw something at me for saying it but... I have seen some nodding heads from staff... that it is kind of where they threw the old residential property.

Vice Chair Finnegan said I will add to that. When you look at some of the streets that show up in these maps from the late 1800s like Academy [Street] and Bruce [Street], people were not parking cars on the street because there were no cars. This idea that public streets are used for private property storage that is something that has come about since the 1950s and you look at lot of the neighborhoods that were built in the 1950s do have the wider roads. Academy [Street] does not have a lot of space there and Bruce [Street] frankly as well. When we talk about setbacks we should also keep in mind what is the street being used for. In a lot of cases the streets are wide so that people can store their private property on it.

Councilmember Dent said I noticed, driving there today, that it became a one lane street because of the cars parked on one side. I move that we recommend approval of the rezoning request with the proffers.

Vice Chair Finnegan seconded the motion.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Commissioner Porter	Aye
Chair Baugh	Aye

The motion to recommend approval of the rezoning request with suggested proffers passed (6-0). The recommendation will move forward to City Council on June 10, 2025.

***A request from 865 East LLC to rezone (proffer amendment) 865 Port Republic Road***

***A request from 865 East LLC for a special use permit to allow reduction in required side and/or rear yard setbacks at 865 Port Republic Road***

Chair Baugh read the request and asked staff to review.

Ms. Soffel said in 2017, when the subject site was zoned R-5C, High Density Residential District Conditional, the property received approval for a special use permit (SUP) to allow a concealed wireless telecommunications facility (WTF). In January 2024, the property was rezoned to B-2C, General Business District Conditional, and received SUP approvals to allow multi-family dwellings and/or mixed use buildings and to allow reduction in required side and/or rear yard setbacks to construct an addition to the existing building. (Additional information on the 2024 rezoning and SUP are available at: <https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6461978&GUID=909CEC69-13BA-4A6B-9FF1-67FE7483256D&Options=&Search=>). The proffers restricted the permitted nonresidential uses to retail stores, convenience shops, personal service establishments, restaurants, and business and

professional offices. The 2024 rezoning did not include WTFs in the list of permitted uses. In the B-2 district, WTFs would typically be allowed by-right, if not excluded by proffers. The discrepancy became evident when upgrades to the existing WTF was being discussed with staff. If the rezoning is approved, the proffer amendment would rectify this oversight, permitting the WTF to continue operation on the parcel and undergo facility upgrades, as needed.

Additionally, since the 2024 rezoning, the Zoning Ordinance (ZO) was amended in June 2024 to add “tobacco, smoke and vape shops” (referred to herein as vape shops) as a by-right use in the B-2 district. A vape shop currently operates on the ground floor of the existing building and is now considered a nonconforming use. Previously, the ZO did not make reference to vape shops, and they were treated as a retail operation. Operating a vape shop within 1,000 feet of any property containing a public or private school or child day care center is not permitted by the ZO. A radius check confirmed compliance that the subject site is not within 1,000 feet of a public or private school or child day care center. Including vape shops as a permitted use in the proffer amendment will eliminate future ambiguity regarding their operation on the property. Any future new vape shop would have to comply with the location requirements specified in 10-3-93(e).

### *Proffers*

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

1. Only the following non-residential shall be permitted on the Property: retail stores, convenience shops (including tobacco, smoke and vape shops), personal service establishments, restaurants (excluding those with drive-through facilities), business and professional offices, and uses permitted under City Ordinance Section 10-3-90(20).
2. Special use permits shall be permitted as approved by City Council.
3. The Existing Building and the Building Addition shall contain no more than 160 individual apartment units containing a maximum of 470 bedrooms.
4. Non-residential uses may only be located on the first/ground floor of the Existing Building and shall not exceed 16,000 gross square feet with the exception of uses permitted under City Ordinance Section 10-3-90(20). The Building Addition shall have no additional commercial square footage, but may have on-site laundry, exercise and game room facilities and other customary resident amenities to encourage on-site convenience.
5. Ten (10) designated parking spaces shall be reserved for the exclusive use of the Devonshire Townhomes, as shown on the Development Plan, to accommodate for street parking along Devon Lane that was removed as a consequence of the development of the Existing Building. The neighboring property owners’ association, for which the spaces are reserved, will regulate the ten (10) reserved spaces via a permit system.
6. The Building Addition shall contain a varied and complementary exterior finish consisting of a mixture of brick, dryvit, and other non-combustible materials with

architectural offsets, angles and finishes to create an exterior appearance similar to the Existing Building.

7. Applicant shall install and maintain the following as bonded improvements as part of any engineer-submitted comprehensive site plan for the Building Addition, and as generally shown on the Development Plan:
  - A. Construct a five-foot (5')-wide sidewalk where none exists at the back of the curb bordering the slip lane at the intersection of Port Republic Road and Devon Lane;
  - B. Dedicate a right-of-way for the existing slip lane and sidewalk referenced below, to be located one-half foot (0.5') behind back of the sidewalk;
  - C. Reconstruct the crosswalk across the slip lane including the existing island sidewalk section, such that the crosswalk ramp for the slip lane connects to the crosswalk ramp for the Devon Lane crosswalk, adhering to the Public Right of Way Accessibility Guidelines to the maximum extent feasible, and eradicate the existing crosswalk.
8. Applicant shall grant the City a twenty-foot (20')-wide easement for a shared use path and pedestrian accessway to be finally located and granted upon City request in the general location shown as the yellow hashed area on page 1 of the Development Plan.
9. Any new or relocated site lighting for parking shall be installed with downward directional lighting and shielding to minimize light exfiltration into neighboring properties.
10. The maximum height of freestanding signs along Port Republic Road is eighteen (18') feet and the maximum height of freestanding signs along Devon Lane is eight feet (8').
11. The height of the Building Addition shall not exceed the maximum elevation of the Existing Building as measured from the Existing Building frontage on Port Republic Road.

Proffer #1 was amended to add “tobacco, smoke and vape shops” and “wireless telecommunications facilities” to the list of approved uses for the property. Proffer #4 was amended to exempt the WTFs from the requirement that all non-residential uses be located on the first/ground floor of the existing building. All other proffers remain unchanged, except for minor proofreading corrections.

#### *Special Use Permit*

In conjunction with the rezoning in January 2024, City Council approved SUPs to allow multi-family buildings and to allow a reduction in required side and/or rear yard setbacks. The SUP to allow multi-family buildings has been established through the existing multi-family building. The SUP to allow a reduction in setbacks for the planned addition is at risk of expiring on July 1, 2025. As allowed by Sec. 10-3-130 (c), the applicant is requesting an extension of the time period to establish or demonstrate diligent pursuit of the SUP to reduce setbacks.

The original 2024 SUP included a condition which prohibited constructing other structures with reduced setbacks not vetted by the SUP process. Staff recommends applying the same condition to the SUP, as follows:

The SUP shall be applicable only to the existing building and planned building addition in the location shown on the Development Plan with the ability to deviate up to 10 feet in any direction.

#### *Land Use*

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

These areas have been developed or are planned for development that have the highest residential density ranges outside of the downtown area and properties designated Mixed Use by the Land Use Guide. Density is planned to allow up to 24 dwelling units per acre. While a number of existing multifamily developments and areas adjacent to such developments are identified as High Density Residential, residential land use could include small-lot single-family detached and single-family attached neighborhoods. In special circumstances, non-residential uses may be appropriate.

#### *Transportation and Traffic*

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

#### *Public Water and Sanitary Sewer*

While staff does not anticipate issues regarding water or sanitary sewer service availability for the proposed development, the applicant has been advised that they will be responsible to complete a study of the water and sanitary sewer capacity prior to submittal of an engineered comprehensive site plan. Any public system improvements required to meet the increased demands resulting from the project will be the responsibility of the developer.

#### *Recommendation*

Staff recommend approval of the rezoning and SUP with the suggested condition.

Chair Baugh asked if there any questions for staff. Hearing none, he invited the applicant to speak to their request.

Todd Rhea, applicant's representative, came forward to speak to the request. He said these were a couple of clean up items. One of which was missed by the attorney, namely me, when we were rezoned back in 2023. The small Verizon telecommunications facility on the roof was approved

by special use permit in 2017 under the R-3 zoning. When we rezoned to B-2, it became a permitted use but the proffers were in artfully drafted to inadvertently exclude the previously granted permits, so we are cleaning up the proffers for that. The vape shop is something upon staff review we looked at to make a nonconforming use into a conforming use. We double checked it is not within the 1,000 feet of any school or daycare facility, so it is conforming if approved. The special use permit is as Planning Commission will recall, the general assembly and subsequently the City ordinance which changed to extend the special use permit period from one year to three years for residentially related uses that happened in June or July of 2024. Our special use permit was granted in January of 2024 so we did not fall under that new regulation. We are simply asking the City to reauthorize it consistent with other current City Zoning Ordinance to give time and not have to go back through the reapplication process should that building addition move forward. Hopefully just a couple of minor clean up items. Staff did a great job in explaining them to you that there is no hidden ball here and we would appreciate the recommendation for approval to City Council.

