

MINUTES OF HARRISONBURG PLANNING COMMISSION

August 11, 2021

The Harrisonburg Planning Commission held its regular meeting on Wednesday, August 11, 2021, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Jim Orndoff; Kathy Whitten; Laura Dent, via GoToMeeting; Richard Baugh; and Brent Finnegan, Chair. Members absent: Adriel Byrd; Isaac Hull.

Also present: Thanh Dang, Assistant Director of Community Development; Alison Banks, Senior Planner; Adam Fletcher, Director of Community Development; Wesley Russ, Assistant City Attorney; and Nyrma Soffel, Office Manager/Secretary.

Chair Finnegan called the meeting to order and said that there was a quorum with four members physically present in Council Chambers. Councilmember Dent participated remotely via GoToMeeting.

In accordance with the Planning Commission's adopted policy for remote participation, Councilmember Dent has requested to participate remotely in this meeting due to a temporary medical condition that prevents her physical attendance. She will be participating remotely from her residence, which is not open to the public. A quorum of the Planning Commission is physically assembled at one primary meeting location, and arrangements have been made for the voice of Councilmember Dent to be heard by all persons at the primary meeting location.

Chair Finnegan asked if there were any motions to grant Councilmember Dent's request to participate remotely.

Commissioner Whitten moved to grant Councilmember Dent's request.

Commissioner Orndoff seconded the motion.

All members voted in favor of granting Councilmember Dent's request (4-0).

Chair Finnegan asked if there were any corrections, comments or a motion regarding the July 14, 2021 Planning Commission minutes.

Commissioner Whitten moved to approve the minutes.

Commissioner Orndoff seconded the motion.

All members voted in favor of approving the July 14, 2021, Planning Commission minutes (5-0).

New Business – Public Hearings

Consider a request from Skylar & Talli, LLC for a rezoning to amend proffers for a +/- 5.44-acre property at 1051 & 1351 Peach Grove Ave

Chair Finnegan read the request and asked staff to review.

Ms. Dang said that on June 11, 2019, the subject property was rezoned from B-2, General Business District to R-5C, High Density Residential District Conditional while also receiving approval of three special use permits, (SUP) which included:

1. To allow multi-family dwellings of more than 12 units per building per Section 10-3-55.4(1) of the Zoning Ordinance,
2. To allow multi-family buildings to be greater than four stories and/or fifty-two (52) feet in height per Section 10-3-55.4(2) of the Zoning Ordinance, and
3. To allow retail stores, convenience shops, personal service establishments, restaurants (excluding drive-through facilities), and business and professional offices per Section 10-3-55.4(4) of the Zoning Ordinance.

The 2019 staff report described the following with regard to the proposed project at that time:

“If all the requests are approved, Skylar & Talli, LLC plans to construct one, six-story mixed-use building containing non-residential and multi-family residential units. The applicant’s letter describes plans for the building to contain approximately 16,000 sq. ft. of retail (i.e. non-residential) space that may include uses such as restaurants, coffee shops, bookstores, clothing retailers, and convenience stores. The applicant also plans to include the following on the first floor of the building: interior dumpster facilities, a loading dock to serve both retail and residents, and residential amenities such as a lobby, exercise room, computer room, laundry facilities, and space for bike storage. The second through sixth floors of the building are planned to contain apartments with 1, 2, 3, and 4-bedroom configurations. The applicant’s letter describes plans for a total of 120 multi-family dwelling (apartment) units.”

While the applicant described in their 2019 proposal to provide “an approximate mix of 20 – 1-bedroom units, 20 – 2-bedroom units, 30 – 3-bedroom units, and 50 – 4-bedroom units for a total of 120 total units,” this was not proffered.

In 2019, staff recommended denial of the rezoning stating “[w]hile staff supports the location of this site for a mixed use development staff has concerns about the proposed entrance location, does not believe that the project, as presented, supports the mixture of uses between this property and neighboring properties, and does not believe that the project provides a safe and comfortable pedestrian environment that promotes walkability for residents and visitors as described in the purpose section of the R-5 district in Section 10-3-55.2...”

Planning Commission (PC) recommended denial of the rezoning with a 4-3 vote. Both staff and PC recommended approval of the three special use permit requests if the rezoning was approved. City Council (CC) approved the rezoning and special use permits unanimously. The May 28, 2019 CC agenda packet, including an extract of minutes from the April 10, 2019 PC meeting, is available at: <https://harrisonburg-va.legistar.com/Calendar.aspx>. (May 28, 2019 was the first reading and public hearing for CC and June 11, 2019 was the second reading on CC's consent agenda.)

About seven to eight months after receiving approval of the rezoning and SUPs, the applicant began the process of pre-requisite submissions for the engineered comprehensive site plan (ECSP) review process by submitting for a Preliminary Fire Review and a Preliminary Engineering Report for water and sewer matters. As noted above, the publicly discussed concept plan at PC and CC indicated 120 units with 1, 2, 3, and 4-bedroom units, however, when going through the ECSP process, the project had 100, 4-bedroom units. The ECSP was ultimately accepted for construction (approved) on August 17, 2020. While the ECSP is accepted for construction, before the applicant can begin land disturbing activities and construction, there are requirements including, but not limited to, submitting an acceptable form of surety for public improvements and recordation of stormwater best management practice (BMP) maintenance agreements, as well as other miscellaneous matters.

With regard to the Comprehensive Plan, the site is designated as Mixed Use. The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for "live-work" and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way. Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

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

- Site: Undeveloped property, zoned R-5C
- North: Retail and other commercial uses, zoned B-2
- East: Convenience store, fueling station, and restaurant, zoned B-2

- South: Across Peach Grove Avenue, private school, retail, and a single-family detached dwelling, zoned B-2
- West: Undeveloped property, zoned B-2

The applicant is requesting to amend proffers for a +/- 5.44-acre property addressed as 1051 and 1351 Peach Grove Avenue and zoned R-5C, High Density Residential District Conditional. If approved, the applicant plans to construct one, six-story multi-family building without commercial or retail uses.

The applicant explains their reasons for seeking a rezoning to amend the proffers in an attached letter titled "Reasons for seeking a rezoning of the property to amend proffers."

The approved and existing proffers (from the 2019 rezoning) include the following (written verbatim):

- 1) The site shall contain residential and non-residential uses.
 - a) There shall not be any residential dwellings located on the first floor of any building. However, the first floor of buildings may contain residential lobby area and other residential amenities for use by residential tenants, such as recreational facilities, computer room, and laundry, etc. These amenities shall not be counted as non-residential.
 - b) A minimum of 15,000 square feet of non-residential uses as permitted by Section 10-3-55.4(4) (i.e. retail stores, convenience shops, personal service establishments, restaurants (excluding those with drive-through facilities), and business and professional offices shall be contained on the first floor of buildings. The proffer does not preclude the property from adding non-residential uses up to the entire first floor of any building.
- 2) The site shall contain no more than 400 bedrooms.
- 3) No more than two rows of parking and associated drive aisles can be located between any building and Peach Grove Avenue and between any building and the existing private access road on the property.
- 4) A sidewalk shall be provided along the southwestern side of the private access road from Peach Grove Avenue to tax map parcel 92-F-11 as generally depicted on the submitted layout titled "The Shoppes at Peach Grove" dated February 23, 2019.
- 5) A right-turn taper shall be provided for the proposed driveway. The taper shall have a minimum taper length of 125 feet.

The revised, new proffer statement includes the following (written verbatim):

1. The site shall contain no more than 460 bedrooms.
2. No more than two rows of parking and associated drive aisles can be located between any building and Peach Grove Avenue and between any building and the existing private access road on the property.
3. A sidewalk shall be provided along the southwestern side of the private access road from Peach Grove Avenue to tax map parcel 92-F-11 as shown on the accepted site plan with the project name, "The Shoppes at Peach Grove" dated August 17, 2020.

4. A right-turn taper shall be provided for the proposed driveway. The taper shall have a minimum taper length of 125 feet as shown on the accepted site plan with the project name.
5. A bus pull off will be constructed along with a concrete pad for a bus shelter, and a bus shelter easement will be dedicated to the City at a location acceptable to the Department of Public Transportation.
6. All traffic generating uses from the site shall not exceed the maximum number of trips in the traffic impact study accepted by the Harrisonburg Department of Public Works on April 2, 2019, as calculated using the latest edition of the Institute of Transportation Engineers' Trip Generation Manual.

