

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**December 11, 2024**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, November 13, 2024, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

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

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

Chair Finnegan called the meeting to order.

Chair Finnegan asked if there were any corrections, comments or a motion regarding the November 13, 2024 Planning Commission minutes.

Commissioner Baugh moved to approve the November 13, 2024, Planning Commission meeting minutes.

Commissioner Nardi seconded the motion.

The motion to approve the November 13, 2024, Planning Commission meeting minutes passed (6-0)

**New Business – Public Hearings**

***Consider a request from Florence LLC to rezone 160 Carpenter Lane***

Chair Finnegan read the request and asked staff to review.

Ms. Soffel said the applicant is proposing to rezone a +/- 2.91-acre parcel from B-2, General Business District to M-1, General Industrial District. The property is addressed as 160 Carpenter Lane and is located at the end of Carpenter Lane adjacent to Interstate 81. Winchester Equipment Company, doing business as Valley Equipment Company, sells, rents, and services compact construction and agricultural equipment. If the rezoning is approved, Winchester Equipment Company plans to move their operations from their current location at 230 Charles Street to the subject site.

*Proffers*

No proffers have been submitted by the applicant.

*Land Use*

The Comprehensive Plan designates this site as Industrial and states:

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

The proposed use conforms with the General Industrial Land Use Guide designation.

*Transportation and Traffic*

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

Staff has no transportation or traffic concerns for this project.

*Public Water and Sanitary Sewer*

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

*Recommendation*

Given the Comprehensive Plan’s Land Use Guide designation for this property and surrounding industrial uses, staff believes that the request is in conformance with the Comprehensive Plan and recommends approval of the rezoning request.

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

Scott Hovermale, applicant, came forward to speak to this request. He said we are wanting to move because we are currently leasing the property on Charles Street and [we had] the opportunity to purchase something in a very visible and in a good location.

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

Vice Mayor Dent said I did have a question, but you just answered it, why are you moving?

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

Chair Finnegan continued, I think most of us were on the site tour yesterday next to Mulligan’s. It seems like a very similar land use. Not an increase in traffic.

Commissioner Nardi said it seems compatible. The business goes to ownership so good for them.

Commissioner Baugh said I will say I agree with Commissioner Nardi and, if anything, I remember some of the history on this around the time of annexation. These properties tended to get kind of thrown at what they were, so that is why you have this kind of mix of industrial and commercial. With that, I will go ahead and move approval of the rezoning, as presented.

Vice Mayor Dent seconded the motion.

Chair Finnegan called for a roll call vote

- Commissioner Nardi           Aye
- Commissioner Baugh        Aye
- Vice Mayor Dent            Aye
- Commissioner Alsindi       Aye
- Commissioner Washington   Aye
- Chair Finnegan              Aye

The motion to recommend approval of the rezoning request passed (6-0). The recommendation will move forward to City Council on January 14, 2025.

***Consider a request from the City of Harrisonburg to amend the Zoning Ordinance to allow data centers as a use permitted by special use permit in M-1***

Chair Finnegan read the request and asked staff to review.

Ms. Soffel said currently, a data center is a use that is interpreted to be permitted within a broader “warehousing and storage” use category. While the permissible language is not the same among the allowable zoning districts, data centers are permitted by special use permit (SUP) in the B-1, Central Business District; by right (with a 20,000 square foot size restriction) in the B-2, General Business District; by SUP (without size restrictions) in B-2; and by right in the M-1, General Industrial District. Currently, there is one data center operating in Harrisonburg at 139 Tyco Street, zoned M-1, and has been operating since about 2010.

After answering questions and working with a potential additional data center operator in the City, staff began to look more closely at data centers and learned more about the impacts that data centers can have on a community. Thus, during this past summer, staff internally began discussing the idea of only allowing data centers by special use permit in the M-1, General Industrial District to assist the community in properly locating where such a use should operate.

Staff is proposing to amend the Zoning Ordinance (ZO) to create a definition for “data centers” and to add data centers as a use that would only be permitted by receiving approval of a special use permit (SUP) in the M-1, General Industrial District.

The proposed definition for “data center” is shown below:

An establishment or facility used for the storage, management, processing, and transmission of digital data, which may include the housing of computer and/or network equipment, systems, servers, appliances, and other associated equipment or components related to digital data operations. Supporting equipment may include back-up batteries and power generators, air handlers, water cooling and storage facilities, utility substations, and other associated utility infrastructure to

support operations. This definition does not include server rooms or information technology infrastructure that is accessory to the principal use of the site.

Demand for data centers is increasing driven by the growing adoption of generative artificial intelligence (AI) and other data-intensive technologies relying on the cloud. Some common types of data centers include:

- **Enterprise Data Centers:** Private data facility that supports a single organization. These may be located on-premises or off-premises. An in-house information technology department may manage the equipment and infrastructure while the data center components and equipment are outsourced. Example: Facebook.
- **Colocation/Multi-Tenant Data Centers:** Facilities that lease space to businesses for their servers and other network devices. Many industries such as healthcare, banking, and government agencies use these multi-tenant data centers. The data center at 139 Tyco Street is a colocation data center.
- **Cloud Data Centers:** Facility where the cloud company manages the hardware with the help of third-party service providers. Examples: Amazon’s AWS, Microsoft’s Azure.
- **Edge/Micro Data Centers:** Small facilities located in the vicinity of the population they serve. They help meet the demand of instantaneous connectivity by connecting to larger data centers and delivering computing resources and cached content to end users. These are often built and managed by large data center operators.
- **Cryptocurrency Data Centers:** Facilities dedicated to crypto mining and support only the owners of the crypto mine.
- **Hyperscale Data Centers:** Massive data centers engineered for large-scale workloads. Examples: Google, Amazon.

### *Data Centers in Virginia*

Virginia has the highest concentration of data centers in the world with the majority of data centers concentrated in the Northern Virginia region. This is driven by good fiber network connectivity (about 70% of the world’s internet traffic runs through Virginia), relatively low cost of power, and a favorable business environment. According to the Piedmont Environmental Council of Virginia (PECVA) web map of data centers<sup>1</sup>, there are approximately 190 existing data centers and over 300 proposed new or expanding data centers in Virginia. The impacts of data centers are being actively discussed throughout Virginia. Various localities, including Loudoun County, Prince William County, the Town of Leesburg, and Fairfax County, have enacted or are in the process of enacting legislation to regulate data centers. In the 2024 Session of the Virginia General Assembly, several bills were presented to regulate data centers. Most were defeated or carried over to the 2025 Session, pending the results of a Joint Legislative Audit and Review Commission (JLARC) Study of Data Centers. The JLARC data center study is expected to conclude by the end of the 2024.

### *Data Center Impacts*

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<sup>1</sup> <https://www.pecva.org/region/culpeper/existing-and-proposed-data-centers-a-web-map/>

Data centers can be attractive to communities because they offer tax revenue (such as personal property tax, real estate tax, and business license tax), and they generally do not create a lot of vehicle traffic and do not add demand to local schools.

However, there are concerns with data centers relating to issues including noise (due to commercial back up generators, cooling equipment, and 24/7 operations) and adverse visual impacts (such as monolithic appearance of large buildings and visible mechanical facilities), particularly near residential areas. Additional impacts may include data centers consuming a great deal of energy and water to support continuous operation. Data centers may also require additional electrical substations and/or transmission lines. Impacts from cooling equipment can vary depending on factors such as, but not limited to, the type of system that is used.

Furthermore, data centers are often highly secured facilities that utilize strategies to reduce access and associated risks, which can result in fenced-in large warehouse-like buildings or campuses. Such facilities may not be compatible with surrounding land uses and where interparcel connectivity is encouraged.

Staff believes that Planning Commission and City Council should consider data center operations on a case-by-case basis so that the location and potential, undesirable impacts can be evaluated and considered. During the SUP process, staff, Planning Commission, and City Council could consider and attach conditions to address matters of concern such as, but not limited to:

- impacts to electrical/power infrastructure,
- water and sanitary sewer impacts,
- facility size and massing (i.e., footprint, building scale, etc.),
- lighting, and
- noise.

