

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**July 12, 2023**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, July 12, 2023, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Brent Finnegan, Chair; Heja Alsindi; Dr. Donna Armstrong; Richard Baugh; Valerie Washington; and Laura Dent, Vice Mayor. Adriel Byrd, Vice Chair arrived late.

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

Chair Finnegan called the meeting to order and said that there was a quorum with seven members present.

Chair Finnegan asked if there were any corrections, comments or a motion regarding the June 14, 2023 Planning Commission minutes.

Commissioner Baugh moved to approve the June 14, 2023 Planning Commission meeting minutes.

Commissioner Armstrong seconded the motion.

The motion to approve the June 14, 2023 Planning Commission minutes passed (6-0).

**New Business – Public Hearings**

***Consider a request from Ceasar LLC for a special use permit to allow religious, educational, charitable, or benevolent institutional uses at 1151 and 1157 South High Street***

Chair Finnegan read the request and asked staff to review. Note that Vice Chair Byrd joined the meeting during the presentation.

Ms. Rupkey said the applicant is requesting a special use permit (SUP) per Section 10-3-97(9) of the Zoning Ordinance (ZO) to allow religious, educational, charitable, or benevolent institutional uses which do not provide housing facilities in the M-1, General Industrial District. The +/- 2.12-acre property is addressed as 1153 and 1157 South High Street and is identified as tax map parcel 20-B-2.

The Manufactory Collective is envisioned as a shared space for multiple tenants, providing access to shared facilities and equipment to support their business ventures. Additionally, the Manufactory Collective has tenants that want to offer community-oriented classes to facilitate skills development. One prospective tenant intends to conduct pottery classes open to the public, while another intends to teach children, primarily aged nine to 13, 3D printing skills and career development. Although vocational schools are permitted by-right within the M-1 district, staff determined the specified age range does not align with vocational education, which typically

includes organized educational programs directly preparing individuals to enter career fields requiring specialized training and often targeting post-secondary education.

#### *Land Use*

The Comprehensive Plan designates the property as Limited Commercial and states that:

These areas are suitable for commercial and professional office development but in a less intensive approach than the Commercial designation. These areas need careful controls to ensure compatibility with adjacent land uses. The maintenance of functional and aesthetic integrity should be emphasized in review of applications for development and redevelopment and should address such matters as: control of access; landscaping and buffering; parking; setback; signage; and building mass, height, and orientation. It is important that development within Limited Commercial areas does not incrementally increase in intensity to become similar to the Commercial designation. Efforts should be made to maintain the intent as described above.

Staff believes that incorporating educational uses into the site aligns with the goals outlined in the Comprehensive Plan. Light commercial uses typically exclude heavy retail and industrial activities, and education is considered a use that staff deems appropriate for Limited Commercial areas.

The applicant is aware that parking, parking lot landscaping, and other zoning and other code requirements will be addressed during the building permit phase.

#### *Transportation and Traffic*

During review, staff had concerns about the entrance on the southern end of the property. This entrance to the property does not meet the Design and Construction Standards Manual (DCSM) standard for a commercial entrance. Among other standards, commercial entrances are required to be a minimum of 30 feet in width. Staff was concerned about the possibility of vehicles queuing in the right-of-way along South High Street. To address these issues the applicant intends to establish a one-way entrance at the southernmost entrance, directing vehicles to circulate around the rear of the property and to exit from the northernmost entrance. The entrance in the center of the property will allow both ingress and egress movements. See Exhibit A. Staff recommends conditioning the approval of the SUP by requiring the property owner to install entry and exit signs before the operations pertaining to the SUP begin.

Know that there is an existing easement on the adjacent property to the north (identified as tax map parcel 20-B-4A) that grants access for the subject property. (Reference deed book 1190 page 374).

#### *Public Water and Sanitary Sewer*

Staff has no concerns regarding water and sanitary sewer service 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 the educational uses as presented in the application or a substantially similar operation.

2. Before the operations pertaining to the special use permit begin, signs indicating one-way entrances and exits shall be installed along South High Street in appropriate locations.
3. If in the opinion of the 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 were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Debbie Erwin, applicant for this request, came forward to speak to this request. She said my day job is as the executive director of the Shenandoah Community Capital Fund. So, my entire lines work is helping entrepreneurs start small scale business. Nate over there is a mechanical and aerospace engineer who can help these entrepreneurs with the redesign of their products. This whole entire idea came to light as I have been working with entrepreneurs over the past seven years with SCCF as we have found that there is a lot of constraints when trying to get their prototype ready to scale. As we have been working with entrepreneurs we have realized if we can create a coworking style thing similar to what you see with Harrisonburg Innovation Hub and Student Innovation Hub but for manufacturers can we start really leaning into the leading industry within the Shenandoah Valley of light manufacturing. So, with that we have been working on this project for the past year. It is under construction currently and so we are hoping with this special use permit we can really create an environment for creativity and innovation to produce more products and economic vibrancy for Harrisonburg and the surrounding area.

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

Commissioner Alsindi said do you believe that the place provides the proper environment for learning there given that it not vocation, so it is more of a learning specific to a certain age of applicants and students? Being on the street over there, in terms of the calmness and quietness nothing that distracts and interrupts the education process.

Ms. Erwin said the current education request that we have under the special use permit is particularly within one area of the building. You will see anchor spot 104 I believe it is on there and that is one reserved classroom. It is already blocked off with doors and things like that. The main entrance for that parking lot is around back which makes it easy for parents to drop off for the camps that this particular tenant is wanting to leverage it for. Not only is that educational environment there, but it is surrounded by more quiet innovation spaces which are open work spaces. The actual machine shop where your louder sounds are going to be along with your other pieces of equipment are actually around the corner in between two cement walls on a concrete slab. We have made sure for noise we are going to have to do some panels around the building, but his space is enclosed for his one training area to make it easy for those nine to 13 year-olds to really dig in to additive and subtractive manufacturing.

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

Vice Mayor Dent said to me, it partially fills the giant hole left behind when Larkin Arts was closed downtown. What a wonderful space that was for arts and creativity. In fact, I know one of the people in it. The one who is creating the pottery studio and they did have us do the Downtown at Larkin Arts. This is a much more spacious and much broader perspective in trying to get businesses off of the ground so that is welcomed as well as kind of a manufacturing hub. What I wonder about a little bit, I guess I could have asked the applicant this, is the connection with JMU. I saw that there was some collaboration. There is the JMU makers space. I am seeing the applicant nodding, so yes. Overall, I think this is a great addition to the City. Now as I understand the special use permit is really just required because of the age of the children they want to have classes for.

Commissioner Baugh said and the nature. I mean the pottery could be for adults but that is not vocational.

Vice Mayor Dent said okay. Educational, artistic whatever. If staff has figured out what will support what they are going to do there, then I am in support of it.

Chair Finnegan said any other thoughts on this? I would agree with that. I think these types of spaces particularly when you see more and more office spaces potentially being vacant. We need to find ways to repurpose certain spaces and find ways to support new businesses, small businesses, people giving...It enriches the community and I think helps the economic development in the community. I would be in support of this. Any other thoughts? Motions?

Commissioner Washington said it does seem like a very creative use of space and then location wise you have a variety of uses around it. It looks like potentially walkable, easier to get to for folks in the neighborhood as well as people getting to the location.

Commissioner Baugh said I will go ahead and add to it. I know Zoning Ordinance amendment stuff is further down the road then we think would be ideal. Of course, emphasis has been residential not many industrial, but I can sort of remember the first time I heard of what I will call sort of a similar type of request. We actually did lose, this business decided not to locate in Harrisonburg. We had the flexibility. I think the underlying point is that for some of these industrial/commercial types of categories that traditionally our Zoning Ordinance covers it quite well. We sort of defined them and they were in their own little boxes and more and more we see these sorts of more innovative and flexible efforts and suddenly you find that in a world where you wanted to look at things as surely industrial or surely commercial. We cannot teach the class, or we cannot cook the stuff in the back, but we need to do because there is a food component even though that is not really what we are doing. I think there is a need to have this type of flexibility. I will go ahead and move approval of the special use permit request with the conditions as presented by staff.

Vice Mayor Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Aye

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

The motion to recommend approval of the special use permit passed (7-0). The recommendation will move forward to City Council on August 8, 2023.

***Consider a request from Blue Stone Designs LLC to rezone three parcels at 201, 203, 205, and 207 Broad Street, and 264 and 266 East Wolfe Street***

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the applicant seeks a rezoning of their property to bring the property into compliance with the Zoning Ordinance (ZO). On August 10, 2022, the property owner submitted a building alteration permit application intending to update outdated plumbing and electrical systems by furring out existing walls. On August 31, 2022, the permit was approved and issued. However, a Community Development Building Inspector discovered that additional work had been carried out without the necessary permits. On March 20, 2023, the property owner submitted a building alteration permit application to rectify the situation. It was at this point that zoning staff became aware that the current use of the property did not conform to the R-2, Residential District regulations. The property owner was informed that in order to obtain approval for the permit, they would need to prove nonconformance by providing substantiating evidence that the use had been legally established and maintained over time. However, despite efforts made, the requested documentation could not be provided, leaving rezoning the property to the B-1, Central Business District as the sole viable option to ensure conformity for the existing residential uses. The processing of the building alteration permit has been suspended pending the outcome of the subject rezoning request.

If the application for rezoning is denied, the applicant will be required to bring the buildings into compliance with the Zoning Ordinance unless they are somehow able to demonstrate nonconformance. The applicant is requesting to rezone a +/- 19,000-square foot property from R-2, Residential District to B-1C, Central Business District Conditional. The properties are addressed as 201, 203, 205, and 207 Broad Street, and 264 and 266 East Wolfe Street. The three properties are identified as tax parcels 34-O1, 2, and 3. There are currently three illegal multifamily buildings on the property. Each building has four dwelling units.

*Proffers*

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

1. the [sic] subject properties shall only be used for residential buildings, except that any allowed by special use permit shall be permitted as approved by city [sic] Council.
2. All current parking on the property along East Wolfe Street that requires backing into the public right-of-way shall be eliminated. The property owner shall be responsible for removing gravel so that the area does not look like a parking area (e.g. seeding the area

with grass, landscaping, or installing other structures or features to discourage parking that backs into the public right-of-way). This work must be completed within six months of City Council approval of the rezone [sic].

3. Structures/Buildings shall be no taller than 52 feet in height and limited to no more than 4 stories.

The B-1 district allows many types of non-residential uses including, but not limited to, retail, restaurants, offices, and hotels. If approved, proffer #1 eliminates the property's ability to contain, by right non-residential uses as the property is a transitional area between the residential neighborhood and higher intensity uses that are typically found in the B-1 district.

The ZO prohibits multifamily dwellings to use public right-of-way for maneuvering in and out of parking spaces. Thus, with Proffer #2, the applicant will change the existing gravel area along East Wolfe Street in a way to discourage parking that backs into the public right-of-way; this can be done by grass, landscaping, or installing other features.