Note that within the applicant's supporting documents, Exhibit D-2 is sheet C3 from the accepted site plan that is referenced in Proffer #3 of the proposed revised proffers. No other element of the accepted site plan is proffered.

New proffer #1 is similar to the 2019-approved proffer #2, except that the applicant has increased the number of allowed bedrooms from 400 to 460. While the applicant has described in their letter a building containing a mix of 22, 2-bedroom units and 100, 4-bedroom units for an approximate total of 126 total units, this is not proffered. As noted above, the accepted ECSP has 100, 4-bedroom units, which is different than what was planned and illustrated during PC's and CC's 2019 review. However, the applicant was allowed to change their plans as the bedroom per unit makeup was not proffered.

The proposed, revised proffers #2, 3, and 4 are similar to the 2019-approved proffers #3, 4, and 5, respectively, except for the noted reference to the accepted ECSP.

With proffer #5, a concrete pad will be constructed and an easement dedicated for a future bus shelter. The Harrisonburg Department of Public Transportation will provide the bus shelter.

The revised, new proffers do not include the 2019-approved proffer #1 that required residential and non-residential uses on the site. Because the SUPs approved in 2019, which included a SUP to allow retail stores, convenience shops, personal service establishments, restaurants (excluding drive-through facilities), and business and professional offices remains valid, and because new proffer #2 would allow 60 more bedrooms than previously proffered, city staff encouraged the applicant to consider a limit on the traffic generated from the site that is in line with the traffic impact analysis (TIA) study accepted by the Department of Public Works on April 2, 2019. Therefore, the applicant has offered Proffer #6. This proffer allows the applicant to have any combination of allowed uses on the site that would not exceed the maximum number of trips in the accepted TIA study. The current proposal for 460 bedrooms and no non-residential uses compared to 400 bedrooms with non-residential uses results in a calculated decreased number of vehicle trips during peak hours. Attached within the applicant's supporting documents is a memorandum from Ramey Kemp Associates dated August 5, 2021 that describes that information.

During the 2019 rezoning, with the plans for a mixed use building, staff recommended that the building be located to the front property line (along Peach Grove Avenue) and along the private access road, and to not have parking spaces or drive aisles between the building and the public street and private road. At that time, the applicant said that such a design is not desirable because

retailers want parking in front of the building to serve customers and that moving the building closer to Peach Grove Avenue would impact the availability of parking spaces within the development. As noted above, with the current 2021 rezoning request, the applicant proposes to remove all nonresidential uses from the building.

While staff did not reiterate to the applicant to relocate the building as suggested in 2019, we continue to believe this is a desirable option. During the review of the current request, however, and with the intent to have a site layout that we thought could encourage future development that would promote a pedestrian friendly and mixed use area, rather than continuing forward with the applicant's desired layout, staff offered for them to consider two different site layout options. The two options included: (A) to move the structure towards the James Madison University Foundation property to the west so that the building's pedestrian entrance/exit is in line with the sidewalk in front of the existing shopping center. This could make it easier for residents to have access on foot to the existing commercial uses without having to navigate a large parking lot. This option could preserve a portion of the Peach Grove Avenue frontage for a future commercial or mixed use building, or (B) to rotate the structure about 90 degrees and push it as close as possible to the rear property line adjacent to the existing shopping center parking lot to the north. This option could preserve the entire Peach Grove Avenue frontage for a future commercial or mixed use building. The applicant explained that they have already invested a lot and are so far along with site development and building plans that they are not interested in changing the location or configuration of the building. The applicant is aware, however, that their proposal will require revisions to the accepted ECSP and building plans for the removal of the non-residential spaces and the addition of more dwelling units to the building.

As we all know, since the 2019 approval of the rezoning and SUPs and during the review and ultimate acceptance of the ECSP, a great deal has happened in the world associated with the Covid-19 pandemic. In the applicants document titled "Reasons for seeking a rezoning of the property to amend proffers," it states, "[d]ue to the many challenges created for the commercial/retail industry by the Covid-19 pandemic, we are asking to amend the proffers for this property." Staff recognizes these struggles. However, as most know, since the rezoning approval and acceptance of the ECSP, the City has completed a Comprehensive Housing Assessment and Market Study (Housing Study), which provides a great deal of information in understanding the housing situation in the City and offers recommended tools for improvement.

While considering the proposed project, as indicated in the Housing Study, there are points that should be understood, which, among others, include:

- The City's rental market is comparably tight with rental vacancy rates as low as 2 – 3.5 percent. This creates high levels of competition for scarce units and where the lowest income households have the fewest options.
- College students drive population growth and the housing market. The demand for off-campus units for college students exerts upward pressure on rental rates, pricing out non-student households.

- There is strong demand for expanding rental housing inventory at the lowest and highest income spectrums. In other words, the number of households in the lowest income group and the highest income group significantly exceed the number of housing units available for and affordable to them.
- There are very few studio apartments. Smaller units are ideal for the creation of supportive housing.

The Housing Study also places the subject property within Market Type C. Along with other details of this market type, it is the smallest but fastest growing market type in the City. Among other characterizations, Market Type C has a large number of university students. The Housing Study states “[l]ike Market Type A, Market Type C has above median overall access to amenities such as public transit within walking distance, full-service grocery stores, and multiple parks and recreation facilities.” It goes on to say that “Market Type C has above median access to amenities yet is the most affordable market type in the City. The creation and preservation of affordable housing and construction of middle income housing would be appropriate here as there are already amenities in place that would make these areas attractive locations for housing...” The Housing Study also notes that “[h]aving an adequate supply of smaller apartments in Market Types A and C is important because these block groups have higher scores for access to amenities such as jobs, parks, full-service grocery stores, and public transit.”

Staff does not believe that more student housing is necessarily needed at this time, which the applicant is likely marketing to, given the bedroom and bathroom configuration. Staff suggested that the applicant consider proffering a multi-family building that would have one-, two-, and three-bedroom units and to proffer a breakdown of the number of each type of unit. Furthermore, staff asked if the applicant would be interested in discussing an ordinance amendment to create a special use permit ability to allow multi-family units in the B-2 district at a greater density than the R-5 currently allows. Staff’s reason for doing so is because we are proposing in the draft Zoning Ordinance update for property owners with parcels zoned AUC, Auto Urban Commercial District (somewhat equivalent to the B-2, General Business District) to have the ability to apply for a special exception to allow apartment units at 38 units per acre compared to the current R-5 district’s 24 units per acre maximum. Again, the applicant explained that they have already invested a lot and are so far along with site development and building plans that they are not interested in changing their plans at this time.

The Comprehensive Plan designates this area as Mixed Use and states that “Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods.” While the proposed building would not contain residential and non-residential uses, staff could envision supporting a proposal for a residential-only building if the location of the building were changed to allow opportunities for future commercial and/or mixed use development on the property as described earlier, and if the bedroom per unit breakdown and overall per unit design provided more housing options for the non-student demographic. While staff understands that the applicant has invested a great deal in their previously planned project, with the knowledge and data of the completed Housing Study, staff does not believe changes should be made to accommodate a project for more student housing. Staff recognizes that the applicant can already build units to accommodate students with the existing zoning and ECSP, but there is an opportunity here to

change direction and provide for other multi-family housing that is greatly needed for our community.

Staff recommends denial of the rezoning request to amend the proffers.

Chair Finnegan asked if there any questions for staff.

Chair Finnegan wanted clarification regarding the massing and location of the building. You showed Option A and Option B, massed to the west and up against the shopping center parking lot. Was the original 2019 massing discussed?

Ms. Dang said that she did not discuss that with the applicant. We were trying to open the conversation by presenting Options A and B as potential ideas.

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.

