



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Meeting Minutes - Final Planning Commission

Wednesday, October 12, 2022

6:00 PM

Council Chambers

1. Call To Order

The Harrisonburg Planning Commission held its regular meeting on Wednesday, October 12, 2022, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Present 7 - Brent Finnegan, Jim Orndoff, Adriel Byrd, Kathy Whitten, Donna Armstrong, Laura Dent, and Valerie Washington

2. Roll Call/Determination of Quorum

Members present: Brent Finnegan; Adriel Byrd; Kathy Whitten; Valerie Washington; Dr. Donna Armstrong; Laura Dent; and Jim Orndoff.

Also present: Thanh Dang, Assistant Director of Community Development; Adam Fletcher, Director of Community Development; and Nyrma Soffel, Office Manager/Secretary.

3. Approval of Minutes

Chair Finnegan called the meeting to order and said that there was a quorum with all members present and asked if there were any corrections, comments or a motion regarding the September 14, 2022 Planning Commission minutes.

Commissioner Byrd moved to approve the minutes.

Commissioner Orndoff seconded the motion

All members voted in favor of approving the September 14, 2022 Planning Commission minutes.

The September 14, 2022 minutes were approved by voice vote.

3.a. Minutes from the September 14, 2022 Planning Commission meeting

4. New Business - Public Hearings

4.a. Consider a request from Gary L. Beatty for a special use permit to allow manufacturing, processing and assembly at 26 Pleasant Hill Road

A motion was made by Whitten, seconded by Armstrong, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 11/8/2022. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

4.b. Consider a request from Gary L. Beatty for a special use permit request to allow reducing required parking areas at 26 Pleasant Hill Road

Chair Finnegan read the requests and asked staff to review.

Ms. Dang said there are two uses currently operating on site, which are not meeting specific components of the Zoning Ordinance, which is what generated the need for both of the special use permits applied for herein.

Starting in February 2022, staff began communicating with the property owner and potential tenants about uses that could operate on the property. After some time, staff visited the site and learned more about the property and its history. Staff eventually learned that one of the operating uses, Smith Glass, necessitates a special use permit per Section 10-3-91 (1) to legally operate in the B-2 district. The other use that is operating is Kruschiki Supply Company, which is classified as a by right retail operation. Unfortunately, the site does not currently supply enough off-street parking for the uses.

The property owner disagrees with staff’s interpretation of the above noted matters, and while he could appeal staff’s interpretation to the Board of Zoning Appeals, the property owner is attempting to rectify the situation by applying for the two SUPs described below. If the SUPs are approved, the property owner must also apply for building permits to change the recognized use of the structure per the Building Code.

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

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

- Site: Retail use and a manufacturing, processing, and assembly operation, zoned B-2
- North: Single-family detached homes, zoned R-1
- East: Commercial uses, zoned B-2
- South: Multi-family dwellings, zoned R-2
- West: Single-family detached homes, zoned R-1

The applicant is requesting two special use permits (SUPs) for a +/- 26,194 sq. ft. property addressed as 26 Pleasant Hill Road. The first SUP would allow manufacturing, processing and assembly operations when not employing more than 15 persons on the premises in a single-shift and provided that all storage and activities are conducted within a building. The second SUP

would allow reducing required parking areas to permit fewer than the required number of vehicle parking spaces for any use, provided that an amount of open space equal to the amount of space that would have been used for the required number of vehicle parking spaces is left available for parking in the event that, at the discretion of the City Council, it is needed at some time in the future.

The first SUP would allow Smith Glass, a contractor specializing in custom commercial and residential glass and window installations, to operate at the subject property. Smith Glass has one employee with operations contained within the building or at off-site locations. The business does not typically have customers coming to the property and it relies on a freight carrier to bring glass and aluminum frames at a frequency of about once per month.

Staff believes with appropriate conditions, Smith Glass' operation is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living and working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of the special use permit with the following conditions:

1. The special use permit shall only be applicable for the current operation (by Smith Glass) or a substantially similar operation.
2. If in the opinion of Planning Commission or City Council, the use becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

The second SUP would allow the property to not construct all the required off-street parking areas for both uses. The applicant states in their letter that “[t]he current parking in front of the building is sufficient since there are few customers coming to the location... [a]dditional parking can be created in the back of the building, but current needs do not justify the implantation [*sic*] of additional parking.”

According to the City's Real Estate property card, the gross floor area in the rear of the building that Smith Glass occupies is +/- 2,801 square feet. The property owner states that Smith Glass has one employee with one work truck. Per Section 10-3-25 (18) of the ZO, the use requires one parking space for each two persons working on the premises on a maximum shift, plus one parking space for every vehicle used in connection therewith. Thus, Smith Glass necessitates the site having two parking spaces.

The remaining +/- 3,731 square feet of the building is occupied by Kruschiki Supply Company (KSC), an online retailer of military surplus and outdoor equipment, which is classified as a retail use. Parking requirements for the retail use are calculated at one parking space for every 200 square feet of gross floor area when the gross square footage of the building is 10,000 square feet or less. In this case, KSC needs 19 off-street parking spaces, and thus the site needs a total of 21 off-street parking spaces for both uses.

The applicant has submitted a drawing that illustrates how 23 off-street parking spaces (more than the minimum required) could be provided on the property. For the SUP request, the applicant proposes to only supply the existing five parking spaces between the building and the public street and to not construct any of the remaining required parking areas unless or until City Council decides they are needed in the future. Given the type of uses and the way they operate, staff agrees that a minimum of five parking spaces should be sufficient for the two uses described herein, but only with the conditions as described in the following paragraphs.

While staff is in support of allowing the reduction in required parking areas, staff has significant safety concerns about the configuration of the front parking area as it does not meet City standards for access and maneuvering. Currently, there is no defined entrance along the property's frontage and vehicles that park in front of the building must use the public street to back out of the parking stalls. Adding to this concern, the site is located at the bottom of a hill and the entire site's frontage lacks adequate sight distance to the east.

If the SUP is approved, staff recommends a condition to require the property owner to modify the property frontage along Pleasant Hill Road with curb, gutter, and a standard commercial entrance. The required modifications, however, will cause changes to the design of the parking layout in front of the building and create the need for parking areas to be constructed and reserved elsewhere on the property. Importantly, if staff's recommended condition is approved with the SUP, and if the property is unable to accommodate all of the required off-street parking spaces, then one of the uses will likely be unable to operate at this property. This matter has been discussed with the property owner.

Staff believes that with appropriate conditions, a reduction of required parking area for the proposed uses is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of the special use permit with the following conditions:

1. The special use permit shall be applicable only to uses that are substantially similar as the operations (an online retail operation and use allowed per Section 10-3-91 (1)) and size of the two current uses described in the application.
2. A minimum of 5 off-street parking spaces shall be provided on the property to serve the uses.
3. The property owner shall improve the property frontage along Pleasant Hill Road with curb and gutter to ensure that the public street right-of-way is not needed to maneuver in and out of any off-street parking spaces. A plan detailing how the property frontage will be improved shall be submitted with the required building permit. The number and width of entrances shall be accepted and approved by the Department of Public Works. Certificates of Occupancy for the building will not be issued until the frontage

improvements are completed.

Ms. Dang said that since last Friday when the staff report was published, the property owner had asked if the City would be willing to allow the property to have one 40-ft wide entrance and a second one-way in entrance so that the front area could be used for deliveries and there would be no parking in the front. Staff is willing to consider this, but is unable to commit to allow two entrances at this time. Therefore, staff is recommending a revised condition as shown which states “the number and width of entrances shall be accepted and approved by the Department of Public Works.”

The property owner is aware that since both Smith Glass and KSC are operating illegally at the subject property as they do not have proper zoning or building codes approvals, the property owner must continue to demonstrate a good faith effort to diligently pursue legally establishing the uses or the City will proceed with legal action. If the SUPs are approved, staff expects the property owner to submit building permits within 30 days of approval.