The B-1 district also allows a maximum building height of 75-feet. While there are currently units on the property, proffer #3 is intended to address any concerns someone might have that if in the future a new building is constructed on the property; the building's maximum height would be limited to 52 feet and no more than four stories.

#### *Land Use*

The Comprehensive Plan designates the property as Mixed Use, which is described as:

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

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

Broad Street is the transition area between planned residential uses and the mixed-use area of downtown. Staff is appreciative of the applicant's willingness to keep the property residential through the proffers, as well as, limiting building height. Staff believes that the proposed use with the submitted proffers conforms with the Mixed Use area designation and abutting Neighborhood Residential designation.

Staff suggested the applicant consider proffering either to build a sidewalk along East Wolfe Street or to dedicate public street right-of-way or a public sidewalk easement along East Wolfe Street so that the City could later construct sidewalks along East Wolfe Street. At this time, the applicant is not comfortable proffering to build the sidewalk or to dedicating public street right-of-way, or to dedicate a public sidewalk easement. While staff would like to promote the interconnectivity of the City's sidewalk network in this area, staff understands some of the applicant's hesitations and the fact that constructing sidewalk adds cost to the overall housing cost.

#### *Transportation and Traffic*

A traffic impact analysis (TIA) was not required for the rezoning request. While the applicant has not proffered a minimum number of off-street parking spaces, there is an alley behind the properties that gives residents the ability to park behind the buildings. Residents can also park on City streets. Given the parcel's size, location, alley access, on-street parking abilities, and the submitted proffers, staff does not have concerns with off-street parking matters.

#### *Public Water and Sanitary Sewer*

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

#### *Housing Study*

The Harrisonburg Comprehensive Housing Assessment and Market Study designates this area as Market Type A. Market Type A areas include "an emphasis on increasing density through zoning changes, infill development and housing rehabilitation to maintain the quality of housing."

#### *Recommendation*

Staff is recommending approval of the rezoning.

Chair Finnegan asked if there any questions for staff.

Commissioner Armstrong asked if I remember right, it is currently two stories? So, this would be allowing an additional two stories?

Ms. Rupkey responded or up to 52 feet in height. As they are right now, they are not the four stories that I am aware of.

Commissioner Armstrong said no it looked like two to me. They are proffering no more than four stories but there are currently two. I am surprised that they are proffering up to four.

Ms. Rupkey said that proffer was suggested by staff and was similarly modeled to the next-door property if you remember 211 Broad Street they did a very similar rezoning to B-1 to allow for

apartments in B-1. They did the same height restriction so kind of keeping with the consistency of it. And if they were to say tear down what they have there, they could go up to that, 52 feet or two stories.

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

Vice Chair Byrd asked the current zoning has how many feet in height?

Ms. Rupkey answered 35.

Vice Mayor Dent said I think this is more of a meta-comment. It seems like we keep having these square peg in a round hole rezonings. Zoning it to business so that we can have apartments? Or zoning it to B-1 even though...that whole thing I will go through that we voted in City Council. So, all of that to say that I am really looking forward to the zoning rewrite so we can make these things much more simple and clear and what they are intended for instead of things that do not really fit just to make it work.

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

Bryan Wilfong, applicant, spoke to this request. He said I am definitely eager to work with the City. I am certainly willing to answer any questions you have about the property. Part of the parking that we are eliminating there was...we redid a parking lot behind the building so that the residents of the building would have a place to park. So, we are not totally getting rid of the parking just trying to prevent the illegal part as Meg had mentioned back into one end of the public street. Any questions you all have I am willing to answer.

Commissioner Armstrong asked these are all rentals, right?

Mr. Wilfong answered yes ma'am.

Chair Finnegan asked if there were any questions for the applicant's representative. He asked if there was anyone in the room or on the phone wishing to speak to the request.

Thomas Jenkins, a resident at 375 East Wolfe Street, came forward to speak the request. He said I have been really excited to see the improvements they have made to this. I am a little challenged by this because I want to see it continue to be residential. Like staff was saying this kind of transition between residential and business is kind of like where do you draw the line? Broad Street to me is very much a residential street and I think that is what, from what I have heard, the applicants desire is. One of my concerns with the rezoning is setbacks. If I am correct, there would not be any setbacks to that. In the future they could be building pretty much all the way to the property boundary. So, I have concerns from that. From the visual standpoint [unintelligible] pedestrian standpoint. I think I would like to encourage where it is to continue to be residential. I understand the height restriction I guess because of that property right next door and just trying to make it the same as that, but I do have a concern of that I would love to see that continue to be 35 feet as well, but I would like to see something kind of to address this setback. Even though that is



not an issue now, however if that were to ever get redeveloped, I would hate to see that get built to the property line. Thank you.

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

Chair Finnegan continued and said [to the applicant] you are not obligated to but if you would like to respond to the comment about setbacks, you are welcome to approach and speak to that before we close the public hearing.

Mr. Wilfong said the only thing that I would say there is that Mr. McDorman when he rezoned his, I do not believe proffered a setback. So, he has the ability now to do that. I just also wanted to mention that the property that borders Community Street and East Wolfe, which is the neighboring property to what I am hoping to get rezoned, is also zoned B-1 with no restrictions. You have B-1 to the left and B-1 to the right with no restrictions. So, it kind of makes sense for the continuity of Broad Street and East Wolfe Corner if it were all to be B-1. It kind of makes sense in that perspective, but I do understand your desire to keep it as residential and I have proffered that as well. I just wanted to point out that it was already commercial on both sides. That is all.

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

Chair Finnegan continued and asked I do not know if staff can speak to the setback question. It can be built to the property line. Is that correct? Like if this were demolished and rebuilt.

Ms. Rupkey said yes. The B-1 setback is zero.

Chair Finnegan asked so it is B-2 on Community Street, right?

Mr. Fletcher answered it is B-1.

Ms. Dang said the label is incorrect on the site plan.

Commissioner Baugh said [references to the site map] the sea of red is all the same zoning but it just should say B-1 instead of B-2.

Ms. Rupkey [referencing to the site map] said this should all be B-1. I apologize.

Chair Finnegan asked how do we feel about this? This is a couple doors down from the Mayor so I am sure she will have some things to say about it. Thoughts on this?

Commissioner Baugh said if I recall correctly, the Mayor was in favor of the other one. If my recollections correct, I brought up the setback issue on that one kind of just for discussion and it seemed to be the general sense that, I am think sort of a combination, between the proximity of existing B-1 and the general Mixed Use designation we were okay with it. That reminds me of some of the informal conversations we were having with Commissioner Alsindi yesterday about... You talked about where precedent comes into this and I think this is an interesting example. It is

not like we have a lot of formal requirements in that area but you are seeing how the practical thing comes up. We have approved something very similar right there. I mean I do not want to overstate it but when the applicant was asked “well, how do you feel about the setbacks.” His answer was “well you let the guy next door to me do it without the setbacks.” That really was his response.

Commissioner Alsindi said I would not say the feeling. If, speaking objectively, we believe this is going to be a start [unintelligible] rather than just a case. If we are treating it as a single case but then we will come across certain standards that we will feel unfair. Then, nothing wrong with it, but if it needs to be dealt with as a start for a policy then it deserves to be reviewed as that rather than a one case and then we forget, or somebody comes and says “why did you deal with this case in that way?” If it is going to start to become a policy, then it is going to be easier for people to understand 80% 90% unification but then 20% 10% improvise that is [unintelligible] policy if it is going to start to become policy. Otherwise, it is going to be a precedent that we cannot deal with later on.

Commissioner Baugh said well I think the point is that it is not the precedent is firm but there is just that practical side of it that I think we can change the policy pretty much anytime we want to as long as it is legal and we have decided that we are certainly entitled to say yeah we have tried that and we have decided that was not the right idea and now it would be in the public interest to go in the other direction. But there is this element of the more you allow an area to develop into a particular direction there certainly is a tendency for it to settle there and that becomes the normal and the status quo.

Commissioner Alsindi said for me to state the fact that I view it as a positive thing by the way. If this is the start for us to think of something that would be useful in the future if it repeats itself and it is good and it becomes a positive point, we are looking at it from that point on.

Commissioner Baugh said I just think it is the general point that we may approve this, but this is the time to discuss it. I just wanted to address a point Mr. Jenkins made. From our planning standpoint right now, he sort of asked where the line is, and the answer is the line right now is Broad Street. So again, if passes any prologue, assuming that does not change, could we one day see somebody on the other side of Broad Street coming in saying “Well you have let it happen on the other side of Broad Street maybe you should allow it there” I am just throwing that out as food for thought of the future because that is the way these things could go sometimes. Based on where we are right now, that is what we have said. We have said that we would see something on the other side of Broad Street as being more of an encroachment on the existing residential. That is where the line is in our Land Use Guide right now. The only other thing I was going to ask about was, usually it is somebody else bringing this up other than me although I fully support this one, I am familiar with this part of town and some of the history on this issue, but I will just go ahead and ask staff now, why did we give up on sidewalks? I am a little less clear on the...I mean a lot of times we do give up on sidewalks and it will be situation well we have them on the other side of the street, or they are sort of isolated so on and so forth. This is a more pedestrian traveled area.

Ms. Rupkey said there is currently a sidewalk on the other side of Wolfe Street and across the street on Broad. The cost of doing the sidewalk could possibly increase the housing costs is one angle we looked at it as.

Ms. Dang said if I may also add, I do not know that I would say that. Yes, I acknowledge that there is sidewalks on the other side but being a high pedestrian area, we want sidewalks on both sides because people are walking on both sides of the street. The housing costs that Ms. Rupkey mentioned is true. Adding to the cost of the project. I would say that the other element that we had discussed was right now that side of the street for those of you who were on the site visit or if you have visited the site you will notice that there is just a gutter for drainage and there is not an actual curb and gutter. Usually, it is easy to build the sidewalk behind the curb and gutter. If we were to build the curb and gutter and then the sidewalk, we had concerns that we had not worked through yet all the details of what drainage patterns would cause the building. It just became this kind of domino effect of consideration. I think it is a larger project to think about.

Commissioner Baugh said I would just throw in really quick that is why I was thinking in terms of I could certainly see a rationale. I am not saying I am against this, but I am saying I certainly see a rationale from what you are saying. I know exactly what you are talking about the topography issue sort of requiring somebody to put it in right now. Okay that seems like an unnecessary burden may not even be that great of an idea. I do know we have had other examples where we have said “well if we can get them to at least agree for the...” I guess what I am saying is what I know is one of the issues we have had with sidewalks in that neighborhood is just this issue of you sort of get locked because there are too many parcels and you cannot get a good contiguous run of people who are at any given moment property owners are for it. That then in a way sort of begs the question of well in the one hand of well maybe you have the opportunity to get at least a promise of the future dedication to go ahead and get it. I can also see the other side of it which is great we will get it here but, in this neighborhood, we are so far removed from wondering when we can get the rest of the...Again just wanted to make sure I was not missing something.

Chair Finnegan said Mr. Fletcher did you have anything to add to that?