#### *Recommendation*

The proposed ZO amendment will not prohibit data center development in Harrisonburg. The SUP process will allow staff, Planning Commission, and City Council to assess the potential impacts of the planned data centers on surrounding residential neighborhoods, commercial areas, and industrial areas and to implement appropriate conditions to address concerns.

Chair Finnegan asked if there any questions for staff.

Vice Mayor Dent said when you walked through the types of data centers, do we care or do we need to about what kind we are approving?

Ms. Soffel said it can be a factor depending on the location, how big of a data center will we want to allow. Is it in a neighborhood? How much electrical infrastructure will need to be added in order to support the energy consumption of that data center? The size can matter.

Vice Mayor Dent said that is more of the physical characteristics of it. I was thinking more if we wanted to say no crypto currency for instance. That might just be a policy decision if we wanted to make something like that, that does not really affect it. Another thing that I wondered about is the ordinance amendment, does including data centers as defined under special use permit under

M-1, does that automatically remove the current zoning? As in special use under B-1 and B-2 and by right by M-1 or do we need to explicitly remove those?

Mr. Fletcher said this calls it out as its own use.

Commissioner Baugh said one of the things I think a lot of these are creating concerns is on the consumption of water and energy I am just curious. To what extent this recommendation...we will start with Public Utilities did we get any input from those guys on this?

Ms. Soffel said not from Public Utilities. We did speak with HEC. HEC would not be able to support some operations depending on the size but then Dominion Energy can come in and support where HEC cannot.

Commissioner Baugh said HEC has basically said it concerns us but in terms of ability to serve it, we think we could find a way to make that happen. Details to be determined.

Chair Finnegan asked did Mr. Collins weigh in on this at all, the water consumption piece of it?

Commissioner Baugh said that was Public Utilities.

Ms. Dang said I feel for them it is on a case-by-case basis on what the proposal might be. We probably should have, but I did not think to contact him to seek a general opinion on it. My guess is they would want to know what cooling technique the facility might be using, what its what demand or sewer output might be. I think there are too many variables to make a broad opinion about it.

Mr. Fletcher said that is pretty much kind of why we are doing what we are doing. We had a very unique situation with a very unique property to be able to do it which made us sort of start investigating the use more in general. Because there are so many variables in the power and the water, and the location question pops up. When you start to look where, how we have interpreted the use, and then where it could be permitted. We should probably get a better handle on this and handle it case-by-case. That is why we are doing what we are doing.

Chair Finnegan said I have been reading the JLARC report, which came out Monday, on data centers. One of the concerns in that report was about the amount of power that it is taking. I mean we are a city of 50,000. Is there a way for 100 megawatts data center... of course we are using words like kilowatt hours, megawatts, things that do not mean very much to the average person. In doing some of my own research, it is about 10,000 kilowatts per year for an average household. I mean we are talking 10 times that per hour for a 100-megawatt station. I think we talk about a lot of power, but it is a staggering amount of power these things would need.

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

Dominique Kostelac came forward with a presentation and to speak this request. He said, I spent the last seven years assembling the largest undeveloped property in Harrisonburg. It is a mile on one side and a half a mile on the other. It has been vacant for forty years mostly. Thank you all for taking the time to gather critical input ahead of the important decision. I am here today to dissuade you from changing the current zoning and especially within the tiny window between Thanksgiving and New Year's. I am probably the City's only data center developer and the main reason this ordinance change is before you now. We have worked for two years with the community planning, HEC, the university, archeologists, sportsmen and first responders to re-envision this property as an oasis for the community both now and in the future, funded by the right sustainable business plan. Our vision shown here is a community scaled data campus with a façade of retail along Country Club Road. We hope to be cleaner, greener, quieter and scaled perfectly for the future adjacent residential mixed-use community. Here is the overall view of the data center campus on the B-2 zoned land and we prefer B-2 for its mixed-use ability. You can see the undeveloped property on the left and the lower 20 or so acres sporting some data center and retail component. Here is a skewed view of it here. Here is an AI generated view along Country Club Road, responsive to staff's comments that the retail should be facing that. It is a challenging street with railroads there. Here is another view of maybe a little alley behind the front. Here are the original buildings that are basically 1970s or 1890s. Here is the interior of the 1890 fruit packing plant converted into a restaurant, if it is saved. Here is the redesigned beverage warehouse, as a phase one of the data center campus. To just give you a quick sense, that building between the 60- and 100-million-dollar renovation for that 1970s building. The vast amount of energy used in computing is almost totally converted into heat which can be reused for the adjacent housing, hotels and restaurants. As designers, we hope to reclaim the recaptured energy into the beautifully designed thermal pools which circulate the stunning untouched limestone features. It will be as if Warm Springs, Virginia suddenly popped up in a forest off I-81 in Harrisonburg. The quarry will become a crystal-clear lake with trophy fish and preserved game. Much of the land will be left in its natural state as nearly \$5 billion will be spent on less than 30% of the site along Country Club Road on land that has served no purpose for 40 years. We ask that given there is no urgency and no emergency, a holiday rewrite of the current Zoning Code only causes harm. We are the only data center that has come here in 17 years, and we will probably be the last if, after the two years of planning and zoning power and fiber confirmation, the zoning is changed. I can testify that Harrisonburg has no unique surplus of power to attract data centers. Harrisonburg's chance to tap into the new gold rush of innovation will be gone if the Planning Commission sends a signal to the market at large that moving the goal post mid-swing is a way of doing business. I recommend the opposite, please encourage this enterprise in every way possible. This is a fleeting and rare economic opportunity for the recent, just like opening the Great Wagon Road of 1750, the explosion of mechanized agriculture in the 1800s or the arrival of the railroad.

John Serrell, a resident of 109 Fairway Drive, came forward to speak to the request. He said, I developed the Tyco amp building that has a data center now. It brought lots of improvements, never had any problems. Excuse my speaking, I had a stroke. I have a vested interest in this project. It has the most undeveloped portion in Harrisonburg. It has water for cooling. We have done two years of research to go ahead and get this thing approved and now, over Thanksgiving, they take two years of our work to throw roadblocks in front of us to stop this project. It has everything that the City would need and it could be a campus where it can be expanded. Harrisonburg, this could bring jobs, it can bring income. Where it is located behind the railroad tracks and in between I-81,

it would have the least impact out of anything that you could build. I would like to know why they waited until Thanksgiving, after two years that the City has been aware as we have worked on this for two years. Why this has to come up now. I would like to know where the idea came from. What individual, what committee, brought this before you all to put it in now after two years of work and all the research. We have researched it. We have all of the things that you have a question for, we have given them answers. This looks like a road-block that has been thrown up for this particular project after two years. Somebody who works in the City does not want this, and I would like to know who it is. I would like to leave it up to you to decide who can get back with me about whose idea it was. Thank you.

Issac Whitmer, a resident of Rockingham Drive, came forward to speak to the request. He said, I am a member of the local Sierra Club Group. Our Chair, Pete Bsumek, wrote a letter in support of more restrictive zoning, and I would like to read portions of it. "The Sierra Club Shenandoah group is deeply concerned about proposals that make it easier for data centers to expand. Based on conversations with our colleagues in Northern Virginia, which has the largest concentration of data centers in the world, we are concerned about potential impacts on air quality, water use, public health, noise, and especially the impacts on our City's climate goals. Chief among our concerns is the vast amount of energy required to run data centers, which is only intensifying the growth of AI. This increase in energy demand could threaten our City's greenhouse gas emission reduction goals, hinder our ability to transition equitably to a clean electric grid, and raise electric costs for residential and commercial customers. According to the City's most recent greenhouse gas inventory (2022), the commercial sector is already the largest contributor to Harrisonburg's GHG emissions. City decision makers should consider the impact of data center development on our ability to achieve the "community goals" for GHG emission reductions and an equitable transition to cleaner energy as are articulated in the City's Environmental Action Plan. We oppose unregulated data center development in Harrisonburg and support the efforts to reduce the zones where data centers can be built and support removing the by right development of data centers in all zones." I just wanted to add that I work at a local software company as server admin, so this is something I have been following, thank you.