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

Gary Beatty, owner of the property at 26 Pleasant Hill Road, came forward in support of his request. I am requesting that Planning Commission support the recommendations of City staff and approve both SUPs for the property. I had reservations, originally, because staff talked about a 30-foot entrance, but I understand that is the minimum entrance. A 50-foot entrance would address some of my concerns to be able to back up to the loading dock. Both of these businesses are perfect businesses for this location. First, there are no environmental concerns. Neither business is dealing with any kind of solutions, solvents or chemicals that would cause an environmental issue in that area. Second, there is no noise being created by the businesses. We are not creating loud noises that would be troublesome to the neighborhood. Third, traffic has been significantly reduced to this building. Kruschiki Supply Company has no customers at the property. They are strictly an online supply company. Smith Glass also does not receive customers at the property. They do business at their customer’s locations. We do not have a traffic problem. Very seldom we have more than two cars at that location. Fourth, they do not create any trash. Smith Glass has a by-product of metal, aluminum, which they recycle, and cardboard boxes. The same with KSC. They only generate paper boxes. Once a month, we collect those and take them to recycle. We do not have a need for a dumpster at that location. I do not know that the neighbors even know that those businesses are in those buildings. There is not a lot of traffic or activity. For those reasons, I hope that the Planning Commission would support the request and approve the SUPs for the property.

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

Commissioner Whitten asked could we request a proffer where there could be a timed proffer on

the retail so that it does not remain open ended? It could be up to interpretation. We did not know that online would be something that needed to be considered. It is far different from retail in terms of their needs for parking. I wonder if five years from now, it would make sense to put a timed proffer so that it would have to be reevaluated on the merits of the business and not just a staff decision.

Ms. Dang said the condition that is written describes that it is “substantially similar” in its operations, specifically the online retail operations and the use described in the other section, which is Smith Glass. This condition says that as long as it was an online retailer, there would be no need for an expiration. If some other retail use comes that is not similar to operating with online retailing, such as selling clothes with a lot of customers coming there, it would not be substantially similar. The SUP would not apply to a different retailer.

Commissioner Whitten said you feel that it covers my concern. As long as it is that business in existence, there would be no need to have time limit, but if it did change... That answers my question. The other thing is the backing-in maneuver from Pleasant Hill Road. I know that truck drivers drive in all kinds of conditions, and they can back a truck into wherever they need it to be, but that place is a bit hairy, I think. I am sure that transportation has looked at that and thought that through. How many trucks do they have in? I would guess it is not frequent.

Ms. Dang said Mr. Beatty had described that freight deliveries are about once a month.

Commissioner Whitten said maybe they time that so it is at a quieter time. I would hope that would be the case.

Mr. Beatty commented from his seat that it is unlikely that there would be much control over the timing of the trucks.

Chair Finnegan said that is a blind hill. People drive fast.

Commissioner Whitten agreed and said that is a concern that I have.

Ms. Dang said that it is not a situation that we would allow with new construction. As you saw, there is a loading dock. That type of delivery has occurred as long as that portion of the building has been constructed.

Commissioner Whitten said I love seeing a building like that being put to good use.

Councilmember Dent said the first SUP is for manufacturing, processing and assembly. That is for Smith Glass, correct?

Ms. Dang said that is correct.

Councilmember Dent said there is a statement in the staff report “the property owner is aware that since both Smith Glass and KSC are operating illegally.” I was puzzled by that because they do not have the proper zoning or building. I thought that KSC was by-right retail.

Ms. Dang said they are by-right retail, but we would not allow a use to occupy a space until they get the required parking in place. In this case, they moved in without getting that taken care of. The property owner is trying to rectify the situation.

Commissioner Whitten asked how long has KSC operated?

Mr. Beatty said about three months.

Mr. Finnegan said Commissioner Whitten and I were on the staff tour, yesterday. Everything that staff said is accurate. Looking at the grassy spot in the back, where the parking lot would be, that area looks like asphalt, but it is grass. Commissioner Armstrong has mentioned not paving over grassy areas, and I support that we are not asking them to pave that over. I support that.

Commissioner Byrd said I would be in favor of reducing the parking and going along with the City’s added details about how to ensure that the frontage is correctly produced to address the issue. The idea of asking a business to create more parking when they clearly could start the business without needing the parking is a very strange thing. It would be different if the new business was causing people to park all around the neighborhood. Then I would be more concerned with addressing the parking at the location. Also, the SUP mentions the current operations, names the company, and then adds “or a substantially similar” operation. That means that staff would be referencing the previous business if another business were to move into that location. I think that is enough of a reference point for that line to hold.

Chair Finnegan said we are looking for a motion for each of the SUP separately, 4.a. to allow manufacturing, processing and assembly and 4.b. to allow reduced parking.

Commissioner Whitten moved to recommend approval of 4.a. SUP to allow manufacturing, processing and assembly, as presented.

Commissioner Armstrong seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten Aye

Chair Finnegan Aye

The motion to recommend approval of the SUP request passed (7-0). The recommendation will move forward to City Council on November 8, 2022.

Councilmember Dent said I am confused with the amendment. We are okay with reducing the parking, but we are requesting that they reconfigure it so that people are not backing out into the street. Is that the idea?

Ms. Dang said that is correct. It will result in having to reconfigure the parking spaces. There will not be enough space in the front the way that it is shown. Five spaces will have to be delineated elsewhere on the property. We discussed different possibilities with the applicant. It is still to be determined.

Councilmember Dent said that leaves a fair amount of... The onus is on the developer to reduce parking, provided they can figure out how. That is acceptable?

Commissioner Whitten said they will not get their Certificate of Occupancy until that is done.

Councilmember Dent asked if Public Works will be in on the discussion.

Ms. Dang said yes.

Commissioner Byrd moved to recommend approval of 4.b. to allow reduced parking, as presented.

Commissioner Orndoff seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten Aye
- Chair Finnegan Aye

The motion to recommend approval of the SUP request passed (7-0). The recommendation will move forward to City Council on November 8, 2022.

A motion was made by Byrd, seconded by Orndoff, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 11/8/2022. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

4.c. Consider a request from Margaret P. Morris for a special use permit to allow for short-term rental at 140 Ott Street

Chair Finnegan read the request and asked staff to review.

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

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

- Site: Single-family detached dwelling, zoned R-1
- North: Single-family detached dwelling, zoned R-1
- East: Cemetery zoned, R-3
- South: Single-family detached dwelling, zoned R-1
- West: Across Ott Street, single-family detached dwelling, zoned UR

The applicant is requesting approval of a short-term rental (STR) operation at 140 Ott Street. The applicant desires to rent the entire residence for STR, which includes four accommodation spaces to up to eight guests at a time. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.)

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the Zoning Ordinance. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time.

While the applicant has explained their operation plans for the STR, the SUP is not restricted to only the current applicant/operator. All SUPs transfer to future property owners; thus, if the applicant sells the property, any future property owner could operate a STR so long as they meet the requirements of the ZO and any conditions placed on the SUP. How the STR could be operated by any future property owner should be considered and evaluated as part of this request.

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as

conditioned by a special use permit.” With a request to rent for STR four accommodation spaces, the property should provide four off-street parking spaces. In addition to the off-street parking spaces required for the STR, the ZO requires one off-street parking space for the non-transient dwelling unit. Off-street parking is available within the driveway and the parking area behind the home. Rather than creating new off-street parking areas, staff recommends a condition to limit the number of guest vehicles during a rental period to no more than three. It should be known that Ott Street and surrounding neighborhood streets are subject to Red Zone permit parking restrictions where permits are required Monday through Friday from 4 a.m. to 6 p.m.

The City has approved many STR SUP applications throughout the City with a few of them being within the nearby neighborhood-one of which is directly across the street at 293 Newman Avenue. Staff believes this request is similar to other applications that have already received approval, thus staff recommends approval of the request, but only with the following conditions:

1. All STR accommodations shall be within the principal building.
2. There shall be no more than four STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to eight.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the items identified in the Pre-Operation Form when short-term rental guests are present.
5. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
6. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Chair Finnegan asked if there were any questions for staff.

