

MINUTES OF HARRISONBURG PLANNING COMMISSION
February 18, 2025

The Harrisonburg Planning Commission held its regular meeting on Wednesday, February 18, 2025, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Chair; Brent Finnegan, Vice Chair; Councilmember Laura Dent; Heja Alsindi; and Valerie Washington. Kate Nardi and Shannon Porter were absent.

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

Chair Baugh called the meeting to order.

Chair Baugh asked if there were any corrections, comments or a motion regarding the January 8, 2025, Planning Commission minutes.

Vice Chair Finnegan moved to approve the January 8, 2025, Planning Commission meeting minutes.

Councilmember Dent seconded the motion.

The motion to approve the January 8, 2025, Planning Commission meeting minutes passed (5-0).

New Business – Public Hearings

Chair Baugh said before we move onto the agenda we have had a request for item 4.c. they believe the matter will be brief. They have asked that we let them take that up as the first item under new business. Since we have a published agenda that would require a motion and approval to change the agenda.

Councilmember Dent moved to change the agenda.

Vice Chair Finnegan seconded the motion.

The motion to approve changing the agenda passed (5-0)

Chair Baugh said the order we will take up is what is on your printed agenda as 4.c. and then 4.a. and 4.b.

Consider a request from Miranda Ebersold to amend the Zoning Ordinance to reduce the minimum setback of accessory buildings on through lots in the UR, Urban Residential District

Ms. Soffel said through lots are lots where both the front and rear yards face public streets. Zoning Ordinance (ZO) Section 10-3-112(1) requires that rear yard setbacks on through lots be subject to the minimum front yard setback regulations. In the UR district, the minimum front yard setback is 25 feet; therefore, the through lot minimum rear yard setback is 25 feet.

With regard to location and setback requirements for accessory buildings, ZO Section 10-3-114(a) requires that accessory buildings in residential districts be located in the rear yard, to not occupy more than 30 percent of the required rear yard, and be not less than five feet from the side and rear lot lines. In addition, ZO Section 10-3-114(d) prohibits accessory buildings in a residential district from being located between a principal building and a public street, except that for through lots the accessory building may be located “within the established rear yard between the principal building and a public street **and meet principal building setbacks**” (emphasis added). As noted above, the principal building minimum front yard setback in the UR district is 25 feet. Thus, an accessory building on a through lot in the UR district shall be located in the established rear yard, shall be no closer than five feet from side property lines, and no closer than 25 feet from the public street right-of-way line along the established rear yard.

If the ZO is amended as presented by the applicant, it would allow for accessory buildings on through lots in the UR district to be constructed five (5) feet from the public street right-of-way line along the established rear yard.

Board of Zoning Appeals

On August 7, 2023, the Board of Zoning Appeals (BZA) heard the applicant’s request for four variances to deviate from the rear and side yard setbacks, and the requirement that accessory buildings not exceed 30 percent of the required rear yard. The applicant had proposed to construct a detached garage in the rear yard of the property addressed as 260 Franklin Street and identified as tax map parcel 26-I-7. The requested variances would have allowed the applicant to construct the garage one foot from the side and rear yard property lines.

A BZA is required to act in accordance with the standards of Virginia Code §15.2-2309(2) and may only grant the variance if the ZO would “unreasonably restrict the utilization of the property or that granting of the variance would alleviate a hardship due to the physical conditions relating to the property.” The Code references specific criteria that must be met for an application to meet the standard for a variance as defined in §15.2-2201, and which are further explained in the staff memorandum available here:

<https://harrisonburgva.legistar.com/LegislationDetail.aspx?ID=6304071&GUID=8B0DBE65-7E50-42B0-B5C3-EC4D5FB5F044&Options=&Search=>.

Staff evaluated the BZA application through the variance standards and determined that the application did not meet the criteria, stating:

The owner already has reasonable use of the property without the proposed detached garage as the dwelling may still retain its use as a single-family dwelling. Additionally, based on the proposed garage dimensions provided, the garage could be constructed in the rear yard and meet all setback requirements, building area requirements, and be constructed by right. Failure to satisfy this condition, regardless of any other satisfied criteria referenced above, means the request does not meet the definition of a variance per Virginia State Code and should be denied.

The BZA denied a variance request.

While the BZA denied that request, it should be noted that that the BZA has granted three (3) similar setback requests. On May 5, 1991, a setback variance request was granted to the property located at 272 Franklin Street; on August 15, 2011, a setback variance request was granted to the property located at 254 Franklin Street; and, on January 7, 2019, a setback variance request was granted to the property located at 218 Franklin Street. In 2019, BZA Chair Mr. Phillippi who voted against the variance request, expressed that under case law the BZA does not have the authority to grant the variance unless all the conditions listed in the Virginia Code are met. He added that approving the variance may result in legal action against the BZA for overstepping their authority. The BZA voiced a decision of 3-2 to approve the variance.