Councilmember Dent said you said should that building proceed, well, should it?

Mr. Rhea said it should. The last eighteen months have been challenging from a building materials and interest rate environment. That addition has been looked at from a design standpoint and from a cost standpoint and there certainly is hope that expansion will get constructed within the three-year period if the SUP approval is extended.

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

Chair Baugh closed the public hearing and opened the matter for discussion.

Commissioner Porter said this seems to just be recognizing a de facto reality and it is kind of retroactive action to bring it back into compliance. What would be the implications if we denied the request? Just for my own understanding.

Ms. Soffel said the existing facility would not be allowed.

Ms. Dang said correct, the wireless telecommunications facility would have to be removed.

Ms. Soffel said the vape shop is nonconforming.

Vice Chair Finnegan said there are other states that have what I will call the "vape shop problem" and most of those states do not have a regulated cannabis market and Virginia does not have a regulated cannabis market. If you are talking about objections to vape shops, I share those

objections, but I also place the blame at the feet of Governor Youngkin for not taking action on regulating these things.

Commissioner Porter said despite my commentary, I do not see any reason to deny this request whatsoever. It reflects the reality of the circumstances. All commentary aside, I do not see a reason why we would even consider anything other than accepting this.

Vice Chair Finnegan said I would be inclined to support this. I supported the request that came before us a year or two ago to rezone and allow that extension of the building and I also support flexibility in setbacks. With that, I will recommend approval with the conditions.

Commissioner Porter seconded the motion.

Councilmember Dent said I like this project a lot because it is using existing essentially wasted parking lot to expand a building that is student housing. I understand it a lot of it is international students who do not have cars, so they do not need the extra parking. There is also a building on stilts to have the underneath parking allowed. I hope this does go forward and this gives it the leeway of the new timing that we allowed by ordinance and Virginia Law for three years.

Chair Baugh said the motion and the second are to approve both the rezoning and the special use permit. Obviously if you have an objection to doing that just speak up.

Ms. Dang said [to Mr. Russ] procedurally does it matter if they do the two items, the rezoning and the special use permit in one vote or do they have to split it in two.

Mr. Russ said I think they can do it either way.

Chair Baugh said as long as the records are clear to what we are voting on we are fine. The answer to that would be if you objected to taking up both of them together, speak up or let that be known. Any additional discussion?

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Commissioner Porter	Aye
Chair Baugh	Aye

The motion to recommend approval of both the rezoning and special use permit request passed (6-0). The recommendation will move forward to City Council on June 10, 2025.

Ms. Dang asked for a clarification if the motion included the condition.

Chair Baugh said that the condition was included in the motion.

### **New Business – Other Items**

#### ***A request from Newtown Cemetery to close an undeveloped public alley located between the Newtown Cemetery and parcels fronting along Hill Street and Gay Street***

Chair Baugh read the request and asked staff to review.

Ms. Soffel said the applicant, Newtown Cemetery Trustees, is requesting to close an undeveloped 17-foot-wide alley adjacent to the Newtown Cemetery, which totals +/-8,659 square feet. In addition to the Newtown Cemetery, the alley is adjacent to tax map parcels 33-K-1, 3-8, and 11, which are zoned R-2, Residential District and addressed as 500, 508, 512, 516, 520, 524, 532, 540, 548, and 556 East Gay Street and 425 Hill Street. The applicant would like to close the alley to allow for the future expansion of Newtown Cemetery for burials.

The subject alley was created by a plat recorded in 1909. In 1909, subdivisions in Virginia were governed by the Early Subdivision Act, which provided that streets and alleys shown on recorded subdivision plats created a public easement or right of passage, but title to the underlying real estate remained with the dedicator of the subdivision or their heirs or assigns. The City likely does not own the underlying land but instead holds a public easement or right of passage across the alley. There are no public water, sewer, or power lines located within the alley. Approval of the applicant's request would result in the City vacating all its interest in the alley; however, the City cannot convey title to the alley to the applicant. It would be the responsibility of the applicant to secure title to the alley in the event the City vacates its interest.

In April 2025, a non-invasive geophysical survey using ground penetrating radar (GPR) was conducted on portions of the existing Newtown Cemetery, the alley to the south of the cemetery, a portion of Effinger Street, and a portion of Sterling Street. The GPR survey identified three potential unmarked graves in or near the alley. The alley boundaries were not surveyed and flagged or staked for the GPR survey; therefore, all locations are approximate, and the precise location of the potential unmarked graves in or near the alley is unknown. A copy of the GPR report is attached.

A tree located in the alley behind 540 East Gay Street appears to encroach on the alley. The tree is approximately 13 feet from the fence and may be an obstacle for vehicular traffic. The potential unmarked graves appear to be located to the west of the tree behind 524 and 532 East Gay Street.

A survey of the property would be required to determine how close the potential graves are located to the property line and whether they encroach in the alley. There appears to be evidence of vehicle traffic in portions of the alley and evidence of pedestrian traffic in the areas where vehicular traffic is likely obstructed.

If the applicant's request is approved, they hope to use the additional land to expand the existing Newtown Cemetery for burials. The undeveloped alley is zoned R-2 and would require approval of a special use permit (SUP) per Section 10-3-40 (3) to allow an expansion of the existing cemetery. The City cannot accept a SUP application until the Trustees have secured title to the land. However, it should be known that staff recognizes the sensitive nature of cemetery operations and would need to further evaluate whether a cemetery should be able to expand closer to residential properties.

Regardless of the complexity of the actions needed for the applicant to acquire the public alley and that further action is needed to gain the ability to expand the cemetery, staff believes that maintaining the public easement or right of passage across the alley is generally in the best interest of the community. A site visit and documented photos (attached) demonstrate that people are walking and driving in the alley. In addition, there are gates that provide rear access to existing lots through the alley. Staff believes that alleys offer the public a benefit and, in this neighborhood, provide access for property owners to the rear of their parcels. Therefore, staff recommends denial of the alley closing request.

If Planning Commission and City Council wish to support closing portions of the alley, which contain potential unmarked graves, staff would recommend closing the portion of the alley extending from the tree located behind 540 East Gay Street going west to include the locations of the potential graves, approximately behind 524 East Gay Street. A survey of the area would be required to determine the exact location of the tree and the potential graves. If this portion of the alley is closed, staff recommends adding a condition to require a public access easement at least five feet in width running the length of this area. A more precise location can be determined by the applicant and Community Development prior to recordation. The public access easement would allow continued pedestrian access along the entire alley.

Alternatively, if Planning Commission and City Council wish to support closing the entire alley between Hill Street and Sterling Street, staff recommends adding a condition to require a public access easement of at least five feet in width at a location determined by the applicant and Community Development prior to recordation, and at least ten feet in width through the remaining portions of the alley between Hill Street and Sterling Street. The public access easement would allow residents continued vehicular access to their property from the alley and allow continued pedestrian access.

*Recommendation*

Staff recommends denial of the alley closing request.

Ms. Soffel asked if there any questions for staff.

Councilmember Dent said when you say if we wanted to close portions of the alley from the tree going west, which street is that towards?

Ms. Soffel said towards Sterling [Street]. [Referring to the presentation] This is a picture from the ground penetrating radar and the top picture that sliver on the left that is gray, that is Sterling Street. You would enter the alley and go towards the tree. These pictures are difficult, they are from GIS, and they were apparently taken in the evening. So those are long shadows of trees and long shadows of headstones that exist. They make it very difficult to pinpoint where things are on this image. There are trees towards the center of the alley that likely encroach upon the alley.

Commissioner Porter said could I ask a question about the lack of clarity on who actually owns this stretch of land and just any information you can provide me at all regarding how we are going to resolve that issue? What are the next steps to clarify that?

Ms. Soffel said they would have to look through historical deeds and see if any of that information gives any clarity to the ownership of the alley. During this time period, between 1880 and 1928, is when it is most difficult to determine ownership because on many occasions the underlying property remains in the ownership of the original subdivider. Therefore, it would be to their heirs, or assigned whoever it may be, 100 years later.

Commissioner Porter said it would be safe to say that the neighbors abutting this alley likely have no claim to ownership of any of this.

Ms. Dang said Mr. Russ, can you help us with what the possible proceedings might be if this alley easement was to get vacated by the City; how one would obtain ownership of it?

Mr. Russ said whether or not you go through the effort of going to court depends a lot on whether or not you need title insurance. Often times if it was long enough ago and no one has put up a fuss and they get overlooked by your title insurance company. It really depends. You can file an action to quiet title to try and clear it up. If you wanted a firm answer on who precisely owns it that would probably be the route you would need to go.