Mac Nichols, attorney for the applicant, came forward to speak to the request. The request is straight forward. It changes the first floor of the building from about 15,000 square feet of commercial space to residential space. In the packet was exhibit C, which shows what the plan is for the conversion. The commercial space was going to be the area here (pointing to plan). It was always planned that this would include the club room, the computer room, mechanical room, bike storage and those other things. It is not the entire floor that was going to be commercial, only part of it. Back in 2019, I assumed that everyone understood that this was going to be student housing. I believe that we had discussions about that. It was designed exactly like 865. This project before the cost increases was going to be about \$35 million dollars. The present owner, in 2019, was considering doing this project himself, but after further reflection decided not to. There have been three potential purchasers of this property based on the plans that were submitted. The first one was not a serious buyer. They terminated their contract before they had developed the architectural and engineering plans. After those were completed, we had two other potential purchasers who were student housing developers. They decided not to purchase the property because of the commercial space. Looking at the City and the available commercial space that was vacant and the fact that they are in the residential business, they did not feel that the commercial space was going to be viable. As a result, they both did not go forward with their contract. That is one of the driving reasons why the applicant is asking to convert the first floor commercial space to residential. The increase from 400 beds to 460 beds is a result of making the first floor residential. The combination of four bedroom and two bedroom configurations comes to about 50, so they put forward 60. They are committed to this plan. They have a lot of money on the architectural plans. They are complete. With respect to the building location, the original proposal by the applicant in 2019 was to have it in a similar location to Option A, backing up to the JMU Foundation property. As a result of discussions with staff, they decided to move it to where it is right now. The reason they have the parking around the building between the private drive and Peach Grove Avenue was because it is commercial. To move the building would be a substantial cost added to what the applicant has invested. Moving it back next to the shopping center could create problems. If the anticipation is to add commercial along Peach Grove Avenue, the existing parking that is available on the site is maxed out. If you added commercial on Peach Grove Avenue, you would have a

parking issue. Secondly, adding commercial would be in violation of proffer #6 and have to come back to ask for an amendment to that proffer. We understand the City's desire for affordable housing for residents of the City. By having a mix of bedrooms in this building, in the anticipation that there would be families and non-students... I do not think that anyone would want to live in a building with a large student population. I do not think that you could have a mixture of students and non-students. Having the additional 460 bedrooms in an area where there is substantial student housing already, what could happen is that students that currently live in the City in single family resident housing and apartment buildings would be attracted to a new building like this. For example, 865 has been substantially high ever since it was built. This is in line with that. It is very possible that having this as student housing will help provide affordable housing by opening up some of these other properties where students are living. We are asking for the ability to make this project viable by eliminating the commercial space, in the current climate and the low occupancy for commercial space.

Chair Finnegan asked if there any questions for the applicant's representative.

Chair Finnegan said that you have 100 four bedroom units, not proffered but estimated to go in there. Are they leased by the room?

Mr. Nichols said that exhibit C, while we are not proffering the two- and four- bedroom units, this area would be two-bedrooms. Each floor, in this section are two-bedroom units. The rest are four-bedroom units.

Councilmember Dent asked how many parking spaces are planned for the development.

Mr. Nichols said that he does not know the number, but it is in compliance. When they submitted the site plan, under the present plan, they had sufficient parking. The architect, when we looked at changing from commercial to residential, we asked that. He said that the change would only impact one parking space.

Councilmember Dent asked how many parking spaces are being reserved for electric vehicle (EV) parking stations.

Mr. Nichols said that he does not know, but suspects that the plans do not provide for that.

Councilmember Dent asked if there were any plans for solar panel or other clean energy or green building practices.

Mr. Nichols said not that he is aware of.

Chair Finnegan asked if there were any more questions for the applicant's representative. Hearing none, he asked if there was anyone present wishing to speak or any callers. As there was no one present wishing to speak and no callers, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said that he reviewed the minutes from April 10, 2019. Many of my concerns of 2019 remain my concerns today. The pedestrian hostile parking moat around the building does not lend itself to pedestrian friendly activity. There is a lot of pedestrian activity in that area, particularly on a Friday night when JMU is in session. The safer that we can make it for pedestrians the better. It is disappointing that the applicant did not want to budge on the massing of the buildings or doing anything to alleviate some of these concerns. I am concerned with the amount of traffic that this will generate. As Councilwoman Dent asked about the EV charging capabilities, it sounds like there is currently not any plan to put chargers in there. I do not fault the applicant for JMU's decision to put several large parking decks around the edges of campus, land that would have been better spent to build housing where people can walk to and from class. What we have here is something that is on the City line, about half a mile from the City-County line, encouraging more cars to drive. Those were my concerns in 2019 and they remain my concerns today.

Commissioner Whitten said that unless and until we have a requirement for EV charging stations, that cannot be part of our decisions. It is a good point to bring up, but it should not go against the applicant because they do not have it. Or solar, for that matter. That is up to City Council to make those rules and then administer those rules. The overarching concern that I have is the proof that we have that we do not have a need for more student housing. That simply does not exist. If I were the applicant, I would be more concerned about having more bedrooms in a COVID environment than taking away the retail. All the retail that they noted in the letter, McDonald's, Food Lion, CVS, ABC stores and several restaurants are still all in business, and they were prior to this point. That point falls flat. There is more retail being added all the time in the City. I voted against it last time. As a mixed-use development, that made it more palatable to some of the Commissioners. It was not palatable to me the first time around and I do not have a problem voting against it this time.

Commissioner Orndoff asked if this request were to be denied, would the developer continue what he was originally planning or would he abandon the project.

Mr. Nichols said that it would be tough to answer that. I suspect that he may continue to pursue this in its present state. That is going to be difficult. As he has determined at this point, because of the lack of interest from other partners as far as student housing and the component of commercial, based on the vacancies in the City.

Commissioner Baugh said that he did vote for this before while on City Council. Your points are well taken, Mr. Chairman, it certainly does not maximize pedestrian friendliness. I was ultimately persuaded that it would be adequate in that layout but that was assuming that you would have commercial on the first floor. I do think that there are some broad implications for us here especially considering how much in our recent Comprehensive Plan we moved strongly in the direction of approving mixed-use developments. I have some concern with taking things that we said we had planned for mixed-use and then allowing them to just be high-density residential. Get used to it because once we start approving those, we will start seeing a lot of applications for that. Who knows how it will look in five or ten years? At this point, I do not think that we have anywhere near enough data to tell us that we are on the wrong path. I did vote for this before with it being mixed-use in an area that we said would be mixed-use. I get it that it is simpler in the marketplace if you are building all as one thing, but part of the idea behind this and the potential for other

similar type buildings to be in the area is that vicinity, does it not make the commercial space more valuable when you have 400 people who could get to it on foot living on top of it?

Chair Finnegan said that those points are well-taken. One of the concerns that I pointed out in 2019, is that neighborhood does have all of the ingredients for walkability. You have a CVS, the sports fields, a grocery store, all of these things right there, but you have a pedestrian hostile environment surrounding it. This certainly does not do anything to alleviate that, nor does it do anything to alleviate the number of car trips that people would have to take to leave where they live and go somewhere to get together with friends and spend leisure time. That would cut down on car trips.

Councilmember Dent concurred that we do not need more student housing. We need housing designed for families. These four-bedroom layouts are designed for four different students. What happens if we do not approve this? What is the developer able to build under the current approvals they have?

Ms. Dang said that the developer would be able to continue with the plans that have been approved through the comprehensive engineered site plan process and building plans. They can do the planned 100 four-bedroom units. If they move quickly their plans and the rezoning from 2019 as well as approved special use permits would continue to be valid. There will come a point where the special use permits would expire. That would happen if they become inactive and they do not work towards any plan, they could expire. Then they would have the rezoning without the special use permits. By that point, we would probably have a new zoning ordinance and would be rethinking things a bit differently. There are a number of scenarios.

Commissioner Baugh moved to recommend denial of the proffer amendment.

Commissioner Whitten seconded the motion.

Chair Finnegan called for a roll call vote.

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| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend denial of the rezoning to amend proffers passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

Consider a request from Cobbler's Valley Development Inc. to rezone a +/- 3.14-acre property at 601 Pear Street

Consider a request from Cobbler's Valley Development Inc. for a special use permit to allow townhomes at 601 Pear Street

Chair Finnegan read the requests and asked staff to review.

Ms. Dang said that on September 9, 2020, Planning Commission reviewed a preliminary plat request from Cobber's Valley Development, Inc. to preliminarily subdivide a +/- 5.66-acre parcel to create two parcels of +/- 3.13 acres and +/- 2.24 acres and a new public street to serve as the entrance to a new residential development. The preliminary plat was approved by City Council on October 13, 2020, and the final plat was recorded on May 25, 2021.