Through Lots in the UR, Urban Residential District

Through lots exist in different zoning districts throughout the City. However, with regard only to the UR district, there are 10 through lot properties on Layman Avenue, 17 through lots on Ash Tree Lane, 16 through lots on East Bruce Street, and six through lots on East Water Street. The proposed ordinance amendment would apply to all 49 parcels.

Evaluation and Recommendation

Staff acknowledges that there are buildings that are nonconforming to setbacks, that property owners have received variances from the BZA approving reduced setbacks, and that there are structures that likely abut or encroach in the public street right-of-way on East Bruce Street; Nonetheless, staff does not believe that a five foot setback is appropriate for through lots in the UR district. Structures that abut or encroach on the public street right-of-way at times can impede sight distance for neighboring entrances and driveways. In some cases, residents might block the public street right-of-way while opening and closing a garage or by parking vehicles in front of their garages, creating obstructions and potentially hazardous situations for other users of the street.

If there is desire to reduce the setback for these types of properties, staff believes a more appropriate and uniform reduced setback would be no less than 10 feet. A 10-foot setback would

mimic the existing permissible front yard setback in the R-5, High Density Residential and R-8, Small Lot Residential districts. A 10-foot setback would also be more reasonable given that it can accommodate more flexibility for the property owner while maintaining better lines of sight distance for these types of environments and, if the need arises, allows for future street improvements to occur without impacting more structures. Furthermore, the 10 feet directly behind public street right-of-way lines is at times a desirable location for positioning many different utilities.

If the Zoning Ordinance is amended as requested by the applicant, it would allow for accessory buildings to be constructed five (5) feet from rear yard property lines that front on public streets. As noted above, staff does not believe that a five-foot setback is appropriate. However, staff does support reducing the setback to allow accessory buildings to be constructed 10-feet from the rear yard property lines that front on public streets. This would provide a 15-foot reduction in setbacks for the applicant.

Chair Baugh asked if there were any questions for staff.

Vice Chair Finnegan said this is about the amendment not the actual building of the garage. Do we know where on that lot that would be built?

Ms. Soffel said they would like to build it five feet from the back property line. The residence that has the red star [referring to the screen] on it is the applicant's, and it fronts on Franklin Street. The rear yard fronts on East Bruce Street which is a substandard street. They want to put it towards Bruce Street.

Vice Chair Finnegan said the staff recommendation is for approval.

Ms. Soffel said for approval of a reduction in the setbacks to a minimum of ten feet as opposed to the five feet that is requested.

Vice Chair Finnegan said I think we were getting denial in our packet.

Ms. Soffel said there is an error. Denial of the five feet, approval of ten feet.

Ms. Dang said maybe not an error. It is denial of the applicant's request, but we have proposed an alternative.

Councilmember Dent said what do you mean East Bruce is a substandard street?

Ms. Soffel said it does not meet minimum widths that are currently used.

Mr. Fletcher said and it does not have sidewalk, curb or gutter.

Councilmember Dent said is it effectively one of these paved alleys.

Ms. Soffel said it is an actual street.

Councilmember Dent said that could bode well for it to be used essentially as a rear entrance.

Ms. Soffel said there are lots that front on Ashtree [Lane] so they are not all through lots.

Councilmember Dent said are there any that front on that Bruce Street block?

Ms. Soffel said [referring to the screen] this is not Bruce Street but the yellow ones here that are fronting on Ashtree Lane it is the same situation just not Bruce Street. The red ones are through lots but there are still a couple of lots that front only on Ashtree Lane. Which is another narrow street.

Councilmember Dent said Bruce Street is substandard but also has some frontage. I am just trying to see is it near where this rear setback would be.

Ms. Soffel said it is right across the street. The lots right across Bruce Street from 260 Franklin [Street], there are two lots there. 270 East Bruce Street fronts on Bruce Street.

Vice Chair Finnegan said that would fit with there are several structures already along Bruce Street that are existing nonconforming.

Ms. Soffel said either nonconforming or have received the variances that were granted by the BZA.

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

Quinton Callahan, Clark & Bradshaw, applicant's representative, came forward to speak to the request. He said first there was a question asked to the location of the potential garage. There was a plat that was prepared as part of the BZA application but it was not included in this because this is only a Zoning [Ordinance] amendment but I would be happy to pass this up if you all want to take a look at it [referring to a handout]. Just so visually you can see what they are trying to do in terms of a garage on the back. Aside from that, I want to start by thanking staff. Staff has been great working with on this including the assistant City Attorney, Mr. Russ on trying to get this put