Chair Baugh said the applicant may be able to speak to that.

Commissioner Porter said it just seems like a pretty significant issue that might impact any decision we might make on this.

Mr. Russ said not to speak for the applicant, but you do not want to go through all the effort of having a court determine who actually has title to the property if City Council is ultimately going to say no, we are not going to close it. I understand why Planning Commission and City Council may want to know who actually holds title to that property before they close it. It can be difficult.

Ms. Soffel said generally speaking, City Council will hold off on the second reading pending that information.

Commissioner Porter said this is also a unique case because we have potential three unmarked graves on this property which I think need to be held in high regard.

Chair Baugh said it is not entirely dissimilar to a matter that I was involved in some years ago. I think the questions on attempting to clarify the title to it are more in the nature of how much time you want to spend and those types of things. The situation might be different. You may dive into this and find some facts that would be barriers. Generally speaking, there is a way to deal with it. It is not like it is a situation where, based on what we know right now, you can file the suit, but it would never work. I can think of a number of circumstances where that would be something they could do with it. It does sound like there are some paths here where we are saying if you approve it, they are going to have to.

Ms. Soffel said they could get lucky and find deeds that make that clear. The case that you just heard before was from the same time period where the ownership is often unknown and they were able to find information that clarified that.

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

Quinton Callagan, an applicant representative, came forward to speak to the request. He said it has been a long road to get here. Originally, the application was submitted back in 2021. That was when we first came with staff to start talking through this issue and this item. Originally, it was just pursuing a conveyance of closing the alley or conveying it to the trustees. We did title work in our office. We were talking to Attorney Brown and Attorney Russ about who actually owned it. They looked into it and agreed that the City does not own it. The City just has a right of way easement over the property; they do not own it in fee. Then we started trying to figure out how would we proceed in that regard. Then we started talking to all of the people below the alley line that you see here if they would have any interest in cooperating with us and doing quit claim deeds, which would just be for them to convey any interest that they could possibly have in the alley over to the trustees. Most of the neighbors seemed to agree with that but there were a couple that refused to respond or cooperate in any way. That made it difficult because it was kind

of an all or nothing thing. One hold-out kind of ruins that path forward. We stopped proceeding with that and think through what was the next best way to go forward. It was at that time that the trustees started looking into the existence of potential burials in the alley. Originally, when we were talking about this in 2021 and 2022 there was a possibility of burials, but really they wanted the alley to extend the cemetery. There was a preliminary study done in earlier 2024 where we had a cadaver dog that came and went through the alley. This is the picture from the that where the dog hit several locations of places of interest or potential burials. After that they were able to work with a group out of Richmond who came and was able to do a ground penetration radar that was scheduled multiple times because of snow events and different things, so we finally got those results back in April which is why we are just now coming to Planning Commission. The existence of the graves certainly makes this a unique alley closure issue. Without the graves I certainly understand the Vice Chair and other council members concerns about closing alleys especially one that has connectivity between the streets. I know that there has been some public comment that has been submitted related to people using the alleyway. The pictures show some foot traffic. However, this is a very sensitive area when it comes to the existence of the burials and being able to preserve this area that is unique to Harrisonburg and the Newtown Neighborhood. That is what the trustees are intending to do. Why now and why not then? It became more pressing once we discovered the burials. What is the path forward legally? I agree with Mr. Russ and Chair Baugh, if the City does approve closure of the alley, then we would move forward to seek some sort of declaratory judgement as to the heirs. Based on my title research I do not think the adjoining landowners own it. I think the title would have been vested in the heirs of the original dedicator which we have very limited research on so far because that is going to be a lot of people and then we will have to get a guardian ad litem involved; potentially for notice and notices of publication. It is going to be somewhat expensive and being trustees of a cemetery, they have a fiduciary duty to not spend money unless it is absolutely required. At this point, step one is to get the alley actually vacated by the City. If the City vacates the alley, that is when we would move forward with the next step to obtain legal title. Once we have title, then we could submit for the special use permit to actually expand the cemetery. At this point, that is kind of where we had a decision tree dead branch... before was if we are going to have obtain title and it is going to take so much time and money and energy to get title to even be able to expand the cemetery then maybe this does not make sense. But now knowing that there are burials already in there is already part of the cemetery in some extent, so that is why we would want to move forward with obtaining having the alley vacated and then trying to get title. That is a long way of saying how long we have been working on this. I am happy to answer any questions or concerns. We do have several of the trustees with us tonight along with Dr. Nash from JMU. I would like to let her speak for a moment related to the historical significance and to the process in terms of determining where these burials actually are.

Dr. Carole Nash, resident at 285 Newman Avenue and an applicant representative, came forward to speak to the request. She said I do teach at JMU. My students and I have been working with

the Newtown Trustees for about 12 years on this cemetery. We were fortunate to be able to get it on the National Register [of Historic Places]. It is one of the only African American cemeteries in Virginia that is on the National Register, it is a very significant place. This is sacred ground. I understand the principle of keeping alleyways open, but I also would argue that there are other principles at play here as well. When you look at the deed sequence, the south half of the cemetery today was purchased as two separate lots. The first in 1898, the second in 1907. In other words, those purchases were made prior to the ordinances going into place about alleys. It does not surprise us in any way that there are some unmarked graves. We know there are a number of unmarked graves in the cemetery, there are over 1000 people buried there. It is an anchor for this community. Just to give you an idea of what they went through to buy this land in the first place. The very first lot that was purchased, they were charged three times what their white neighbors were charged to purchase that first lot. The second lot they were charged twice what their white neighbors were charged and this went on. You also have to keep in mind that this was an agricultural field. This was part of the Robert Gray property and there was not even a fence line at the southern edge of this property when it was purchased. It was in wheat and barley and the property owners who sold it were given the right to harvest the crop before the cemetery took it over. I think that if you look at the history of the place and you look at the request that is being made now and you think about the burials that are in the alleyway. We really did our due diligence to hire a top-notch firm to come in and help us with this because my students and I had looked. We have done ground penetrating radar. We brought the dog in who is trained to look for historic burials. There was the hit, we got the hit again with the second company that came in. As we are thinking about what that alleyway means, we understand that there is this question of ownership, we understand there is this question of access, but we also understand that it is part of the original cemetery lots. We ask you to think of it in that way. Thank you.

Mr. Callahan said the only thing I will say in closing is that as part of the staff report and recommendation there were alternatives related to continuing to have connectivity for walkability and pedestrian traffic and things like that. There are no restrictions on this cemetery as it is now. That is a semipublic space; in the sense that it is open to the public. No one regulates who goes on and off the space. While there may be a fence that would be erected at some point to actually show where the boundary is, the intent would be for it to be open to the public and for people to be able to visit this historically significant place. To the extent that you want to add any of these conditions related to accessibility or other easements, we are open to that. It would be difficult now to draw those lines in where easements would need to be difficult now to draw those lines of where those easements would need to be because as part of the next step, we would need to do some surveying. Again, related to the costs we do not want to incur the cost related to surveying without knowing that there is some support from the City going forward. We would be open to any of those conditions that were potentially mentioned if it were to be approved.

Councilmember Dent said I see that it says the precise location of the potential unmarked graves in or near the alley is unknown. They did the ground penetrating radar to detect the possible graves and they sketched out the general area. What I was wondering is no matter what we do with it would it be possible to put markers there to say we think somebody is buried here? Even if we kept it as an alley to have those markers to be clear too respect that it is sacred ground even if it is still publicly accessible.

Mr. Callahan said I think in terms of this was the best visual in my opinion as to where we actually are because the ground penetration is kind of vague. This shows the pictures on the actual easement location. The vagueness is related to when they did the ground penetrating radar it was not staked and surveyed. We do not have clear lines as to where the boundary line is from an actual surveyor. To the extent that we would move forward with actually establishing some type of easement for the neighboring property owners or something like that, we would have to get a survey to comply with that. In terms of marking the graves, I do not have an answer for you. I do not know if the trustees would be open to marking those graves with the alley not being vacated in some way but that would be a follow up conversation for a different day.

Commissioner Porter said it sounds like you are open to an easement. There is no pitched opposition to that possibility?

Mr. Callahan said it is 17-feet now; the limitation is where the burials are actually located. In terms of drawing an actual easement I would encourage you to consider five feet instead of ten. Five feet is enough for pedestrian traffic and that would give us the ability within the 17-feet to have something that would avoid any burial sites to the extent that it needed to be actually platted as an easement. I would encourage you to do five instead of ten because ten would only leave us seven feet. Does that answer your question?