The Comprehensive Plan designates this site as Medium Density Mixed Residential. These areas have been developed or are planned for small-lot single-family detached and single-family attached (duplexes and townhomes) neighborhoods, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets. Mixed-use buildings containing residential and non-residential uses and multi-family dwellings could be appropriate under special circumstances. Attractive green and open spaces are important for these areas and should be incorporated. Open space development (also known as cluster development) is encouraged, which provides for grouping of residential properties on a development site to use the extra land for open space or recreation. Like the Low Density Mixed Residential designation, the intent is to have innovative residential building types and allow creative subdivision designs that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and the protection of environmental resources or sensitive areas (i.e. trees and floodplains). Residential building types such as zero lot-line development should be considered as well as other new single-family residential forms. The gross density of development in these areas could be around 20 dwelling units per acre. 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.

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

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

Site: Vacant land; zoned R-1

North: Across Pear Street, detached single-family dwellings and vacant land; zoned R-1

East: Vacant land; zoned R-1

South: Vacant land within Rockingham County; zoned County R-5

West: Detached single-family dwellings; zoned R-3C

The applicant is requesting to rezone a +/- 3.14-acre parcel from R-1, Single-Family Residential District to R-8C, Small Lot Residential District Conditional and is applying for a special use permit (SUP) per section 10-3-59.4 (1) to allow attached townhomes of not more than eight units within

the R-8, Small Lot Residential District. The applicant is not requesting approval of a preliminary plat at this time.

With the subject rezoning request to R-8C, the applicant has proffered the following (written verbatim):

1. Density of the development shall not exceed 40 units.
2. Developer shall plant and maintain a 30' landscape buffer adjacent to the existing Sky View Estates Subdivision as depicted and described on the Concept Plan.
3. A 5 ft wide sidewalk connection shall be provided that connects the internal sidewalk system with the existing sidewalk along Pear Street as generally depicted on the Concept Plan.
4. The Developer shall provide an easement for a bus shelter at a location acceptable to Harrisonburg Department of Public Transportation (HDPT) and will construct a concrete pad to HDPT's specifications.
5. The Developer shall provide a vehicular connection/road stub to parcel # 108-(6)-L2 (located in Rockingham County) to allow for future connectivity. Cross-access shall be provided from Cobbler's Court to the stub location to provide for inter-parcel connectivity.

Note that the submitted Concept Plan is not proffered.

Proffer #1 limits the development to not exceed 40 dwelling units. The traffic impact analysis (TIA) accepted by the Department of Public Works on February 26, 2018, considered a maximum of 450 dwelling units for a development area located in the City and Rockingham County. See Figure 1. In November 2018, Rockingham County approved rezoning the County portion of the proposed development to County R-5, Planned Residential District. The County rezoning included proffers that limited the density of the development to 400 dwelling units. If this rezoning request in the City is approved, then the maximum number of dwelling units the development can construct in the City and County is 440, which is less than the 450 dwelling units considered in the TIA study. In addition, the Comprehensive Plan's Land Use Guide designation for this site is Medium Density Mixed Residential, which is planned to be around 20 units per acre. The proffered density is 12.7 units per acre while the conceptual layout of the site demonstrates 35 units, which is just over 11 units per acre.

Proffer #2 is consistent with a 2018 proffer for the development in Rockingham County. The applicant's letter describes "[a]s part of the Rockingham County Rezoning in 2018 a series of public meetings were held to discuss the impact of the development with adjacent landowners in Skyline Estates, particularly the residents that live adjacent to Cobblers Valley along Russell Drive. As a result of those meeting *[sic]* the developer proffered a 30 ft wide buffer planted with a double row of evergreen trees in order to screen the homes from the development." The proffer offered with the subject rezoning in the City references the Concept Plan, which describes in the detail: "Proposed Leyland Cypress tree (or approved equal), 6-ft min height at the time of planting."

Proffer #3 would require an internal sidewalk connection as depicted on the Concept Plan. Proffer #4 would require the developer to provide an easement and to construct a concrete pad for a bus

shelter. The Harrisonburg Department of Public Transportation (HDPT) would provide the bus shelter and would approve the shelter and concrete pad's final location during engineered comprehensive site plan review. Proffer #5 would require the developer to provide a vehicular connection/road stub into portions of the development in Rockingham County to enhance connectivity.

As previously noted, the applicant is not requesting approval of a preliminary plat at this time. It should be understood that the layout illustrated in the Concept Plan would require the City's approval of a variance from Subdivision Ordinance Section 10-2-42 (c), which requires all lots to front on a public street. Therefore, that variance should be considered when making a recommendation for this project as approving the rezoning could be perceived as also providing an endorsement for the variance that would be requested during the platting phase.

The requested rezoning to R-8C is supported by the Comprehensive Plan and staff recommends approval.

Additionally, staff believes that the proposed townhome use is consistent with good zoning practice and will have no more adverse effect on the health, safety, or comfort of persons living and working in the area and will be no more injurious, economically, or otherwise, to property or improvements in the surrounding area, and therefore staff recommends approval of the SUP request.

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

Todd Rhea, attorney with Clark & Bradshaw PC, came forward to speak to the request. I have been working on this project on behalf of the applicant since late 2016. This is a culmination of a long standing planning effort with both the City and the County to provide much needed housing under a planned concept. The rezoning in the County was approved in 2018. It contained about 75 acres of fairly dense single-family and townhome development. This request extends the townhome portion of the development into the three acres located in the City on the west side of the entrance road that was installed which you have seen at the site. There has also been proffered on the County portion of master plan. This is not a stand-alone request. There are amenities, walking trails, about 15 acres of wooded and open area that are proffered in the immediate adjacent County over at Cobbler's Valley Development that the folks in the City portion would have full access to. They will be integrated with and part of the homeowner's association for the overall project. One reason that we could not reach the target density in the Comprehensive Plan is that there is a very large HEC and Dominion Power line that runs through a portion of this property which restricts it from development leaving about two and half acres which can be developed. We have worked closely with staff and other City agencies. We think this is well integrated into the County plan. Culminating three years of work, we have some houses being built in the single-family County portion and we are ready start the process of moving across the street to provide a second housing type which are townhomes on these three acres. I am happy to answer any questions.

Chair Finnegan asked if there any questions for the applicant's representative.

Councilmember Dent said that some of you may have seen me say on City Council last night that we have a dire climate emergency. While I would love for the City to require renewable energy and EV parking and charging stations, we cannot require that yet, with the Dillon rule and we are just getting going on this discussion. What provisions does the proposed development have for renewable energy and EV charging?

Mr. Rhea said that the townhouses all have private parking spaces. The provision of rooftop solar for this community will be up to the homeowner. It is not prohibited. There is some open space on the County portion of the project, but that is wooded. I am wrapping up a year of service on the County solar ordinance study committee. One of the recommendations was to not convert to true canopy to utility scale solar projects. The intent would be to preserve that as a more natural area within this development. I concur. I think that, as a developer, we are sympathetic to and realize that renewable energy is a consideration for developments of this type. While nothing specific was integrated into this design, we encourage homeowners who live here to install distributed systems on their property.

Councilmember Dent said she appreciates his sympathetic understanding of the issue. I am less concerned in this case because they are townhomes and people can put solar panels on their own roofs and the parking is arranged more or less adjacent to these units allowing them to run an extension cord to their own car. This has the flexibility as well as the density. I think that has some room for being able to develop renewable energy and EV charging in the future. I agree, leave the trees alone because they are carbon sequestration and air quality devices. Thank you for your consideration of those issues.

Chair Finnegan said that to Councilwoman Dent's point, the market is going to drive the EV charging infrastructure. I hope that is something that is taken into consideration on all requests as residents buy EVs they will need a way to charge them safely.

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. Hearing none, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said that this development is already being built in the County. When you look at the Erickson-Stone Spring connector, it was created with future growth in mind. I do not see any reason to oppose this request at this time. I have no outstanding concerns. Since a good portion of this development is in the County, we want to make sure that the City is able to get some of that tax revenue, as well.

Commissioner Baugh said that it is consistent with and moves in the direction of planning. Unlike the matter that we took before, this does feel more like the direction and type of things that we want to see. I will move to recommend approval, as requested.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

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|----------------------|-----|
| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the rezoning request, as presented, passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

Commissioner Baugh moved to recommend approval of the SUP request, as presented.