Mr. Fletcher said I think Ms. Dang and Ms. Rupkey answered well. I was just going to put you in the mind of staff for a moment. We challenge ourselves with those specific question. Mid last week we were still working through these things, and I do not know if I had used the words “are we giving up on sidewalks?” but I challenged us about the fact about how hard are we pushing for wanting sidewalk with regard to the overall benefit of housing. Because what folks do not know is that we cannot require people to proffer things, we can offer suggestions knowing what this board likes to hear, what City Council likes to hear, what we like to see, and what the community hopes the developers provide. If the developer does not provide, of course, then the City often times is going back to retrofit those items. We offered it as the last paragraph of the Land Use Section really sums up quite well exactly how they went about it. We suggested for the applicant to consider proffering the sidewalk or dedicating the right-of-way so then we do not have to acquire it in the future. We absolutely always want sidewalks on both sides of the street. We never want a situation where somebody has to cross the street to have a safe pedestrian environment, but we cannot require them to do it. When the applicant decided that they were not really interested in doing it, then it came back to us of “well how important is this rezoning for housing?” We said it is very important for housing. We want those units to exist. That is where we offer a favorable recommendation.

Chair Finnegan said thanks for that context. I think this is frustrating because affordable housing is, I think, one of Harrisonburg's most urgent needs. I also think that walkability is really important if we are ever going to get away from autocratic ways of thinking. A friend of mine was recently hit by a car walking downtown. I am going to ask, why people do not walk more? Everyone has to drive and when everyone drives it makes the streets more dangerous. I struggle with this one.

Vice Mayor Dent said just an added comment to that, it seems to me that since they are deliberately moving the parking to a little lot in the back corner of these combined parcels that should free up the now illegal backing out into the street space on Wolfe Street. It seems like it would be no loss to them to at least grant a public right-of-way or easement for a sidewalk layout.

Mr. Fletcher said that is up to them.

Commissioner Alsindi said I just have one question and probably comment. So, when it says the applicant is not comfortable, that means the applicant does not want to because of costs implications? I think costs is true, but unless we factor or rather the word value when cost increases the value also increases, the value of the lifestyle, consistency, the walkability. The consistency of sidewalks of the streets and roads over there. It is missing when we just say cost. Cost of the building is true but the value of living there because I would be curious to ask, if I was a resident over there, I would be in favor of having a sidewalk eventually over there or not. Do I pay more for that in the future?

Vice Chair Byrd asked there are three proffers on this application or are there not?

Ms. Rupkey and Mr. Fletcher answered there are.

Ms. Rupkey said the first proffer was for the residential uses plus the uses by a special use permit. The second was the landscaping and removal of gravel along Wolfe Street. The third was no building should be taller than 52 feet in height or no more than four stories.

Chair Finnegan asked Vice Chair Byrd did that answer your question?

Vice Chair Byrd said we were all talking about sidewalks so, I was trying to remember was there an existing easement along Wolfe.

Ms. Dang said there is not an existing easement. We do not know because we have not surveyed or anything, but it appears that there is not enough right-of-way for the City to put in a sidewalk before. We have had that conversation with the applicant, and they were not comfortable proffering either construction of sidewalk or to dedicate an easement for the City to do it in the future.

Chair Finnegan said this is kind of pitting housing and affordability against walkability, which I do not like.

Commissioner Baugh said this is not the only one. I always have one that I think of on this. We ended up approving it after a lot of discussion but the existing development that was on the fringes of town and there were other sidewalks in the area. I mean this is an area where people frequent.

When I was just talking before, we were talking about how that whole block... is if you do think of the planning of that entire block being mixed use, with maybe us being okay with things like built to the property lines when you think of sidewalks

Chair Finnegan said I think that is a really important point to keep in mind. If we know what is being done with these buildings now is not the four-story built to the property line but if they were ultimately demolished and there is no public right-of-way, I see that as being problematic. I want to support this because I think the proximity to downtown the walkability, of the rest of the neighborhood... I am surprising myself because when I came here, I thought that sounds good but the fact that there is no sidewalk there, or an easement for a sidewalk, and that these could be demolished and there would be no possibility of a sidewalk if it was built to the property line. I have a problem with that. That is a sticking point for me.

Vice Mayor Dent said this is verging on one of those cases of leaning towards denying it not out of lack of support, but as a back to the drawing board, you can do better, we really want the sidewalk easement. I know we cannot demand a proffer, but we can vote yes or no.

Mr. Fletcher said just to make the point it looks like the applicant is interested in potentially speaking if the Chair would like to welcome it. I do not know. I presume that staff probably went over with the applicant that the applicant has the ability to make proffers even at the meeting. While it sometimes can be cumbersome to get wording correctly written, it is possible to do so and also possible to do so after Planning Commission. City Council really appreciates it when all proffers are presented to the Planning Commission so that they are acting on the same agenda item.

Mr. Russ said if this property were redeveloped, because there is existing contiguous sidewalk, is this parcel not large enough to trigger a full site plan that would require them to construct that along the front?

Mr. Fletcher said when it is redeveloped.

Mr. Russ continued if it were redeveloped, they would need to provide sidewalk along the portion of the parcel that does not have it already.

Chair Finnegan said that is a really important clarifying point because what I heard was if this were demolished and built to the property line there would be no way to add a sidewalk.

Mr. Fletcher said well that is true. They would build to their property line if they wanted to and then the question becomes is there enough right-of-way width to fit two travel lanes and a sidewalk in the existing right of way.

Mr. Russ said but our existing standards because there is a contiguous sidewalk. It would have to extend the sidewalk. Right?

Mr. Fletcher said yes, the statements are true but if there is not enough right of way width we would have to have the conversation with the Department of Public Works as to what we are giving up.

Ms. Dang said they would have to dedicate the right-of-way. Our ordinance requires that if there is an adjacent sidewalk they would have to dedicate the right-of-way.

Mr. Fletcher said yes, that is absolutely correct.

Mr. Fletcher continued so the answer is, you would end up with sidewalks at redevelopment. Not renovation of existing units, but redevelopment.

Ms. Dang thanked Mr. Russ.

Chair Finnegan said that is a really important clarifying point. Thank you for adding that into the conversation. I do not know if the applicant...I do not know if we have questions, we have already closed the public hearing. Unless there is new information, which that was new information thank you, I would like to get to a point where we can make a motion.

Vice Chair Byrd said in light of this new information, if destruction of the existing structures and proposed building of new structures would trigger public concerns related to Wolfe, then I would no longer be against this application. I would be in favor and therefore I will make a motion to approve the rezoning.

Commissioner Armstrong seconded the motion.

Vice Mayor Dent said just to be clear that this new information as you put it means that while protected against the build up to the property line because that would trigger further review and require the sidewalk or at least an easement.

Mr. Fletcher said they would have to dedicate right-of-way. If the site redevelops meaning they take the buildings down completely and they build back, they would have to dedicate right-of-way and build the sidewalk because sidewalk already extends to the corner so they would have to build a sidewalk along their frontage along East Wolfe Street. Then they could build to the new property line.

Commissioner Baugh said I think what has happened is that the worst-case scenario that we have thrown around has been addressed already.

Ms. Dang said if I could entertain a question for staff here, if, hypothetically, it was not a full redevelopment but an addition in front of the building, would that trigger the requirement to construct sidewalks if we only have received a building permit for an addition?

Commissioner Baugh said of at least the more general question of we have answered the worst-case scenario, but let's say they do not want to build to the lot line they just want to...

Mr. Fletcher said gets us to the age-old question of what is redevelopment? And for almost 19, 20 years you can try to define it and that is difficult to define.

Ms. Dang said it depends on the situation.

Commissioner Baugh said if you prove it as it is presented right now you would not have it.

Ms. Dang said there is a possibility you would not have the sidewalk.

Commissioner Baugh said as it is right now, they are saying they are not going to do it and if you approve it, you say you are okay with it not doing it. That was going to be exactly what I was going to ask about which was... So, we feel pretty good about the worst-case scenario; that is not going to happen. That does not address the issue of now there will be any dedication for anything in the future and not everything that could be done with that property would trigger sidewalks.

Chair Finnegan said I do think, to your point Commissioner Baugh, I think that is a valid point. I also think what I am trying to do right here at least speaking through myself is balance housing affordability with walkability and how do we try to hold onto both as much as we can. Knowing that if this site gets redeveloped...it sounds like knowing what we know now from Mr. Russ, if this gets knocked down, we will get a sidewalk. If it does not...it is the question of are we willing to play those odds. At this point, I would say that I am.

Vice Mayor Dent said I have just one other question about that, is there anything they could do that could make a sidewalk impossible. As in, a redevelopment would trigger the sidewalk but in the in between case that if they put an addition over it would that go through the building permit process?

Mr. Fletcher said I would never say impossible. More costly is really the answer. Let us say you rezone it, it is zoned B-1 and then for whatever reason they want to do an addition onto the existing buildings and they go right to the property line. At some point in the future, if the City had the funds to do so and we wanted to construct a sidewalk in there we would have to acquire right-of-way and likely acquire buildings, demolishing buildings, it seems unreasonable and not likely, but I do not think I would say impossible. Then it gets back to my earlier point of then having the question of two-way travel, lane width, sidewalk, all that stuff.

Ms. Rupkey said another thing, this is mostly a question for Adam, there is three lots with it now, with it being multifamily and to approve the building permit would they be required to remove the lot lines?

Ms. Rupkey asked would the minor subdivision trigger a sidewalk?

Ms. Dang asked is the one that currently has a permit now, is it straddling two properties?

Ms. Rupkey said yeah.

Mr. Fletcher said I hesitate to give a firm answer because we have situations like this across the City as you both know when minor subdivisions come in, you all never see them, and we have to look back at other odd situations and how we have interpreted what the regulations are. Strict interpretation is a vacation of a property line is by definition a subdivision. I do not think we treated

them that way when all somebody is trying to do is vacate a property line to improve a structure. It is usually when people are subdividing lots to create more density essentially. So, by vacating the property line, I would lead us down a path of discussion that you all would never get to see, but that is the debate we would have internally.

Ms. Dang said after hearing you say that, Ms. Rupkey and I agree with your direction there.

Chair Finnegan said just to clarify and not to put staff on the spot but having the discussion that we just had just now, does staff stand by their recommendation to approve?

Commissioner Baugh said I will just say this, I am leaning at the moment to go with your reasoning, the Chair's reasoning in this. So, if anybody feels like they are a firm no, then this might be a good time to speak up.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on August 8, 2023.

***Consider a request from Lowell H. Miller Trustee to rezone two parcels at 1621 and 1641 Smithland Road***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said the applicant is requesting to rezone two parcels totaling +/- 1.81-acres from R-1, Single-Family Residential District to R-8C, Small Lot Residential District Conditional. If the request is approved, the applicant plans to renovate the existing single-family detached dwelling on the property and to construct seven additional duplex structures (14 dwellings). All 15 dwelling units would be served by a private access drive running parallel to Smithland Road. If the rezoning is approved, at some point the developer must complete a preliminary subdivision plat.