Councilmember Dent said, just to be clear, this is the usual STR requirement that the owner lives there and rents it out?

Ms. Dang said because it is already built into the regulations, we would not be able to present an application where the owner did not live on the property.

Councilmember Dent said we are still saying “property” at this point, correct?

Ms. Dang said correct.

Commissioner Whitten said it has to be the primary residence, but with no requirement to be there.

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

Meg Morris, owner of 140 Ott Street, came forward in support of her request. This house has been my primary residence since 2009. I operate a STR with my mother on the eastern shore. I have been operating a STR [as a homestay] in this house as of this year under the by-right rules, which is 90 nights or under per year and up to four guests. I want to be able to expand that. I have a shared custody situation with my kids, and I travel to my property on the eastern shore. My house sits vacant already. It is a good use of the space. The house is almost 2,700 square feet which is a lot of space for just four people. There is room for more people. I want to emphasize that this is my primary residence and I care what is happening in the neighborhood. I am in contact with all of the adjacent neighbors. They all know that I am using it as a STR when I am out of town. They all have my cellphone number and can get in touch with me if there are any issues. I have had seven stays this year and we have not had any issues. The feedback has been very good. A lot of feedback is about the location. They love that location. I know that there is a push for more density. We do not have more space in the City. These people are definitely buying from downtown restaurants. It is bringing money into downtown. I have also opened it up on a couple of weekends where I had my kids, and we were going to go out of town just because the demand was so high. Parents' Weekend was the first in which I did that. I do not love being in town during Parents' Weekend because it gets very busy. The hotels were all booked. There were no more Airbnb's in Harrisonburg, so we listed it and it was gone within 24 hours. There is a demand for this property and, so far this year, it has gone very well. Up to eight guests at a time is the maximum number that I would allow. I prefer groups under six. If I have groups over six, I am going to charge an extra \$25 fee per guest per day. I do not like groups that big, but the house can accommodate groups that big. Do you have any questions for me?

Chair Finnegan said I appreciate everything that you are saying. You have lived there for a while, and you care about the property. The SUP does convey. That is the nature of it. We will take into consideration everything that you have said and the fact that this SUP will convey.

Ms. Morris and the Commissioners discussed other STRs in the neighborhood near the subject property.

Councilmember Dent said I heard you talking about groups of six, with a maximum of eight. With four accommodation spaces, you could have four sets of parents on Parents' Weekend.

Ms. Morris said they rent as one group. On Airbnb, you have one person who is the point of contact. It is one group to me. If they have eight people, they could coordinate amongst themselves. I do not rent separately to four individual groups. It is one group.

Ms. Morris answered questions regarding the amount Ms. Morris charged lodgers during parent's weekend. Ms. Morris charges \$300 per night for four lodgers. If she is allowed to rent to eight lodgers, she would charge \$350 per night for eight lodgers. She charges \$300 for up to six lodgers. She charges \$25 per person over six people. Eight people would be \$50 additional per night. Airbnb allows hosts to charge for extra guests over a certain number. She usually does not charge extra for additional guests until it is over six.

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

Chair Finnegan asked what was tabled at City Council, it would not affect this request because this request is not a duplex, right?

Ms. Dang said that is correct.

Commissioner Whitten asked how many unrelated people could live in the R-1 zoning district?

Ms. Dang said in the R-1 district, an owner-occupied property could have a family plus two boarders. For an owner-occupied property, one might say that it is one individual, plus two roommates for a total of three unrelated people living together. For a non-owner-occupied property, it would be a family plus one other boarder or two unrelated individuals.

Commissioner Whitten said that is substantially under eight people.

Commissioner Washington asked when would the STR pre-operation form need to be submitted?

Ms. Dang said the pre-operation form is a condition that we have recommended for all STR applications. I can email you a copy. It has a checklist that includes egress windows and doors, smoke detectors, carbon monoxide detectors, and other checks to help ensure the safety of the guests. It has nothing to do with the number of guests. The number of lodgers is not related to the recommended condition. The SUP [if approved with the recommended conditions would] allow the property owner to rent out to eight guests for the STR.

Commissioner Washington asked so this pre-operation form has already been done.

Ms. Dang said no. Ms. Morris is currently operating the by-right homestay. By-right homestays allow up to four guests. The pre-operation form is not something that we can require. We can require it through the SUP conditions, so we have chosen to recommend that every time.

Commissioner Whitten asked who does the inspection?

Ms. Dang said it is a self-inspection. They have to sign and submit the form to us.

Commissioner Whitten said I thought the Fire Department was involved.

Ms. Dang said they were involved in creating the form.

Commissioner Armstrong said I wanted to give an example of neighborhood cohesion. I am not friends with any of my neighbors. I do have phone numbers, but I do not socialize with them. We are neighbors and there is an intent to be neighborly. Sometimes, the lady across the street will let me know when she is going out of town. She will ask me to keep an eye out. There was package that arrived, delivered on her property. It had a big notice on the front that you could easily see from across the street. I was concerned about theft, so I put it up on her porch and turned the label around. That is something that I do because I am familiar with my neighbors. If I had a STR, that is not something that you would call somebody and let them know. It is about neighborhood cohesion. One of the questions that has been used to measure neighborhood cohesion is “do you believe your neighbors would help you if you needed it?” Another example, a limb blew down on roof. My neighbor across the street, who’s name I do not know, asked if needed help. I accepted his help, and we sawed it up and got it off my roof. There is an intent to be good neighbors. That happens because we are familiar with the routine of our neighborhood. We do not have a formal neighborhood watch, but they are our neighbors. The research article that I distributed to this body was speaking to that exact point. It is not that someone renting in a STR is going to go steal that package. It is that the people who occupy the neighborhood become more fragmented, less cohesive. It erodes the social fabric. Those are the terms they used in that article. We are at a time in the United States where we need to be supporting social cohesion and trust. We need to build that, and this is undermining that. My second point is that we have a lot of business districts on the east side of town, with a lot of new motels. There are lower income jobs over there. Those are not high income jobs. I care about that. We are eroding that economy over there. There are many empty commercial buildings over there. They also need City support. Instead, we are supporting individual profitability over the well-being of our community, including our economy on the east side. That really bugs me. There are a lot of jobs over there and they need our support. This is eroding that. Those are my two biggest points. I am going to continue to vote against these.

Commissioner Whitten said I wholeheartedly agree with you, and I have a few other points. I see this as a business use. It is a business use. This is a neighborhood. We are saying that we are okay with a business use in this neighborhood. There is more trash. There certainly is more trash. It is a business use. As I asked about the zoning, eight unrelated people would never be allowed in our Zoning Ordinance. Yet, we are saying that for someone to make extra money, we are willing to ignore our Zoning Ordinance and allow it. It is not conducive to building community. The other thing that I keep saying is, affordable housing seems like the topic that we always end up on in this body. There is no way that you can charge \$300-\$350 per night, for however many nights you would like to of the year, and not cause the price of that real estate to go up. When that house sells, it will sell for more than the ones that do not have this SUP. That is special, but it is not special for the City of Harrisonburg. I will also vote no.

Commissioner Byrd said there are a lot of things that people have opinions about, like this is destructive of community cohesion. I was not moved by those points. As a business, having these ordinances and knowing about it gives us knowledge of these things. Many years ago people were doing these things, such as couch-surfing, and no one knew unless people in the communities knew their neighbors and knew what was going on. I see this as an opportunity for us to know what is going on and as we acquire data over time, we will know for sure what the pros and cons of these situations are. I will likely vote in favor of this request.

Commissioner Washington said the applicant is already operating as a homestay. Going from four to eight people does not mean that it will be used more, it will just accommodate more people.

Commissioner Armstrong said it goes for longer too. It goes from 90 nights to...