Commissioner Whitten seconded the motion.

Chair Finnegan called for a roll call vote.

| | |
|----------------------|-----|
| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the SUP request, as presented, passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

Consider a request from PDY LLC to rezone a +/- 2.03-acre parcel located at the terminus of Suter Street

Consider a request from PDY LLC for a special use permit for townhomes on a +/- 2.3-acre property at the terminus of Suter Street

Chair Finnegan clarified that there are three separate requests for the same property that will be discussed together and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site as Medium Density Mixed Residential. These areas have been developed or are planned for small-lot single-family detached and single-family attached (duplexes and townhomes) neighborhoods, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets. Mixed-use buildings containing residential and non-residential uses and multi-family dwellings could be appropriate under special circumstances. Attractive green and open spaces are important for these areas and should be incorporated. Open space development (also known as cluster development) is encouraged, which provides for grouping of residential properties on a development site to use the extra land for open space or recreation. Like the Low Density Mixed Residential designation, the intent is to have innovative residential building types and allow creative subdivision designs that promote neighborhood cohesiveness, walkability,

connected street grids, community green spaces, and the protection of environmental resources or sensitive areas (i.e. trees and floodplains). Residential building types such as zero lot-line development should be considered as well as other new single-family residential forms. The gross density of development in these areas could be around 20 dwelling units per acre. 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.

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

- Site: Undeveloped property, zoned R-2
- North: Single family detached and duplex dwellings, zoned R-2
- East: Non-conforming single family detached dwellings, zoned B-2 and commercial uses, zoned B-2 and B-2C
- South: Single family detached dwellings, zoned R-2 and commercial uses, zoned B-2C
- West: Duplex dwellings, zoned R-2

The applicant is requesting to rezone a +/- 2.03-acre parcel from R-2, Residential District to R-8C, Small Lot Residential District Conditional and is simultaneously applying for a special use permit (SUP) per Section 10-3-59.4(1) of the Zoning Ordinance to allow attached townhomes of not more than eight units within the R-8, Small Lot Residential District. Moreover, the applicant is also requesting approval of a preliminary plat with variances. If the requests are approved, the applicant plans to dedicate and construct the extension and permanent termination of Suter Street and to build 9 duplex dwellings (18 units) and 3 townhomes (3 units) for a total of 21 units on the site.

Rezoning and Special Use Permit

With regard to the rezoning request to R-8C, the applicant has proffered the following (written verbatim):

1. Construct an asphalt surface 8 ft wide shared-use path, to connect the proposed Suter St. cul-de-sac and Clinton St. through the existing Madison St right-of-way.
2. Duplex structures on lots numbered 11-22 on the 'Preliminary Plat-Site Layout' drawing, dated 7-9-2021 and prepared by Colman Engineer, PLC, shall have a minimum 23-ft front setback.
3. Provide a 20-ft wide Public Shared Use Path Easement on lots 9 and 10 depicted on the 'Preliminary Plat – Easements and Typical Section' drawing dated 7/30/21, and prepared by Colman Engineering, PLC.

Note that the submitted conceptual site layout is not proffered.

As noted above, the applicant is proposing to dedicate and construct the permanent termination of Suter Street. With this design they are requesting a variance from the Subdivision Ordinance to construct a cul-de-sac that will exceed the Design and Construction Standards Manual's (DCSM) maximum length and maximum vehicle trips per day design regulation. (The variance requests are described later in this staff report.)

Proffer #1 addresses concerns of the extended, long cul-de-sac length by proffering the construction of a shared use path, which will provide not only pedestrian and bicycle connectivity, but, when necessary, can be used in the event of a fire or other emergency that prohibits emergency response from being able to access this section of Suter Street via Jefferson Street. In other words, the shared use path could be used by emergency response vehicles and by other vehicles to enter and exit this neighborhood if this section of Suter Street was blocked at or near the intersection with Jefferson Street.

Proffer #2 provides that the duplex units situated around the curve of the cul-de-sac will have a 23-foot front setback, allowing for parking in the front. The additional setback is also needed so the six duplexes meet the required lot width of 18-feet measured at the point of required front setback.

Proffer #3 provides that a 20-foot wide public shared use path easement will be provided for the proffered path.

The subject property is located within an existing neighborhood consisting of duplexes, multifamily dwellings, and single family detached dwellings. Also adjacent, along North Main Street, are commercial uses. As previously noted, the subject property is designated Medium Density Mixed Residential, which means such areas have been developed or are planned for small-lot single-family detached and single-family attached (duplexes and townhomes) neighborhoods, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets.

The requested rezoning to R-8C is supported by the Comprehensive Plan and staff recommends approval.

With regard to the SUP, additionally, staff believes that the request to construct townhomes is also in conformance with the Comprehensive Plan and is consistent with good zoning practice and will have no more adverse effect on the health, safety, or comfort of persons living and working in the area and will be no more injurious, economically, or otherwise, to property or improvements in the surrounding area, and therefore staff recommends approval of the SUP request.

Preliminary Plat

If both the rezoning to R-8C and the SUP to allow townhomes of not more than eight units are approved, then the preliminary plat can be considered. If the rezoning or SUP are denied, then the submitted preliminary plat request is no longer relevant and cannot be approved.

The preliminary plat illustrates a proposal for 21 residential lots and 2 common area parcels. The common areas will provide for the required stormwater best management practice (BMP), drainage facilities, and for the proffered shared use path. The residential lots are proposed as 18 duplex dwelling units and three townhouse units. Each residential lot will provide at least one off-street parking space as required by the Zoning Ordinance.

As required, all lots would be served by public water and public sanitary sewer. An existing public water main and an existing public sanitary sewer main run within the developed portion of Suter

Street and will be extended into the proposed new development. The preliminary plat shows how existing and proposed water and sanitary sewer lines will serve each new lot. As well, all public general utility easements are provided along the front and side, or rear, property lines as per section 10-2-43 of the Subdivision Ordinance.

The applicant is proposing to dedicate and construct the permanent termination of Suter Street. As required per Section 10-2-41 (e) “[c]uls-de-sac [*sic*] and other permanent dead-end streets are prohibited except when permitted by the planning commission in accord with the DCSM.” Therefore, Planning Commission must first give consent to dedicating a cul-de-sac and permanently terminating Suter Street. If Planning Commission consents to creating a permanent cul-de-sac, the applicant is further requesting Subdivision Ordinance variances to deviate from specific design criterion of the Design and Construction Standards Manual (DCSM).

As a reminder, Section 10-2-41 (a) of the Subdivision Ordinance requires that proposed streets conform to the standards and specifications outlined in the DCSM, except that variances may be approved on a case-by-case basis when:

- “(1) The proposed alternative would better achieve the walkable, pedestrian and bicycle-oriented environment the city desires.
- (2) The particular conditions of the site and surrounding street network would allow the proposed alternative without causing undue inefficiencies for service vehicles, nor an excessive reduction in pedestrian safety due to pedestrian-vehicle movement conflicts.
- (3) The proposed alternative would better balance the needs of pedestrians and vehicles, and better achieve the goals of the comprehensive plan.”

Specifically, the requested variances are to deviate from the DCSM Sections 3.3.3.1 and 3.1.10.2. Section 3.3.3.1 of the DCSM requires sidewalk on both sides of all new public streets (sidewalk is not required along the cul-de-sac). The applicant is requesting a variance from Section 10-2-41 (a) to not construct sidewalk along a +/- 55-foot section of the southern side of Suter Street. As the applicant describes in their letter, a sidewalk is proposed on the opposite (northern) side of the street and will connect into the proposed shared use path, thus connecting Suter Street to Clinton Street. Since no sidewalk exists on the southern side of Suter Street and because sidewalk is not required around the cul-de-sac, in this particular situation, staff does not believe sidewalk is necessary along the short distance of the frontage of the parcel that includes the drainage and SWM facilities and supports this deviation from the requirements.

The second variance to the DCSM is to Section 3.1.10.2, which requires:

A cul-de-sac serving a residential development shall be designed to a length that will carry a maximum of two hundred fifty vehicles per day, not to exceed eight hundred (800) feet in length, measured along the centerline from its intersection with the centerline of the through street to the center of the turnaround, and the minimum length shall be one hundred fifty (150) feet measured from the centerline of the intersecting street to the center of the turnaround.