***Proffers***

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

1. Applicant shall dedicate approximately 0.16 ac of right-of-way to City of Harrisonburg for future improvements, at a distance measured no less than forty feet (40') from the existing centerline of Smithland Road.
2. Development shall be limited to no greater than two (2) entrances.



3. 40' access easement shall be extended to both the southern and northern property line, as depicted in 'Exhibit A'. Upon development of adjoining parcel(s), the parties sharing maintenance responsibility of the private drive and access easement shall enter into a reciprocal easement agreement with the neighboring property owner(s) to allow for inter-parcel connection to the constructed roadway stub, as generally depicted in 'Exhibit A'.

4. One (1) large deciduous tree shall be planted for every seventy-five (75) linear feet of street frontage, or fraction thereof, OR, One (1) sub-canopy/ornamental tree shall be planted for every fifty (50) linear feet of street frontage. Trees may be planted anywhere on the Property.

Proffers #1, #2, and #3 are further explained in the Transportation and Traffic section of this report.

### *Land Use*

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

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

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

Because the Mixed Use designation supports the development of townhomes and higher density, staff asked the applicant if they had considered developing townhomes. The applicant explained their preference to build and sell duplexes and staff has no concerns with this aspect of the proposal.

While staff believes that the proposed development and rezoning to the R-8 district conforms with the Comprehensive Plan, it should be known that staff also believes an ideal situation would be

for the subject property to be part of a much larger development, where the development would be connected with a local street network to the west and dwelling units would front on a local street with back yards along Smithland Road.

#### *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 will not generate 100 or more peak hour trips, which is the threshold for staff to require a Traffic Impact Analysis (TIA).

As indicated in the Comprehensive Plan’s Street Improvement Plan, the City is planning to widen Smithland Road and to construct a shared use path on the east side of the street while providing sidewalk on the west side. To support the future project, the applicant has proffered to dedicate public street right-of-way (Proffer #1).

Streets and roadways are grouped into classes, or systems, according to the character of service they are intended to provide. Smithland Road is identified as a minor collector street and not a local street. Local streets emphasize property access rather than traffic movement and arterial and collector streets serve a combination of property access and traffic movement. The City’s Design and Construction Standards Manual (DCSM) Section 3.1.8.2 states that “[d]irect property access will be restricted along arterials and collectors, whenever reasonable access can be provided to a lower class roadway.” The applicant’s original submittal illustrated five entrances onto Smithland Road to serve the development, to which staff raised access management and safety concerns. The applicant was able to rework their concept and to proffer that the “[d]evelopment shall be limited to no greater than two (2) entrances.” (Proffer #2)

Staff also discussed the idea of whether the future private access serving this development could be located in such a way to connect with future development on adjacent properties. The applicant has proffered (Proffer #3) to create a 40-foot wide access easement that would extend to both the southern and northern property line as depicted in Exhibit A and to enter into a reciprocal access easement agreement with the adjacent properties to allow for interparcel connection. Should the adjacent property owners agree to the reciprocal access easement, an agreement would be created by the private parties when the adjacent parcels develop.

#### *Public Water and Sanitary Sewer*

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

#### *Housing Study*

The City’s Comprehensive Housing Assessment and Market Study (Housing Study) places the subject site within Market Type A. Among other things, this Market Type is characterized by high population growth. The study notes that Market Type A has “above median overall access to amenities such as public transit within walking distance, full-service grocery stores, and multiple parks and recreation facilities.” The study also notes that “policies that are appropriate to Market type A areas include an emphasis on increasing density through zoning changes, infill development and housing rehabilitation to maintain the quality of housing.”

*Public Schools*

The student generation attributed to the proposed 14 new residential units is estimated to be six students. Based on the School Board's current adopted attendance boundaries, Smithland Elementary School, Skyline Middle School, and Harrisonburg High School would serve the students residing in this development. Harrisonburg City Public Schools (HCPS) staff noted that schools are over capacity in many of the schools.

*Recommendation*

Staff recommends approval of the rezoning request.

Chair Finnegan asked if there any questions for staff.

Chair Finnegan said at this point the property owner that is, in this drawing, on top of back towards the quarry, do we know of any plans or...there is no proposal to build anything there currently?

Ms. Dang said that is correct. It is zoned R-7. From time to time there might be somebody interested who inquires about the property with staff, but right now there is no active plans or submittals or anything.

Chair Finnegan said that R-7, in order to be R-7 it had to be rezoned at some point.

Ms. Dang said yes and the R-7 district is one of those master plan zoning districts.

Vice Mayor Dent said what was the R-7 zoning?

Ms. Dang said [referring to the map] that purple area on the map.

Vice Mayor Dent said that means that somebody would have had to rezone it with one of those master plans at some point.

Ms. Dang said but it has been a long time, it has been since like 2007.

Commissioner Baugh said that is one of the largest undeveloped tracks in the City. It was, I think may have been as many as 4 that at least I think 3 different zonings in the entire parcel. It was kind of a progression of commercial on the Country Club Road side and maybe transition to some sort of proto mixed use [unintelligible] before we even had the mixed-use ordinance. And then there was some debate about, basically, the residential being a little more dense towards Country Club Road and transitioning to what you hope to be a more sort of planned development. It may even be that there is...I am trying to think if there is any...is the majority of it R-7?

Mr. Fletcher said I am just smiling because you have a great memory, but yes.

Commissioner Baugh said well we spent a lot of time on this thing just to sort of not do anything since then.

Mr. Fletcher said there is another person in the crowd that I believe was with us at the same time. We talked quite a bit in 2006 about that project. We went through several iterations it was finally approved in I think August 2007 and it had a range of unit counts. It was like 550 to 700 units. It was a very large rezoning. 118 acres I think it was.

Commissioner Baugh said I think the tentative idea was that even in the R-7 as you got towards the back it was going to be within...because within the R-7 you have the flexibility so it would taper to a more single-family residence...

Mr. Fletcher said it was townhomes essentially along the Linda Lane frontage. There were some apartment units that were sort of central to the interior of the site and then duplexes and single-family homes along the Interstate 81. You have to remember that there is a huge quarry in the middle, and it is a huge lake now essentially that it was going to be built around. There are some sink holes there is a lot of geology complexity with this site.

Commissioner Baugh said I think the operative point for us is that, among the challenges for whoever gets that and develops it in the future, it is really these ones that we are...it is an excellent candidate that whoever buys it, is going to look at the zoning, that sort of very particularized zoning that is there now, and come back to us to ask to do something else.

Chair Finnegan said if this gets approved the folks who live there can oppose that rezoning.

Vice Mayor Dent said another late night meeting.

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

Commissioner Alsindi said I have one question. So, proffer 2, the development should be limited to no greater than two entrances and a couple of times you have stressed on that. I see that [unintelligible] on page 3 ,Transportation and Traffic, talks about the road over there and you have the entrances there, but if you combine both is there any issues that might come here in terms of you have only two entrances there is no peak over there but coming in and leaving those two entrances on that road, would that be okay from the movement point of view?

Ms. Dang said I am not sure if I fully understand. I will take an attempt to answer your question but if I do not full answer it, please ask it again. The reason for limiting the number of entrances on the Smithland Road is so that you are prioritizing the flow or the vehicles on Smithland Road so that drivers on Smithland Road are not having to stop at every entrance. There is a potential for them to stop because the vehicle in front of them are looking to turn left instead of right.

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

Commissioner Washington said the Stormwater Management Facility, is that just like a retention pond kind of thing?

Ms. Dang answered yes that is the proposed location for something. Could be a detention pond or other feature that they put there.

Chair Finnegan opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Jon Ernest, landscape architect, partner of Monteverde Engineering & Design Studio, and applicant's representative came forward to speak to the request. He said we are here on behalf of the applicant, Emily Harris-Henry. She is the contract purchaser of this property. First off, thank you, Planning Commission, for splitting this up into two times for this week and I guess next week, right? It would have been a long hearing and maybe you will get out soon to enjoy a beer at Levitt AMP. Thank you, Thank, that was a comprehensive presentation and basically went over everything I was going to discuss. I would like to commend staff for the efficiencies in conversations that we have had. There were a couple items that were on the docket that kept going back and forth in discussion and it required very timely responses and lucky and fortunately our team and staff we able to coordinate that in a timely manner. Those two specifically, just for context, issues were one regarding the interparcel connectivity, understanding the greater context with the historically known quarry development that is zoned R-7 and wanting to provide that interparcel connectivity. We ended up providing the end result of that frontage alley with the 40-foot access easement providing interparcel connectivity for that unknown development. Then the additional item was the second entrance. The applicant was at the time willing to even limit it to one. Even now, we are still little concerned with conditioning one, but I would like to keep in mind that, I guess it would be four entrances that technically could be permitted. We are cutting that back by a minimum of 50%. Any questions related to those? Those were the two main issues that we had discussed with the City back and forth. But if there are any planning related comments or questions that you may have or any additional correlation that it may have with the future unknown development of the quarry land. I am here to answer, now if you have the questions or if there is applicant specific questions, our applicant is here. Also, she is willing to answer any questions you might have for her.

Chair Finnegan said I do have a question about the house that, I think it is good that you are not demolishing what is there. Was that part of the original conversation. Just like, "we want to keep this and we need to build around it."

Mr. Ernest said the applicant felt strongly to preserve. It has a lot of character and she felt strongly to preserve that. I do not know what age it is, but it defiantly has some character to it and some local material that could be a really good renovation project that she was excited about. Although, it would be 14 total single-family attached units, that center of the property would remain a single-family detached lot.

Chair Finnegan said I did have one question just kind of following up on Commissioner Washington's question about stormwater. I know that engineering site plans, there is a certain requirement for that, but I have also seen some more creative stormwater management that includes trees. I know that there is a bare minimum put a hole with riprap and a drain, but I will just say the comment that I am hopeful that there is considerations on other ways of handling stormwater.

Mr. Ernest said there is and we always look at that and we always prefer that for ample reasons, a lot of times it winds up being more cost effective for the developer depending... It could be more expensive in certain areas. But in this stage, we did not want to present or illustrate that. Potentially leading to a conversation that would extend interparcel connectivity in a key area that we needed to make sure was at least evaluated for stormwater in case we were not able to achieve the requirements set by DEQ when site plan phase occurred. It is intended to be stormwater, but our first priority will be looking at BMPs and better applications for that than just a dry pond essentially.

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

Mary Van Pelt came forward to speak on this request. She said I grew up in that rock house so the fact that she wants to preserve that means a lot. I grew up in that when it was a dirt road. I had a great childhood, and I would like to see other families raise kids in that area. Thank you.

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.

Vice Chair Byrd said my thought is that the proffers that concern the trees is always interesting. Board members have mentioned before their concerns about the words say one thing and then we will have to see if it actually ever happens in the way the words say. That is what it is. The two entrances I understand. Especially before the bridge was being repaired and rebuilt. Having the commute onto this road to pick up children from Smithland, more entrances will just create more issues. There is enough right-of-way I feel it was proffered. I would be in favor of this.