Emily Henry, owner of an adjoining property and local real estate agent, came forward to speak to this request. She said I was very surprised. I met with him this week about an easement that I am now required to get for stormwater over something that actually could have been coordinated and addressed very differently if there had been a little organization on the City's side before. When you said, I have not spoken to them about this, I very strongly recommend that you speak to all of the agencies together and see what the impacts would be because I would not need an easement for stormwater management. I would not even need to have had the conversation with him if there had been better coordination on the impacts of the request by the City before my proposal had been suggested. There are some things that I do not think anyone considered beforehand that could have been better addressed if there was better coordination. The other thing I think that the Sierra Club does present a good point about the emissions and things like that; however, having seen the proposals that he has put forth to me, I was very excited to build my development near his property because of the green building that he intends to do. Right now, there are tons of people that are trying to walk on a road that is very unsafe. I allocated part of my property towards sidewalks, so that the City could put in sidewalks to make it safer. He wants to make that area safer. He wants to make that area greener. Any business that moves in there, I am sure a data center is going to require



more power than some, but any business that moves in there is going to impact the water and sewer quality. I think that his commitment to making those sustainable and making them green is very important. When you invest hundreds of thousands of dollars into something that by right you should be able to do only to have that after the investment is made and after all of that is done to have somebody move the wall, that is very difficult for businesses to overcome, and I think that it really sends a very negative message, which is why I came just in support of that this evening.

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

Chair Finnegan continued, I did have a question for the Assistant City Attorney, Mr. Russ. In terms of procedure, I know there were some concerns about changing the rules. In my recollection, we have done this a few times where there is something on its way, it is not currently addressed in the Zoning Ordinance and address it to specifically tailor it to that.

Mr. Russ said, up until you have acquired permits and have started construction of your project, you have not really established a vested right in a particular use on a property. In this case, they have not actually begun the use yet, started construction, or submitted for permitting. There is still an opportunity for the City to change the ordinance that would be applicable to them.

Chair Finnegan said I did want to reiterate for folks in the room and for folks listening online at home, this is not a site-specific [request]. This is a Zoning Ordinance amendment. We are not approving or denying any site-specific requests before us tonight. That is not what we will be voting on.

Commissioner Alsindi said, I do understand that data centers definitely do not appear as closely in this way on the Comprehensive Plan. How does it weigh eventually in such initiatives in the Comprehensive Plan and the character of the City? As far as I understand this is evolving and growing significantly in Northern Virginia, and now we are talking about here is Harrisonburg. Where does it stand within the Comprehensive Plan, the current one and generally how the Comprehensive Plan would be for the future? Where does it stand, how does it weigh in the Comprehensive Plan?

Mr. Fletcher said, it is a great question. Our Comprehensive Plan does not currently speak to data centers. It was not something that we envisioned in 2018 to have to speak to. We already had a data center during that time. I think it is sort of the reality of the evolving technology and the evolving businesses and the evolving demands. As we continue to go down this path to try to help this particular individual try to figure out can it work here, there were so many new things that we learned. We researched and investigated different concerns, different opportunities and all these sorts of things. What has not been discussed tonight and is not even discussed in the staff report is, you have to imagine the zoning map in your mind, and you look at all these brown colors all across the City where it would be, under today's law, permitted by right. You have to pause and say, would I want our community to have a data center at those locations? Just to give you an example, we have a few old industrial buildings that are zoned M-1 that are right next to neighborhoods. As an example, Artisans Packaging off of West Market Street would be an example of an M-1 piece of property, a vacant building currently today, very close to downtown. By just a building permit they

could go in there by right. I say it with a little urgency, but it would not be that quick. There would, obviously, be preliminary engineering reports for water and sewer. There would be demands evaluated for power. When you think of the concept in general, the land use itself, it could go there by right. I am not sure that the community would be interested in that. That is why we brought this proposal to you. Which is because it is still evolving, because there is such a high demand, and this rush for these types of things. This gives the community an opportunity to pause and say, is this an area where we want this use? It does not prohibit it in the City, it just gives the community an opportunity to say, yes it would work well here in this area of the City, not necessarily over here. Or maybe it does, but it needs conditions on it or some parameters to help assuage some of the concerns. It just became very apparent to us, and then we as staff said, lets go down the research path. We put planning staff on it and said let us write up a report and let us propose to make it a special use permit, so we can assist the community with any concerns they might have.

Commissioner Alsindi said it does give another reason to go case-by-case because it is still not being settled in the Comprehensive Plan.

Vice Mayor Dent said I have been to several conferences lately, Virginia Municipal League, National League of Cities, and data centers was one of the very hot topics precisely because of this kind of discussion, and I strongly support what staff has come up with for all those good reasons. For instance, I saw a presentation by the data center guru from Loudon County, the data center capital of the world, and, to hear him tell it, it just sort of happened as a runaway thing because they allowed industrial by right. My comment to him was, he is presenting it as if it is an economic bonanza, but is it not also potentially an environmental disaster? He said, "yes it can be," and that is why we are looking into it and trying to mitigate it and so on. The proliferation of data centers is already having a drastic effect on the greenhouse gas emissions, for instance in the latest Dominion [Energy] Plan they are not only not retiring two gas plants that they had planned to, they are building six more. That is my biggest concern, the environmental impacts of the added energy requirements, as well as the water. I read that anytime you use ChatGPT to write an email, you have just waster a bottle of water's worth. The water for cooling and the noise, there are all sorts of reasons why we would want to have public comment, review and approval and, especially, I like the special use permit because we can add the conditions, as needed.

Chair Finnegan said I agree, and I also want to share I commend staff for being proactive on this. I would also share Mr. Fletcher's concerns about allowing these anywhere where there is industrial because it is scattered all over the City. I would also add, I was sitting in on the Rockingham County Planning Commission meeting earlier last week, where they unanimously denied solar to the utility Innergex. There was a proposal to change the Zoning Ordinance to allow for more solar after they had already said they were capping it. I think what is happening here and what I am seeing happening, from reading the news from around the state, is you have places, not just Northern Virginia but primarily Northern Virginia, who are raking in the tax revenue because the personal property tax on the computer equipment; that is where a majority of this tax revenue is coming from. There was a quote from Rip Sullivan, I do not often agree with Senator Mark Obenshain, but I did in this case. The idea that the state can force local governments to build more solar whether they want to or not, while data centers are driving up the need for more power, I think is hugely problematic. I will go even further to say, I am willing to support this amendment, but I will say that my personal belief is this should not ultimately be a local land use decision. I

think that local land use decisions could say this is where they can go, but I think localities like Loudon or Prince William Counties are making decisions that impact places far outside the municipal boundaries. That is very different from housing development. I commend staff for doing the research and doing what you can to get ahead of this.

Vice Mayor Dent said I did not quite understand your point that data centers should not be a local land use. Where they go should be local, but what else?

Chair Finnegan said what I am saying is in my opinion, any county should not be able to build 20 data centers and then tell the rest of Virginia, I do not care where the power comes from. You can build gas powered plants. Rip Sullivan can force local rural counties to cover every hillside with solar. The incentives are all wrong.

Vice Mayor Dent said I have heard that too, that some counties are resisting building solar because they do not want their energy to be powering these data centers in Northern Virginia.

Chair Finnegan said the Friendly City Solar array that is off of Acorn Drive, that is powering for the City of Harrisonburg. It may look the same, but where the power is going matters to me and it matters to a lot of folks. It matters to the Planning Commission in Rockingham County because that was a unanimous denial.

Vice Mayor Dent said given that, I will move to approve the proposed zoning amendment to allow data centers by special use permit in M-1 as presented by staff.

Commissioner Alsindi seconded the motion.