The proposed subdivision would result in a cul-de-sac length of +/- 1,100-feet with +/- 442 vehicle trips per day (estimated by City staff). City staff and the applicant thoroughly discussed the street design as we had concerns regarding public service provision efficiencies, concerns with emergency response access, and concerns with interconnectivity of public streets for this neighborhood. Staff suggested constructing the extension of Suter Street to curve into the undeveloped Madison Street ROW so that it could connect to Clinton Street. Such a design might have necessitated other DCSM design deviations while also potentially causing a change in the scope of the project, possibly necessitating more units to make it economically feasible for that design through a multi-family development-type of project. Ultimately, the applicant wanted to move forward with the design that is considered in this application. To assist in alleviating concerns with the long cul-de-sac, the applicant proffered to provide an 8-foot asphalt shared use path that will be placed within a 20-foot shared use path easement that will connect the Suter Street cul-de-sac to Clinton Street. The path will serve not only as a pedestrian access, but will provide ingress and egress during fire and other emergencies that block access to Suter Street via Jefferson Street. With the shared use path serving as a second access point for emergency response, in this particular situation at this location, staff is comfortable recommending approval of the variance.

As required per Section 10-2-23 of the Subdivision Ordinance, a draft copy of the homeowner's association's covenants and restrictions for the Suter Street Development has been provided.

If Planning Commission consents to dedicating a permanent cul-de-sac, aside from the variances requested to not construct sidewalk on both sides of the street and to allow a cul-de-sac to exceed the maximum standards of the DCSM, the development meets all other requirements of the Subdivision and Zoning Ordinances. Staff recommends approval of the preliminary plat and variances and recommends approval of the proposed cul-de-sac as requested by the applicant. (The preliminary plat and variance request will be forwarded to City Council. However, the proposed permanent cul-de-sac only requires Planning Commission approval.)

Chair Finnegan asked if there were any questions for staff.

Chair Finnegan asked for clarification regarding the emergency access.

Ms. Banks said that the proffered shared use path will be eight feet wide, asphalt and within the 20-foot wide easement. The Fire Department is comfortable with that size and that the path itself will be able to hold an engine or rescue vehicle that may need to come in and out of there, and it can be used as means of driving in and out of the cul-de-sac if for some reason you cannot get out towards Jefferson Street.

Councilmember Dent asked if the letter that was received was directed to her or the entire Planning Commission.

Ms. Banks clarified that it was sent to all.

Councilmember Dent continued by stating that the letter is from a resident on Main Street. Is there an alley that goes from Main Street to Madison Street? Is that the cut through that is being objected

to? I am hoping that the shared use path would siphon off the traffic of people using that short cut provided that it is clearly marked.

Ms. Banks said that it is a public alley that goes along the neighboring property from whom the letter came. The public alley is also what they use as their driveway to access the rear of their property. I imagine that people drift and that is the easiest place to connect to walk to North Main Street. The shared use path will be wide, it will be paved, it will take you right to Clinton Street which will lead to Main Street.

Commissioner Whitten said that it will be a longer route.

Ms. Banks said that there will also be new homes at the end of the cul-de-sac.

Commissioner Whitten said that the path of least resistance is still there.

Councilmember Dent said that it is a public alley, so it is usable by the residents.

Chair Finnegan said that it could be fenced off.

Ms. Banks said that they use the alley to access the rear of their property so I do not know that fencing it off would help in their situation. It is public, so it can be used by anyone.

Commissioner Whitten said that there are water issues and there have been flooding issues in that neighborhood. Has this part of Suter Street had those issues?

Ms. Banks said that she does not know if they have had issues with homes flooding. Everything will have to be designed to meet standards. There is not a floodplain in this area. I do not know if the applicant knows anything differently about flooding in the homes currently.

Commissioner Baugh asked if there is any reason that the resident on North Main Street could not petition for an alley closing? If they were to do that and acquire it then they could put a fence along the entire parcel. Under the circumstances, the person who would need to make that decision is not in front of us and we cannot make a representation on behalf of City Council, but I think that you can see the wisdom of doing that to the extent that could cut the pedestrian traffic. If there is a shared use path over to Clinton Street, there probably is not a compelling need to keep that open for the people behind them.

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.

Phillip Yutzy, PDY LLC, came forward to speak to his request. My wife and I intend to provide community conducive to families and to homeownership. We desire to provide opportunities for first time home purchases. We would like to make them as affordable as possible. Affordable is an adjective and is relative to what we are able to do.

Chair Finnegan asked if these are to be for sale, not to be leased out.

Mr. Yutzy said that his intent is to work with Habitat for Humanity (Habitat) for some of these lots. I am willing to provide a rent-to-own option, and some might be sold directly, depending on the market, what I am able to do and what is profitable.

Commissioner Whitten thanked the applicant for doing exactly what we say that we want.

Chair Finnegan said that we did deny a request earlier tonight that could be perceived to be about housing. As we mentioned during that request, this is the type of housing that we need in the City.

Mr. Yutzy added that he is very interested in solar. I did not have those in the cost analysis for my particular buildings. If I am able to work with Habitat, they do put solar panels on the buildings that they do.

Chair Finnegan said that as these are designed, they have individual driveways. They could conceivably find a way to charge EVs in their driveways.

Councilmember Dent said that addresses some of her concerns. I am observing that with townhomes, if the occupant owns the building, they have their own roof and can use an extension cord for charging an EV. The renewable energy is technically feasible. There are tax incentives to get solar panels and EV charging. Thank you for doing family housing.

Chair Finnegan said that since you have mentioned wanting to work with Habitat, Give Solar has worked with Habitat to put solar on roofs.

Councilmember Dent said that is the ideal combination of affordable housing with renewable energy that actually saves people money on their utility bills.

Commissioner Whitten said that there is an active program with Habitat for solar.

Chair Finnegan said that Give Solar has been working with them.

Gil Colman, Colman Engineering, came forward to speak to the request. I had been on the Habitat board for six years. Now I am off the board, but I am on some of the committees. The intent of Habitat is not only to provide affordable housing to families, but also long-term with houses that are well insulated, providing solar. It speaks to affordability in many ways. Regarding this project, some of your questions related to flooding in that area. I think that area has a lot of issues with flooding. In this property there is a pond but is a sinkhole that carries water. There is a channel that goes all the way through to the next street and on to Blacks Run. I have heard some stories about houses in that area being flooded. The City does not have the infrastructure there. There is no infrastructure for that water to be channeled in a proper way to Blacks Run. To remedy the existing situation, the City would need to do something about that. In a new development that is larger than acre, it is required by State law to meet stormwater management requirements. That means that this development is going to have to meet that. Whatever runoff is generated by this development will have address water quality and water quantity, hopefully minimizing and reducing some of the flow that is continuing on to the next property. There is flooding in the area.

We will analyze the site so that our homes are elevated in such a way that there will not be flooding. We have had some conversations with neighbors behind the property from whom we are going to need a bit of an easement to address that channel coming through. He was interested in that. We are working with him. He has some flooding in his back yard, not necessarily in his home but under his crawlspace. We have talked with him to drain that so that it gets channeled to help his situation also. The idea is to continue this neighborhood, to expand this neighborhood. We are not just going to throw a bunch of houses here. We talked about many options with staff. This was the labor of many months. We continue to emphasize that the cul-de-sac was more conducive to a static neighborhood than a street that people drive through. It establishes a place, not a something you drive by.

Chair Finnegan said that he is looking at the conceptual drawing and has a question regarding foot traffic and the comment that was received. Has there been any consideration for fencing or anything to alleviate some of those concerns?

Mr. Colman said that the property behind this property has a big fence. He told us that he witnessed people jumping over that fence. The whole lot has become a place where people come and go through it. By putting in the shared use path, we are channeling that traffic in a specific direction. I believe that the person who sent the letter and the neighbors behind them have signs that say “No trespassing” and yet I pointed out that it is a public alley and people have the right to walk through there. I can understand that when people damage the property, that is a different thing. I would support what Commissioner Baugh suggested, encouraging them to close the alley behind their house and fence it. We think that it would be advisable for the units that back towards that alley to have a fence there. Perhaps the development could put a fence behind those properties so that they are protected. We do not want to also have those issues with people walking through and invading somebody else’s property. That is not what we are aiming for, so we might have something like that.