Commissioner Armstrong said I am really glad to see a lower density development. We had a whole spate of pretty high density multifamily. I think this is great.

Vice Mayor Dent said I am just thinking of the proximity to the schools. That could be beneficial addition to the area for families with children and growing up there.

Chair Finnegan said I would also say just thought about...I do agree with staff. It would be nice to see more connected walkable neighborhoods here. On the flip side of that is when you look at Strong Towns it means you needed to have more and more capital to do these bigger projects. I agree with the want to have a planned community and also, we need opportunities for infill and for other folks to be able to, without access to a whole lot of capital, do this. I would love to see something more walkable, and I do hope as staff mentioned on the Street Plan for the Comprehensive Plan that adding a bike lane or a shared use path on the other side. I do have some concerns. Nothing that would prevent me from voting for this, but just concerns that it is across from the park across a very busy fast-moving road. I am hopeful that when Public Works goes to redo this street that we put in some pedestrian islands or ways to get folks to get safely from these housing units to the park with their dogs. Other discussion or motions?

Vice Chair Byrd said I move to approve the rezoning with the presented proffers.

Vice Mayor Dent seconded the motion.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on August 8, 2023.

***Consider a request from Katherine S. Moran and Marcie E. Harris to rezone 361 Franklin Street***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said the applicant is requesting to rezone a +/- 10,269-square foot parcel from R-1, Single-Family Residential District to R-8C, Small Lot Residential District Conditional. The vacant parcel is addressed as 361 Franklin Street and is located on the southeast corner of Franklin Street and Monticello Avenue. The applicant is proposing to construct a single-family detached dwelling. As explained in a letter submitted by the applicant, the key goals are to keep most living spaces and essential functions on the main level of the home. To achieve this, the home requires a large footprint that conflicts with the setback requirements of the R-1 district. Within the attached exhibit, the applicant illustrates the allowable setbacks of both the R-1 and R-8 districts.

***Proffers***

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

1. More than one dwelling is prohibited.
2. The minimum setback along Franklin Street shall be 20 feet.

When the Planning Commission agenda was published last Friday, the staff report only included proffer #1. Last Friday, staff reached out to the applicant to discuss concerns staff had about the setbacks along the public streets and the applicant needed more time to consider them. Yesterday, the applicant submitted a new proffer statement that includes proffer ##2.

Note that the submitted conceptual layout is not proffered.

Regarding proffer #1, in R-8 zoning, duplexes are allowed by right and given the lot area and dimensions of the property, two duplex structures (four dwelling units) could be constructed, or the property could be divided into three single-family detached dwelling lots. If the rezoning is approved, although the R-8 district dimensional regulations would allow the property to be further subdivided, since the applicant has proffered to prohibit more than one dwelling on the property,

subdividing the property would not grant permission to build another dwelling on any newly created parcel. The submitted proffer essentially limits the subject area to only contain one dwelling unit.

Regarding proffer #2. The R-8 dimensional regulations require a 10-ft. minimum front yard setback and Article T of the Zoning Ordinance, which is where Modifications and Adjustments are, requires corner lots to provide setbacks equal to the required front setback along all yards adjoining a public street; provided, however, that the setback regulations shall not reduce the buildable width to less than 50% of the lot width. Staff was concerned that a 10-ft. minimum setback allowed by the R-8 district along Franklin Street would allow the single-family structure to be too close to the street. In response, the applicant has proffered that the minimum setback along Franklin Street shall be 20-feet. The minimum setback along Monticello Avenue would be 10-ft. as allowed by the R-8 district.

Note that any special use permit approved by City Council would still be permissible.

#### *Land Use*

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

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

With the submitted proffer, both the allowed dwelling type (single-family detached dwelling) and density (at about 4 dwelling units per acre) conforms with the Low Density Residential designation.

Know also that the R-8 district’s occupancy regulations are the same as the R-1 district’s occupancy regulations. When the R-8 district was drafted, the proposed occupancy regulations were intentionally designed to mimic the R-1 and R-2 districts because the R-8 district was intended to promote family occupancy with higher unit density abilities. The occupancy regulations allow owner-occupied dwellings to be occupied by a family plus two individuals or a maximum of three individuals and nonowner-occupied dwellings can be occupied by a family plus one individual or a maximum of two individuals.

The existing property meets the R-1 lot area requirements, lot depth requirements, and is 10 feet less than the currently required 80-foot lot width. During review of this request, staff discussed whether it is appropriate and best practice to rezone an R-1-zoned, buildable property to the R-8 district to alleviate setbacks to construct a larger building. The R-8 district was created in 2019 to provide more flexibility for developers to create more housing opportunities by establishing smaller lots for more dwelling units. Ultimately, staff concluded that on a case-by-case basis and with appropriate proffers, rezoning a lot in an established neighborhood to R-8 should not have major adverse effects on the surrounding properties nor defeat the overall purpose and intent of the R-8 district.



*Transportation and Traffic*

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

Staff discussed with the applicant concerns with the proposed entrance along Franklin Street, primarily with the steep slope on the property, grade of Franklin Street, and potential for sight distance issues. The applicant understands these concerns and will evaluate them in more detail during building design. If the driveway is ultimately approved and constructed, the property owner must also ensure that the entrance (including the ADA-compliant pedestrian access route across the entrance) is built to standard and does not impede the sidewalk.

*Public Water and Sanitary Sewer*

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

*Housing Study*

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject property within Market Type D, which has "neighborhoods [that] are characterized by the lowest growth of any market type and low housing volume turnover." Additionally, "[i]ncomes in different pockets vary greatly. Median household incomes across block groups in these neighborhoods have the broadest range: \$20,000 to \$91,000. This could point to a divergence of two conditions found within these neighborhoods: one of stable, high-income, low turnover neighborhoods and one of lower turnover in lower income neighborhoods.

*Public Schools*

The student generation attributed to the proposed single family dwelling is estimated to be one student. Based on the School Board's current adopted attendance boundaries, Spotswood Elementary, Skyline Middle School, and Harrisonburg High School would serve the students residing in this development. Harrisonburg City Public Schools (HCPS) staff noted in their review comments that schools are over capacity in many of the schools.

*Recommendation*

While staff initially withheld the recommendation pending additional information from the applicant, with the newly submitted proffers, staff is recommending approval of the rezoning. Chair Finnegan asked if there any questions for staff.

Vice Chair Byrd said the setbacks that are on corners make sense to me from a drivers' perspective of site from Franklin into Monticello. Are you saying that the 10 is still fine?

Ms. Dang said yes and remember also that there is also public right-of-way behind the curb to the property line and then there is also that 10 feet.

Chair Finnegan said I think to folks listening at home, I know it sounds like R-8 is eight times more dense than R-1 and that is not the case. There are times when I wish that we had called R-8 R-2Z or R-2X. I just wanted to clarify that. We are not increasing the density to eight times the density here. It is just the number that was available after R-7. So, that is unfortunate.

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

Vice Mayor Dent said to your point this is another of those weird mismatches of zoning that the reason for moving it to a higher density is strictly for the lower setbacks, but it is still one very large single home. I really appreciate what they say in here about aging in place with a single level dwelling. So, since that neighborhood is mostly 2 and 3 story houses, I think it can still fit and that is a good adaptation.

Chair Finnegan said the one other question I have for staff is by right without this rezoning...let's say this gets denied by City Council, what could go there by right is what we saw in that red boundary and how tall could that be?

Ms. Dang answered 35 feet.

Chair Finnegan opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Matthew Robertson, owner of The Stratford Companies and applicant's representative came forward to speak to their request. He said I grew up in Rockingham County. I have called this community my home for my wife and children for the past 28 years and I am here this evening representing Kathy Moran and Marcie Harris who are also in attendance. Our goal is to design and build a sensitive and thoughtful single family detached home which respects and reflects the existing development pattern and character of the neighborhood. We desire to design and build meaningful indoor and outdoor spaces where a family can thrive, and a neighborhood can be enhanced. We are designing a front porch where Kathy and Marcie can sit and interact with their neighbors and a functional backyard which is inherently more private. We are working with a challenge of steep grades on each street. We have therefore placed off street parking and driveway areas farthest from the corner in order to provide off street guest parking in a driveway with reasonable slopes. We have studied the rhythm of the existing homes along these two streets with regard to building heights, building setbacks and open spaces. The current zoning classification does not permit the continuation of this rhythm and overall structure of the neighborhood. We have heard and share the concerns voiced by some neighbors and staff concerning potential density in building setbacks. We have listened and responded to these concerns to the written proffers which are an integral part of this request. I had very productive and enjoyable conversation with Mr. Nathan Horst through the phone this afternoon. He is the adjacent property owner along Franklin Street. We were able to discuss and review some ideas as well as some of his concerns regarding this application. I would like to thank him formally for this spirit of citizenship and cooperation. We spoke with additional property owners on both Franklin Street and Monticello Avenue, some of whom are here tonight to show their support for this request. I am happy to answer any questions you may have. I appreciate your time and consideration.

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

Chair Finnegan continued and said I guess my question is when you were looking at this, did you go to the Community Development office and just kind of say we would like to change the setbacks?

Mr. Robertson said we had discussed with staff over the phone the potential for a variance to reduce setbacks. There are topographic constraints to the property, right? It goes up in elevation as we go up Franklin Street and up in elevation as we go up Monticello. A corner lot with building setbacks in topographic constraints with the scale of this lot is very, very challenging but probably not challenging to the point in creating hardship approaching confiscation. So, the idea of a variance to reduce the setbacks was not likely and a recommendation that we pursue another method or another tool in the zoning code to allow for this type of building to be built here. Which is more representation of the structure of the neighborhood. We pursued the rezoning instead of a variance.

Chair Finnegan asked if there were any questions for the applicant. He then asked if there was anyone in the room or on the phone wishing to speak to the request.

Jared Burden, a resident of 343 Monticello, came forward regarding this request. He said I wanted to express my strong support for this rezoning because the plan of Kathy and Marcie is very harmonious with the street and the neighborhood. The use of the R-8 zoning to allow, among other things, the aging in place. Which I believe in very strongly. A workable backyard makes a lot of sense to me. I think that taking advantage of that setback possibility that arises from R-8 is very appropriate from a land use perspective. Most importantly this is a great plan. It is going to be a great house in a great neighbor for those of us along Monticello and Franklin. Thank you.