Commissioner Porter said it does. Second question is, and again this might not be as germane to this, but would there be a process assuming that this all goes through and the trustees are eventually granted what they want to do and what they want to begin placing the burials at this site. Would there be some effort to verify...you are not digging a grave to be placed in the ground and also exhuming or disturbing an existing burial site. Would there be some attempt to try to kind of exhume some of those potential remains and resituate them? I guess I am trying to understand because if you have several unmarked graves and some potential graves that may not necessarily be properly buried graves at least by modern standards you very well may be running into that circumstance as you are digging on a grave site.

Mr. Callahan said the purpose of the ground penetration radar was to establish that these actually are burial locations and then to preserve those locations as they are. I do not think there is

intention to exhume them or relocate them in any way. It would just be to properly identify them within the ground and mark them.

Commissioner Porter said I assume there would be an effort to try and avoid those areas and work around it.

Mr. Callahan said correct.

Chair Baugh said it might be worth asking this if you are able to speak to it. I think maybe implicit in Commissioner Porter's question was we have done what we have so far but whether it is in this spot or somewhere else in the cemetery if you were to be digging it up and you found that you are running into human remains, tell us, are you capable...I think it might be helpful for the group to hear that. That is my understanding is there are a lot of things that come into play immediately once that event happens.

Dr. Nash said of course burials are protected by Virginia State Code. What I will tell you is, in terms of all of our work there over the last 14 years, we have been mapping all of the depressions that we are finding. Some of which are not marked at all. At one point you could imagine that there may have been markers from funeral homes that are now gone but tombstones were never erected. What we have done is we have been able to map over 900 burials and with doing historical evaluations, going through records, we have been able to put names on a lot of those folks. We have been able to identify the burials that are there. We still have a number that are unknown, but they are definitely burials and you can pick them up with the ground penetrating radar. Ideally what would happen is the work that we did in the alleyway would be done across the entire cemetery at some point so that we know where every single burial is. Keep in mind with the trustees you also have a superintendent who has a lot of historical knowledge and has been working with families. There are many ways to get information about where people are buried. You are absolutely right, if you start digging a grave shaft and you find human remains then you stop immediately. Even if you find the shaft itself and no remains, you stop.

Chair Baugh said I think it may be helpful for the group to here and then after you stop what happens then.

Dr. Nash said typically whatever you were doing would not go forward. In Rockingham County, when they were building the big soccer fields out at Penn Laird, they found a family cemetery that had been undocumented. With the permission of the family...a judge has to give a court order and there has to be a 30 day notice in the newspaper so that family members can come forward and claim remains and then it is the responsibility of the County to then decide are we going to remove these folks and put them somewhere else with the permission of the family.

Chair Baugh said I anticipated there might be some concern that we give up our rights to this and the cemetery now has unfettered access to do this and you [referring to the Newtown Cemetery Trustees] are just going to say: well that way inconvenient let us pretend we did not see that.

Dr. Nash said absolutely not. I do not think they would have been in business for as long as they have been if that had been the case.

Councilmember Dent said I do know that even if the applicants request is approved and they get title, or at least the City vacates our easement, the City cannot accept a special use permit application until the trustees have secured title. Staff recognizes the sensitive nature and would need to further evaluate whether a cemetery should be able to expand closer to residential properties. That is a consideration too. It butts right up against residential lots and in some cases right near the houses. I do not know if that applies to our decision, but it does not automatically mean that they can expand the cemetery.

Ms. Soffel said only the owner may apply for the special use permit. They definitely have to secure the title. Regarding the placement of the graves and the proximity to the houses, I did not find anything that prohibited that, but it would still be something to be evaluated.

Ms. Dang said Councilmember Dent, I may have misunderstood. Let me just make a statement that if the City were to vacate its interest in this alley and the trustees were able to secure title to the land they could not use that land as a cemetery. Burials could be preserved that were existing, but they could not expand additional burials until they got approval of the special use permit.

Commissioner Porter said just for my purposes, and I read the packet that was provided, but I would just like a summary of the basis of the rationale for the denial.

Ms. Soffel said across the southern side of that alley there are a number of residents there. We have only heard from one and that person was not in favor of closing the alley. We found several gates that provide access to the rear of those lots plus more evidence of vehicular traffic into those areas. As we consider that this space is a public good of access to the neighbors that live there and to anybody else who would be trying to traverse these neighborhoods in a safe way away from traffic. We try to work for the public good and try to maintain the availability of this alley for everybody. The presence of the graves does make it more complicated. We understand wanting to preserve some of the areas.

Vice Chair Finnegan said option number one is clear, deny the request. Option number two, recommend approval to close a portion of the alley with the condition to require a public...that would five feet going by that tree?

Ms. Soffel said it would have to be surveyed and more specific but approximately around the position of that tree, access is more limited because that tree narrows the ability to traverse the alley. The graves appear to be west of that tree. There would be some restricted access here. There are some potential graves to the west of that. Let us draw some boundary lines here but provide an easement so that people could still walk through.

Councilmember Dent said I see the third option you have here “close the entire length with a portion of it at five feet and the rest at ten feet.”

Ms. Soffel said it would be that same space that I am talking about from the tree to the area beyond where the potential graves are. Then to allow vehicle traffic on the outside portions where we saw evidence of vehicle traffic anyway. That is mainly for the residents. They are already using it so we would like to provide them continued access.

Commissioner Porter said due to the nature of the property it is kind of already open and semi public. What would be the de facto difference between allowing people to continue to pass through that property, and I am sure people walk in other areas of the cemetery as well, versus preserving the rights of the alley? The only area that I could possibly believe that there would be an impact here would be this issue of being able to get a vehicle access to the rear of one of these properties. Is that the primary concern here?

Ms. Soffel said it is to maintain access. It is a best practice to maintain that traditional network design. Alleys where they currently exist and just to provide safe passage.

Vice Chair Finnegan said I will just respond to Commissioner Porter anecdotally. I used to live on Long Avenue. The shortest distance from Long Avenue to downtown was through Woodbine Cemetery. I would say 95% of the time I used it, I could get through there day or night. There were occasions where...there is not a fence around Newtown Cemetery right now but if they put a fence around it, they could decide to close the gate. There were times where the gate at Woodbine is closed and locked and then you have to walk all the way around on [Route] 33. That has been my experience with cemeteries in Harrisonburg. Generally, the public may have access but if you put a fence around then the board decides to lock it, no access.

Commissioner Porter said I think it comes down to what is reasonable access. Is reasonable access at 3:30 in the morning versus during the time when the cemetery has probably some sort of superintendent or someone there that is potentially available. I know for a fact that we have people that are occasionally in that cemetery at night regardless; if the gates are locked or not. There is also paved paths in that cemetery versus what we have in Newtown.

Councilmember Dent said one thing I do note, when I was there today walking in that alley I saw someone walking down this paved path that is essentially a continuation of Effinger Street but does not look like it is really fit for vehicular traffic except maybe a car driving into do a burial. I mean there is already in effect a paved pathway through there for what that is worth.

Mr. Callahan said to be clear our request is to close the entire alley. To the extent you are entertaining an alternative, our request would be that the alternative be limited to five feet in a dedicated easement location so that we avoid burials. We do not want to just keep the southern half or the northern half. We would want to design that in a way to avoid those burials, so that would be the only alternative. I think the real issue right now unlike the alley closure that we had earlier with the McGehee's, nobody really knows who owns this piece of property. The City has just exercised its control as an easement over it. We certainly understand that is an issue that we have to get resolved. The issue is it would be much better if I had resolved that issue and I could tell you right now that we are the owners and we want to close it and take it and do X, Y, and Z. Given the situation this is not development land with juice to squeeze here. These are people that are volunteering their time to try and take care of a part of history in the City. They do not want to take the time and expense to do that until there is something. I think the comment earlier was that if City Council approves it, they would not hold the second reading until we would actually get title. There is some assurance that a recommendation would not be fulfilled until we actually prove that we have title. If we can even get it. There is some possibility through the courts that we may not even get the title that we would seek. There are a lot of hurdles there are a lot of roadblocks, this is just the first one. As to the vandalism question, I was just informed that they have had to restore five tombstones already this year due to vandalism. There is no perimeter boundary on the property as it exists now, does not mean there will not be one in the future. This is open to the people in that neighborhood for walking and greenspace to a degree.

Chair Baugh said you may have just volunteered something that I was going to ask you anyway. Is it an overstatement to say that you could live with what staff has determined option two when you say five feet. Do these two-dove tail enough?

Mr. Callahan said I think when staff is talking about five feet across the closed portion of the alley where the tree and the potential graves are and then ten feet throughout the remaining. Option two if it is just limited to five feet. The main reason with the five feet is because that would give us the ability to then come forward with a special use permit and extend the cemetery.

Chair Baugh said it is option two in the report; but it is alternative one on the screen.

Mr. Callahan said alternative one is only closing a portion of the alley. I am trying to combine...

Chair Baugh said that is what I was trying to hone in on. Alternative one and alternative two they have that difference of close portion of the alley versus closing all of the alley.