together. Zoning amendments from the public are odd but we worked with the staff as best we could to try and get this BZA appeal resolved, so I want to thank them for their time. And I want to thank them for getting us almost all the way there. Originally with BZA it was a one-foot setback. We have changed it to five feet. They have come down to ten. We are really just fighting over five feet at this point. While I appreciate their support of a ten-foot setback, I do not believe that ten feet is sufficient. The prime reason for the requested five feet is due to the limitation of size for an accessory building. As you saw in the staff report, you can only occupy 30% of an established rear yard with an accessory unit. When we increase the setback, it decreases the amount of space within which you can put that accessory unit because you have less space because you cannot build within a setback. Effectively the difference between five feet and ten feet when you are looking at this lot...this is 60 feet wide. You have five-foot setbacks on either side, that is 50 feet. Five feet, it reduces a potential building by 250 square feet, which is pretty sizable. When you think about it, that is only on a one story. While the applicant is not seeking to construct an accessory dwelling at this unit, which is prohibited by current the Zoning Ordinance, I think it could be a potential option in the future. I think this Zoning [Ordinance] amendment would be the first step towards potential accessory dwelling units. At this point, we have an applicant who has City businesses. They have two young kids, and they both own and manage their own businesses, Black Sheep Coffee and The Yellow Button. They simply need more storage for each one of their businesses. They live and work in the Downtown corridor, and they need more storage for that. Limiting the square footage creates a material limitation on their use of the property. Furthermore, when we look at the 49 UR district lots that are affected by this, 24 of those lots are on Bruce Street between Mason [Street] and Ott [Street]. Of those, roughly half have accessory units that are less than ten feet from the edge of the pavement. When we talk about the two recent BZA variances, the one from 2019, the BZA granted a variance of five feet. Back in 2011 it was two feet. Immediately next door to this applicant is a two-foot authorized setback. At this point, the Ebersold's are not looking for special treatment. They are simply asking for the same treatment as their neighbors have. Also, I think when we look at the future of zoning and this Planning Commission, newly seated, we should be looking towards the future development in the City. I know that one of the big factors with the Strong Towns Initiative is accessory dwelling units. I think this is the first step towards being able to achieve more accessory dwelling units by limiting these setbacks. While I do think ten feet goes a long way from the 25 feet that we currently have which makes it virtually impossible to construct these types of accessory units, I think five feet is more appropriate. I certainly understand staff's concern about sight lines, but we have sight line issues everywhere in the downtown corridor and in the UR corridor. Five feet is roughly the width of a normal sidewalk and that is why we are asking for five feet to be accepted. I also have Mr. Ebersold here with me. He can answer any questions, or I am happy to answer any questions that the commissioners may have.

Vice Chair Finnegan said when we are talking about the difference between five and ten feet...could you speak to that concern about things sticking out in the lane even temporarily that would clip a car or a truck going by?

Mr. Callahan said I think when speaking with staff they were worried about the sight lines especially if you were to back out a vehicle from a garage. With ten feet you should be able to have the vehicle completely clear of the building before you would be in the right of way. Five feet, it really depends on the length of the vehicle, but you are probably going to be in the roadway. That is one of the things that we always worry about. While I understand that it is a legitimate concern, we have the same thing with vehicles pulling out of parallel parking spots and what we really need to focus on is the buildings that are constructed there now. One of the other things that we talked about that we were able to resolve is potential utilities. Everywhere in the City now we want a ten-foot public utilities easement along all boundary lines. I think that is why ten feet does make a lot of sense based on the way the current zoning is written in the City, but we have a public street right there where a lot of the utilities would be located. We do not need that additional five feet. I think the only real reason why we are talking about the difference between five feet and ten feet is because of the sight line issue. The reality is when you look at the street now and the buildings that are there, those sight line issues are already somewhat of an issue. The other thing is that Bruce Street already has one-way indicators at the end of either street so there is not a lot of through traffic that comes up and down Bruce Street. It is usually only those residents that live on Campbell [Street] or Franklin [Street] that are accessing the rear of their property, they are going on Bruce Street. Bruce Street is not one of these through roads that you see traffic going up and down.

Councilmember Dent said you said as well as the sight line issue, the property has the issue with the additional setback of ten feet they may not be able to build on it for the 30% rule, what is that about?

Mr. Callahan said the concern there is you are limiting the amount of space within which you can build an accessory unit because you can only take up 30% of the rear yard with the building. If you have a 1,000 square foot rear yard, you can only have a 300 square foot building because you can only take up 30% of that. My interpretation of it is when you are talking about the setback, you cannot build within any of the setback anyway. You have effectively cut off that portion of the yard.

Mr. Fletcher said I would like to rephrase what he said because I am not quite sure I follow.

Mr. Callahan said [referring to the image on the screen] you have the property line here but once you have a setback, whether it is five feet, ten feet, or twenty five feet, you are reducing the buildable rear yard for construction because you cannot build within the setback area. You can only take up 30% of the buildable area for your accessory unit. That is a part of my argument, the

issue that with the more setback you have, the less square footage you have available to construct an accessory unit.