Commissioner Baugh said we are here to vet things for Council, and there is often kind of a split. We are kind of charged with the hardcore heavy lift land use side of it, whereas Council has a broader mandate, it overlaps. Some of the points you are making, that are not necessarily Planning Commission's bailiwick, but they are important and there is nothing wrong with us in our advisory role bringing those up. To me the thing that keeps jumping out to me about this is... what Council chooses to do with it and when and timing, to me it feels more like a Council-level decision because this is a big issue. I think the thing that hits me about this, as a Planning Commissioner, is this is one of these things that if you just started polling people who live here, and you start describing any project of this magnitude, and then start trying to explain to them oh that was of right development and so nobody gets to weigh in on it, you would get blow back. It really has nothing to do with the fact that you are talking about data centers, it is anything like that. There has been a movement over the years to do this, and I will even remind people that doing the history lesson that there is even precedent. The reason we actually have in our current Zoning Ordinance, hopefully to go away in the rewrite, such a thing as old R-3 and new R-3 is because at the time of the change, a lot of importance was given to the piece that some of the people who are in opposition of this were talking about. Well, it is not fair to change to the rules midstream, and how are we going to deal with that. That was a Council level decision to do it that way. I think from where I am right now it is like any project this size would have this much impact, regardless of the details, it probably makes sense for it to be a special use permit.

Vice Mayor Dent said just to reiterate that does not mean prohibiting it, that just means it goes through the vetting. If a project looks good but we want to tweak some of it, we can add the conditions so that adds a lot of flexibility.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the Zoning Ordinance amendment request passed (6-0). The recommendation will move forward to City Council on January 14, 2024.

***Consider a request from the City of Harrisonburg to amend the Zoning Ordinance to allow the acceptance of cash proffers***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said on August 27, 2024, at the request of City Council members, City Attorney Chris Brown presented draft amendments to the Zoning Ordinance (ZO) Section 10-3-123 to allow the acceptance of cash proffers. City Council referred the ZO amendment to Planning Commission. The memorandum and minutes from the August 27, 2024, City Council meeting are available at: <https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6841924&GUID=BC0537E3-BBF6-46F8-8787-19A3AA13A092&Options=&Search=> and <https://www.harrisonburgva.gov/agendas>.

Ms. Dang said on October 9, 2024, City staff presented to Planning Commission a draft amendment to the ZO to allow the acceptance of cash proffers. However, staff recommended that Planning Commission tabled the request to give staff more time to better evaluate the practice of accepting cash proffers. The October 9<sup>th</sup> staff report and extract of the meeting minutes are attached herein.

Since the October 9, 2024, Planning Commission meeting, staff has communicated with and gathered information on cash proffers from Albemarle County, Arlington County, Goochland County, City of Fredericksburg, City of Manassas, and the Virginia Commission on Local Government.

At City Council's request, staff has drafted an amendment to the Zoning Ordinance (ZO) to allow the acceptance of cash proffers. While the City has enacted an ordinance permitting conditional zoning, cash proffers are currently prohibited per Section 10-3-123 (b)(3) of the ZO. Attached herein is the entirety of the proposed ZO amendments that if approved would allow the City to accept cash proffers.

The Albemarle County Land Use Law Handbook,<sup>2</sup> a respected resource guide for land use matters in Virginia, notes that:

A proffer is a condition offered by the owners of property subject to a rezoning, which may be accepted by the locality's governing body in conjunction with its approval of the rezoning. Rezonings with proffers are referred to in Virginia Code §15.2-2296 as conditional zoning... The typical proffer addresses an impact of the development resulting from the rezoning, e.g. a road improvement to address a traffic impact, or a cash proffer to address the impacts of more students attending a public school beyond the school's existing capacity.

Virginia Code Section 15.2-2298 authorizes the City to adopt an ordinance permitting *reasonable conditions*, including cash proffers, if the rezoning itself gives rise to the need for the conditions, if the conditions have a reasonable relation to the rezoning, and if the conditions are in conformity to the Comprehensive Plan. A 2023 report by the Virginia Commission on Local Government<sup>3</sup> describes that:

In 2016, the Virginia General Assembly passed new legislation addressing residential developments and cash proffers; stipulating that onsite or offsite proffers must be specifically attributable to a proposed new residential development and must directly address an impact to an offsite facility. A voluntary cash proffer is considered unreasonable unless the residential development created a need for one or more public facility improvements and the new development would receive a direct benefit from those improvements. Localities are only allowed to accept cash proffers for roads, schools, public safety or parks and recreation that would need improvements or a brand new facility as a direct impact of a new residential development.

The above noted 2016 legislation is referring to Virginia Code Section 15.2-2303.4, which states that for residential developments, localities are only allowed to accept cash proffers for improvements to or new public transportation facilities, public school facilities, public safety facilities, and public park facilities. This means, for residential developments, localities cannot accept cash proffers to support operational costs for transportation, schools, public safety, or parks or for other uses such as, but not limited to, water and sanitary sewer systems, stormwater management, and affordable housing.

While localities cannot accept cash proffers for residential developments for affordable housing, know that the Virginia Code authorizes localities to create affordable dwelling unit programs, which could include provisions allowing localities to accept cash contributions in lieu of affordable unit set-asides. These contributions must be awarded with similar density bonuses, and the

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<sup>2</sup> Albemarle County Land Use Handbook, Chapter 11 – Conditional Zoning: Proffers (March 2022), <https://www.albemarle.org/government/county-attorney/resources/land-use-law-handbook>

<sup>3</sup> Virginia Commission on Local Government, "Report on Proffered Cash Payments and Expenditures By Virginia Counties, Cities, and Towns, 2022-2023" - <https://www.dhcd.virginia.gov/cash-proffers>

contributions must be put into a local Housing Trust Fund. Staff intends to study affordable housing dwelling unit ordinances in the future.

#### *Calculating Cash Proffer Amounts*

There are three primary ways that applicants and other localities have calculated and reviewed cash proffer amounts; they include: (1) the locality calculates an amount they believe is needed to address the project's impact and presents it to the applicant for consideration, (2) an applicant calculates an amount needed to address the project's impact and provides calculations and justifications for the locality to review (some localities have hired a consultant to be a third-party reviewer for cash proffers), and (3) the locality develops formulas that can be used by future applicants to guide the amounts offered by applicants as a cash proffer (some localities have hired consultants to develop the formulas).

At this time, which of the three primary ways cash proffer amounts are calculated and reviewed requires further evaluation. It is possible, for example, that staff may recommend one way to calculate public transportation facility improvements and a separate way for calculating public school facility improvements.

Additionally, for cash proffers that address transportation facility improvements, there may be situations in which City staff recommends that City Council not accept the cash proffers because the development is by itself giving full rise to the need(s), and staff believes the City should not take on the responsibility in managing a project to design and construct such a transportation improvement. As it stands today, a developer would proffer that they would complete the transportation improvements as part of their development project.

#### *Tracking Cash Proffers and Annual Reporting*

Staff believes that cash proffers can be managed using existing review and approval processes during site development and building permitting. Staff can use existing permitting software to prohibit the issuance of certificates of occupancy until cash proffers have been paid. Expenditures of cash proffers can be managed through the City's budget process.

If the City accepts cash proffers, then Virginia Code Section 15.2-2303.2 will, among other things, require the City to:

- “[w]ithin 12 years of receiving full payment of all cash proffered begin or cause to begin, (i) construction, (ii) site work, (iii) engineering, (iv) right-of-way acquisition, (v) surveying, or (vi) utility relocation on the improvements for which the cash payments were proffered.”
- Include within the Capital Improvement Program (CIP) the amount of all proffered cash payments received during the most recent fiscal year, and to include in the annual capital budget, the amount of proffered cash payments projected to be used or expenditures or appropriated for capital improvements in the ensuing year.
- Annually report to the Commission on Local Government the amount of proffered cash payments collected; amount of proffered cash payments expended; and related information.

*Recommendation*

Staff recommends approval of the ZO amendments.

Chair Finnegan asked if there were any questions for staff.

Vice Mayor Dent said does striking out shall not allow cash proffer, is that sufficient to allow it? Can we now allow it just by striking that out, or do we need to affirmatively say we allow it?

