



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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August 31, 2023

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Consider a request from Fast Lane Auto Tech LLC for a special use permit to allow manufacturing, processing and assembly operations at 80 Ashby Avenue.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: August 9, 2023

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in September 2014, a portion of the property was rezoned to B-2C from R-2. The proffers from the 2014 rezoning did not limit the uses to the property but were related to providing buffers and fencing. Per the proffers, the property is required to leave 10 feet of the existing vegetation, where the adjacent property is zoned residentially. In addition to the existing vegetation, the proffers also committed the property owner to plant and maintain evergreens within the 10-foot buffer. Proffers also require a 6-foot opaque fence along the same boundaries where the vegetation is required.

The applicant is requesting a special use permit (SUP) to allow for manufacturing, processing and assembly on a property that is zoned B-2 and B-2C. The property is currently occupied by Fast Lane Auto and is addressed as 80 Ashby Avenue. The applicant is proposing to convert two of the existing bays into a space for the manufacturing component for a dietary supplement business. The proposed facility will primarily be a production center with mainly online sales and direct to store sales for brick-and-mortar stores.

Land Use

The Comprehensive Plan designates this site as Mixed Use and states:

The Mixed Use category 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 nonresidential 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.

Staff believes that the proposed use, with the appropriate SUP conditions, conforms with the Mixed Use area designation.

Staff recommends conditions to restrict the SUP to only be applicable for a dietary supplement manufacturing operation or a substantially similar operation, and to restrict the operation to no greater than 2,500 square feet of gross floor area. If in the future the operator wants to expand the use, a new SUP shall be applied for, reviewed, and approved.

As is already controlled by the Zoning Ordinance, this particular SUP limits the number of employees to no more than 15 people on a shift. The applicant is aware of this and is planning to have no more than two or three employees on a shift. For delivery to the property, most ingredients that are planned to be used will be delivered by smaller delivery trucks on a weekly or biweekly basis.

Transportation and Traffic

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

Public Water and Sanitary Sewer

Staff has no concerns regarding water and sanitary sewer service availability for the proposed development.

Recommendation

Staff recommends approval of the SUP with the following conditions:

1. The special use permit shall only be applicable for a dietary supplement manufacturing operation or a substantially similar operation.
2. The special use permit shall be restricted to no greater than 2,500 square feet of gross floor area.

3. 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.

Chair Finnegan asked if there any questions for staff.

Vice Mayor Dent said again, there is that odd phrase “substantially similar”, I raised that to Adam last night. If a future use comes up how and who determines what is substantially similar to a dietary supplement? How different does it have to be before it is not similar, I do not know.

Ms. Rupkey said it is up to our Zoning Administrator at the time to make that decision of what is substantially similar. We did have the applicant in their letter explain sort of what they are doing. Just manufacturing the supplements or...it is not giant manufacturing, but it is a similar scale of size. It is ultimately up to the Zoning Administrator.

Chair Finnegan said you could also argue on what is a nuisance. One person’s nuisance is another person saying it is okay. I think it is open to someone’s interpretation there.

Chair Finnegan then opened the public hearing and invited the applicant or applicant’s representative to speak to this request.

Hearing no public comment, he closed the public hearing and opened the request for discussion.

Commissioner Armstrong said who inspects the food producing type of manufacturing?

Ms. Rupkey said with discussions that I have had with them [the applicant], they were talking with the Department of Agriculture.

Chair Finnegan said in the applicant’s letter they did say that they were...I am operating on the assumption that they say dietary supplements, they are taking powder and putting it into capsules or something.

Ms. Rupkey said from what I understood, yes it is similar to...they want to be licensed by the GNC vitamin type stores to be able to provide products to them and then additional various other companies, like salons, to sell to.

Vice Mayor Dent said is there a retail operation here that is sold both online and to brick-and-mortar stores? It does not sound like they are going to be selling it right there.

Ms. Rupkey said from what I understand, there is not any of that coming in, but it is zoned B-2 so by right they could, but as far as I am aware it is primarily online sales.

Commissioner Alsindi said I was just trying to make a comment that the word manufacturing sometimes gives that kind of understanding that there will be bangs. It is in fact production and its more soft assembly line if I am not mistaken. Otherwise, it would not even be an issue for the

neighborhood if it was manufacturing, it sounds heavy metal and putting together stuff. So, I think it is a light production line which is fine in my understanding.