Ms. Dang said I think you have misinterpreted the ordinance. It is an accessory structure cannot be greater than 30% of the required rear yard and that is the area between Bruce Street and 25 feet into the property.

Mr. Fletcher said typically accessory structures are permitted in required rear yards because they are typically five feet off of the property line. You are referring to the principal building setback which is irrelevant in this situation because it is a through lot.

Mr. Callahan said right, but what I am talking about is when you are going to do your 30% test if they show you a plat and you are going to see how much of the established rear yard can they actually build in. Right now, we are measuring that from 25 feet from the edge of pavement on Bruce Street in between the rear of the house.

Mr. Fletcher said in a typical lot you have a required rear yard setback which would be 25 feet. Typically, an accessory structure can be in that 25 feet because it is not a principal building. Within in that 25 feet, only 30% of that space. It does not apply in this scenario because it is a through lot. In fact, you are going to get more space to build an accessory building.

Councilmember Dent said are you saying the additional five feet will not cut into the 30%?

Mr. Fletcher said whether we are going to reduce it down to five or reduce it down to ten, if you are reducing it they are going to get more space to put an accessory unit.

Mr. Russ said he is talking about the size of the accessory unit, what number are you taking 30% from. The setbacks impact the area.

Ms. Dang said I thought it was 30% of that space between the rear yard and the 25 feet.

Mr. Fletcher said that is correct.

Mr. Callahan said when you take it from 25 feet to ten feet or five feet...

Ms. Dang said I do not think that distance makes any difference in this scenario.

Mr. Callahan said I think Mr. Russ understands my point.

Mr. Fletcher said an accessory building can sit in the required rear yard because it is typically it is five.

Mr. Russ said I do not care where the accessory building goes. We are only talking about the square footage of the accessory building.

Mr. Fletcher said [referring to an image immediately in front of him and Mr. Russ, but not visible to the Commissioners or audience] in this space only 30% of it can be used. In his scenario, he is not positioning a building between this line and this line. He cannot because this is a public street right of way. The 30% comes into play on a typical lot where principal building has this area to build in and this is the required rear yard. This space has an amount that accessory building that typically sets in here can be no larger than 30% of that space.

Ms. Dang said it could be larger beyond that space.

Mr. Fletcher said it could be much larger beyond that space, but it can be no bigger than 30% of the area where they are required to have open area. In this case, and we have played this out multiple times, the required rear yard in this particular case is not irrelevant because they cannot position an accessory building in between that space.

Ms. Dang said correct.

Councilmember Dent said between what space?

Ms. Dang said between whether it is five feet from the rear property line or ten feet from the rear property line. If the rear yard setback was five feet, then there would be 20 feet of distance times the width of the area where they cannot exceed the 30%.

Vice Chair Finnegan said this amendment is for UR and within UR through lots. This is the only place in the City where there is UR zoning, right?

Ms. Dang said yes this neighborhood.

Vice Chair Finnegan said I guess I am trying to understand staff's concern. Is the concern about the through lot? Where else this might apply on other through lots?

Mr. Fletcher said our position really came from the fact that you are separating that space from a public street right of way. It is very different from an internal boundary line or a rear line that is just sharing a backyard. You are just getting closer to that public area of activity. Our most flexible setback in the City is ten feet. That is in R-5 and it is in R-8, and we went through a lot of pros and cons creating those. We thought 10 feet is a really good marking space for us to be as close as we

want to get to the public street right of way. I know it really does not come into play here, but we are looking at a lot of different things for our forthcoming Zoning Ordinance amendment where a ten-foot setback might be. If you do not like ten, you can absolutely can go with five which is what the applicant requested.

Chair Baugh 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.

Mr. Fletcher said can I ask a question of staff for just a quick moment? I am trying to remember back about two weeks ago when we were having the discussion, we were drawing on the board and Tyler was with us, and he was talking about still applying the 30% rule. We recognized through our suggestion of ten feet that it still would not, when you apply it solely to their lot and what they wanted to build, we still recognized that they could not build exactly what they wanted. Remind me of why we were still applying that 30% rule in that scenario. We recognized through our suggestion of ten feet that it still would not when you apply it solely to their lot and what they wanted to build.

Ms. Soffel said because it is a different section of the ordinance, and the ordinance amendment does not address the thirty percent rule.

Mr. Fletcher said I am not sure it is relevant for the argument, but something is not sitting right with me about how I am remembering what we were discussing and why we were still applying a thirty percent rule.

Ms. Dang said I think what Ms. Soffel said was what I recall is at 10-3-114 accessory buildings talks about the thirty percent, and this amendment is being done to 10-3-112 that talks about setbacks with through lots.

Councilmember Dent said wait this is 114?