Mr. Russ said State Code is written in a way where sometimes it is expressly enabled and you can just do it and sometimes you have to adopt an ordinance. In this case, State Code does not require the locality to first adopt an ordinance it is just something you are permitted to do. The only reason the City could not previously is because we had on the books the statement that said you will not do it. Once we get rid of that, we are allowed to do it.

Commissioner Baugh said [referring to the text on the screen] was the first blue language trying to address that too?

Mr. Russ said yeah and the blue language at the top also.

Vice Mayor Dent said just curious, why strikeout four and five? Those seem sort of different, what is that about? About real or personal property or physical development, are those related or is that removed for some different reason?

Mr. Russ said I do not recall what prompted us to remove this. I believe we were unable to figure out why they were there in the first place.

Mr. Fletcher said it is because it says “mandatory dedication of...” They shall not include mandatory dedication of... It is probably language that has been here since 1996, and we cannot make people do any of it anyway.

Mr. Russ said there was nothing in particular that we were thinking we want someone to proffer or do through their proffers. It was just language that we were not sure why it was on the books, and thought we would clean it up.

Commissioner Baugh said it arguably came from a world where the orientation was, we cannot accept cash proffers, we kind of do not want to accept cash proffers, and we are okay with putting some things in here to say we do not want to take these or we are not going to use it as a backdoor way to get some other things.

Vice Mayor Dent said that makes sense like instead of giving cash you can give a chunk of land or something like that. This long list of questions you had to ask the various localities you have kind of talked about what you have learned but did you get some answers to any of these that are worth illuminating.

Ms. Soffel said I did ask these questions, and they were all addressed. In some cases, we got a little bit too much in the weeds. For example, we were concerned about the 12-year limit to spend the

funds and was wondering if any localities might have missed that deadline. We do not know because that State Code has not been around for 12 years. However, different localities felt comfortable with their ability to use the funds. How long have they been accepting cash proffers? Some never really had a start date. It was just allowed, and they did it under the previous legislation until there was a change that made it more restrictive and so they stopped. Then when there was legislation to free it up, they started again. It was just a part of all of the discussions. Are there any questions there specifically?

Vice Mayor Dent said I did not really zero in on any in particular. How has it benefited your community might be a big one. What examples did you get?

Ms. Soffel said in Goochland County they were short on funds for a lot of the capital projects that they needed. This was, for them, an excellent way to raise the funds for those capital projects. They used a consultant to create a formula. It is pretty automatic for developers to check in, run their numbers through these formulas, and it spits out a number and distributes it among the four allowable areas. One of the jurisdictions really only allows cash proffers for one of those items, I think it was parks, because they are very well funded for everything else. There is nothing additional that they need in the Capital Improvement Project to be able to justify accepting cash proffers. They will not accept cash proffers except for the one item. It just depends on the locality and what their needs are.

Commissioner Baugh said I think it is implicit in what you are saying is, is it safe to say that the reactions you were getting was one, generally positive and two, the extreme would be you did not have anybody whose response was “if there is one thing we cannot wait to do is repeal our ability to take cash proffers. It was the worst decision we ever made.”

Ms. Soffel said I did not come across that. I did come across jurisdictions that felt that their process was disorganized. One person used to take care all of it, and that person left and now they are struggling to figure out where everything is. There is a lesson learned there. We need to have people cross-trained. We need to make sure we have a process that can carry on and not base it on a single person who is in charge of it.

Chair Finnegan said just to underscore, this is for residential development?

Ms. Dang said it would allow the City to accept cash proffers to residential and nonresidential. There are rules that are a little stricter for residential cash proffers.

Chair Finnegan said for residential it is just the four that you mentioned. Can you give examples for non-residential cash proffers?

Ms. Soffel said we did not talk about them a lot. I do know that there is a jurisdiction in Northern Virginia where Amazon is coming in and Amazon offered cash proffers for housing. The idea was they were going to generate all of these jobs and housing is expensive.

Mr. Russ said some of the very large new headquarters for a company that knows they are going to bring in thousands of people who are making significantly more money than the average family



in the jurisdiction. They know that new homes cannot be built for all of the people that would be relocating there, and so they contribute to an affordable housing fund to attempt to offset the impact that they are going to have on the housing market on the lower income side. Then they manage the funds and use it to construct some affordable housing throughout the jurisdiction.

Ms. Soffel said beyond that example, the impacts are from residential housing. Those are the ones that impact a lot of the...

Chair Finnegan said putting cars on the road, putting students in the schools, that sort of thing. Vice Mayor Dent said I just wanted to make sure I heard that correctly; that taking out this prohibition means that we can accept both residential and nonresidential [proffers]. It is just that the specific rules relate to residential. That is good to hear because if we had a similar situation we could accept that. The other thing I appreciated the clarification on is about affordable housing, that we cannot take a cash proffer for it, I want to find out more about it, but Virginia Code authorizes localities to create affordable housing dwelling unit programs in lieu of affordable unit set-asides. As I understand it, we would have to have the ability to have affordable unit set asides first in order to accept cash proffers in lieu of that, like Charlottesville does.

Mr. Russ said Charlottesville, Abermarle, and a few other jurisdictions are all permitted to apply it to anything you are building. Every other jurisdiction, it has to be an incentive. The base zoning for the district is 20 units per acre, but we can say we will allow you to build up to 25% more than that as long as some of those additional units you are building are going to be set aside for whatever the locality defines as low income. In lieu of actually constructing affordable units, they can donate to an affordable housing trust fund, which is something that Charlottesville has done in the past. Especially in college jurisdictions where you have large student housing complexes, the jurisdiction may not feel like living in an apartment complex with 18–22-year-olds is necessarily where a low-income family with children would want to live. It may make more sense for those jurisdictions to take the cash instead of having it included in the development itself.

Vice Mayor Dent said is that something we can do now? I thought there was some provision by the General Assembly we would have to seek.

Mr. Russ said we can do the incentives. It is a fairly rigid ratio of how many new units per acre you would allow them to build and how many of those would actually be set aside. Some jurisdictions hire consultants to look at whether or not it would ever actually make economic sense for someone to participate in a program like that, it is not something that we have done yet. I know it is something that Liz Webb, Housing Coordinator, would like to explore if it would be financially feasible or would it just be something that would sit on the books and never get used.

Vice Mayor Dent said the short answer is that is separate from the cash proffers.

Chair Finnegan said this may enable a future conversation about inclusionary zoning, the jury is out on whether that works.

Vice Mayor Dent said from Charlottesville I heard them say that allowing developers to essentially buy their way out of affordable housing had some unintended consequences.

Chair Finnegan said I am persuadable on inclusionary zoning. Just show me the study that says that it works, and I will read it.

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

Emily Harris Henry, a resident of Harrisonburg and local real estate agent, came forward to speak to the request. She said I do not know what everyone's background is with the exception of Richard, I know you are an attorney. Has anyone actually ever sat through a proffer meeting? Have you ever developed property in the City to understand the proffer meeting? Has anyone that is on the council ever done that? It does not feel like you are asking to be offered. It feels very much already like a quid pro quo. When you change that, it feels even more like a quid pro quo especially for local builders like myself. I am a realtor. I build primarily for families. I have a value-based system not a profit-based system. I care about the families here because I live here. I do not bring in supplies and crews from other places, take from the community and then move on to the next available space, which is what a lot of major companies do, and they do not have great reviews. The types of companies that can afford to make you large cash proffers are those types of companies. Whereas I am using local suppliers. I can tell you their first names. I know where they live. I know where their daughter takes ballet. It very much feels like a quid pro quo with proffers because it is oh if you want to build here this is what we need from you. Whereas, proffer by definition to me says what are you offering to us? Would you like to give us anything? But that is not what it feels like when you actually sit through the meeting. The second piece of that is you eliminate a lot of local builders from competing for places that would really revitalize the jobs in this community, and if you bring businesses here, that is great. I feel like your Amazon thing would be amazing, but I do not think the City has the function to build houses, so you are going to contract that anyway. But Amazon is not residential contractor, it is a business. I would love for a business to come and increase tax revenue so that our families here can see their tax impact go down for their residential housing. I feel like doing this system where you are asking for cash proffers from builders is not the best way to do it.