Jim Anderson, a resident of 356 Franklin St, came forward regarding this request. He said we are opposed to this going into an R-8 because after reviewing all the different I guess inadequacies of control in the R-8 district. There are tremendous opportunities there to absolutely distort that site into something that it should not be. There is more restriction in there saying that they cannot have multiple people coming and staying nights and basically a bed and breakfast type of set up. There is nothing that says that you can go through and have it change to something else other than what it is now as a residence. It is a challenge of the purposed zoning for the way that it is set up in the R-8 section. I do not know what they can do about that. When we called in, they said they could not get setbacks because it is not allowed to have a review and change in Virginia. It surprised me they could not change the setbacks on something by getting a variance. We have lived in several different and that just shocked me that you guys do not have that here. Yes, driveway proposed on Franklin Street will eliminate at least two parking spaces on the street. Why not use the parking spaces that are on the street currently that people actually utilize to let that stay there rather than putting another parking space in there for guests where that could be part of a bed and breakfast side. I have no idea what the proposal is on this with the long-term expectations is. New owners come in, buy the property and decide to change it. It says right in the R-8 district that it is a right and a right in real estate is a right. I do not know if you guys have a different setup for Virginia, but in Michigan and Florida a right is a right, you can do these things. The variance probability, from what it was originally proposed to be, could be different in 10 years. That is why we are opposed to it. It just does not make sense to do that. Looking at the actual plan that they have set up, they would lose probably, and I do not have the exact measurements because the site plan does not show exact measurements, but it appears to be that they lose about 150 to 200 feet on the main floor. Why not put that on the second floor that they have already proposed to have on that and eliminate the part that is extending over that to the other property to the neighbors on Monticello and then shift the house back to be the current setbacks. They would be right inside of that bracket.

We have talked to several of our neighbors, I hope you got the responses in writing, you should have. Everyone that we have talked to was opposed to it. So, I am not sure where you have got on the positive things but everybody that is right around there, we are not real happy with the idea of having it happen. Now, there is another more significant problem that has to do with the Public Works Department. That is something that we personally experienced in the spring because the main line that goes through and down the middle of Franklin Street which also is ran into by Monticello is only a four-inch sewer line. Now, I have been involved with Dennis Lambert, he told me that more than 10 years ago that was supposed to be changed and expanded. He put in a proposal more than 10 years ago. He acted like he was kind of surprised that had not happened. We had a problem because we had the opportunity to have several of our neighbor's stuff that they were sending down the line in the sewer come into my home. It took the City three surgeries in the middle of a street to get that taken care of. When they literally had to come in, dig up a chunk of the road, repair all the pipes that were there, and run it to my house. They got to my house, and we ended up, because of the problems we were experiencing, having a contractor come in and put an entire new sewer line all the way into my home. The difficulty is if you have other residents going in, what is going to happen with the sewer lines. As it is, the neighbors right directly across the street from us have expressed to me and there was supposed to send a thing over to you, that they have been having problems with their sewer and the same type of thing that we have been having. Now we are fixed and they are having more problems. That is something that needs to be taken care of. In the process during this time I talked with Doug, the field manager from the City. He expressed the same concerns and the problems with not having a main line that is supposed to be the requirements for zoning is. I talked to both City Engineers, Zach and Micaela, and they were boring through trying to figure out what to do as far as their proposals for expanding that line to the street because that is the whole thing. If you are down inside the manhole cover, whether at the end of Monticello, there are three four-inch lines coming in-to that and one four-inch line coming out of that. Taking care of the entire residential area and that creates a major headache. So, if they are going to put another house in there, they probably ought to consider doing something about the street, two at the same time. I do not know what the R-8 district is, it says they cannot add a kitchen to a property, but if you are building a new property, why don't you just put in two kitchens at the same time and that way you can have your bed and breakfast setup or your weekly rental. Again, I do not expect that is their proposal, but in five, ten years or they moved to something else, somewhere where they can actually do that. I do not know how you guys personally can limit what the new owners can do on it when it says it is their rights to do these things. That is my spiel. Thank you very much.

Nora Anderson, also a resident of 356 Franklin Street, came forward to speak to this request. She said what I am saying is R-8 we are not happy with that designation in this area because we have no other ones and we are afraid that other lots that are available would be allowed to have R-8 with all the R-8 things that they can have. We know one person on Ott street is thinking about selling her property which is three lots. Now, who is to say that the person that buys that says "I want R-8 there because I want to put duplexes in, I want two houses and you have allowed it over here on Franklin Street and Monticello why can I not have it. Just like you have said on other ones." Why are we fitting what is an R-1 area, and since it is not complying with what the owners of the property want to do, we just want to give it this other zoning so that they can have what they want but we cannot have what we want. I am not happy with the setbacks that are posed in the proffers. I think that they are too close to the road. They look terrible. Why should we suffer because these

people did not look at their due diligence when they purchased the property on what could go on that property? We bought it as a R-1 and we did not expect somebody to come in and say “we are not happy with the variances so change it to R-8 so I can have them.” I do not agree with that. That is all I have to say.

Sarah Jones, a resident of 334 Monticello Avenue, came forward to speak to this request. She said I am the house to the south side of this lot. So, the setbacks that Marcie and Kathy are asking for will be very close to my home. I am all in favor for what they are doing and have suggested. I think they are very honorable people. They have been in this community a long time. I can understand your concerns Mr. and Mrs. Anderson, I know. They have been in this community. They have a small business here. They hope to move Kathy’s own business to downtown Harrisonburg because they want to be able to walk from this potential new home down to their place of business in several years, that is their hope and plan to do. This lot is a bit difficult. It does have some very steep hills but in one respect it makes it very agreeable for a lesser setback in my opinion and that it is raised up above Franklin Street and it is actually raised up above the better part of Monticello. So, it sits up, it is not right down on the shoulders of both of those streets. They are right on my shoulder, but I know these folks. They have been very forthright and honorable in everything that they have done. Matt Robertson, you could not find a better contractor available. He is impeccable. Does impeccable work. Kathy and Marcie could have gone to some lesser quality home builder plan and certainly probably put in something there that would have been a lot less in value and prestige and look and price, but they chose to go with Matt, and I think it is a wonderful choice. I do not think you could get any better. So, I think they are offering to put it on this lot. I trust them, I take their word. I do not understand totally about proffers. If it says it can only be one dwelling, I guess that also conveys to another purchasers, should they decide to buy it. That is a protection that it is a single-family home then. Without that proffer I still stand because they have the decency and commitment and honesty to come to me and ask if they can meet with me personally, talk to me in my home, show me their plan, ask me how I felt about it and what was my concern. They have always been more than upfront and more than willing to try and work with you and they want to be good neighbors. I am all for it. I look forward to having them in our community and I honestly think that they will increase the value in many ways. With their presence and the landscape that Matt does, he is a landscape architect. I cannot wait to see what he does. I am going to be jealous as I can be, but that is okay. I get to look on to it. I am all for it. I would like to see them there close in our community.

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.

Vice Chair Byrd said without proffer number one, I would not even be anywhere near close to being in favor of this. So, with that present I feel it alleviates a lot of the concern of extra dwellings and all entails. That also addresses a concern about some Public Works issues that we always tend to hear about in zoning for any reason because the current zoning is for one dwelling and if it is limited to one dwelling, we are not increasing the amount of dwellings that are currently zoned to that area. The variance route, as I learned as a member of the BZA, it is very hard to prove hardship. And because of options like this, a person would have a hard time getting a variance through the BZA because we would go “why did you not just do other avenues?” So, hearing peoples’ concerns but seeing the two proffers, I would be more in favor of this than initially at first glance.

Commissioner Washington said just to clarify, the proffers do transfer over to the next?

Chair Finnegan said the only way, and correct me if I am wrong, those proffers could get removed is if they came in for another rezoning. That is true of any property. That is true for my house, your house, anyone's house. Any house can be requested to be rezoned but it conveys when it gets sold.

Commissioner Baugh said it becomes part of the zoning of that tract.

Chair Finnegan said that is why the "C" part is important, R-8C, its conditional. I do not know if it possible to bring the one that shows all the properties and lot lines going back down the hill, is that one in this presentation? It is hard to see on this one, but you can see, this is just an interesting note about zoning, if you look going down the hill at the corner of Ott and Franklin, the setbacks are very small. In a way, when you are going down the hill you are going back in time, not exactly but you are going back to when the setbacks were less. I did ask staff when these were zoned R-1 and they were zoned R-1 from the previous designation of A-1 in 1963.

Ms. Dang said 1963 was when this particular property was zoned R-1 and, presumably if I recall correctly looking at the zoning map from that time, the other properties too. At that time in 1963 the area and dimensional regulations basically have not changed. The maximum number of stories is now 3, right? So, it went from two to three and prior to that it was zoned A-1 residential district that did allow for smaller setbacks and then who knows before 1939, I think is when the first record that we have in our office of the zoning ordinance in the community, I do not know if it was allowed then.

Chair Finnegan said it is important that we not think when Harrisonburg was founded that R-1 did not exist and when a lot of these houses were built, R-1 did not exist.

Ms. Dang said your point being that some of the homes or many of the homes in this neighborhood are nonconforming to R-1 setback requirements and are thus closer to the property line.

Chair Finnegan said if you look at the corner of Ott and Franklin, that setback is pretty small for a corner lot. I do think it is important to kind of keep that historical context in mind. I also went through and looked up when a lot of these houses were built and the dates; 1955, 1925, 1957, 1928, 1962, 1900, and 1958 those are all kind of on that block. All of those were before R-1. I would also say I think there is a bigger discussion to be had about, I can see this becoming more common, these types of requests to rezone from R-1 or R-2 to R-8 to change the setbacks with proffers. I think we should keep these in mind as we are looking at the Zoning Ordinance revisions because I feel that this request in my opinion...one single family house is allowed by right on that property as is if this gets denied. Which does not address the very real concerns about the plumbing which is serious. It is just something that I think we should keep in mind and consider as we are moving forward. We did this with short-term rentals. We said okay, there needs to be by right use. Trying to find some sort of compromise in this.

Ms. Dang said if I may just address just a little bit of the sanitary sewer main question, I did reach out to Micaela Smith and Zachary Hinch at the Department of Public Utilities after receiving the

written comment from the Andersons here. The response that I received from Public Utilities is that they acknowledge that the sanitary sewer in Franklin Street is undersized by current standards. However, they have no record of capacity related issues in the area, and they acknowledge that there were structural problems with the pipe earlier this year, which they have resolved. It was more of a structural issue, not a capacity one. Although current standards today, they would build a larger pipe. Eventually, they would like to replace the sanitary sewer line with a larger line, but of course there are other priorities that they are focusing on throughout the City. There is adequate capacity for this dwelling to be there.

Vice Chair Byrd said well, that sounds like an old neighborhood of Harrisonburg with old pipes that are being replaced piecemeal. That must be a joy to live there. I would like to move us along. I will make a motion to approve with the two proffers as presented.

Commissioner Armstrong seconded the motion.

Chair Finnegan said if anyone is planning to vote against this, I would encourage you to just state your reasons why just so that City Council knows why.

Commissioner Baugh said unless somebody comes up with something I have not heard yet, I am going to support this. I just want to affirm for the Andersons here, and anybody listening, that with...and your point is well taken about what rights means and I understand it sounds like you have some familiarity in other states with this stuff, but I mean I will just say this proffer number one really is putting a position where anything else that they want to do they have to come back for a process like this to be permitted to do it. Everything from if they wanted to increase the density, if they wanted to put a duplex that is now two dwellings, if they wanted to do Airbnb there is a whole short-term rental thing they have to go through.