Ms. Dang said oh wait, I am mistaken, I am sorry.

Councilmember Dent said you mean 112 is about the thirty percent.

Ms. Dang said I said the wrong numbers entirely, I apologize.

Ms. Soffel said 10-3-114(a) addresses the thirty percent rear yard, and we are amending 10-3-114(d) specifically, to where the accessory buildings in a residential district can be located between the principal building and the public street.

Councilmember Dent said it does not show the subsection B or whatever.

Ms. Dang said yeah, we will have to make that correction that was an error on our part.

Chair Baugh said I am looking at staff and I have surmised that the reason for silence is Commissioners are not clear that we have a definitive answer as to whether Mr. Callahan's point is correct. That this would have an effect on what they can do, or whether it does not.

Mr. Fletcher said even if you played out the scenario that Mr. Callahan was correct, they still have a great deal of space to put in an accessory structure, nonetheless.

Ms. Dang said yeah, I would agree.

Chair Baugh said but as far as it goes, his point was that he will have less, and I think we have been debating back and forth about whether he actually has less.

Mr. Fletcher said yeah, I am not sure this is the right space to do it. I would love to entertain the conversation so we can all be on consistent grounds, but I do not know that it is necessarily relevant for how close you can get to the public street.

Vice Chair Finnegan asked does the thirty percent rule just apply to UR?

Mr. Fletcher said that applies to all residential districts.

Vice Chair Finnegan said that is problematic in my mind.

Councilmember Dent said maybe we need to revisit that.

Vice Chair Finnegan said, back in April, we did have a discussion about accessory dwelling units and setbacks and all that.

Councilmember Dent said I had forgotten that thirty percent rule. If you wanted a full accessory dwelling unit once we allow that, thirty percent might be too constrained. That is more of a shed, depending on your yard.

Ms. Dang said I would love to draw this out and spend the next twenty, thirty minutes on this, but I do not think it is appropriate to do that. It is thirty percent of a sliver of area in the rear of the backyard. Somebody could still have quite a large accessory structure. I cannot explain well without pictures.

Mr. Fletcher said, well, it is so circumstantial based upon where the building sits in its principal building area. In their scenario, they have more rear yard than is required by the Zoning Ordinance.

Councilmember Dent said so since the house itself is sitting close to the front street, they have a large enough area in the back that thirty percent ought to be doable.

Mr. Fletcher said it is not thirty percent of that space. It is thirty percent of the required rear yard.

Ms. Dang said I do not know what it is to exact scale, but let us say [referring to the image on the screen] from here to here are twenty-five feet. The required rear yard is only this sliver, thirty percent of that area. That means that the accessory structure can occupy some of that rear area as well as all of this right here.

Vice Chair Finnegan said you cannot stick back and occupy more.

Ms. Dang said you cannot take up more than thirty percent of the rectangle.

Councilmember Dent said they can move it in from the back into the larger part of the yard. So, not an issue is what I am getting from that.

Ms. Soffel said but then it is not as close to the street as they were hoping to get it. They can move it in and resolve the thirty percent problem.

Councilmember Dent said they can build it as big as they wanted to, just closer in.

Ms. Soffel said right, but then it would not be as close to the public street as they would like it.

Mr. Fletcher said it would take up part of the yard they do not want to use.

Councilmember Dent said this is more complicated than I thought.

Mr. Fletcher said every scenario will be different based upon where the principal building sits on the parcel.

Ms. Soffel said with their designer they could strategize, you know, shifting the position, you know width versus length and stuff like that and find ways to try and still maximize their square footage.

Councilmember Dent said if they are looking at here, and they have to move it back, they can still do that? Well, I personally like ten feet since we are talking about an ordinance amendment. Somebody really wants to fight for five feet, go talk to the BZA again, or a special use or whatever it takes. A variance, I guess.

Mr. Russ said part of why they are here is that the variance is not the appropriate avenue because it is generally applicable. There is nothing that makes one lot particularly special of any of these. For why one should have a five-foot set back and the rest should have ten.

Chair Baugh said do not throw anything at me. Just tell me if I am saying something that is totally off base. Remember that one of the issues you have with BZA is their mandate of what they can do is very strict. It is governed by state law. What often happens with BZA is, because it is a human being taking a vote, they will approve whatever they approve or not approve. Then, I think the argument that could be made is, if you ask the question, "Have variances been granted for situations that we will just call generally somewhat similar to this one?" It appears the answer is yes. If you follow the letter of what BZA is supposed to do, should they have ever been granted? The answer is probably no.

Councilmember Dent said that is what Mr. Phillippi was worried about.