Chair Finnegan said it is the same use, but a more intensive use, more people for more nights.

Chair Finnegan said I appreciate the reasons for the neighborhood cohesion and what you are talking about. The separation of uses and this idea that this area is only designated for housing and this area is only designated for business is not good. I do not agree with it. I do not like it. I also have a couple of Airbnb homestays and STRs in my neighborhood. There have only been a handful of occasions where I have interacted with guests from there. Those interactions have been the lodgers asking where the best place to eat is or where the dog parks are, those kinds of questions. My experience is that those Airbnbs have not harmed the neighborhood. I do not know if they have helped, but they make daily life more interesting. Boardinghouses and group homes were far more common in the pre-war era and Harrisonburg had quite a few of those. Airbnb is new in the grand scheme of things, but it is not new in the sense that you have transient visitors staying. From my perspective, we have the homestay. I do not think that this substantially changes how the house is being used. It increases the number of nights and the number of people, but there are already Airbnb guests staying there.

Commissioner Whitten asked what about the economic benefit? You always talk about that. You always talk about affordable housing. Does it not concern you that the cost of this house will be greatly increased because of this business related use, this income-related use that makes that house more desirable? We have already inquiries from venture capitalists who want to buy a house here, who want to buy a lot of houses here. How do you think that is going to change the way the neighborhood looks? Right now, we can keep the venture capitalists out but only until the lawyers figure out how to get around our "primary residence" clause. And they will. They certainly will. When you compare boardinghouses to this, that is laughable. Boardinghouses were for an economic reason. I had a little old lady that lived in my house in the time period that you talked about because she could not afford anything else. There was a dentist that lived there because he could not afford anything else. Every renter that lived in those rooms lived there because they could not afford their own house or their own apartment. Boardinghouses in no way compare to this concept.

Chair Finnegan said they are different. They are fundamentally different. We have zoned out existence the single-room occupancy (SRO). That is what a lot of those boardinghouses were. When you talk about affordable housing, I will meet you halfway on that, but it will not be on this request. It is going to be looking at R-1 and how we can put in basement apartments, how we can put in ADUs, and how we can make housing for affordable for the people who live here? That is not what this request is about.

Commissioner Whitten said I have been here for 35 years. The reason that boardinghouses went away is because of the abuse of boardinghouses, because of student accommodations in boardinghouses. They were dangerous, too. They were removed from the ordinance for that reason, not to try to keep people from living in a single room, like the old concept. The old concept is an old concept. Maybe there is room for it in the future. I had boardinghouses in my neighborhood, and they were not a good thing.

Commissioner Washington said there is aSTR across the street, already in use?

Chair Finnegan said yes, there is one at the corner of Newman Avenue and Ott Street.

Commissioner Washington asked what is the difference?

Chair Finnegan said that is an accessory building.

Commissioner Washington asked what would make this application different from the other approved ones in the area?

Commissioner Whitten said why would we not just go ahead and approve them all? Is that your question?

Commissioner Washington said no. I am not saying approve them all. I am saying, in terms of how the Planning Commission and everyone else approved the other ones around this, what is the difference in the application compared to the other ones? If we say no to this one, for whatever reason, are we going to have to say, well there are other ones in the neighborhood that are similar? Are we being fair?

Commissioner Whitten said this one is for eight. That is a lot more people.

Chair Finnegan said one way of looking at it is do we object to the number of people? Do we object to accessory dwellings? All seven of us up here might have different reasons as to why we are voting yes or no. I think that everyone has to figure out where they stand and why.

Commissioner Washington said I do not see eight as a difficult number, coming from a large family. Eight for me is accommodating the six of my siblings and one parent. That does not even accommodate my whole close family. Eight is not a large number for me.

Commissioner Armstrong said the boardinghouse comparison, when the owner operates the STR, they do not have to be there. Those boardinghouses were run. You had to have references. They were run as boardinghouses. This is not comparable to that. I think that speaks to the point that there are eight of you. Well, there is a parent there who laid down the law. You said your family.

Commissioner Washington said a parent and grown children. What do you mean, lay down the law?

Commissioner Armstrong said you had a family that had rules. Comparing that to this... She can rent this to eight independent people. It does not have to be like that. This is just a number. It is not like a family that has parents there, with rules and guidelines and noise limits. It is not like that.

Commissioner Washington said so the assumption is that the eight people who are unrelated do not have rules and regulations to...

Commissioner Armstrong said you are comparing it to your family unit. I find that incomparable.

Commissioner Washington said who says that these people that are going to use this space are going to be eight unrelated people? They have to book all together. She is not booking them separately. It is a group.

Commissioner Armstrong said if this does not make sense to you, then that is okay.

Commissioner Washington said it does not make sense. Travelling in a large group, whether it is my family or it is my friends, the assumptions that everyone... What I am hearing from you is noise, trash, all of these things. The assumption is there, and you cannot assume things about people that you do not know who are coming to do things that you do not know why they are here.

Commissioner Armstrong said *[unintelligible]* assuming that they will misbehave. I am saying...

Commissioner Washington said that is the assumption. That they do not have rules or regulations or someone to lay down the law, the assumption is they come in...

Commissioner Armstrong said do not speak for me.

Commissioner Washington said that is what you said.

Chair Finnegan said we all have strong opinions about this. We are veering off from this particular request. Commissioner Armstrong, we do allow by-right the homestay, which is a less intensive use. Same basic thing, less intensive use.

Commissioner Armstrong said that is one of my points too. The by-right seems to be working. Let us leave it. That is a balanced position.

Commissioner Whitten said that is a good point.

Commissioner Byrd said let us remember that there are commissioners that have not spoken. When we are making our passionate arguments for things, remember that others might be thinking about what you are saying. When we are making it as we are talking to one other commissioner, we start to forget that we might hurt our own arguments. Also, when we talk about numbers, and we say family plus this... Family is not a defined number. That is as many as those parents are able to produce and legally take care of. That number is whatever that number is, plus. The limit on this is eight people being allowed to rent that space. How that renting comes about is not part of the ordinance. It is those bodies. If those bodies misbehave, that is a nuisance. If there is such a thing as neighborhood cohesion and people are paying attention to their neighbors and notice this nuisance, they will be able to bring it City Council. These are things that we can talk to City Council about and talk to voters who go to City Council. If your position is to wait on these, fine. If your position is to let them go, fine. With this one, I am not hearing anyone talking about this building or this property. We are talking about general concepts. If this building can house eight people without being a nuisance, I see no issue with eight.

Commissioner Whitten said we have no idea about the nuisance. What I do know about the nuisance is that if you call the police and you do not get a report, it never happened. Your grand statement of "let us go to the Council" or "let us go to whoever" and get something done, you will not get anything done. You heard me talk about my experience in May with a really large, loud party. The police knew there was a big problem and yet there were no charges and there was no report. That speaks very highly of not putting a use in a neighborhood that could potentially be a nuisance. I think that the economics of it is all wrong. If we say that we are for affordable housing, we cannot vote for this because it makes housing more and more unaffordable. It increases the value of that property to the point that it is less affordable than ever. Just on that merit alone, you should not in good conscience vote for another long-term STR. It is not short-term, it is long-term. That house could be a family house rental, but it will not be.

Commissioner Armstrong said this undermines jobs here. The point that people go eat... If they are staying in motels in the business district, they can also go eat downtown. We do not have those jobs in those motels being supported. This is undermining jobs, too.

Councilmember Dent said I like it. If were coming to a new town, this is the sort of place that I would look for. An Airbnb, walking distance to downtown with neighborhood charm. That is what I have done in the past, all over the country, Europe, the world. While I understand the point of neighborhood cohesion, the primary residence requirement is our stopgap against the speculation that we are worried about. I like the economic development benefits of bringing tourist dollars into the downtown region. While I understand the point about the motels on the east, that is not where I would want to stay. It is a personal preference that I can sympathize with, so I will

vote for it. I liked a couple of things that the applicant said. The neighbors know when she is going out of town and she lets them know that someone is renting, and that she is renting as a group. However, both of those are reliant on the current owner and, as you point out, the permit transfers and neither of those are guaranteed in the future. It could become more like a motel if it is rented to four different sets of people. While it is a good situation now, we cannot guarantee that. That is my one hesitation about it, but for now...