Mr. Callahan said for the purposes of a motion my recommendation would be a motion to recommend closing the alley with a condition that five feet remain along the alleyway for pedestrian traffic. It is not one of the explicit options. That is why I just wanted to make it clear.

Chair Baugh said essentially what you are saying it is alternative one if you knock out the first bullet point.

Mr. Callahan said it is alternative two if you knock out that last [referring to the PowerPoint slide] dash ten foot and just keep five foot throughout the alley.

Mr. Fletcher said I would suggest just rewriting a Callahan option instead of trying to make the language work. Mr. Callahan, what I think I am hearing you say, and maybe from folks in the crowd, is that if it is to be closed then you could almost zig-zag through the alley where appropriate to have pedestrian access.

Mr. Callahan said if you go with alternative two as on the screen where it is ten-foot easement across the remaining portions. That does not give them sufficient ability to then come back and request the special use permit to expand the cemetery. In some cases, we have preserved these couple of burials, but it is all for naught because they cannot really expand the cemetery, which is their goal. I do not want to walk away with a compromise that really give nobody anything. The Callahan proposal would be to close the entire alley with a five-foot easement to allow pedestrian access.

Chair Baugh said with the language that amounts to details to be determined.

Ms. Dang said while we are talking about these alternatives, I just want to restate again that your preference is to close the whole thing.

Mr. Callahan said yes, no easement whatsoever. That would be our preference.

Commissioner Porter said what redress does that give somebody that is your neighbor that needs to have a tree cutter come in or there is utility work that needs to be done at the rear of one of these properties and there is then a need for vehicular access to be able to get to that place? I think that is the only sticking point I have got in my mind right now.

Mr. Callahan said I think that sticking point is just like anywhere else in the City where you have to ask the neighbor for permission to get in there. Where right now the person has a right to come

across that alley to access the rear of the property. Based on our recommendation they would not have that by right, they would have to be requested and granted.

Commissioner Porter said due to the sensitive nature of the property I can certainly see a reasonable basis for denying that request but at the same time I feel like it does infringe a little bit on the rights of the folks that are currently abutted to the property.

Mr. Callahan said staff will correct me if I am wrong, or they will tell me they did not look into it, but I do not think there are any utilities in the alley right now.

Mr. Fletcher said not to our knowledge there is not.

Mr. Callahan said in terms of utility work that should not be an issue. It would only be someone that needs to access the rear. That is a conversation that we have had with the trustees. Where there are existing fences with gates, would people be allowed to maintain it, and what type of equipment is acceptable versus not acceptable? For the cemetery they use mowers to mow the area, to the extent that someone needs to come through across with a small mower or some type of device like that. Again, if you give us what we are asking, it would be based on their permission it would not be a by right usage like it is now.

Commissioner Porter said I think that your point was very germane, at least in my line of logic, as it relates to the fact that this is already kind of a semipublic place. Really, in reality those that would want to be able to travel across this property right now, they would not be stopped from doing so, correct?

Mr. Callahan said as it exists now. I cannot make any promises for future trustees or the Newtown Cemetery Inc., if they would actually be the entity that would acquire title to the property, as to what they would do. The way it exists now, there is no boundary fencing. People come on and about the property but there is vandalism so there may be some reason for them to fence it in the future. You look at other cemeteries in the City, like Woodbine that was brought up earlier, and that is somewhat open to the public but there is a stone wall all the way around it. You are not allowed to take dogs they have their own rules. I am not saying those rules would not be created in the future but those rules do not exist now. That is not something we are proffering.

Mr. Fletcher said maybe to the benefit of Mr. Porter who admitted earlier he is relatively new... We have had a few alley closing requests within this neighborhood in the past five years and then in other areas where we have traditional neighborhood design, one of which this is. This is a great neighborhood of networked streets and alleys. We absolutely can see and feel the sensitivity of this whole situation and then fell back on trying to be consistent with what we have

said with other alley closures in this neighborhood which it creates a great network for those passing areas. Just to paint more of a historical picture of how we have had to look at it wholistically rather than keying in on this. We absolutely recognize the sensitivity of it. When you read a stale government staff report you may not see that emotion in there and the things that are the context of how we had to think about it. We always have to readjust ourselves and come back to the bigger picture and look at it. We have recommended denial of other alley closures in this neighborhood. I am just talking about the bigger picture of alley closures in a great gridded network infrastructure. This will probably be the very first time in my entire career that I have had to even talk about cemeteries in this manner ever.

Vice Chair Finnegan said I live in that Morrison Park neighborhood and there are a lot of alleys there and there are a few where you can see some decision was made somewhere back down the line and the alley just dead ends and it does not connect to the street. It is very frustrating from a vantage point of being a pedestrian and being a community member in that neighborhood and not being able to get where you are trying to go. Particularly in places where there are no sidewalks. There are no sidewalks in a lot of the places around in this neighborhood, in the Northeast neighborhood. If I do not have to interact with cars, I would prefer to take that route. Commissioner Porter you brought up what about the folks who have those gates in the back, how do they access their property, so it is an access issue as well.

Councilmember Dent said I also see that there is a continuation of the alley across the street, across Sterling [Street]. It is sort of the extension of that alley as a grid.

Commissioner Washington said I am going to speak in first draft here. I think it is really interesting that we were told today that this is one of those sacred places in Virginia. There are people buried there, their loved ones. This is a Black space and I have not seen, in Harrisonburg, where the City has preserved a lot of Black spaces. Or have been intentional about preserving Black spaces. I think this is an opportunity to do that. When we talk about a cemetery it really does not keep people from walking in cemeteries. Cemeteries are public spaces, they are open to the public. The only thing we talked about is... we heard safe passage for vehicular traffic. Vehicular traffic and safe really do not always go together and as we talk about access... we saw an alley closure earlier and I just want to say that while they were talking about closing the alley I did not see the same amount of research done in terms of closing that alley. It was just going off of this dead ends and we are going to take the word for it that people do not use that. I also want to say that there is a difference in what we are talking about here and how it was presented. Which I think can be a little bit problematic. In regard to what we are talking about here, we are talking about history here and how we are preserving history and how we are expanding on preserving that history. If that means an alley closure, I think I would be in favor of closing that alley to make sure that part of that history which is important. Harrisonburg has not been very nice to Black people in its history. I would have to give that there. I do not think as we talk about

infrastructure... I cannot imagine the conversation of walkability over people. To me, how that is a valid argument.

Chair Baugh said there are two aspects of this that keep kind of nagging at me and one of them is really your last point which is there is no public interest in walking over anybody's grave. I guess what I am finding on both issues... Despite the fact that this has been sitting around for literally years, I wish there was a little more granularity on two points; that being one of them. Depending on how graves were configured maybe I do not even want a five-foot easement there if I actually knew where they were. The other piece is the impact for the folks that back up to it. The representation is we talked to most of them and most of them are okay with it, but we know at least one is not, and it sounds like there is at least one that they have not been able to contact. I think there is an element in there that if there were folks just saying "listen, I am willing to give up any right that I would have to have access to the back of my property" then okay they are willing to give that up. It would be interesting to actually have a picture of where if there were any issues. Even then, I would say just because I wish I knew more does not mean I necessarily think that this is dispositive. That is something where I would say I have seen this before and I will just say that I think reasonable people can disagree. One of the things that has come up a few times with some of these alley closings is this notion that I have always not quite been able to buy into 100 percent is that for a public use, great, but so much of the time that by the time you are saying I do not want to close it because there is this one or two property owners who need it, it is like well because I buy property that is next to a public right of way am I buying a public...my interest in using is still private it is not really public. First and foremost, I do not like the idea that maybe now we might be walking over somebody's grave.

Councilmember Dent said a creepy feeling walking it and wondering where am I? Am I on somebody's grave.

Chair Baugh said we have the ability to find out where that is and get that marked off appropriately. Let us do that. If that is the reason that we lose connectivity between two points in that area, now I am kind of like I was on the other one. I am not generally for that but that does not mean that sometimes there is a good reason to do it. I guess my only hesitation for a motion that I cannot make to just approve the alley closure is it would be nice if I had more detail of exactly what those affected properties thought about it. Those are my thoughts at the moment.