Chair Baugh said that is kind of the bane of BZA's existence. I joked that it has been a while, we are sort of overdue. The Virginia Supreme Court, every ten to twenty years, has to write the same opinion because literally what will happen is they will write this opinion that is very strict and will overturn something the locality is done because they say, golly, we do not care that it was a good idea, it is not what you are authorized to do. You have very specific criteria that you are supposed to follow. You have not done it. Then all the local governments get reminded of that and everything tightens down. Then it slowly starts to drift because human nature is such that people sitting on BZAs like to come up with common sense answers to things, even if their mandate says nothing about being able to use common sense to do it.

Mr. Russ said, yeah, that is about right.

Mr. Fletcher said having the rules to follow become stricter over the years as well. They have gotten even narrower. Did that change in like 2015?

Chair Baugh said I thought they actually put a couple of specific issues that they said, okay, you can approve it for this. I think they actually expanded it very narrowly.

Mr. Russ said they changed some words around and left it with that. It feels like it means the same thing. There are new words, so it needs to mean something different, and it is difficult.

Vice Chair Finnegan said this amendment is not about the thirty percent of the required yard set back. We are just talking about five feet or ten feet from the street, correct?

Chair Baugh said that is true, but I think in fairness to the applicant they have argued that it does have an impact on it, even though what you said is also true. We are not literally voting on the thirty. In fact, I think it has already been touched on it, we are probably pushing the limits of how much we ought to talk about it here because it was not something that was teed up for us to even talk about. As you say the proposed amendment does not address that, though.

Vice Chair Finnegan said we need to move on this one way or another.

Councilmember Dent said I move that we accept staff 's recommendation of ten feet.

Vice Chair Finnegan said I will second it with the caveat of we do need to revisit the thirty percent piece further downstream.

Chair Baugh said motions made and seconded. My one observation of this, one of the arguments, and reasonable people can differ, but I confess the argument that because you have a whole lot of places with sight lines problems, one more will not hurt. I do not find that particularly persuasive. I have certainly been down there, and it was not specifically stated. I am going to say it was just a few years ago and it probably was ten or twelve now, but Bruce Street was not one way, it was two ways. It went both and you had people going, you know, navigating through there. It was kind of a shortcut.

Mr. Fletcher said it actually still is two-way. You just cannot enter from one end.

Chair Baugh said that was the idea because you had people who were trying to get out of downtown that would use it as a cut through, and it was more heavily traveled. Yeah, there is pavement there, but that is about all you can say for it.

Vice Chair Finnegan said I would say I hear that point, and I would just say as a counterpoint, when you look at that image and look at the front setbacks on Franklin, they are all over the place. I think often times, when I go to a modern neighborhood with much larger setbacks, I would not say the neighborhood looks and feels better. I hear that point, and I would also say, you know when most of the neighborhood is non-conforming to begin with in terms of setbacks, is it changing the character of the neighborhood, to use a phrase that is often used in these meetings, to make it less? To make it greater? I will support it tonight, but I do think this needs more work on the thirty percent.

Councilmember Dent said well, I just wanted to say why I support the ten feet from staff's argument of having a full driveway in front of the garage so that a car could be there and not blocked, not having to back out of the garage into the street, those kinds of considerations.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Baugh	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (5-0). The recommendation will move forward to City Council on March 11, 2025.

Consider a request from Janis Brown Enterprises LLC to rezone two parcels addressed as 1211 and 1231 Smithland Road

Ms. Rupkey said the applicant is requesting to rezone two parcels totaling +/- 10.14-acres from R-1, Single Family Residential District to R-8C, Small Lot Residential District Conditional. The parcels are addressed as 1211 and 1231 Smithland Road and identified as tax map parcel numbers 71-A-3 and 4. The applicant intends to rezone the site to allow up to 70 single-family detached dwellings.

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

1. The overall density of the development shall not exceed 70 units.
2. Only single-family detached dwellings are permitted as principal uses.
3. No more than one public street connection to Smithland Road shall be permitted. The public street shall end in a street stub to provide connectivity to the parcel identified as tax map number 71-A-13. This public street shall meet access management standards in accordance with the Virginia Department of Transportation's (VDOT) Road Design Manual Appendix B (2) for an "avenue." No driveways will be located on this new public street. Location and alignment of the public street shall be as approved by the Department of Public Works. All other streets in the development shall be considered "local" and shall meet VDOT's Road Design Manual Appendix B (2) standards.
4. In addition to the public street stub described above, a minimum of two public street stubs shall be constructed to the southeastern boundary of the development to provide connectivity to the parcel identified as tax map number 71-A-13. Location of the street stubs shall be as approved by the Department of Public Works.
5. Upon request from the City, the Owner/Applicant will dedicate the necessary public street right-of-way along Smithland Road approaching the intersection into the development; up to twenty feet (20') in width to allow for a two-hundred-foot (200') right turn lane and a

two-hundred-foot (200') right taper and to include curb and gutter and a five-foot (5') sidewalk with a two-foot (2') grass buffer. In addition, a ten foot (10') temporary construction easement shall be provided.