Commissioner Whitten said I would hope that would be a big hesitation.

Chair Finnegan said Condition 6 states that if “in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance,” and that does not have to be through the Police Department, “the special use permit can be recalled for further review.” We do have that as a last ditch measure that can be used in this case.

Commissioner Whitten asked how would that be measured if not by the police calls?

Chair Finnegan said calls to Community Development.

Commissioner Whitten said calls to them? No. No, because if somebody calls, you have no way to quantify that call. They will say, well we do not know, it could just be a neighbor that does not like this neighbor. That happens. Does it not?

Commissioner Byrd moved to recommend approval of the SUP with the suggested conditions.

Commissioner Orndoff seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong No
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten No
- Chair Finnegan Aye

The motion to recommend approval of SUP request passed (5-2). The recommendation will move forward to City Council on November 8, 2022.

A motion was made by Byrd, seconded by Orndoff, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 11/8/2022. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Finnegan, Orndoff, Byrd, Dent and Washington

No: 2 - Whitten and Armstrong

4.d. Consider a request from Robert E. Alford II and Havilah Alford for a special use permit to allow short-term rental at 375 Broad Street

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this site as Mixed Use. The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

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

- Site: Duplex dwelling, zoned R-2
- North: Single family detached dwelling, zoned R-2
- East: Across Broad Street, single family detached dwellings, zoned R-2
- South: Single family detached dwelling, zoned R-2
- West: Across Community Street, 7-Eleven convenience store and Fire Station #4, zoned B-1

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (8) to allow for a short-term rental (STR) within one unit of a duplex on a property zoned R-2, Residential District. The parcel is +/- 6,123 square feet and is addressed at 375 Broad Street on the western side of the block between East Rock Street and East Gay Street. The property contains an unsubdivided duplex with one dwelling unit on the first floor and a second dwelling unit on the second floor. The

rear of the property includes existing off-street parking spaces across the width of the property off of Community Street.

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the Zoning Ordinance. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time.

The applicant is the property owner, who noted that their son will reside in the upstairs unit with it being his principal residence, where he will be the operator of the STR located on the first floor. Since the operator will not be the property owner, the operator must be present at the property during the lodging period. As explained in the applicant’s submitted letter they will have three accommodation spaces with plans to allow up to six guests at one time.

While the applicant has explained their operation plans for the STR, the SUP is not restricted to only the current applicant/operator. All SUPs transfer to future property owners; thus, if the applicant sells the property, any future property owner could operate a STR so long as they meet the requirements of the ZO and any conditions placed on the SUP. How the STR could be operated by any future property owner should be considered and evaluated as part of this request.

With regard to off-street parking matters, the ZO requires one off-street parking space for each dwelling unit and, unless conditioned otherwise, one parking space for each accommodation space of a STR. This means that five parking spaces would be needed to meet the requirements of the ZO-one for each unit of the duplex and one each for the three accommodation spaces of the STR. The ZO does not allow for a reduction in parking spaces for a duplex on this parcel, but it does allow City Council to approve the reduction of off-street spaces needed for a STR. The property owner noted that they believe the existing parking area at the rear of the parcel is large enough for about four vehicles. The width of the parcel, however, appears to be about 45 to 46 feet in width, thus there could technically be enough width for five vehicles as the standard width for a parking space is nine feet. Nonetheless, in this particular situation, if the STR is approved as requested, the one unit of the duplex would not be used long-term and would only be used as a STR, therefore, staff can support a reduction in required parking for the STR from three to two off-street parking spaces.

Given the circumstances of this request, where the operator does not reside within the dwelling in which the STR will operate, staff believes the request should be denied. At the August 10, 2022, regular Planning Commission meeting, staff proposed amendments to the ZO that, if the amendments were already in effect, would have prevented the property owner from being able to apply for a STR as requested. In brief, among other amendments, staff had proposed to amend Section 10-3-205 (2) as shown below:

Sec. 10-3-205. General Regulations

(2) Operators shall maintain the **property dwelling** as their primary residence, as indicated on a state-issued license or identification card or other documentation deemed acceptable by the Zoning Administrator.

Planning Commission unanimously (7-0) recommended for City Council to approve all of the ZO amendments that were proposed at the August 10, 2022, regular meeting. However, at City Council's public hearing regarding the amendments at the September 13, 2022, meeting, while there appeared to be differing opinions on the matter, Council tabled the request and advised staff to draft an option that would allow one unit of a duplex property to be used as a STR by SUP. At this time, staff has not had an opportunity to draft those amendments.

While we respect City Council's direction noted above, under the current regulations and in this particular situation, staff believes it is in the best interest of the City to maintain Planning Commission's intent to require transient accommodations to only be permitted within the dwelling in which the operator resides. Staff believes the most recent proposed amendments for the STR and homestay regulations is a good middle ground for the many and diverse opinions as to how such uses should be permitted in the City.

At this time and at this location, staff believes it is in the best interest of the City to maintain the opportunity for both units of the duplex to be available for someone or a family to use for long term housing needs rather than one of the units only being used for a transient accommodation space.

However, if there is a desire to approve the request, staff recommends the following conditions:

- a. All STR accommodations shall only be permitted within the first-floor dwelling unit of the existing principal structure.
- b. There shall be no more than three STR guest rooms or accommodation spaces.
- c. The number of STR guests at one time shall be limited to six.
- d. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the items identified in the Pre-Operation Form when short-term rental guests are present.
- e. Minimum off-street parking spaces may be reduced to two and do not need to be delineated and can be accommodated utilizing the existing parking areas to the rear of the property or other areas on the property.
- f. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chair Finnegan asked if there were any questions for staff.

Mr. Fletcher said there had been a question about the Pre-Operation Form, the self-checklist, and the Fire Department. A few years ago, there was a lot to do with our inability to require inspections and to get into those spaces. That is why we have to do it through the SUP and that it is not required in the by-right homestay. We do not have the ability to require people to go into those homes for these types of inspections. We did the best we could with the Pre-Operation Form to give it a self-checklist.

Commissioner Whitten asked why is that true? It is a matter of public safety.

Mr. Russ said it is not a change of use under the Building Code, so there is not authority to inspect the interior.

Mr. Fletcher said, according to the Building Code, if there were an R-1 or R-2 use classification type of construction, we do have that ability. Those are multifamily unit use classifications. Because they are not applying to change the use of the space in the Building Code, we do not have the legal ability to go into their home to do that.

Commissioner Whitten said then we are depending on the person completing the form to check the items on the list. If there is a fire, they are going to be on the line, if they did not do something right.

Mr. Fletcher said it is the private property owner's responsibility to ensure those safety mechanisms for their lodgers.

Commissioner Whitten said and hotels and motels?

Mr. Fletcher said we inspect those.

Commissioner Whitten said you are taking your chances if you go to a place like that. What year did the duplex use begin at this address?

Mr. Fletcher said I think it was built as a duplex. I would have to look up the date.

Commissioner Whitten asked it is it a legal duplex? Did you check that?

Mr. Fletcher said it is a non-conforming duplex. It is zoned R-2 and it has less than 11,000 square feet of lot area. Like many of the duplexes in that area of the City, the lots are smaller. I am almost positive it was built as a duplex, but we can double check that.