Chair Finnegan said just to clarify, if they want to do homestays, they can do that by right up to 90 nights.

Commissioner Baugh said that is right, but so can everybody else. With the big thing there being that they are owner occupied type thing. Just really wanted to confirm that. That and the piece to that I cannot speak to other states, but I can affirm that the Virginia Supreme Court has repeatedly for a long time said that at least in Virginia, variances that you get for setbacks through the Board of Zoning Appeals, hardship essentially means literally cannot find any way to do it. The bar is insanely high and in fact, the opinion that they end up having to write over about every 20 years is the natural slide of localities to start making decisions based on practical considerations. Maybe in another way, instead of putting it as if you were a disgruntled neighbor, I think your legal ability to challenge a variance is actually easier than your legal ability to challenge a rezoning. The Supreme Court is has just said that hardship is...the bar is just really high.

Chair Finnegan said one last thing that I will add is I went back through our discussions from when we created R-8 and I was trying to decide was this in keeping with the idea of R-8 and I think it is kind of borderline. The idea behind R-8 was to allow more flexibility for these lots, more infill development and more density. This can be considered infill development. It is on the line, but it is not increasing the density. I did not get anything from reading the old minutes.

Commissioner Baugh said I will go a step further, I never thought anything like this was what we would be talking about. Maybe I am more comfortable than you are I am going to go a little more with the mindset of if somebody can figure out how to do something that I could not think of, good for them. Really for the same reasons, that proffer number one we would be having a very different discussion if that was not there.

Vice Chair Byrd said I view variances as “eh, no”? and setbacks are a matter of safety and concern and visibility. As long as safety and visibility are maintained, slight changes to some setbacks can be reasonably accepted. That is my view on that particular subject.

Chair Finnegan said spoken like as a true member of the BZA. Any last comments before we do roll call vote.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on August 8, 2023.

***Consider a request from Box Nine LLC to rezone 231, 251. and 261 South Liberty Street***

***Consider a request from Box Nine LLC for a special use permit to allow manufacturing, processing, and assembly operations at 231, 251, and 261 South Liberty Street***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said on December 11, 2019, Planning Commission received a similar request to rezone the subject property to B-1, Central Business District with a special use permit (SUP) request to allow manufacturing, processing, and assembly for the newspaper production facility for the Daily News-Record (DNR). At that time, no proffers were offered by the applicant and the SUP was needed for DNR’s operation because if the property was rezoned to B-1, the DNR manufacturing operation would have been no longer permitted by right. Staff recommended denial of both requests while Planning Commission recommended (6-1) to approve the rezoning and recommended (7-0) to approve the SUP with suggested conditions. Staff was primarily concerned with parking demands in the vicinity and the applicant was not comfortable at that time proffering any specific number of off-street parking spaces due to uncertainty regarding future development of the property.



On January 14, 2020, City Council held a public hearing and tabled the items until further review of the Downtown Parking Study. The Downtown Parking Study was completed and presented to City Council on April 13, 2020 (The final report is available here: <https://www.harrisonburgva.gov/downtown-parking-study-2019>). The rezoning and SUP requests were then denied by City Council on August 11, 2020.

*Key Issues:*

The applicant is requesting to rezone a +/- 2.25-acre parcel zoned M-1, General Industrial District to B-1C, Central Business District Conditional and a special use permit (SUP) per Section 10-3-85(1) of the Zoning Ordinance (ZO) to allow manufacturing, processing, and assembly operations when not employing more than 15 persons on the premises in a single shift and provided that all storage and activities are conducted within a building within the B-1 district. Unlike the previous rezoning and SUP requests, the applicant is now offering proffers and the SUP is needed for a different manufacturing operation. The property is located downtown along South Liberty Street and currently houses offices for the Daily-News Record (DNR) and houses assembly operations for Lauf Cycling. (Note: During the review of the applications, it came to staff's attention that when the DNR ceased manufacturing operations, technically the office use associated with the DNR should also have ceased operation or the property owner should have sought a SUP per Section 10-3-97 (3) to allow business offices in the M-1 district. Under the M-1 district, the offices were permitted by right because they were in connection with the onsite allowable manufacturing use. If the rezoning herein requested is approved, the DNR office operations become conforming to the B-1 zoning district.)

If the rezoning is approved, the applicant desires to allow commercial uses (retail, office, food service, etc.) as well as residential uses. With regard to residential uses, at this time they plan to renovate the existing building to create two to four dwelling units and then at a later time to somehow accommodate between 80 to 120 residential units. In addition to these planned operations, they are seeking the SUP to continue allowing Lauf Cycling's manufacturing use.

*Downtown Parking and Proffers*

The Downtown Parking Study, completed in 2020, includes information from a parking occupancy count conducted on a Tuesday in April 2019. Utilization rates reflect the ability of a motorist to find convenient and available parking within a particular area. It is a generally accepted principle that a supply of parking operates at optimum efficiency when peak occupancy is at 85% to 95% of capacity.

Within the Downtown Parking Study, specifically in Appendix C – Total Occupancy, the data shows that the midday count period for the Municipal Lot (identified as ID# 44B and described as "Harrisonburg Farmers Market") has an 80% utilization rate (145 parking spaces occupied out of 181 parking spaces available).

Long-term developments (between six and ten years from 2019/2020) were estimated to introduce more than 30,000 square feet of new commercial or institutional space to Downtown Harrisonburg and introduce demand for 67 additional parking spaces with primary pressure to blocks surrounding Court Square and the core of downtown Harrisonburg. Figure 21 within the study

continues to illustrate a peak hour demand with greater than 95% utilization for Block 40, which includes the DNR site which is the subject property for the rezoning and SUP applications. To address staff's concerns about parking demand in this area, the applicant has offered the following proffers (written verbatim):

The minimum required parking for residential uses shall be as follows:

1. Provide 0.5 Parking Spaces per 1-Bedroom Unit
2. Provide 0.75 Parking Spaces per 2-Bedroom Unit
3. Provide 1.0 Parking Space per 3-Bedroom Unit

The applicant explained to staff that if in the long term they constructed 81-120 multiple-family dwelling units (apartments), that they envisioned that the parking spaces provided on-site would be used during the daytime for non-residential uses and in the evening the same parking spaces could become permit parking for residents.

#### *Special Use Permit*

Lauf Cycling has been operating at the subject property since February 2023 and currently operates under normal business hours between approximately 8AM and 6PM. Lauf Cycling occupies a +/- 6,367 square foot area in the rear of the existing building. The applicant has described that bicycle parts and components manufactured elsewhere are shipped in boxes to Lauf Cycling at the subject property for assembly. Typically, a few times a week, deliveries are made by step vans and similarly sized vehicles (e.g. FedEx, UPS, USPS) and tractor trailer deliveries are made a couple of times a month.

Staff recommends conditions to restrict the special use permit to only be applicable for a bicycle assembly operation or a substantially similar operation, and for the special use permit to restrict the bicycle assembly operation to no greater than 8,000 square feet of gross floor area. If in the future a bicycle assembly operation wishes to expand the use, then a new special use permit shall be applied for, reviewed and approved. Note that in the future, if Lauf Cycling or other bicycle assembly operation opens a retail store that is related to the manufacturing use, there is no restriction on the size of that component of the operation since it would be a by right retail use in the B-1 district.

#### *Land Use*

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

The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for "live-work" and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration

when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

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

Staff believes that the proposed uses with appropriate proffers and SUP conditions conforms with the Mixed Use area designation.

Additionally, the proposed rezoning would support the Harrisonburg Downtown 2040 plan's goal to "Grow Downtown as a Neighborhood" and the following two action items:

- #16: Encourage mixed-use and residential development in key clusters
- #17: In the long-term, seek opportunities to add density and improve the urban design at key Downtown sites

The Harrisonburg Downtown 2040 plan describes that "[w]hile the number of housing units and residents have grown Downtown, there is need for more housing to support local businesses." Additionally, the subject property is within a key cluster area identified as "South Downtown." (The Harrisonburg Downtown 2040 plan is available at: <https://www.harrisonburgva.gov/downtown-2040>)

#### *Transportation and Traffic*

A traffic impact analysis (TIA) was not required for the rezoning and special use permit requests. In a letter dated June 22, 2023, the Department of Public Works provides explanation for this decision. (The letter is attached herein.) In summary, staff evaluated both short-term and long-term proposed uses for the parcel and calculated that the planned non-residential uses and residential development of up to 120 multiple-family dwelling units would generate 106 new trips in the PM peak hour. While this would meet the minimum threshold to require a TIA, this segment of South Liberty Street has recently been studied through the Downtown Small Area Study, which evaluated the traffic impacts of reconfiguring the downtown transportation network. (The final report is available on the Harrisonburg Rockingham Metropolitan Planning Organization website at: <https://www.hrvampo.org/articles/downtown-harrisonburg-operations-analysis>). The Downtown Small Area Study included an assessment of the surrounding transportation needs. Staff believes that the trips generated from this parcel would be consistent with the growth assumptions made for the study and would not have any detrimental effects to South Liberty Street.

*Public Water and Sanitary Sewer*

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

*Housing Study*

The City's Comprehensive Housing Assessment and Market Study (Housing Study) has this property in a Census block group that is classified as "No Data" according to market types. This block group did not have any housing sales data at the time of the study. The Housing Study identified that there is strong demand for expanding rental housing inventory at the lowest and highest income spectrum because the number of households in the lowest and highest income groups significantly exceed the number of housing units available for and affordable to them.

*Public Schools*

The student generation attributed to the proposed 120 dwellings is estimated to be 22 students. Based on the School Board's current adopted attendance boundaries, Keister Elementary School, Thomas Harrison Middle School, and Harrisonburg High School would serve the students residing in this development. Harrisonburg City Public Schools (HCPS) staff noted in their review comments that schools are over capacity in many of the schools.

*Recommendation*

Staff believes that rezoning the property to B-1C conforms with the City's Comprehensive Plan and Downtown 2040 Plan, and that the proposed proffer addresses staff's concerns about parking demand. Staff recommends approving the rezoning. Additionally, staff recommends approval of the SUP with the following conditions:

1. The special use permit shall only be applicable for a bicycle assembly operation or a substantially similar operation.
2. The special use permit shall be restricted to no greater than 8,000 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 I am just curious about this [cycling company] that is the company from Iceland right? I thought they were going to be established in the north side of the Three Brothers Brewery. Did they move to this instead or are they expanding?

Ms. Dang said I actually do not know the answer to that. Although, I can just say affirmatively that the press releases from last year indicated their other location that I did not have the opportunity to ask about. Maybe the applicant here knows the answer to that question.

Chair Finnegan said who has got a better deal.

Vice Mayor Dent said it might be more space who knows.

Chair Finnegan said when your lease is up. I did have a question about the fully funded bike lane that goes along Liberty, where does that terminate on either end? Does that run in front of this property?

Vice Mayor Dent said yes.

Ms. Dang said it does run in front of this property.