Joesph Eney, a resident of 420 Eastover Drive, came forward to speak to the request. He said I am all in favor of proffers. My understanding of proffers, [they] are a legal way of offering a break to builders of new development, new residential, is that correct?

Ms. Dang said proffers could be made for residential and non-residential development.

Chair Finnegan said residential has four specific places...

Mr. Eney said in most of your text behind the announcement deals with residential. My concern is residential developments are not defined. Does that mean two four-unit buildings, is a development? Or are we thinking about stuff similar to the Harrisonburg High School and South 11? The definition of terms is what I am talking about. Could this be a problem later on down the line for the administrator dealing with the proffer? Council will probably be aware of this since we have a Council representative here. The other thing that I am looking at, residential developments can be applied to public transportation facilities. Facility to me means a building or a bus stop,

correct? Or does it also mean roadway widening? I do not think I could widen [the roadway] but if I widen it is going to affect the lot size. Can I offer a proffer that keeps the roadway narrower in a development? I live in an Eastover development. The roadway is plenty wide until you get cars and trucks parked on the curb on both sides, there is a safety consideration. Definition of terms; public safety facilities, a proffered facility, what does that mean? A building? Certainly, on South Main Street there is going to be a need for something. It is a long way away from [unintelligible]. I think in favor of proffers, yes, but is there a limit to the size of the proffer or does it have to fit what the proffer is designed to accommodate? I think planning staff has to tighten up, not necessarily in the code or in the ordinance, but I think before it is even implemented, there has got to be some guidance to whoever is going to administrate the program.

Chair Finnegan asked if there was anyone else 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.

Ms. Dang said in the City code there is a reference to the Virginia Code Section 15.2-2303.4 and it says “proposed new residential development or new residential uses as defined in...” and then it references that code section. You go to that code section and there are definitions for those terms, as well as terms for public transportation facility which, to answer the gentleman's question, it could mean construction of new roads, improvements, and expansion of existing roads and so on and so forth. It is not limited to just public transit or that type of facility. There are also definitions in here for public safety and public school facilities, as well. It says, “facilities, building structures, parking and other cost directly related there to.” It does not include operational costs. In terms of the scale question, if I understood correctly, I would respond with that is where the question of reasonableness of the proffer is. Is the proffer reasonable and addressing that impact that we are trying to address?

Chair Finnegan said as it stands right now, when there is a large development coming in and it is going to create a bunch of extra traffic, we are not saying, as the City, just pay us and we will do it for you.

Ms. Dang said if a development, some rezoning proposal, if they were to cause a need for a turn lane, staff would feel that the applicant should be responsible completely for that cost. That is what they would proffer today, generally. If they agree that they are responsible for it, then they can do that.

Chair Finnegan responding to a member of the audience who wanted to speak said the public hearing is closed. However, I will allow one question.

Ms. Henry said if I came to a meeting to ask about something, and you are suggesting to me because you have a formula and a consultant, this is what the proffer should be or we recommend the proffer should be for this project, are you going to deny proposals simply because we do not have the ability to do it?

Ms. Dang said staff does not deny them but, what I think you are getting at is, staff could recommend denial of it if we felt that it is something that the applicant should be responsible for. It would be the responsibility of Planning Commission and City Council to make the decision as to whether they would approve the request or not.

Vice Mayor Dent said if what you are getting at is what you said about quid pro quo, the initial memo we got from the City Attorney said

If the amendment, in some form, is eventually enacted by Council, please note that case law in Virginia prohibits cash proffers from being used as a quid pro quo for a rezoning. Therefore, Virginia law requires that impacts from a proposed rezoning be substantiated and documented before the planning commission and governing body in order to determine if the cash proffers have a reasonable relation to the impact of the rezoning.

That answers that. It is not allowed to be, “I am not going to vote for it unless you get us cash.” That would be quid pro quo, we cannot do that. That is why the Bluestone Town Center cash proffer did not fly, besides which we did not allow it. There was no documentation of how they arrived at the amount they wanted to offer. That did not match the impacts that were documented.

Vice Mayor Dent said I would like to move that we amend Section 10-3-123 for conditional zoning to allow the acceptance of cash proffers as presented by staff.

Commissioner Baugh seconded the motion.

Commissioner Baugh continued, since I first became aware of these many years ago...it has been a long time since I have done a reread of the statute., There was a time when you could only do this if you are a big city or, knowing how Virginia politics work, you were on the list of the ones that clearly got the legislature to give you a special exception. I have to say I am happy to at least be able to second the motion to see us move in this direction. I do think it is a good idea. I do want to address some things one speaker was talking with about the proffer process. I am not in any way shape or form trying to deny your experience with proffers. What you said makes sense to me. I also know that, from staff’s perspective, they also have plenty of these other meetings with experienced developers and whatever image you have when I say something like tough eyeball to eyeball negotiations, those types of things happen. It is a set of rules that sort of has to accommodate a whole spectrum from just a resident who has suddenly come forward and I have got a land use issue and maybe there is some proffer issues, to very sophisticated projects and everything in between. I will make a little bit of a devil’s advocate point because it is almost be careful what rules you ask for because sometimes you get them. I think a piece to remember in the proffer regime is that yes, it is standard to have these proffer meetings and massaging what is going to happen, and staff may develop an opinion that they convey to a property owner or developer that we would like to see this. We think that we are more likely to recommend favorably, sure that is all a part of the process. I am going to remind everybody that, when it does get to the level of actual consideration and voting... Part of it is because of the rules is that we can only vote on what is presented to us. Planning Commission and the elected officials are prohibited to negotiate proffers during the process. I can understand that it can chafe a lot but there is also a piece to this where I support staff trying to get proposals that come to us to sort of be the finished proposals. It is not designed to be a process for continued negotiations. Once it gets to the vetting stage, that happens sometimes. but even then, because of the rules, you can decide that you do not like the

way you think the discussion is going and decide to volunteer more proffers, but we cannot ask you too. We can only go thumbs up or thumbs down for whatever the applicant proposes. Maybe it is not helpful, but I just thought I might share a broader perspective of how that process works and why things seem a little problematic or insensitive. I think, from our perspective, by the time we are voting on it up here and by the time the Council members are voting on it, they do not get to negotiate at that point. They have to vote yay or nay on whatever has been proposed. It often comes down, on a close case to, “do I think the proffers are good enough?” If I do, I am going to vote for it and, if I do not, I am not.

Chair Finnegan said I do think about if the proffers were not in the request when it got to us, that would be such a messy process. We would have to get Mr. Russ a whistle to just be up here saying could you do this, could you do that, could you give us a sidewalk? All of that needs to be hashed out before it gets here.

Mr. Fletcher said I do not know that any of our staff has ever used the term proffer meeting. I can understand how it might feel that way from an applicant. You can go through our files about how the applicant might consider proffering XYZ because there are so many similarities with your project with what others have done before you. If you are increasing density or you are changing a use dramatically in the intensity of the use, there come impacts with that. Those are the things that you might consider doing because it might make it more palatable to Planning Commission and City Council to look favorably upon it.

Chair Finnegan said I think about how many requests come to us with proffers that without those proffers, we would be denying more than we would be approving.

Vice Mayor Dent said just wanted to make a quick comment to Commissioner Baugh’s first comment that it started out with a list of Northern Virginian cities that could do this. Well, they expanded, maybe at some point, the definition to any locality that has grown by 5%. Even if that was meant for Northern Virginia, it applies to us now, so we can do this. The second point is, while we cannot require proffers, we can add conditions to special use permits on Planning Commission and on Council. That is one tool we do have, like the example before with the data centers.

Commissioner Baugh said I think it is challenging to deal with a world where your applicants are going to range from some folks at one end of the spectrum who are going to feel intimidated by anything that the governmental agencies are saying “we think it would be a good idea if you did” versus other people that you are dealing with who are walking into the room experienced and prepared to offer nothing and they think they can get by with it. We deal with those extremes and everything in between.

Vice Mayor Dent said and the other extreme of big fancy developers who want to give us money and up until now they could not.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye

Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment request passed (6-0). The recommendation will move forward to City Council on January 14, 2025.