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

Robert Alford, owner of 375 Broad Street, came forward in support of his request. I went to the

City Council meeting. They got into quite the discussion about it. I know there are a lot of different opinions on this. One of the things that City Council said that stuck with me is that, as a governing body, they really do not have the right to tell me what to do with asset. That was one of the things a councilmember said. You can look it up in the notes. I purchased this with this current law in place so that I could do this for part of it and provide housing for my son. I am a blue collar worker. I am performing a lot of the work on the property myself. I have cleaned it up. I have cleaned multiple trash off this property. I am trying to bring it up. I am a painting contractor. I am going to make it look better. All the neighbors are excited that it is cleaned up. The current residents are no longer there. I would have already put this through before you even did this. It took me months and months to legally get these people out. They were on a month to month lease. It was 1980-something it was purchased. We checked that. It was renovated at that time and the City approved it as a duplex. That is part of it. The off street parking is there.

I understand the intent that everyone is scared of, the neighborhood and things, but this is so close to downtown. It is an area where a little tourism would help the City. You have multiple festivals. You have many things that go on in downtown. I understand that you might want to do that a couple miles down the road. I live in the County. I own it. I pay the mortgage on it. You are not helping a corporation. You are helping an individual. I understand that in other parts of the country, they are buying up properties. They are doing this thing with the Airbnbs. This is not the situation with this. City Council kicked it back because they were not comfortable saying that I could not do this with this property. I purchased this property with the intent to do this. Because it has taken so long to get tenants out who had more people living in there than they should have. I still have to, you cannot throw people out on the streets, so you patiently wait. They do not pay. Then you start your process. I have done that the whole step of the way. I am not a lawyer. I am not a great big businessman. I simply bought an asset, and I am trying to make some money off of it and provide free housing for my son to live there, as well. I understand there is a lot and people have some strong opinions about this, but I could very easily just decide not to put a tenant in there. This is not a primary residence. This was bought as an asset. My wife and I do not live in either. We are going to rent it to somebody. If they want to walk downtown and do things like that and experience the City, how will they ever experience that living in a hotel and travelling? I am not in favor of those very large corporations versus the American dream. You buy a house. You buy real estate. You rent it. You hopefully build some wealth for your family.

Airbnbs clean up an area. That is not a part of town that has always been the cleanest or the best. It is coming up. If you have rentals there, people want it neat. They want the grass cut. They do not rent from you, and you get bad reviews. They go elsewhere. If you are trying to bring up a part of town, tourism, things being nicer, that helps versus who was running it before. Do you have questions for me? I hope you understand the intent. I am not going to become a big businessman or get rich off of this.

Chair Finnegan said the SUP would convey. Whenever people talk about their intent, I want to contextualize that.

Commissioner Whitten said you will get a lot richer doing it this way than you would if you were renting out that apartment for the year.

Mr. Alford said and when I get a tenant in there that does not pay the rent? Are any of you going to offer for me to pay the mortgage, the mortgage insurance, or the taxes?

Commissioner Armstrong asked was that through the pandemic and the forbearance?

Mr. Alford said no, it has been since the pandemic was over. I bought it during the pandemic. It has been months and months trying to fight people to get rent out of them. They will not do it. They are supposed to only have three people living there. They have seven living there. I have had stuff stolen off the porch. People who never live there come check the mail every day. I do not know what shady thing is going on there. I have ring cameras up. They do not even know that I have seen them stealing stuff from us. It is not the best part of town. If you had a couple of rentals in the area, it seems to me like it would help things. My only other comment is that City Council threw this back because they did not feel it was fair to do that with an asset that I purchased. It is a rental anyway. It is nobody's primary residence. It is a rental.

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

Mr. Fletcher said, to clarify, their son will reside in the upstairs unit to be the operator of the STR. Since he does not own the property and he is the operator, he must be present during the lodging period.

Chair Finnegan said we have all made our positions clear about how we feel about STRs, in general. One of the biggest differences between this and the last request is that staff recommended approval of the last one and is recommending denial of this one for the reasons that were stated. There is a third option that we could consider which would be tabling. Is that an option?

Mr. Fletcher said it is an option. If you table it, there is a time period in which you would need to act on it. Staff will soon work on the provisions that City Council directed us to give back to them for their own consideration. I think it is about 90 days if you table it.

Mr. Russ said it is 90 days, but I cannot remember if the 90 days starts today or the date of the application.

Councilmember Dent asked will that timeline coincide with what you are preparing at City Council's request?

Mr. Fletcher said I cannot answer that yet.

Commissioner Armstrong said they tabled, so they have a timeframe too?

Mr. Fletcher said they do not. In that scenario, the City brought the ordinance amendment and they could table it indefinitely. It is different.

Chair Finnegan said it does matter to me what City Council decides. Whether I agree with City Council's decision or not is beside the point. What the City Council decides would impact this request. I would hope that it would go back to City Council within 90 days, but we do not know the timeline for that.

Commissioner Byrd said I was in favor of that amendment about dwellings because dwellings are rentable for permanent residency, whereas property is too broad. In this case, we have two potential permanent dwellings, and the owner wants to use one as this extra business. I am not in favor of that idea and am inclined to go along with staff's recommendation for denial. I am renter. I choose renting places based on location and rent. If there are no locations, then I am only making my decisions based on rent. Which means that I might be on the edge of the City or in a neighborhood that I am not inclined to be in. From the perspective of a renter in the City, who is a permanent resident, the reduction of potential places to rent is not conducive to those like myself. In that light, I would not be in favor of approval.

Chair Finnegan said I agree with making that distinction.

Councilmember Dent said I think that I agree. This is a tough one because I like STRs as a general business model for the property owner. I really object to taking a dwelling unit off the market when housing is so short. The other concern that I raised last time is that if we are looking to push for more density and more availability of duplexes, ADUs, extra apartments, then this would set a dangerous precedent to allow STRs in all those duplexes. We did change the ruling. Once that ordinance rewrite goes through, Mr. Fletcher acknowledged that as a concern. We could address the law as it is now and change it later if we want to. That is just a forward looking concern. If we want more density precisely to address the housing shortage, then this is going in the wrong direction. I will somewhat reluctantly vote to deny it. I have fellow councilmembers who feel differently. I was surprised by the tabling of the amendment. I will have to explain to them how I felt.

Commissioner Armstrong said I would move to recommend denial, or table it until City Council acts on it, if this request based on staff's recommendation regarding duplex designations.

Councilmember Dent asked if we voted to deny now, and City Council makes a clear determination that we want to allow duplex STRs by the owner or operator, what would happen with this request?

Mr. Fletcher said if you vote on it and do not table it, they will likely hear this application before we are able to give them the amendments that they requested.

Councilmember Dent asked what are you planning to bring back to City Council?

Mr. Fletcher said I have some questions of my own about exactly what they wanted. I went back to listen and watch the video about what they requested for us to do. I believe that essentially it was to make this kind of scenario an ability via SUP. That was the directive. There are some things that we need to figure out with the language. A STR is already a SUP. I have some ideas about how we can make that work from the legal standpoint being codified.

Mr. Russ said the language itself is really quite simple. The real concern is that right now, by-right, you can do it with a duplex under certain circumstances and making sure that is not the case any longer.

Councilmember Dent said, I see, because under the current law with the term “property” it is allowed by-right in a duplex.

Mr. Russ said the text of the actual ordinance, I could write it in 15 minutes. That is not complex.

Mr. Fletcher said at the meeting there was a lot of conversation about what they wanted, what I thought City Council wanted. I question, is it only for duplexes or was it for a property that might be a triplex or a quadplex. Is it simply just a duplex? Mr. Russ is correct. I could just write out some text to say that it is a SUP, but there is more to it than just writing it down in 15 minutes. It is thinking through lots of different things and making sure that staff is not wasting City Council’s time in just throwing that together. We want to think through the scenarios and make sure that we are doing what they requested for us to do.

Commissioner Armstrong asked what was their answer about tri-plex and multi-plex?

Mr. Fletcher said I did not get an opportunity to ask them. I was in the crowd when the motion was made, and the vote was taken. I figured there would be an opportunity for us to work together as staff with the City Attorney’s office to figure out what exactly they want. Do we bring them back options? Is it just a simple text amendment? I have questions.