Vice Chair Byrd said I was thinking about what would be substantially similar and if for instance a particular not major, but it is still a chemical operation started to be considered, I would have concerns about whether that was still substantially similar to this use and therefore that language would come into view, in my view in the future if something like that were to occur. I feel that the conditions addressed any future concerns that may come up and then the body at that time can make that decision based what the community feels at that time. I would make a motion to recommend approval of the special use permit request with suggested conditions.

Vice Mayor Dent seconded the motion.

Chair Finnegan said I want to clarify before we take a vote. All of us are operating under the assumption that it is some sort of pill manufacturing, and it is not using caustic chemicals, this is our understanding because the applicant is not here. If it is not substantially similar to that and I think it could and should be revoked in the future.

Mr. Fletcher said again, I want to jump in because I am not really sure what you mean by caustic chemicals and what your concern might be. Anything that would be of a chemical nature would be regulated by the, I presume, the Department of Agriculture and Consumer Services. We do not have the details of every single production method they are using. So, at the time that they get their building permits and they have to put in whatever ventilation systems in all of those things for the building code, if there are questions that arise the Zoning Administrator would always interpret whether or not it still fits the special use permit category. This body never has to worry about interpretation, that is the responsibility of the Zoning Administrator. The concerns that you bring up made me question what you really meant by that.

Chair Finnegan said I think what I mean is right now we know that there is motor oil and loud drills and things like that happening in that building. They are manufacturing dietary supplements and I am under the assumption that they are not going to be noxious fumes and stuff coming out of there if they are just assembling, putting powder into pills and putting pills into bottles. That is the assumption that I am operating off of.

Vice Mayor Dent said my question and what I hear from Vice Chair Byrd is more of the substantially similar potential future operations. If they are still doing light processing and manufacturing, what if it becomes a question of caustic chemicals and potential environmental hazards and the permits for the ventilation and such.

Mr. Fletcher said there are a lot of uses that require ventilation. Painting of vehicles, repair of vehicles, hair salons require ventilation systems, when the downtown brewery is making beer, you can smell it all throughout the downtown. Again, I just want to make sure I understand what you mean by that so that we have an understanding to what your concerns might be.

Vice Mayor Dent said for me it is just what would trigger the threshold of evaluation of whether future businesses substantially similar or if it needs to be revisited or limited somehow.

Mr. Fletcher said not to be repetitive, but the Zoning Administrator would make that call.

Commissioner Baugh said around here that would mean a complaint or something else that has brought it to....

Mr. Fletcher said sure, we have put it through significant review during the building permit review. There are a ton of things that the building division looks at and that zoning would look at. They will look at what the request is, what is the manufacturing production, all of those things.

Commissioner Baugh said once it is up and operating, there is a good chance, unless it came to our attention.

Mr. Fletcher said yeah, I mean when things come in for review and they are getting mechanical, and electrical permits and plumbing permits and all of these things, they are triggers that sort of bring to attention specific matters and then building inspections walk down the hall and say “hey hold up a second here zoning, let's talk about this.”

Ms. Dang said condition one where it talks about the special use permit being applicable for a dietary supplement manufacturing operation or substantially similar operation, that is talking about the activity. They are manufacturing dietary supplements. Is a future activity similar to that, that is the first condition. The third one is, if it becomes a nuisance, I am hearing the discussion about caustic vapors and ventilation, whatever it might be, if it becomes a nuisance, we have the option to recall the permit and review it especially a use permit. It is not totally an interpretation just by the Zoning Administrator because condition number three says Planning Commission and Council can recall the special use permit to review it if there are ever concerns raised, complaints and what not.

Vice Chair Byrd said when I was bringing up my example, I was just using it to wrap my head around the first condition not so much to make it sounds like a restrictive or definitive thing as into how this particular application. I was just saying that once it is up and running that dietary manufacturing process, if in the future it was to change drastically to what it no longer is into still a manufacturing process, these conditions enable me to go oh now I have a reason to...

Mr. Fletcher said I heard the fumes and the chemicals, and I mean there are lots of by right businesses that use a lot of those things.

Vice Mayor Dent said come to think of it, what Chair Finnegan raised that right next door are auto repair with oil and banging and fumes and what not, presumably this is part of the site planning and such but how would this manufacturing facility be shielded from that, they do not get the fumes as badly.

Mr. Fletcher said that is all taken care of during the building review.

Chair Finnegan called for a roll call vote.

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| Commissioner Armstrong | Aye |
| Commissioner Baugh | Aye |
| Vice Chair Byrd | Aye |
| Vice Mayor Dent | Aye |
| Commissioner Alsindi | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the special use permit passed (6-0). The recommendation will move forward to City Council on September 12, 2023.