6. Upon request from the City, the Owner/Applicant shall dedicate land adjacent to tax map parcel 64-B-4-A for public street right-of-way as generally depicted on the Concept Plan, in Exhibit A.
7. A shared-use path shall be constructed along one side of the new public street connection between Smithland Road and tax map parcel 71-A-13. A sidewalk will be constructed on the other side of the public street.
8. A ten foot (10') wide shared use path will be constructed between a public street and tax map parcel 71-A-13 in the location generally depicted on the Concept Plan in Exhibit A. A twenty foot (20') wide public shared use path easement shall be conveyed to the City upon completion. The shared use path shall be constructed and dedicated to the City of Harrisonburg as a public shared use path easement prior to the completion of the Development.
9. A recreational play area of no less than 500 square feet shall be provided. If provided adjacent to Smithland Road, then a privacy fence at least six feet (6') in height shall be constructed between the recreational play area and Smithland Road. Between the privacy fence and Smithland Road, a staggered double row of evergreen trees shall be planted and maintained by a Homeowner's Association, with the trees in each row planted not more than ten feet apart and a minimum of six feet (6') in height at the time of planting.
10. One (1) large deciduous tree for every forty feet (40') of public road frontage shall be planted and maintained by a Homeowner's Association along the frontage of all streets. At the time of planting, trees must be at least two inches (2") in caliper and at least six feet (6') in height.

The conceptual plan is not proffered.

Land Use

The Comprehensive Plan designates this site as Low Density Mixed Residential (LDMR) and states:

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 applicant has proffered that the site will not exceed 70 single-family detached dwelling units and has committed to planting trees along public streets, that would be maintained by a homeowner's association (HOA), and to providing a minimum of 500 square feet of play area. As noted above, the layout of the development is not proffered. Thus, the applicant would have the ability to design the site in a different way as long as the proffers, Zoning and Subdivision Ordinance requirements, and other design standards are met. Staff continues to encourage the applicant to locate the proposed play area in a more central area to the development to encourage social activity within the neighborhood rather than at its perimeter near Smithland Road.

When looking at the density and housing type that is proffered, the applicant's proposal of 70 single-family detached dwellings is 6.9 dwelling units per acre and aligns with the LDMR's recommended density of about 7 dwelling units per acre and in providing small lot single-family detached dwellings.

Transportation and Traffic

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

As previously noted, the concept plan is not proffered. Proffers 3 and 4 address the construction of new public streets and requires a minimum of three public street stubs to provide connection to adjacent parcels. As described in Proffer 3, no more than one public street connection would be made to Smithland Road. This street is also required to stub to the adjoining parcel to the southwest identified as 71-A-13, and requires the same street to meet access management standards in accordance with the Virginia Department of Transportation's (VDOT) Road Design Manual Appendix B (2) for an "avenue." Streets that are "avenues" balance access to destinations with vehicle and pedestrian traffic. Typically, "avenues" have fewer travel lanes, a slower design speed, and dedicated space for pedestrian and bicycle facilities. While it was staff who originally suggested to the applicant to use the Appendix B (2) standards and staff has supported Subdivision Ordinance and Design and Construction Standards Manual (DCSM) variance requests to reduce

public street right-of-way and street width requirements, staff does not believe it is appropriate for these standards to be proffered and that deviating from Subdivision Ordinance and DCSM requirements should be evaluated during the preliminary platting phase of development.

Although a development layout is shown on the concept plan, staff does not believe this layout addresses all matters that staff would typically expect in preparation for a rezoning request of this magnitude. As indicated within the General Notes of the concept plan, the plan was created based on limited data and without a site visit. The notes also state that grades and conditions of the site are not known at this time and that a more detailed investigation of the City's regulations is required. While a site visit is not required or may not always be necessary, in this case, staff is concerned that the applicant might either have proffered too many restrictions that could make the development difficult to achieve or has not considered the interplay between various needs and requirements and how they could be addressed to design a well-planned residential neighborhood.

If the request is approved, the developer must complete a preliminary subdivision plat, where, among other things, they could request variances from the Subdivision Ordinance and the DCSM. Other recently reviewed development proposals have requested to deviate from location requirements for public general utility easements and to deviate from minimum public street right-of-way and street width requirements. If the rezoning is approved, staff anticipates that the applicant will request the aforementioned variances.