Commissioner Porter said I just wanted to give voice to my opinion as it relates to what I heard Commissioner Washington say. I believe that this has to be treated with great deference and I do not believe that it is the same case as some of the other alleyways in that neighborhood just because of the sheer nature of what exists here, its unique location, and the fact that it is effectively already a cemetery not fully verified, but likely, to be a place where folks have been interred. I view that automatically as a very different condition than any other principle we might

be dealing with here. I would be inclined to show deference to the effective presence of the cemetery and the fact that this really is an extension of the cemetery by the very nature that there are already folks that have already been buried in this location. When I view that as an issue related to the public interest again, I think there are some things that are more important than the broader issue of connectivity or accessibility or whether kids can get back and forth on this space here. My only concern would be that if I owned a property abutting this, and I really had a reason that I needed to have a truck come in for some reason, I would want to be able to have at least a reasonable opportunity to be able to work with the trustees to be able to effect that. While still being respectful of absolutely what is currently in place. The fact that these graves might be coming up so close to private property it puts us at a really uncomfortable and unique circumstance in my mind that I am not sure that I have a great answer for. This does feel a little out of order to me and I know why this is being brought forward the way it is but the fact that the ownership of the property is still somewhat in question. It could make some of this a mute point but again this is a very unique place. This is a very special place in our community. I know for Ms. Thomas and others this is not an academic issue, this is a very different issue. This has a level of emotion and personal feeling that extends beyond just what we might be discussing about the implications as it relates to zoning or any other issue that might be regulatory in nature. This is something very different. I think that is where my head is on this as well.

Vice Chair Finnegan said I would like to respond to one point that Commissioner Porter made about...and I do agree this is a complicated one there are some other issues here that do not exist in other alley closure requests. I think you [referring Commissioner Porter] said and I do not have the exact wording that this request is more important than kids being able to walk safely to and from school, I disagree with that.

Commissioner Porter said I think my only point being that I would not advocate an unsafe passage. Just that there might be alternative passages that are also safe. I understand your concern with me placing it that way but I think the intent is more that if this is a cemetery that is viewed as sacred ground and there are people currently that have been interred into this place, it makes it a little bit different than your average passageway. I am not advocating for unsafe passage of school children anywhere.

Councilmember Dent said I would just note that this Effinger Street which is effectively a path forms a viable alternative. That to me decreases the necessity for keeping this open for a public path.

Commissioner Washington said also knowing that if you close the alleyway people can still walk through the cemetery.

Ms. Soffel said [to Councilmember Dent] are you referring to the space that was formally Effinger Street that goes into the alley?

Councilmember Dent said yeah that continues from Effinger Street.

Ms. Soffel said that is closed. That belongs to the cemetery.

Mr. Fletcher said they own it. While it looks like on the map that it is part of an alley, that is actually a parcel now and Ms. Thomas might be able to identify the exact date but I remember City Council actually deeded it to the City, I want to say, in the early teens I think. It is now owned by the cemetery. It was a similar alley layout to what we were talking about prior to around the 2014 time period, I think. It is now owned by the cemetery.

Vice Chair Finnegan said the one thing that I did want to respond to your point that people can use that. I think what I am about to say is akin to the same principle applying to when we grant a special use permit to a short-term rental. They might say “well I will not do this” and “I will not do that” and “my neighbors are in favor of this” if that property is sold, we do not control what happens in the future. Similarly, if this request was granted they might have no plans to block off pedestrian access but the next board of trustees could build a fence around it and shut it off. I think that is where I am coming from is not what their current intent is but what might happen in the future when no one in this room is making decisions. How will that impact? Staff is recommending denial. The applicant is requesting approval. There are other options on the table. To me this does not have to be an all or nothing request. There was a fifth option that was discussed which was a five-foot access easement for pedestrians to get through there. We are looking for compromise, I would be open to entertaining that.

Councilmember Dent said the one thing that cuts off is vehicle access for the residents. Do we have any evidence that is really needed?

Vice Chair Finnegan said there are tire tracks there on the site tour yesterday; car width not lawn mower width. There is that tree that is kind of blocking... I do not know that you would be able to drive a car from the Hill [Street] down to Sterling [Street].

Councilmember Dent said not without going over graves.

Vice Chair Finnegan said even that aside, the tree. There is a mulberry tree.

Councilmember Dent said if you tried to do that you would have to detour over graves.

Vice Chair Finnegan said when I say vehicles I mean cars. I do not think that a six-foot-wide car could get through around that tree.

Councilmember Dent said there is no way for vehicular access through the whole thing.

Vice Chair Finnegan said is that a fair assessment?

Ms. Soffel said I can share this image (an aerial view of the alley and the adjoining properties) with you.

Vice Chair Finnegan said I guess my question is about the tree.

Ms. Dang said the tree is identified in the picture tour that was included with the staff report. The mulberry tree was 13-feet away from the fence.

Mr. Fletcher said if any of the folks in the room might be able to speak to any of the specificity of where the tree and maybe some of the graves might be in relation to where we think the alley is. We technically still do not have confirmation of where the alley is in relation to the potential graves correct?

Dr. Nash said when you are out there and when you take a look at the ground penetrating radar survey you will notice that it veers slightly, that is where the tree is. That is where the burials are. My assumption is that tree was left in place for a purpose. There are no other trees growing in that alleyway but that one. It is right where those burials are. What I will say is Councilperson Dent you are absolutely correct, if you were to try and drive a vehicle down that alleyway the only way to get around that tree would be to go on top of some graves. There is no through passage for vehicles. When we had the ground penetrating radar there it was mounted on a four-wheeler and it was tight then. It was very difficult at that point to even get that through.

Commissioner Porter said if there is some efficiency to the findings of the cadaver dog that was brought in you are already driving over graves.

Councilmember Dent said I guess my sort of sixth option, if that is even possible, is if we were to close the alley and keep a five-foot easement for pedestrian access, could we also have markers where the graves are so you are not walking on them? That is an added piece of research for something that is more detailed than what you did. I guess it would take a survey as well as the ground penetrating radar.

Ms. Soffel said I think that is more or less what the applicant was suggesting the five-foot easement that they would determine where it would go.

Mr. Callahan said it would be to close the entire alley and reserve a five-foot easement to be determined by survey.

Councilmember Dent said the survey would include determining more precisely where the graves are?

Mr. Callahan said we would have to do a survey to look at exactly where the graves are and then locate this five-foot easement which would be shown on a plat exactly where it is going to be. I think we would need to include a plat where the actual property is as an exhibit to the court in terms of who would need a metes and bounds description on what is being conveyed or declaratory judgment quiet title ordered to be given over to the trustees that are seeking trustees to the property. We need to define it in some way so it would need a survey with metes and bounds description. To the extent that we are staking it out for a metes and bounds description we can draw that easement on that survey. I think that would then be incorporated with City Council and their second reading is now they have identified where the easement is going to be. We are approving vacating this alley with this easement being preserved.

Councilmember Dent said now does that still allow for the potential eventual expansion of the cemetery? Only five feet go through the 17 feet there might still be graves added.

Mr. Callahan said my understanding this whole time, from the trustees, was to try and keep as much of the alleyway as we possibly can for the location of the burials. What I am telling you is to the extent that we need to keep five feet, I think that is about the maximum amount of space leaving 12 feet for the location of burials with headstones.

Vice Chair Finnegan said you are saying new burials?

Mr. Callahan said new burials correct.

Mr. Fletcher said I have three attorneys in the room. I have not known anyone to go through this process you are talking about. Is it possible that when this initiated...if this gets closed and they go to initiate this quiet title that the adjacent property owners get these notifications that this happening...

Mr. Callahan said like when we go to court?

Mr. Fletcher said yeah, and then those adjacent property owners along East Gay [Street] say we also want our quiet title portion, is that a possibility?

Mr. Callahan said no the only way that they would be listed is if we think there is some possibility that they have an ownership and we have to notify all potential owners. I do not think we would be notifying neighbors.

Mr. Fletcher said set aside the sensitivity of the nature just for one moment. If this was just another place and there was an obviously an established cemetery and someone is going through this process where...you have this adjacent property which is the cemetery and then somebody is like oh we do not know who owns this I want to go through quiet title I want to acquire the whole alley. Does that individual have the right to acquire the whole alley or do the adjacent property owners also get the opportunity to say: hey, we want our share?

Chair Baugh said until you know what you got out of the title records, we are kind of just throwing darts in a room with no lights in it.

Mr. Callahan said I think the code section says you have to give notice to any potential owners. It does not say anything about neighbors or adjoining landowners like when you give notice for public hearings.

Chair Baugh said I would say this, if you approve the alley closing and I as one of these adjoining land owners whether it is because I have been brought into the case or because I found out about the case and feel like something of mine is getting taken away from me. What can I do about that? I think unless I can find that I have some argument that I have actually got title to something that is in that area, I am probably out of luck because if this was all private property you would have an argument that, well I have been running my thing in here to my back fence and I have been doing that forever, and maybe you would have the right to go to court and enforce something but it is public right of way.

Mr. Russ said there are a number of cases where local governments have abandoned their right of way and adjoining property owners have asserted a continued private easement.

Chair Baugh said if you could show an abandonment and then here we are... I will defer to you [referring to Mr. Russ] one that. If I was going to pick a side on that, that might not be the side I pick. I am with you there.