Commissioner Whitten said that in closing Suter Street, then Suter Street is the alley that connects to Main Street. Is that right?

Commissioner Baugh said that there is a second one. Suter Street arguably goes through the building there on Main Street. If it does not go through the building, it is right up against it. You can see it up on the plat, on the northern part of that property line.

Mr. Colman said that Suter Street ends where it ends right now. The other ones have a paper right of way that goes to that property. There is no paper right of way from Suter Street. It ends right there. There was a proposed development, years ago, that only went that far. That is an alley there.

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. Hearing none, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said that a pure YIMBY, that is “yes, in my back yard”, is to say yes to every development that comes before us because housing is housing. I do think that this request, the way that it is laid out, the duplexes, the triplex, and moving from R-2 to R-8 conditional is in line with

what we have discussed on the Planning Commission and on the Zoning Ordinance rewrite. I would be in favor of these requests.

Commissioner Whitten made a motion to recommend approval of the rezoning request.

Commissioner Baugh seconded the motion.

Commissioner Baugh said that we do have a number of these types of parcels throughout the City. Parcels that have a main corridor, typically zoned or used as commercial, with residential behind it and an undeveloped spot in between. These things are bears to deal with. One thing with the developer here is often because they may be pushing the envelope on the density that they want more than we like and more than suits the neighborhood. I think this is a particularly good solution. Usually these types of parcels, when we get to vote on them at this junction, it is much more contentious than it is now. Echoing the person on North Main Street, yes there are going to be changes, but the reality is that they have an undeveloped R-2 parcel behind them that could get filled with duplexes right now. I will be supporting this.

Chair Finnegan called for a roll call vote.

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| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the rezoning request, as presented, passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

Commissioner Whitten moved to recommend approval of the SUP request, as presented.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

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|----------------------|-----|
| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the SUP request, as presented, passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

New Business – Other Items

Consider a request from PDY LLC to preliminarily subdivide a +/- 2.3-acre parcel to create 23 parcels and dedicate public street right-of-way for the extension and permanent termination of Suter Street

Discussions for this item of business was included above in the public hearing requests associated with the same property.

Ms. Banks said that along with a vote on the preliminary plat there has to be a determination made on ending Suter Street.

Commissioner Whitten moved to recommend approval of the preliminary plat, as presented.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

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| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the preliminary plat, as presented, passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

Commissioner Whitten moved to approve the request to dedicate the public street right-of-way for the extension and permanent termination of Suter Street.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

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|----------------------|-----|
| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to approve the request to dedicate the public street right-of-way for the extension and permanent termination of Suter Street, as presented, passed (5-0).

Consider a request from George and Betty Heavner to preliminarily subdivide a +/- 5.3-acre parcel at 1270 Smithland Road

Chair Finnegan read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Low Density Mixed Residential. These areas have been developed or are planned for residential development containing a mix of large and small-lot single-family detached dwellings, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets. Duplexes may be appropriate in certain circumstances. Mixed use buildings containing residential and non-residential uses might be appropriate with residential dwelling units limited to one or two dwelling units per building. Attractive green and open spaces are important for these areas and should be incorporated. Open space development (also known as cluster development) is encouraged, which provides for grouping of residential properties on a development site to use the extra land for open space or recreation. The intent is to have innovative residential building types and allow creative subdivision designs that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and the protection of environmental resources or sensitive areas (i.e. trees and floodplains). Residential building types such as zero lot-line development should be considered as well as other new single-family residential forms. The gross density of development in these areas should be around 7 dwelling units per acre and 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.

The following land uses, as well as the properties' existing zoning, are located on and adjacent to the property:

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| <u>Site:</u> | Single family detached dwelling and undeveloped acreage, zoned R-1 |
| <u>North:</u> | Single family detached dwellings, zoned R-1 |
| <u>East:</u> | Single family detached dwellings and undeveloped acreage, zoned R-1 |
| <u>South:</u> | Single family detached dwellings and undeveloped acreage, zoned R-1 |
| <u>West:</u> | Harrisonburg City Public Elementary and Middle School, zoned R-1 |

The applicant is requesting to preliminarily subdivide one parcel into two lots consisting of one +/- 3.78-acre lot with frontage on Smithland Road, and one +/- 1.49-acre parcel with frontage on an unnamed 50-foot wide private right-of-way. As described in the applicant's letter, the subdivision will create a residential parcel for the existing single family detached dwelling and a second parcel for the remaining undeveloped acreage.

As noted above, the applicant is requesting a variance to Section 10-2-42(c) of the Subdivision Ordinance. Section 10-2-42(c) requires that all lots front on a public street. The original +/-5.3-acre tract is a pipe stem lot and has 50-feet of public street frontage along Smithland Road. The single family dwelling on the site, which was constructed while still part of Rockingham County, has always been accessed from Smithland Road through a 50-foot wide private right-of-way. If the subdivision is approved, the proposed +/- 1.49-acre single family residential parcel would no longer have any public street frontage because the pipe stem frontage would be part of the +/- 3.78-acre lot. (Note: For some time, the area now known as "private right-of-way," was believed to be undeveloped public street right-of-way. The review of the subject application brought this matter

to the City's attention. Staff will work with others to determine next steps on how to rectify this property and mapping issue.)

Regarding public utilities to the parcels, the proposed +/- 3.78-acre undeveloped parcel will be served by a 12-inch City water line and an 8-inch public sanitary sewer line, both located within the Smithland Road public street right-of-way. The +/- 1.49-acre single family residential parcel is connected to water through an 8-inch water line that is located within the private right-of-way and connects into the 12-inch City water line located within Smithland Road. Currently, the single family detached dwelling located on the proposed +/- 1.49-acre parcel is not served by public sanitary sewer; but is served by a septic system and drainfield. The preliminary plat includes a 10-foot private sanitary sewer easement, from Smithland Road, through the proposed +/-3.78-acre parcel, to the proposed single family residential parcel. This easement would serve the single family residential parcel with public sewer if needed in the future.

Staff has informed the applicant that the location of the septic and drainfield needs to be determined to ensure that the system is located entirely on the proposed single family residential parcel or that appropriate easements be established for the septic and drainfield. The location will need to be shown on the final plat prior to administrative staff approval.

The preliminary plat provides public general utility easements along the front and sides, or rear, of the proposed parcels as per the requirements of Section 10-2-43 of the Subdivision Regulations. Easements are also provided for existing overhead power and phone utilities which are located on the parcels. These are indicated as 10-foot easements centered on the existing utilities.

Staff recommends approval of the preliminary plat and variance as requested.

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

Todd Rhea, Clark & Bradshaw, came forward on behalf of the applicant. The family constructed the house 40 years ago and lived there the entire time and raised their family. Unfortunately, last fall, Mr. Heavner passed away and his wife moved out west to live with one of their daughters due to care. Looking at this property, it was more appropriately sellable, and there were some estate taxes and estate planning also involved, to divide off the house parcel for sale. There is a contract of sale for the house on one and a half acres, subject to preliminary plat approval. Those funds would then be used for the care of Mrs. Heavner and her family. It is a beautiful house, well maintained. The driveway is a multi-user driveway that comes off of Smithland Road. It is within a 50-foot privately created easement, so it is legal. It is just not a public street, hence the variance request, to just memorialize what has been the access for the last 40 years since the house was constructed. We would appreciate approval of the plat so that we may move forward with the transaction.

Chair Finnegan asked if there were any questions for the applicant. Hearing none, he asked staff if there were any comments received regarding the request. Staff indicated that no comments were received.

Commissioner Baugh moved to recommend approval of the preliminary plat and variance, as presented.

Commissioner Orndoff seconded the motion.

Chair Finnegan noted that there are a lot of pipestem lots in the neighborhood off of College Avenue in the Park View area. Sometimes to make these properties work, you need to make them shaped differently.

Chair Finnegan called for a roll call vote.

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| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the preliminary plat, as presented, passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

Consider a request from W.S.K.K.&J. LLC to preliminary subdivide a +/- 6.0 parcel at 3900 Early Road

Chair Finnegan read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site as Industrial. These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. They include the major existing and future employment areas of the City.