Chair Finnegan said we are talking about the amendment that may or may not happen in the next 90 days. This body, we all have a different place where we draw the line. Some of us do not want any STR SUPs. Some of us might say yes to most or all of them. And some of us draw a line somewhere. It sounds like this is where, at least this particular body at this point is drawing the line. That is where I draw the line. If we are taking livable spaces with kitchens off the rental market, that matters to me. Regardless of what City Council does, we can continue to draw the line where we feel that we want to draw the line. In this case, speaking for myself, I am drawing the line at taking rental units off the market.

Commissioner Whitten asked I wonder what will happen when the son moves on, if this was

approved? Who would be the person who would have to stay there all the time when it is a STR?

Mr. Fletcher said we have another scenario just like that with the operator of a homestay on Long Avenue. They are essentially an employee. They would have to rent to someone in the upstairs unit, and that renter would have to agree to be the operator.

Commissioner Whitten said, for clarity, when you buy a piece of property, be it a duplex or a single-family home or a whole apartment building, you have to abide by the zoning that is in place. You have the opportunity to take advantage of a SUP, but that is not something that will necessarily be granted because you would like it to be. People who buy property in Harrisonburg need to understand that. I know that realtors tell people all kinds of things, but they are not always right. In my experience, they are frequently wrong. If you buy something, you bought it. It is your mortgage. It is your insurance. It is your rental. It is your renters. Sorry about your luck.

Commissioner Byrd made a motion to recommend denial of the request.

Commissioner Armstrong seconded the motion, based on staff’s recommendation.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten Aye
- Chair Finnegan Aye

The motion to recommend denial of the SUP request passed (7-0). The recommendation will move forward to City Council on November 8, 2022.

A motion was made by Byrd, seconded by Armstrong, that this PH-Special Use Permit be recommended for denial to City Council. The motion carried with a recorded roll call vote taken as follows:

- Yes:** 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington
- No:** 0

4.e. Consider a request from Mosby Opportunity Fund LLC to rezone parcels addressed as 2492, 2494, 2496, and 2498 Millwood Loop

A motion was made by Whitten, seconded by Dent, that this PH-Rezoning be recommended for approval to the City Council, due back on 11/8/2022. The motion carried with a recorded roll call vote taken as follows:

- Yes:** 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

- 4.f. Consider a request from Mosby Opportunity Fund LLC for a special use permit to allow townhomes at 2492, 2494, 2496 and 2498 Millwood Loop

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this site as Medium Density Residential. These areas have been developed or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.

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

Site: Property under construction, zoned R-3C.

North: Property under construction for townhomes and existing multi-family dwellings, zoned R-3C and R-3, respectively.

East: Multi-family dwelling units, zoned R-3.

South: Multiple-family dwelling units, zoned R-3.

West: Townhome development under construction, zoned R-3C.

The four subject properties together total +/- 0.29 acres of property and are part of a planned 39-unit townhome development, which is now under construction. To allow for the townhome development, the subject properties, along with the remainder of the townhome project acreage, were rezoned in August 2018 to R-3C, Medium Density Residential District Conditional. In November 2019, the property owners preliminarily platted the 39-unit townhome complex and received approval to deviate from the Subdivision Ordinance Section 10-2-42 (c) so that townhome parcels did not have to front along a public street. Four months later, in March 2020, the engineered comprehensive site plan for the project was approved. Then, in December 2021, the property owner submitted the final subdivision plat to officially create the townhome parcels.

During the review of the final plat, staff noted that the parcel for Unit 54 did not meet the depth requirements of the R-3 district and communicated to the developer that the parcel could not be created as shown. At that time, the developer chose to combine the areas of planned Units 54 and 55 so that the final plat could be approved to then move forward with construction of the other areas of the townhome community. The hope was that new Zoning and Subdivision Ordinance regulations would have been approved by the time the developer reached that section of the project and that the townhome community would have been zoned to a new district that could accommodate lesser depths for townhome parcels. Unfortunately, the regulations have not yet changed and the developers are now ready to begin construction of that section of the community.

Staff and the developer met to discuss options for them to be able to construct the five-unit row of

townhomes that Unit 54 was planned to be a part of since the beginning phases of the project. It was determined that the only option to allow for the planned buildings was to rezone the site to the R-8 district, which allows for townhome parcels with lesser depths than the R-3 district. However, since townhomes are only permitted by special use permit (SUP) in the R-8 district, they would also have to apply for the SUP to allow for townhomes. The information below describes the details for the rezoning and SUP requests.

The applicant is requesting to rezone four parcels totaling +/- 0.29 acres of property from R-3C, Medium Density Mixed Residential Conditional to R-8, Small Lot Residential District while simultaneously applying for a special use permit (SUP) per Section 10-3-59.4(1) for the same acreage to allow for townhomes within the R-8 district. Approval of both applications would allow the developer to maintain their plan of development, which is to build a row of five townhomes within the +/- 0.29 acres of land.

As noted in the Background section of this report, the four subject properties are part of a larger townhome development and are currently zoned R-3C, Medium Density Mixed Residential District Conditional with the following proffer:

1. If rezoned to R-3, Medium Density Residential District, the 3.47 acre portion of the subject property will be developed in no greater density than 39 units, as shown on the “Rezoning Exhibit” dated June 29, 2018 and submitted in connection with the application.

If the rezoning is approved, the above noted proffer would no longer be applicable to the subject properties, however, all remaining R-3C-zoned properties of this development would continue to be regulated by that proffer. It should be understood, however, that it does not grant approval for those remaining properties to somehow find areas to create five additional units on the R-3C-zoned areas that are capped to a total of 39 units.

While four properties are part of the rezoning and SUP permit requests (tax map parcels 7-E-55, 56, 57, and 58), in reality, parcel 7-E-55 is the parcel that prompted the need for these applications. Approval of both requests would allow this parcel to be subdivided to create Unit 54 and Unit 55 as illustrated in the attached exhibit, where Unit 54 would have an average lot depth of 101.94 feet rather than 112 feet, which is what is required if the parcel were zoned R-3. The developer could have chosen to apply for the rezoning and SUP only for tax map parcel 7-E-55, but because the impacted unit is part of a five-unit building, they chose to rezone all properties associated with the five-unit structure.

For all intents and purposes, if both requests are approved, physically there is little that will actually change when compared to what has been approved for construction. There are, however, a few regulatory differences that should be understood. One is regarding dimensional lot and setback requirements. In the table below, one can view the dimensional differences for townhomes in R-3 and R-8.

Zoning District	Lot Area Sq. Ft./Unit	Lot Width (ft.)	Lot Depth (ft.)	Front Yard Setback (ft.)
-----------------	-----------------------	-----------------	-----------------	--------------------------

	Side Yard Setback (ft.)*	Rear Yard Setback (ft.)	Maximum Stories	Maximum Height (ft.)
R-3 2,000	18 112 30 10 25 3 40			
R-8 1,800	18 60 10 7 or 10 (depending upon number of stories)		20 3 40	

*Shared walls have zero-foot setbacks; structures with more than four units have 15-foot side yard setbacks.

Minimum off-street parking requirements are also different for townhomes in the two districts. In R-3, off-street parking is based upon the number of bedrooms per dwelling-1.5 spaces for one bedroom, 2.5 spaces for two and three bedrooms, and 3.5 spaces for each unit with four or more bedrooms. Whereas the requirements for R-8-zoned townhomes is one parking space per unit.

Another difference is occupancy regulations. The R-3 district allows a family or not more than four persons per unit, whereas the R-8 occupancy regulations are the same as R-1, which is associated with whether the unit is owner- or non-owner occupied. Owner-occupied units may be occupied by a family plus two persons, while non-owner-occupied units may be occupied by a family plus one person. The developer is aware of this situation and was not concerned that occupancy of the proposed five unit R-8-zoned properties would have different occupancy regulations than the remainder of the townhome development.