Mr. Callahan said I think what you are getting is it becomes a standing issue. Do they have standing to intervene? Do they have standing to assert the claim?

Chair Baugh said my question is can you obtain a prescriptive right? You generally cannot obtain a prescriptive right over a public right-of-way. As Mr. Russ is saying, you first have to establish that it is not really a public right-of-way because it has been abandoned; which therefore makes it

private enough that your prescriptive rights might attach to it. That is what that winning argument is.

Mr. Russ said the argument tends to be that essentially every lot that is on the subdivision plat when the alley is created, whether it is public or private, has an interest in being able to use that right-of-way.

Chair Baugh said they might have an argument there.

Mr. Callahan said we are talking about the neighbors. Everyone got notice of this. No one is here saying that I have to have this in order to get to my backyard.

Mr. Fletcher said they do not get notice at this stage. This is not a public hearing.

Mr. Callahan said just the posted signs?

Mr. Fletcher said just the posted signs. They only get public notice, which could be why no one has showed up, when it goes to City Council. We as staff just put the signs up to try to encourage it. We do not do the notice until the law says we have to do the notice. We put the signs up out of an extra effort. That could be why no one is here.

Chair Baugh said what we know is that they did not get any notice.

Mr. Callahan said they did not get a formal notice, they just saw the signs. I think Mr. Crissman noticed because he saw the sign. I spoke to him directly about it. His letter even says we understand if you go the other way. With all that I think anything related to where the future easement is going to be or how we are going to articulate that. Unfortunately, I just do not have enough facts to give you at this point. I wish I did.

Commissioner Porter said can I ask whether anyone has actually looked at the plats that are adjoining this property? Are they uniform? We are talking about a matter of feet here.

Mr. Callahan said the issue is the master plat that was recorded in 1909 went to Rogers, it shows the lots, it shows the alley and, then it shows the piece of property above them. It is not a boundary line plat that you would think of that has been subdivided. It does not show the perimeter. When it is showing that alley it kind of depicts the alley and says that it is being created, but it does not say that it is necessarily being created on their property. This was a larger farm that came down multiple times. 1909 is where a lot of the online records stop and so I have stopped the title work there. I have not gone to the courthouse to pull out all of the old deeds to see exactly where things go together before that. That is one of the central issues is did they have

the land to actually convey and that would be if we go forward with the title work and the quiet title action. All of these lots, like where the Crissman's are, I have looked at their title and it is very consistent. It is 168.3 feet, I believe, in terms of the length of their lot to the alley. All of those lots are consistent in how large their lots are to the alley.

Commissioner Porter said if we grant closure and this goes to City Council and they grant a closure because this property is not clearly titled or owned by anyone, does this closure go into effect immediately?

Mr. Russ said there would be two readings at City Council. They will have the first reading and then at that point generally the applicant, now that they know that City Council is willing to close it, they would expend the money to figure out precisely the boundaries of the area that we are talking about. After the second reading if City Council is vacating it, the public right is gone.

Mr. Fletcher said that has to be recorded at the courthouse?

Mr. Russ said the ordinance closing the alley, yes.

Mr. Fletcher said that is when it is official.

Mr. Callahan said procedurally I think our goal would be to get to City Council, have a first reading, have them articulate yes they want to close the entire alley. Then we would go to court get some sort of order or declaratory judgement or quiet title saying that we can own it, we do own it and then it would be City Council that would then pass the ordinance saying that we vacated and the trustees own it.

Vice Chair Finnegan said in the interest of moving us towards a motion, I would suggest trying to meet concerns of all parties.... I personally cannot support option four as it was submitted. I could support option three minus the second half of that sentence where it says "and at least 10 feet in width through the remaining portions of the alley between Hill Street and Sterling Street."

Ms. Dang said can we articulate a new condition?

Vice Chair Finnegan said it would read like this "recommend approval of the requests to close the entire length of the alley between Hill Street and Sterling Street with a condition to require a public access easement at least five feet in width at a location determined by the applicant and Community Development prior to recordation."

Chair Baugh said if you make it a period there does that cover it?

Vice Chair Finnegan said I just feel like it either has extra words or is missing a word. "...to be determined by the applicant and Community Development..."

Chair Baugh said "prior to recordation" just take the at out and add a period.

Councilmember Dent said let us call it option five.

Vice Chair Finnegan said that I feel like I could live with it, personally. Also, if there is an appetite to recommend approval of the closure of the whole thing with no conditions someone can make that motion.

Commissioner Porter said I will speak to that and say that I feel like I am kind of more leaning towards the request to close the property without restriction or easement. I would like to express my rationale behind that. Because we have determined that there is a high probability that there are already graves in that area that would be affected by the easement. This is effectively an extension of the Newtown Cemetery in my mind. I would be more inclined to preserve that space as part of the cemetery and have it be managed in the same manner to which the rest of the cemetery is currently managed. The presence of those individuals carries a lot of weight with me in this consideration and I think that ultimately if this land is going to be owned by the Newtown Cemetery, assuming that they are able to secure ownership of that, that it really comes back to the trustees and their ability to work with their neighbors to find a process that is honorable to the cemetery but also hopefully reasonable to the neighbors. I do not know that the easement necessarily achieves what we are trying to get at here which is I just feel like there are lots of other paths around that neighborhood that does not necessarily have to rely on this particular piece of ground. I understand that there are gates that abut this that are owned by people that access that space and use it. Again, this is different. This is a unique piece of ground. I am not sure that from a zoning perspective or a civil planning perspective and the other loftier ideas that we have to deal with and consider, in my mind it does not overrule what we have believe to be the reality that these are effectively unmarked graves that need to be treated with a level of deference that a normal zoning issue or special use permit request or easement would be at play here because of the nature of the property. That is a fairly inarticulate way of saying it, but I feel like this is so different and so unique that I would be more inclined to give deference to the Newtown Cemetery based on the fact that this is effectively an extension of what already exist at the Newtown Cemetery. For the purposes of moving us forward I would be willing to make it a motion that we accept the recommendation of the closure of the alleyway with no conditions.

Commissioner Washington seconded the motion.

Vice Chair Finnegan said I would like to state my reason for not supporting this when we do the roll call. I will not be supporting this for the reasons I stated before about allowing some access

back there that in the event that in the future the cemetery does decide to build a fence around the whole thing. That is my motivation here.

Councilmember Dent said while I said I like the five foot easement as kind of a compromise, I also see the rationale as not just rationale, but it is respectful. I have this am “I walking on graves” kind of feeling that counters the need for an easement given there is already an established path through there. To Vice Chair Finnegan’s point, it could be closed if they put a fence around it but that is another issue for later. I am on the fence between [option] four or five.

Chair Baugh said where I sit right now, I will vote to support the motion. I think as, I am coming down on it, I am sort of seeing two things. One is the five foot does not address the backyard access issue and, as I have said, that has been dispositive to some Council members in the past, I was not always one of them. I am content that if Council looking at sort of thinks that is more of an issue, well I would understand that. I do not think it outweighs these other concerns. The other piece of it is that it is similar to the one we took up earlier and I think these things are the exception rather than the rule. If you built a 10-foot high wall around the cemetery and people to move around had to walk around it, it is just not that big a deal. The comment that I made earlier about it is not one of those situations where you have to go eight blocks out of your way to get from point A to point B. It is a little further to walk a little further to bike. That pushes me in the direction of supporting the motion.

Councilmember Dent said request for translation of legalese. Dispositive means makes you decide one way or the other?

Chair Baugh said dispositive means that in and of itself it would settle it. We have talked about a lot of other things but because it does this I am voting so and so.

Vice Chair Finnegan said it is a 17-foot alley right now, I would support leaving five feet. A massive reduction and also finding a way to make that five feet go around any existing...I am not saying I want people to be walking on bodies. That is my position and that is why I will be voting no.

Commissioner Porter said my sense is that it is a bit of a moot point until that fence is put up. It really is to Attorney Callahan’s point a semipublic space. It is a historical space. There are no impingements currently in place. In reality this is not necessarily a restriction for the existing neighbors. What this does is effectively provides the Newtown trustees the ability to make their case in court and it will be decided by somebody far smarter than me. It also provides a small step towards providing some respect for those that are currently interred into that space. I do understand being a property owner that would need to have access to my property with a vehicle to be able to deal with a tree removal or some other things. If I wanted to put a shed on my

property and I needed to have it brought in, those sorts of things. I do understand those concerns, but I think that the issues related to the fact that this already an extension of Newtown Cemetery far exceeds any other issues or points that would affect that. I am not sure that the five feet makes much difference when the ten feet seems to be the bigger issue the ability to get access to your property if you needed to get a vehicle in. I think those issues would probably have to be worked out among neighbors.