**New Business – Other Items**

***Consider a request from the City of Harrisonburg to preliminarily subdivide property and dedicate public street right-of-way for East Kaylor Park Drive (Rocktown High School)***

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the City is requesting to preliminarily dedicate public street right-of-way to establish the extension of East Kaylor Park Drive along Rocktown High School. The plat impacts eight parcels and vacates and adjusts several property boundaries, resulting in four parcels. The subject site totals +/- 61.274-acres. The request includes variance requests from the Subdivision Ordinance to allow deviation from public street design standards. The property is addressed as 2970 East Kaylor Park Drive and is identified as tax map parcels 2-C-1, 2-D-6 through 10, and 1-E-5. Additionally, the subdivision will include dedication of a temporary construction easement for the neighboring property owner (Steven Kia) to allow for construction on their property.

*Land Use*

The Comprehensive Plan designates this site as Commercial and Governmental/Quasi-Governmental and states:

*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.

*Governmental/Quasi-Governmental*

These lands include properties owned or leased by the City of Harrisonburg, the Commonwealth of Virginia, the federal government, and other governmental /quasi-governmental organizations. Examples of entities included in this category are City Hall, City administrative and support facilities, Harrisonburg City Public Schools, James Madison University, Rockingham County Administrative Offices, Rockingham County Public Schools, and the Massanutten Regional Library. Properties within this designation may already include uses supplied by the entities mentioned or are planned to be used by such public entities for any type of uses necessary for their services. Some Governmental/Quasi-Governmental uses, such as James Madison University, other state agencies, and the federal government are not subject to some of the City's land use regulations. City parks are included in

the Conservation, Recreation, and Open Space Category. Furthermore, it should be understood that properties that are owned or leased by the City, which may not be designated as Governmental/Quasi-Governmental by the Land Use Guide, may be developed with public uses, as defined by the Zoning Ordinance, to operate and provide services supplied by the City in any zoning district, which as of the approval of this document, is every zoning district in the City.

#### *Transportation and Traffic*

A Traffic Impact Analysis (TIA) for the development of Rocktown High School was performed during the engineered comprehensive site plan process. The TIA had determined that multiple improvements would be necessary, some of which included along South Main Street at the right-in right-out intersection with East Kaylor Park Drive, at the intersection at West Kaylor Park Drive, and at the South Main Street intersections of Pointe Drive and at Mosby Road. The improvements included new turn lanes, changes in traffic signalization and signal times, pedestrian improvements, and a new bus shelter. While the majority of the TIA recommended improvements have been implemented, some of the improvements have yet to be completed. For example, there are proposed improvements to South Main Street and Pointe Drive that were revised in the City's 2022 South Main Street Corridor Study. These improvements have been funded by the City but have not been constructed.

#### *Public Water and Sanitary Sewer*

As required, all lots would be served by public water and public sanitary sewer. The preliminary plat shows how proposed water and sanitary sewer lines will serve each new lot.

#### *Subdivision Ordinance Variance Requests*

The variances being requested are from Subdivision Ordinance Sections 10-2-41 (a), 10-2-61 (a), and 10-2-66, which are associated with public street design standards. Specifically, Section 10-2-41 (a) states that “[p]roposed streets shall conform to the standards and specifications outlined in the Design and Construction Standards Manual (DCSM) except that variances to the standards for streets, alleys, blocks, easements, sidewalks, and all such related features may be approved on a case-by-case basis by the city council when particular objectives are met.” Section 10-2-61 (a) states that “[t]he subdivider is required to make all such improvements to streets, including grading, subgrade, surface, and curbs and gutters, in accord with the requirements of the city's DCSM.” And Section 10-2-66 states “[a]ll utility, street and alley improvements shall be provided in each new subdivision lying wholly or partly within the corporate limits of the city in accordance with standards and specifications of the city.”

In particular, the City is requesting to deviate from the Design and Construction Standards Manual (DCSM) Sections 3.1.4, 3.6.4.1, and 3.6.3:

- Section 3.1.4 (Public Street Right of Way Width), right of way widths shall meet widths depicted on the DCSM Typical Cross Sections. This project has provided variable right of way width due to on-street parking, sidewalks, and shared use paths. These right of way widths are acceptable to Public Works as they are consistent with VDOT-approved right of way widths for a local street.
- Section 3.6.4.1 (Public Street Width), street widths shall be as shown in Appendix F, which states for a local street a width of 34 feet measured face of curb to face of curb is

required. This project has provided 26 feet of street width in sections where no parking is permitted along the street and 34 feet of street width in sections where parking is permitted on one side of the street. These widths are acceptable to Public Works as they are consistent with VDOT-approved widths for a local street.

- Section 3.6.3 (Public Street Maximum Horizontal Curve), the maximum horizontal curve radii shall be 23 degrees (250 ft). The project has provided three (3) curves along East Kaylor Park Drive, identified as C1 = 225 feet, C2 = 225 feet, and C4 = 228.70 feet. These curve radii are acceptable to Public Works as they are consistent with the VDOT geometric standard “GS-8 Urban Local Street,” which allows a minimum horizontal curve radii of 155 feet.

Staff supports all of the requested variances.

#### *Recommendation*

Aside from the variance requests as described herein, the preliminary plat meets all other requirements of the Subdivision Ordinance. Staff supports the variance requests and recommends approval of the preliminary plat.

Chair Finnegan asked if there any questions for staff.

Chair Finnegan asked whether the Director of Public Works would call in.

Ms. Rupkey said when I spoke with you yesterday there was a chance that Tom Hartman would be able to come to the meeting, but we did not feel that was necessary. You did ask a question on the site tour, yesterday, about the traffic counts on each end of Kaylor Park Drive. Since they have done the TIA [traffic impact analysis], they have not done a traffic count of the area again. With that TIA study, the southernmost entrance was predicted to be the entrance that had the most traffic. Additionally, there have been exits off of the site split between the two main entrances to East Kaylor Park Drive.

Chair Finnegan said the Design and Construction Standards Manual [DCSM] has widths that are wider than the VDOT approved widths for local streets, why?

Mr. Fletcher said you have to remember that the DCSM, similar to the Zoning Ordinance, was written a number of years ago when there was a different philosophy. There were probably reasons those before us wrote those design criteria. We are having those debates monthly when proposals come before us because you are seeing us come to you with variances to reduce widths and all these sorts of things. There is good reason to have the debate because there is planning philosophy of different things and then you have practicality and what people expect on their streets. You hear people complain about the narrow width of the street, when you are parking on both sides. There are so many different approaches to it. Our original DCSM comes from the early 90s. It was amended pretty heavily in the early 2000s, and then another slight adjustment in 2014. It is just an evolving thing.

Ms. Dang said I am guessing, I do not know this for a fact, but I would guess that when these widths were determined, VDOT probably has a similar standard. It is just that VDOT now has new



subdivision standards that they have adopted that allows the reduced widths, which is why Public Works has been okay with these. They do want to move towards amending the DCSM and just have not had an opportunity to do that

Chair Finnegan said that does answer my question. because more and more studies are coming out. We want cars to go fast on the interstate, and in neighborhoods we want cars to go slow. The wide streets do not aid cars going slow. Similar to the off-street parking minimums, staff may in certain cases want a reduction in parking, but the Zoning Ordinance says what it says. Obviously, the street width is not the purview of this body, but I would like to see that reduced.

Mr. Fletcher said in some ways I do want to say that it is kind of a purview of you all because it does come from the subdivision regulations which you all have some say in. Do not feel like you cannot share those concerns or that you will not get those opportunities because when we bring you the Zoning and Subdivision Ordinance rewrite, it will be a component for those.

Chair Finnegan said I am thinking specifically of when we were trying to address the concerns of the neighbors from Quarry Heights. Could we condition a 30-foot setback from the road? No. We could condition a 30-foot setback from a building. It is distinctions like that.

Vice Mayor Dent said we can condition the townhouses because they had a special use permit, but not the single-family homes. Can we address this in the subdivision rewrite?