Given the narrow circumstances of this situation, staff has no concerns with either of the requested applications and recommends approving rezoning the property from R-3C to R-8 and to approve the SUP to allow for townhomes.

Chair Finnegan asked if there were any questions for staff.

Councilmember Dent said I want to be sure that I understand. What I understand is that this is what will work so that they can have five units instead of four.

Mr. Fletcher said that is correct.

Commissioner Whitten said the complication was because the property in that little square is owned by condominium owners, correct? That makes it difficult?

Mr. Fletcher said that is correct. I have been working with Mr. Todd Rhea. He has a representative here this evening, if you have any questions. I cannot recall if they attempted to buy it or decided it would be too complicated. The end result was that they worked with us to find a potential solution.

Commissioner Byrd said in practical terms, does this mean that whoever eventually gets that unit will not own much concrete in front of their property?

Mr. Fletcher said based on the comprehensive site plan it will still be a paved space because it is part of the parking lot.

Chair Finnegan asked whether it had anything to do with fire truck access.

Mr. Fletcher said it is a very standard parking layout, probably 60 feet in width with 24-foot travel aisles, which is very standard for a fire apparatus.

Chair Finnegan asked if the parking lot would belong to the condominium association.

Mr. Fletcher said yes. There are probably some cross-easements and understandings between the two property owners and the two developments.

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

Quinton Callahan, attorney with Clark & Bradshaw representing the applicant, came forward in support of the request. My partner is Todd Rhea who has ushered this along to this point. He asked me to step in tonight as he is unavailable. I am familiar with the project. We have represented this client for a while. I agree with everything Mr. Fletcher said. It is the least complicated of multiple complicated options. For the reasons stated with that property being owned by a condominium association, it would be incredibly difficult to get that conveyed out. There were attempts to do that, but I do not know if there was an offer made. I do not know how far they got, but the decision was made that they could not go further. I understand that there are to be cross-access easements. It comes down to this one section of these four lots will have a different zoning. To anyone driving by there, these will look identical. It will all be laid out as it was originally, as it has gone through every phase. We just hit this one snag at the end which is why we had to come back today and ask for this rezoning. I would ask that you approve the rezoning and the SUP. Mr. Fletcher did not speak specifically to the SUP. The SUP is to allow townhomes in the R-8 zoning district which is not permitted by-right. I am happy to answer any questions.

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

Commissioner Whitten moved to recommend approval of the rezoning request.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye

Commissioner Washington Aye
 Commissioner Whitten Aye
 Chair Finnegan Aye

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on November 8, 2022.

Commissioner Whitten moved to recommend approval of the SUP.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong Aye
 Commissioner Byrd Aye
 Councilmember Dent Aye
 Commissioner Orndoff Aye
 Commissioner Washington Aye
 Commissioner Whitten Aye
 Chair Finnegan Aye

The motion to recommend approval of the SUP passed (7-0). The recommendation will move forward to City Council on November 8, 2022.

A motion was made by Whitten, seconded by Dent, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 11/8/2022. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

5. New Business - Other Items

6. Unfinished Business

7. Public Comment

8. Report of Secretary & Committees

8.a. Proactive Code Enforcement (On Hold)

8.b. Rockingham County Planning Commission Liaison Report

Chair Finnegan said there was an ordinance amendment to the R-5 Planned Neighborhood district to clarify repetitive language and make clear that designated ‘neighborhood center’ areas

in the R-5 zoning districts shall not exceed 20 percent of the total project area. It was approved. There was another ordinance amendment regarding solar energy facilities. The big picture is that there is farmland that is being lost to many different reasons. Solar energy facilities are one of them. They want to cap the total number of acres in Rockingham County that can go under solar energy facilities. It was unclear to me whether it was 1,800 acres or 2,100 acres. That is not per site. That is a cumulative total for the whole County. They approved it but wanted more clarification before it went before the Board of Supervisors. There was a solar energy facilities request in Elkton that had been tabled prior to this ordinance amendment for 300 acres. It was a question as to whether the request would be affected by the ordinance amendment, making the total number 1,800 or 2,100 depending on whether it is included.

There was a rezoning request from A-2 General Agricultural to B-1 General Business on M & N Drive near Ridgedale Road. It was not clear what the business would be. It was an application to rezone it. It was unclear what the property owner wants to put there, possibly a fast food restaurant. The applicant or applicant's representative did not show up and that was not very well received because it was denied 5-0.

Commissioner Armstrong asked what was the acreage for the solar energy facilities?

Chair Finnegan said 1,800 or 2,100. It was not clear to me. I spoke with Mr. Getz to get some clarity. Is that the site from property line to property line? Is it what is under the panels? I did not get full clarity on that.

8.c. Board of Zoning Appeals Report

8.d. City Council Report

Councilmember Dent said last night was all about special recognitions for the Fire Department and others. They did not address any Planning Commission items.

9. Other Matters

9.a. Review summary of next month's applications

Ms. Dang said there are 11 items for six unique locations. Staff recommends holding one meeting to consider all of these agenda items.

Chair Finnegan asked for context. Is preferable to get it done at once? I am wondering where the break point is. Is it 15 applications or 15 sites?

Ms. Dang said at this time we feel that having all the items at one time makes sense. We do not know what might get tabled. I know that meetings have gone late and that has been a concern. Staff is willing to have one meeting.

Chair Finnegan said I do think that there comes a point where, if a meeting is running too long, we

need to table things. The latest we have gone since I have been on the Planning Commission has been close to midnight.

Mr. Fletcher said that was before we moved the meeting up to 6:00 p.m. We know that certain things can be contentious. We can give those recommendations that there could be a second meeting. There are four applications for one site, Wilson Avenue. Vine Street has two. One of the Smith Avenue items has two applications. Sometimes we have no idea if something will be contentious. There might be no activity until the day of the meeting.

Chair Finnegan said remember to read your packet and make it to the site tour, if you can, so that we are prepared to have these conversations.

Commissioner Byrd said I do like to see this report, to know what the next month might look like.

Chair Finnegan said you can come prepared. If there is a point in the middle of the meeting, and it is running long, that someone needs to take break, please signal to me and we can have a five minute recess.

10. Adjournment

The meeting adjourned at 8:05 p.m.

NOTE TO THE PUBLIC

Staff will be available at 4:00 p.m. on the Tuesday before the next Planning Commission meeting for those interested in going on a field trip to view the sites on the next agenda.

INTERPRETATION SERVICES

Language interpretation service in Spanish, Arabic and Kurdish is available for Planning Commission meetings. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least four (4) calendar days in advance of the meeting by contacting the City Clerk at (540) 432-7701 or by submitting a request online at: www.harrisonburgva.gov/interpreter-request-form

El servicio de intérpretes inglés-español está disponible para las reuniones públicas de la Comisión de Planificación. Para asegurar la disponibilidad de intérpretes, cualquier interesado deberá solicitar la presencia de un intérprete al menos cuatro (4) días calendarios antes de la reunión comunicándose con la Secretaría Municipal al (540) 432-7701 o por medio de la página por internet al:

<https://www.harrisonburgva.gov/interpreter-request-form>

NOTE TO PUBLIC

Residents/Media will be able to attend the meeting according to best practices and procedures associated with pandemic disaster.

1. Masks are not mandated but strongly encouraged
2. Social Distance rules will apply

The Public can also view the meeting live on:

- The City's website, <https://harrisonburg-va.legistar.com/Calendar.aspx>
- Public Education Government Channel 3

A phone line will also be live where residents will be allowed to call in and speak with City Council during the Public Hearings and the Public Comments portion of the night's meeting. We ask those that wish to speak during the public comment period to not call in until after all the public hearings and public comment on those have been heard. This will avoid anyone calling on any other item from holding up the queue and then being asked to call back at a later time.

The telephone number to call in is: (540) 437-2687

Residents also may provide comment prior to the meeting by visiting this page:
www.harrisonburgva.gov/agenda-comments