Mr. Fletcher said I think, and I am going by memory, so I know it begins on the north side where the new art structure is to be installed and I think it essentially goes to the World War I Memorial. I can confirm that it does come through here. It is a cycle track.

Vice Mayor Dent said it is the one-way portion of Liberty Street that is technically US 11 going south from Noll Drive down to Grattan Street.

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

Mike Hendrickson, a Harrisonburg resident and part owner of the property, came forward to speak to this request. We are seeking to rezone this from M-1 to B-1, as we stated in our application. As all properties do, this property has gone through its initial life cycle for a purpose-built use as a DNR production facility. It is now ready for other uses that are not allowed under its current zoning. We are seeking to rezone this property to allow for other commercial uses. Retail office, food service etc., and residential uses. Two to four units initially and then potentially more later. We have interested businesses now who would like to occupy this space but due to the existing zoning, that is not possible. I would be open to answer any questions you have.

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

Chair Finnegan continued and said just about that property in the back, the rear section of the property. Those proffers were for residential, right?

Mr. Hendrickson answered correct.

Ms. Dang said that is any residential on the property they have to provide a minimum number of parking spaces.

Chair Finnegan said whether it is this building or in the back, anywhere on the property.

Mr. Hendrickson said I think the specific last time when we did this years ago, I think the specific reason for that conversation was due to the future expansion. If there is a building that is built there, how would that parking be handled. The existing load is a couple units not many now, so it would not be a real issue, but later 80 to 120 potentially. We do understand that at this point

obviously we are willing to put that forward. Last time we were not. We are now ready to do that and hope that again Planning Commission will recommend approval.

Chair Finnegan asked if there were any questions for the applicant. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request.

He then closed the public hearing and opened the matter for discussion.

Vice Chair Byrd asked we have two motions, correct?

Chair Finnegan answered yes. The rezoning comes first. So, we are going to need two motions and two votes.

Chair Finnegan continued I will say, having lived several places downtown, I know that this discussion about parking is kind of ever present, but as we talk about density downtown and walkability and bike-ability and putting how many millions of dollars into a new two-way bike lane. I think we need to consider this and not hold on to the idea that we need...we have parking downtown and we may need to start charging for that parking as things get more dense. As the 2040 plan shows that we are going to have more people living downtown. You may have to let go of the idea that there is parking everywhere all the time for free. That is my soapbox, and I will get off of it now. Do we hear a motion?

Vice Chair Byrd said I was waiting to give people a chance if they had any comments on this. I move to approve the rezoning.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on August 8, 2023

Chair Finnegan said now we are looking for a motion for the special use permit.

Vice Chair Byrd said I move to approve the special use permit with the suggested conditions.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the special use permit request passed (7-0). The recommendation will move forward to City Council on August 8, 2023.

At this time the Board took a two minute recess.

### **Unfinished Business**

None.

### **Public Comment**

None.

### **Report of Secretary & Committees**

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

Commissioner Armstrong said this was a really interesting meeting and I am not going to do it justice, but I will do what I can here. Two minor notes the Rockingham Commissioner who was reporting on Harrisonburg said that the volume was not loud enough, and they had called in then they called back and still said that they could not hear.

Ms. Dang said my understanding is that there is an issue, if I recall correctly, with one of the cable providers that it is not an issue with our equipment unfortunately. I guess maybe the question that maybe you all happen to talk to the County Commissioners to ask them are they streaming it online or are they watching it on TV. TV seems to be a continuing issue.

Chair Finnegan asked so, it is working online?

Ms. Dang said yeah. Maybe there is a different circumstance, I do not know the specifics.

Commissioner Armstrong said maybe that is something to communicate to them.

Ms. Dang said I can do that. I can communicate with the staff.

Chair Finnegan said they do not even livestream theirs I do not think. At least we have video.

Commissioner Baugh said I have not been following City Council much. Madame Vice Mayor, I am assuming that this is continuing to come up at Council meetings. I am just saying the powers that be know about this and are frustrated and even people who do not know, they are also commenting on this repeatedly about why can we not get this fixed?

Commissioner Armstrong said that same person commented that he attempted to listen for his allotted two hours and then that was it for him. I did not have the heart to...

Chair Finnegan said it was Bill Loomis. He does the two-hour limit.

Commissioner Armstrong said it might have been Bill Loomis. I do not know because it was not on the agenda, this is the future agenda. I did not have the heart to point out to them when they allocated the next reporter that we have two meetings this month. I did not mention it. This is a really interesting project that has kind of touched on a lot of comments. Everything was unanimously approved in this meeting. There was a very minor rezone for a 12-and-a-half-acre farm that they dispensed with pretty quickly. Then it is a very large project that was presented, and they are rezoning to an R-4 designation, which is a planned resort district. So, there is a very large development. That designation requires contiguous 500 acres to attain that zone R-4.

Chair Finnegan asked was this at Massanutten?

Commissioner Armstrong said it is at Massanutten. They are tying in to the Massanutten Resort and the idea is to create several residential areas that have village centers, and they passed an ordinance in the beginning to allow those village centers to have a little more flexibility in what they incorporate in terms of business. They included animal hospitals, antique craft shops, farm market groups. That normally is not a part of the R-4 resort planning but they have re-ordinanced that so that these village centers, which will be at the center of each of these different residential. The residential is tied in to not just the Massanutten Resort but also, they are creating a system of walking and bicycle paths that are not on the highways. These are separate. You mentioned a lot of capital. I mean this had capital all over it, that impressed me. They are creating a 197-acre residential are designated only for active adults and there is an HOA on it that restricts to only full-time residents of equal or older than 55 years old. They also use that aging in place. But there are no families in there. The emphasis is on the active and it was active because a lot of the houses they described in that area are two story. You have got restriction of one story. They referenced some other very prestigious resort residential developments in Colorado, Georgia, and Utah and talked about the opportunities of the Shenandoah Valley to create that kind of a prestigious resort residential development. The architectural drawings and pictures were just lovely. It was a trip.

Chair Finnegan said thank you for that report. Who has the next meeting?

Ms. Dang said the next meeting will be Vice Chair Byrd and that is on August 1<sup>st</sup>.

Chair Finnegan asked the Rockingham County meeting is on August 1<sup>st</sup>?

Ms. Dang answered that is correct.



Chair Finnegan said [to Vice Chair Byrd] are you still able to do that?

Vice Chair Byrd said I am doing everything in August.

Commissioner Armstrong said September 5<sup>th</sup> there was not anybody written down, is that you?

Chair Finnegan said it can be me.

Ms. Dang said I think last month we filled out the list. I can send it out to you all.

Chair Finnegan said just for Commissioner Alsindi's information, we sit in the Rockingham County Planning Commission meeting and report back. It is supposed to be vice versa.

Commissioner Alsindi said Thanh explained it to me.

Chair Finnegan said they are welcome to come in person, as we have to go in person.

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

Vice Chair Byrd said I believe we are also meeting on August 7th.

Ms. Dang said there are two variance applications to be considered in August.

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

Vice Mayor Dent said we met last night. We approved things, tabled things, whatever. The gnarly one on Chicago Avenue, we followed the lead. Planning Commission denied the rezoning of the small lot on 813 Chicago Avenue. Three to one, there were only four of us there Monica Robinson was not there. Council Member Jones voted against it because he wanted to approve it. Likewise, we passed the special use permit with the conditions that we added in Planning Commission for one truck only and again Chris Jones voted against it, so it was three to one to pass. He wanted to allow two trucks. He was being slightly contrary and not for the sake of it, just had a different idea. The two things about West Mosby Road, it passed four to zero. Vine Street, there was much rejoicing, four to zero. I mean that we echoed what we were talking about in Planning Commission that it was a great collaboration with the community so that was all really good. Now, the amusing one was the 130 Franklin Street rezone that Planning Commission denied, and I looked back in our Planning Commission extract, and it literally said, "this is going to be fun to explain to City Council." I just said we has decided to deny it so it could go straight to City Council instead of tabling it and holding it up. I made clear that we were just denying it as presented and lo and behold they came up with a long list of proffers and made it entirely acceptable. I was impressed that they listed the things that would be allowed rather than exclude a few certain things to make it B-1 over these particular purposes, about 16 things. Things like offices and I do not know what all else. Rather than specifically excluding bars and whatever they said, it can only be any of these things. There was a lot of them, I do not know why there were so many. I meant to bring it. That worked really well and that was a good strategy on our part to deny it as is to let them come up with the proffers, City Council passed it with those. The public facility at 1111 North Main is in substantial

accord to the Comprehensive Plan, we agreed with that. The short-term rental amendment was tabled yet again because Council Member Robinson was not there. Since we postponed it before because Council Member Jones was not there, we thought it was only fair to bring all of us. Most of everything else we just voted four to zero or three to one whatever, but that one is so contentious, I frankly was afraid we could wind up with a split vote. Which would not be exactly disastrous. We could always bring it up again, I ran this by Mr. Russ. That I wanted to be sure that, we all agreed that, should be ideally for all five of us. The Planning Commission Report and the presentation, yay, we have done our job. We just accepted it, there was no vote there. The key thing is that ideally someday we will get back to that short-term rental ordinance. The idea is there is some language that needs to be amended throughout. Homestays and short-term rentals and such as that. There is one key difference in the two options presented, whether we leave it as dwellings or change it to property.

### **Other Matters**

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

Ms. Dang said reminder we are having a meeting next week on the 20<sup>th</sup> on a Thursday at 6:00pm. We will be delivering packets at the end of this week. Right now, on the docket for August's meeting, we have ten agenda items for seven sites. We have combination of rezonings, and special use permits for the same site to consider. Staff's recommendation is that we hold one meeting to consider all of the items.

Vice Mayor Dent said it sounds late.

Chair Finnegan said I think it was the right call of staff and Planning Commission to break up this month's meetings. We are approaching 9 o'clock here. If we were only halfway through the meeting, I think this was the right call. How many are we hearing this month?

Mr. Fletcher asked we originally had like 16 and it dropped to 13?

Ms. Dang said yeah some of them had dropped off because we either determined that a special use permit was not necessary, or I cannot think of what all the reasons were. We have had applications drop off.

Vice Chair Byrd said we only had five tonight.

Chair Finnegan said yeah, we have five tonight so this is...I agree. Think we should do one meeting. If we need a break, just let me know and we will take a five-minute break.

Vice Mayor Dent said last night at City Council we discussed that since Planning Commission is breaking into two meeting this month, City Council will consider them in two subsequent meetings in August.

Chair Finnegan said that is why a lot these say either August 8<sup>th</sup> or August 22<sup>nd</sup>.

Ms. Dang said for the July 20<sup>th</sup> Planning Commission meeting they will be heard at City Council on the August 22<sup>nd</sup> meeting and then the consent agenda for the rezonings would be that first meeting in September.

Vice Mayor Dent said I will not be here for next week's meeting. I am at a conference.

The meeting adjourned at 8:43 p.m.

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Brent Finnegan, Chair

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Anastasia Auguste, Secretary