Chair Baugh said I think this is one that is different than the one earlier is, if I go with eyeballing the aerial, I think that fella on Campbell Street really does not have any way to get anything into his backyard because of the way the front of his property is configured. There is not enough space on either side of the house, they do not have the driveway built in or anything. I am looking at one of these lots that might not be able to pull it off. It might be more convenient to pull it in through the back through the cemetery property. Unless council chooses to get hung up on that piece, I am not. Not only have we not had anybody show up and say “boy you are going to cripple my use of the property if we cannot go in that back way”; it kind of does not look like that is the case for anybody.

Commissioner Porter said the one letter we did receive did not make that point at all. That was not the issue.

Vice Chair Finnegan said also because there is a tree there, vehicular access is not my primary concern here.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	No
Councilmember Dent	Aye
Commissioner Alsindi	No
Commissioner Washington	Aye
Commissioner Porter	Aye
Chair Baugh	Aye

The motion to recommend approval of alley closing passed (4-2). The recommendation will move forward to City Council on June 10, 2025.

### **Public Comment**

At this time Mr. Fletcher let the Commissioners and public know that the City of Harrisonburg just issued a water conservation notice.

None.

**Report of Secretary & Committees**

***Rockingham County Planning Commission Liaison Report***

Vice Chair Finnegan said the Rockingham Planning Commission met last week. There were four main items that needed action and they tabled three of the four. Townes at Congers Creek there is phase four of this Master Plan for an almost five-acre portion of a parcel zoned R-5 to include no more than 54 townhome units. They wanted to expand. Townes at Congers Creek has already gone through three phases and some of the folks from phase one, two, and three showed up in opposition to phase four. They tabled that. They tabled a request for rezoning a parcel zoned B-2 to add “animal hospital”. They basically wanted to open a veterinary clinic. That was in district three. That also got tabled because the neighbor had concern about an animal hospital. Ordinance amendment to the Rockingham County code to allow residences on private well or septic systems in the R-1 and R-2 zoned districts by special use permit within the Urban Growth Area. That was approved. Another one that was tabled was short-term rentals. These are not actually land use restrictions that Rockingham County is currently looking at, these are just health and safety. You have to have an egress, you have to have fire extinguishers, you have to have smoke detectors. A lot of folks who are operators of short-term rentals showed up to oppose the safety and health regulations. They have a second wave of regulations coming down the pike, at some point, that are land use regulations. Rockingham County does not know how many short-term rentals they have. Mr. Getz said they have “somewhere between 425 and 1,000” Trying to get these safety regulations on the books is also an attempt to get the tax money. That was tabled 4-0.

Ms. Dang then ask for sign ups for the remaining Rockingham Planning Commission meetings this year. Commissioner Washington volunteered to attend the June meeting.

***Board of Zoning Appeals Report***

None.

***City Council Report***

Councilmember Dent said I was just looking back through the minutes. We had two meetings. April 22<sup>nd</sup> the only pertinent thing there was we approved the Smithland Road development with the new proffers. Not a proffered layout but the proffer that had to do with having only one intersection on the public road off of Smithland so that it could more easily...

Mr. Fletcher said it controlled the layout.

Councilmember Dent said it controlled the layout and more easily adhered to the distance requirements from the main street without having that awkward loop. Once they came back with that after many iterations, we approved it unanimously.

Chair Baugh said do I recall correctly that those changes earned staff’s approval?

Councilmember Dent said yes. Last night we had various special proclamations and what not. The setback and the through lot on Franklin Street, the ordinance amendment for the UR district. We approved it with five feet. I was arguing for ten-feet, as we recommended here at Planning Commission, but there was enough argument for five-feet, and we went with that. Multifamily at Erickson Avenue... That was the one for permanent supportive housing on the road towards Walmart and there too City Council was more accepting of his approach that he should not have to build the sidewalk all the way towards the end toward the Walmart parking lot. The new information was that Mr. Gordon had been in negotiations with Walmart and asking them to build a sidewalk all the way up to the development. Which would be great if they could, but it is still an ongoing discussion. At the very least it was an ask to ask them to build to the boarder and maybe they would go beyond that even. If you appeal to their sensibilities for the need for these people, plus their accessibility, plus the whole Bluestone development across the street to have more access... That all could be a very compelling argument. We went with the whole thing there. Those are a couple of cases where City Council was more accepting of what the developers themselves wanted. The Sunrise Avenue thing that was at Sunrise [Avenue] and Chestnut [Drive] rezoning and vacating the ghost property line down the middle of it. We did not even get into their potential reconstruction that was nonconforming because it was too high or whatever. Just the start of rezoning and vacating the property line we approved. We also more or less skipped the whole through lots in the UR we kind of skipped the 30 foot...

Mr. Fletcher said it was not relevant.

Councilmember Dent said some of these were more streamlined than the discussion. The big deal was the budget public hearing. We had the presentation on it and a couple of people came for Sam Nichols and Nadia Dames to say where is the housing trust fund already putting it emphatically. Some discussion among us back and forth about we are doing housing stuff we just have not gotten to that yet unfortunately. We accepted the Planning Commission Annual Report that we did here last time. The Weldon Cooper Report on population and school enrollment projections for the City of Harrisonburg. This was a representative from Weldon Cooper giving the presentation. He might have been cautious to draw conclusions from it, but it was interesting how they did the study. There were three scenarios; first is their standard which we have been using by default because everybody in Virginia does, more or less, that had a gray line going up through the middle. Second case was if we took an optimistic estimate of how many housing units might be built, that bumped the line up slightly, as in a thousand a year when we have not even been doing fifty a year, a lot more than we have been. The line that made the biggest difference was when they took out in migration. There was discussion of do you mean from other countries or from other states or just other cities and it really is just any new people moving to Harrisonburg. That made by far the biggest difference. The upshot was that housing does not drive population growth, in migration and births do. The births are leveling off and even possibly declining. Vice Mayor Fleming asked the question “well what about the future of immigration” given that we are a refugee resettlement city and the politics are uneasy. The Weldon Cooper guy

understandably said he cannot predict the politics but where we will measure it is next year looking back has the immigration fallen off because of some of those factors. The upshot to me at least is we can take with even more chunks of salt when the school staff says this new housing development is going to require a new school, I do not think so. Again, that is not the conclusion that the Weldon Cooper people can make, it is just what we can parse out from the data to help make those big decisions.

Mr. Fletcher said another component to what was said last night was that the data reflected that older housing units currently generate more students. Some new housing units would generate students, but more students come out of older housing units. Then they even pointed out two very specific outlier data points from the City which was students coming out of units that were living in townhomes built in the 1980s was an extremely high amount of students and also out of mobile homes and manufactured homes was also very high.

Vice Chair Finnegan said when they say students in this report they are talking about K-12 not college students.

Mr. Fletcher said yes, K-12 and these are real students. They had their names and ID and connected them to actual addresses.

Councilmember Dent said he also said the student counts are hard data whereas the population projections are fuzzy and based on assumptions. As we track those, we can see the trends over time. The point about K-12 students living in older housing I raised the point that what we have is new housing that is designed for college students and when that gets old and beat up it gets passed to families which it is really not designed for. That is part of our struggle to find ways to have affordable housing for working families.

### **Other Matters**

Vice Chair Finnegan said this was something that has been bothering me for awhile. This one line in the Planning Commission bylaws. Ms. Dang sent out some links of the housing pipeline report presentation to City Council back in March. Staff shared that owners make up 40 percent and renters make up 60 percent of the City. We have this line in the Planning Commission bylaws 3-1 “at least half of the members shall own real property in Harrisonburg.” This line strikes me as antiquated and not appropriate in a City where renters outnumber owners. I just do not see a reason to keep it in there. I did talk to Mr. Russ about process if we were to amend this what would be the process for that.

Mr. Russ said generally amending you would have to give notice of what the amendment is and then there is a 30-day period and then at the next meeting you can vote. That particular vote comes from the City Code which may actually come from the State Code as well. That may be a little bit more complicated to amend.

Vice Chair Finnegan said that is required by the State?

Mr. Russ said I do not recall if that is something required by the State. It requires particularly a break down it just kind of give a description of what a Planning Commission is and complies. I would need to look into what the State Code says about Planning Commission composition. That particular portion is a bit more complicated to amend.

Vice Chair Finnegan said if it is able to be amended I would like to be able to address that maybe at next month's meeting, or wherever it fits, just because it feels like there are so many rules that really privilege owners over renters in lots of different ways and this is just one thing that if it does not need to be in here by State Code I would to remove it.

Mr. Russ said it does come from the State Code. It says at least one half of the members shall be owners of real property.

***Review Summary of next month's applications***

Ms. Dang said we have five items. There are two of them that are for the same site, which is the Forest Hills Towers site. Our recommendation is to have one meeting for these five items.

The meeting was adjourned at 9:06 PM.

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Richard Baugh, Chair

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Anastasia Montigney, Secretary