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

- Site: Equipment supply and logistical business, zoned M-1
- North: Across Leray Circle, industrial uses, zoned M-1
- East: Warehousing and industrial uses, zoned M-1
- South: Vehicle tire repair business, zoned M-1
- West: Across Early Road, Interstate 81 right-of-way

The applicant is requesting to preliminarily subdivide a +/- 6.0-acre parcel into two lots, a +/- 1.06-acre lot and a lot consisting of +/- 4.94-acres. Both lots will have frontage on Early Road and Leray Circle. The application includes a variance request from the Subdivision Ordinance for deviation from public general utility easement dedication requirements for the 4.94-acre lot. If approved, the applicant intends to sell the smaller, lot and retain ownership of the other lot.

As noted above, the applicant is requesting a variance to Section 10-2-43 of the Subdivision Ordinance. Section 10-2-43 requires a 10-foot-wide public general utility easement (PGUE) along front lot lines and any lot adjacent to public street right-of-way and requires at least a 10-foot wide PGUE centered on the sides or rear lot lines. The applicant has stated that the planned +/- 4.94-acre lot, which would contain the existing development, is currently served by necessary utilities and easements. Therefore, new PGUEs along exterior lot lines for this parcel are not needed. The applicant is providing 10-foot PGUEs along the street frontages and centered on the lot line perpendicular to Early Road for the proposed +/- 1.06-acre lot.

Regarding public water and sanitary sewer service for the subdivision, the planned +/- 4.94-acre lot would continue to be served by an 8-inch waterline situated on the site within a 20-foot public waterline easement. A 12-inch watermain located in the Leray Circle right-of-way will provide water to the proposed 1.06-acre lot. Sanitary sewer is provided to the planned +/- 4.94-acre lot by a sewer lateral on the site. The lateral leads to a private sewer manhole near Leray Circle, which then connects to a Harrisonburg Rockingham Sanitary Sewer Authority (HRSSA) manhole via a private 8-inch sanitary sewer main. This connection was approved as part of the 2000 engineered comprehensive site plan for the development of the existing Tactical & Survival Specialties, Inc business. The City's Public Utilities Department has agreed to accept the private sewer manhole and the +/- 146-linear feet of private 8-inch sanitary sewer main into the City's public system and requests that an exclusive public sanitary sewer easement be overlaid, centered on the pipe. The manhole and 8-inch main are shown on the preliminary plat and the applicant has overlaid the proposed easement. The applicant will be able to connect the sanitary sewer for the planned +/- 1.06-acre lot directly into what would become a public 8-inch sewer main. Additionally, a 20-foot wide private sanitary sewer easement will be provided centered on the existing sanitary sewer lateral from the building on the planned +/- 4.94-acre lot to the public sanitary sewer main.

As required by the subdivision regulations, a proposed stormwater best management practice (BMP) is provided for the new lot. As previously noted, the planned +/- 4.94-acre lot would contain the existing development and would contain the existing stormwater BMP facilities.

Staff recommends approval of the preliminary plat and variance as requested.

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

Ed Blackwell, Blackwell Engineering, came forward on behalf of the applicant. This is a pretty straightforward request. TSSi wants to carve off the corner lot. There is public water there. There is private sewer, but the City is going to take that private sewer main and turn it into a dedicated public main, making it public sewer. HEC is there. There is a fire hydrant on the corner. They are going to access this new one acre lot off of Leray Circle. TSSi has their driveway off of Early Road. The new lot will have a local street access which will be safe. They want to sub-off the lot and they have a potential buyer. That is why we are before you tonight. If you have any questions, I would be happy to answer them.

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

Chair Finnegan said that any concerns that I would have would be related to Public Works and future water use. If they do not have concerns, I do not either.

Commissioner Whitten moved to recommend approval of the preliminary plat and variances, as presented.

Commissioner Orndoff seconded the motion.

Chair Finnegan called for a roll call vote.

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| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the preliminary plat, as presented, passed (5-0). The recommendation will move forward to City Council on September 14, 2021.

Unfinished Business

Chair Finnegan said that he signed the letter regarding affordable housing and sent it off to City Council.

Public Comment

None.

Report of the Secretary & Committees

Proactive Code Enforcement

On hold.

Rockingham County Planning Commission Liaison Report

Commissioner Hull was scheduled to attend the Rockingham County Planning Commission; however, he is not present at this meeting. He may provide his report at the next Planning Commission meeting.

Board of Zoning Appeals Report

Commissioner Orndoff said that there was a meeting, but the appellant was not present. The matter was tabled to next month.

City Council Report

Councilmember Dent said that the public hearing was the Public Utilities request. The Public Utilities Department agreed to incorporate low maintenance vegetation. It was approved.

In other matters, we approved the sewer onto the property on East Market Street that is within Rockingham County. What are they doing with the failed septic system?

Ms. Banks said that she assumes that they would be shutting it down and taking the necessary actions as required under code. It is in the County, and I do not know what they need to do to close it off.

Other Matters

Planning Commission Annual Report 2020

Ms. Dang said that every year we compile an annual report of all the activities and requests that come before the Planning Commission. This document contains all those cases. It shows how the Planning Commission voted and what the City Council action was. I invite any discussion or questions that you might have regarding the document. If you are comfortable doing so, a vote to forward this report on to City Council.

Commissioner Orndoff moved to approve the Planning Commission Annual Report.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

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| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to approve the Planning Commission Annual Report, passed (5-0). The report will be forwarded to City Council.

Community Development Annual Report 2020

Ms. Dang said that this is an annual report that we put together from the Planning and Zoning Division of Community Development. It summarizes zoning activities, proactive code enforcement, and subdivisions that were administratively approved. That includes minor subdivisions and final plats that do not have to come before the Planning Commission. This report is for you to review and ask questions if you have any. It does not need to be forwarded to City Council.

Chair Finnegan said that it is interesting to see the impact that the changes that we have made to the Homestay by-right regulations on SUP requests in the Annual Report. It seems that has been reduced. I do not know how much of that is the pandemic or actions that we have taken. It does seem like a reduction in requests.

Consider Planning Commission Bylaws

The bylaws were presented to you at the last meeting on July 14, 2021. There was some discussion, but no changes were recommended. We can take recommendations, suggestions, or questions. You may make a motion and a vote to adopt it if you are prepared to do so.

Chair Finnegan asked if there were any questions for staff.

Commissioner Whitten moved to adopt the Planning Commission Bylaws.

Commissioner Orndoff seconded the motion.

Chair Finnegan called for a roll call vote.

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| Commissioner Baugh | Aye |
| Councilmember Dent | Aye |
| Commissioner Orndoff | Aye |
| Commissioner Whitten | Aye |
| Chair Finnegan | Aye |

The motion to adopt the Planning Commission Bylaws, as presented, passed (5-0).

Update on Zoning and Subdivision Rewrite Project

Ms. Dang said that it has been a very busy month and we have not made as much progress as we would have on reviewing all the comments that were received for Module 1, as well as the review of Module 2 by staff. We are collecting comments on Module 2 from various City departments right now. It is likely that the public input period that we were planning to have in September will likely be pushed back to allow staff more time to review it before we put it out to the public and for the Planning Commission and Ordinance Advisory Committee to review.

David Nahm has moved out of the area, so he has resigned from the Ordinance Advisory Committee. On July 27, 2021, City Council appointed Barry Kelley to fill that spot. When we have future meetings or correspondence, Mr. Kelley will be included.

Chair Finnegan said that he attended the first and watched the second of those meetings. Are you saying that there is nothing before September?

Ms. Dang said that is correct. We were anticipating that the next Ordinance Advisory Committee would be in conjunction with the public input meeting, and then there would be a public comment period.

Chair Finnegan said that he noted that there was an activity sponsored by Harrisonburg Downtown Renaissance (HDR) in front of Pale Fire about downtown parking.

Ms. Dang said that was for the Downtown Master Plan. The Department of Economic Development is leading that charge. Mr. Fletcher and multiple City departments are participating on that. HDR is a partner in that effort. They had a pop-up public input at Pale Fire on one day, another day at Magpie and another day on Court Square.

Chair Finnegan asked if there was the possibility of doing something like that with the Zoning and Subdivision Ordinance.

Ms. Dang said that staff will take that into consideration. A lot of it has to do with resources and availability.

The meeting adjourned at 8:32 p.m.