Mr. Fletcher said it depends on how we go about it. It is sort of a yes maybe. It is yes, we can, but it depends on internally to Public Works and us about how we want to regulate it. Should it be in the DCSM? Should it be in the subdivision regulations? A lot of these specifications use to be systematically written out in the subdivision regulations. In about 2012, we took them out and said just refer to the DCSM.

Chair Finnegan said that way there are not any inconsistencies between the two documents. I support this. I have no issue with it.

Commissioner Nardi said I move to approve.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the preliminary plat request passed (6-0). The recommendation will move forward to City Council on January 14, 2025.

## **Public Comment**

None.

## **Report of Secretary & Committees**

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

Chair Finnegan said there were a couple of rezoning requests. One near Silver Lake for Silver Lake Welding. There were some neighbor disputes, and the Planning Commission was basically saying, “we are not here to mediate neighbor disputes. We are here to do the rezoning or not.” It was to expand the property where the welding operation was taking place, to expand for some additional parking. That was approved, unanimously. There was a request off of Port Republic Road, right near the intersection of Boyers Road, to rezone six almost seven acres from A-2 to planned multi-family. It is right across from the fire station. There were some concerns. The planning staff wanted the entrance to line up with the fire department. There were also concerns about whether the fire department and the rescue staff can get in and out if there is an entrance for a multi-family development across the street. It does meet VDOT standards, and that is what it came down to. Some folks did not like it, but it did meet standards, and VDOT did not want the entrance to skew the intersection. That was approved 5-0. There were several staff generated amendments to amend the minimum front setback requirements in low density residential R-1 to allow accessory structures like accessory dwelling units to be built closer to the front setback line than the primary structure. Basically, to reduce the setbacks and allow accessory dwelling units because of the way some houses are situated, the ADU could actually be in front of the primary building. That was approved. Staff generated an ordinance amendment to amend setbacks and property owner association requirements in planned industrial district, planned commercial districts, to allow structures with engineering foundations to be built in the 100-year floodplain. It was to bring it in line with several other similar zoning allowances. Some unfinished business they did not get to, and that would probably be coming up next month to limit the number of building permits that can be issued within a development project during any rolling 12-month period.

The big one was Energix, the utility solar developer, wanting to amend the zoning ordinance that caps solar in the County. Right now, it reads that no more than 50 acres may be approved for an individual large solar facility. The idea behind that was to make sure the benefits and any negative externalities are kind of spread out around the county. We are not just taking one side of the County and covering it in solar. A total cap of 1,800 acres, in aggregate. That is 50 acres here, 50 acres there, 50 acres all the way up until 1,800 acres, then no more solar can be built in Rockingham County. The exception that Energix was seeking was up to 20% of the 1,800-acre cap may be occupied by large solar facilities that integrate, maintain and use agri-solar, sheep grazing underneath the solar panels and all that kind of stuff. I think they were also saying pollinator fields. There was some debate about whether that is agricultural. Ultimately that was shut down, unanimously recommended for denial because the County spent years...it kind of reminded me of the short-term rental [STR] saga we went through in 2018 or 2019 trying to figure out how do we zero in on this and get the regulation that we want. I think the Rockingham County Planning Commission is like we already did the work on this. We are not interested in amending it to allow agri-solar. There is nothing in the current amendment that prohibits the use of sheep or any

agricultural use. The argument came down to the primary land use is energy production and the second land use is agricultural. They denied it.

### ***Board of Zoning Appeals Report***

None.

### ***City Council Report***

Vice Mayor Dent said [November] 26 we dealt with a couple of things from here. The 731 Jefferson Street where they had a fire in the house and the rezoning of that. The rezoning of Rockingham Drive where they were making it into two lots. The big deal was Quarry Heights, the reduced setbacks and other proposals. Got public comment, and we passed it. Last night, there were no public hearings. There were consent agenda things including those couple, Quarry Heights and the preliminary plats. New thing for making an appointment to have cardboard collected for recycling. We approved the water service at Granite Farm. The preliminary subdivision of Weston Park on Port [Republic] Road and the subdivision on Rocco Avenue, Park Apartments. I do not remember seeing that one, was that a while back?

Mr. Fletcher said that was to allow a lot to not have public street frontage. Deviations from the easement.

Vice Mayor Dent said a couple of these were when I was not here. Subdividing for the fire station, we approved. Reimbursement resolution for Dry River and North River, did that come here? And then some boards and commissions.

Chair Finnegan said I did have a question about Granite Farm. Did Mr. Collins weigh in? We had some questions about water. You are talking about the one in the County right?

Vice Mayor Dent said yeah right over the line from Quarry Heights.

Chair Finnegan said was there any discussion about the amount of water that would be needed out in the County, in addition to the water that would be needed to serve Quarry Heights?

Ms. Dang asked was it water or was it sanitary sewer? Where Granite Farm had concerns about sewer capacity, why does Quarry Heights, right next door, not have the same concern? What we found out from the Deputy Director, David Gray, was clarification that they are served by two separate [sewer] systems coming from the two properties. The undercapacity issue is on the Granite Farm side.

Chair Finnegan said because that hill is there.

Mr. Fletcher said they are two different interceptors that go to two different directions.

### **Other Matters**

*Review Summary of next month's applications*

Ms. Dang said we have one public hearing item. The other items that I have listed here are the typical things we take care for January, such as the election of Chair, Vice Chair, Secretary, and appointment of a BZA member for 2025. Then a public hearing for a Zoning Ordinance amendment. The Zoning Ordinance amendment is related to that 895 North Liberty Street project where you all tabled the item and asked staff to consider a special use permit or some ability to allow that use to continue. We are going to bring to you all a proposal related to the nonconforming use section of the Zoning Ordinance. We will also present to you all the updates to the Planning Commission's rules and procedures for your review and consideration.

Vice Mayor Dent said Planning Commission functions a little more informally than City Council in that we can have discussion or motions first. In City Council, we are supposed to have a motion and a second before we even discuss it.

Mr. Russ said technically it does not matter. The traditional, stuffy conversative body way of doing things is having the motion and the second, probably to help guide discussion. Whichever way works better for the body is fine.

Commissioner Baugh said I kind of like the informality. Again, this is not an open legislative body where you are concerned about people getting the floor and doing nongermane stuff. When a public hearing ends on a matter, it is on the agenda, we know what we are talking about. If anyone wanted to wander that would be different. Everybody knows what we are talking about whether someone has actually made a motion or not. Sometimes when you cannot talk about it before anybody makes a motion, everybody might sit there for a while. Maybe people want to talk about it before they decide what motion to make.

Vice Mayor Dent said to me the difference works because this is after all an advisory body. We do not have a binding yes or no vote. Several times, I have seen us discuss it for a while before we have formed what we want to make a motion for.

Chair Finnegan said I view our role as being deliberative. It is good to question why we do it the way we do it and change it if need be. I do think one change that we have tried to implement more recently is when we are doing public hearings is to allow the applicant to speak and then open up the public hearing because if you do it the other way around you are saying three minutes for everyone else but the applicant gets more time. It confuses things.

Vice Mayor Dent said you mean we ought to have the applicant to have a slightly longer time?

Chair Finnegan said yes. Often because there are a lot of questions and answers. If we open the public hearing and say everyone limit yourself to three minutes except for this person, it creates confusion and it creates a sense of unfairness.

Vice Mayor Dent said in City Council, we open the public hearing and traditionally the applicant goes first, and they have a longer time and a presentation typically and then the true public hearing happens.

Chair Finnegan said we have been doing it slightly different here. The applicant speaks, questions and answers, then public hearing.

Commissioner Baugh said there have also been times, particularly when there is a lot of public interest, where non-applicants wanted to do a PowerPoint. There was an understanding that the first speaker goes, and we give them some leeway, maybe almost up to equal time. After that, you shift over to... If you are opposed to this, just stand up so that we can read the room. If you have something new to tell us... Five people might come up and just say that they agree with what the last person said.

*Adjournment*

The meeting adjourned at 7:56 PM

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Brent Finnegan, Chair

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Anastasia Montigney, Secretary