When appropriate, staff has supported variance requests to reduce public street right-of-way and street width requirements. However, at this time, staff is uncertain whether it is appropriate in this development due to questions staff still has about the design of the public street network, public street intersection spacing, the number of driveways along the public streets, and parking abilities for residents and visitors. The concept plan illustrates 24 feet of public street pavement width from curb face to curb face, which would not allow for on-street parking. Additionally, the applicant described to staff that they plan for each home to have a two-car garage and that the driveways would not be large enough to accommodate additional car parking in the driveway, however, know that these details are not proffered. Acknowledging that there is likely not enough space to park cars within the driveway also identifies another concern staff has with the compacted design of the neighborhood. Proffer 10 is intended to provide street trees between the dwelling units and the public street, yet staff is uncertain as to whether there will physically be enough space to accommodate this desirable detail. It appears the development might want to utilize reduced public street right-of-way widths and might be utilizing a 10-foot setback for the planned dwellings. If such a design is planned, it leaves very little space to accommodate street tree planting and maintenance.

Proffers 5 and 6 relate to the dedication of public street right-of-way and Proffers 7 and 8 address shared use paths in the development.

Staff believes more planning and design work is needed for the street network, which impacts the overall layout of the development. Additional design elements that cause concern for staff include:

- The design of the “T-intersections” located near lots 58 and 26 is not supported by staff as presented. The concept plan shows that lot 58 would be built at the end of the stub of the T-intersection and the T-intersection next to lot 26 does not take into consideration the necessary width of pavement for the public street stub to 71-A-13 and may result in the loss of lot 26. Additionally, if a street stub is intended, the applicant should expect to dedicate public street right-of-way to the property boundary to provide connection to adjacent parcels and to construct the public street, unless a variance from the Subdivision Ordinance to not construct the street is approved.
- While Proffer 8 requires construction of a shared use path the call out showing the shared-use path from “public street A” demonstrates only the future shared-use path easement. Additionally, Proffer 8 references that the connection would be to tax map parcel number 71-A-13 but shows the easement connecting to 64-B-4-A.
- The concept plan only demonstrates two of the three proffered public street stubs to tax map parcel number 71-A-13.
- A number of elements are not drawn to scale such as the shared use path along “public street C,” which would require a 10-foot-wide path with a minimum 5-foot grass buffer between the path and the street, along with dedication of public right-of-way or shared use path easement.
- Staff has concerns with the design of the median shown along “Public Road C”. Staff understands that the median was provided to be able to control traffic movements to meet the minimum intersection distance requirements, but the Fire Department has not had an opportunity to weigh in on the lane widths shown nor is staff convinced of the street network design that necessitates the purpose for the median. Additionally, the median is illustrated as a 5-foot wide median, which likely will be constructed of concrete. Staff recommends widening the median to accommodate landscaping for an inviting entryway into the development.

Public Water and Sanitary Sewer

While staff does not anticipate issues regarding water service availability for the proposed development, the applicant has been advised that they will be responsible to complete a study of the water and sanitary sewer capacity prior to submittal of an engineered comprehensive site plan. Any public system improvements required to meet the increased demands resulting from the project will be the responsibility of the developer. Additionally, the applicant has also been advised that sanitary sewage will discharge to a sewage lift station (Smithland Road pump station) that may require modifications of the station by the developer to address increased demand.

Housing Study

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject property within Market Type D, which notes that "[m]arket type D has lower market activity as well as lower access to amenities. This could be because the areas are stable residential neighborhoods or because the area is less developed and therefore has fewer sales and fewer amenities. Strategies that would be appropriate in the latter case include concurrent development of the housing and economic opportunities through mixed-use developments to build commerce and housing centers across the City."

Public Schools

Staff from Harrisonburg City Public Schools (HCPS) noted that based on their student generation calculations, based on the applicant's original proposal of 64 residential units, it is estimated to result in 28 additional students. Based on the School Board's currently adopted attendance boundaries, Smithland Elementary School, Skyline Middle School, and Rocktown High School would serve the students residing in this development.

As with all requests to the Planning Commission, HCPS primary focus is to ensure that they have adequate classroom space and maintain appropriate class sizes to educate the students of Harrisonburg. While most changes will positively impact residents and the community, HCPS remains focused on the fact that increased housing opportunities in Harrisonburg will increase the number of students who attend HCPS. HCPS staff also noted that currently four of the six elementary schools exceed effective capacity.

For total student population projections, the City of Harrisonburg and HCPS both use the University of Virginia's Weldon Cooper Center for Public Service's projections. These projections are updated annually and are available at: <https://www.coopercenter.org/virginia-school-data>.

Recommendation

While the planned project's housing types and density are both in conformance with the Comprehensive Plan and will accommodate interparcel connectivity, there remain significant concerns with the overall public street network and layout of the site. Staff recognizes that single-family detached dwellings on small lots is a desirable type of housing that is needed in the City, however we must ensure that neighborhoods are planned and designed accordingly for the long-term success of this neighborhood and future residential developments that would be constructed adjacent to the site. At this time staff cannot support the rezoning request and recommends denial.

Chair Baugh said a fair summary is that, just based on the totality of things right now, staff simply thinks that submission right now just is not sufficient for approval at this stage?

Ms. Rupkey said correct.

Vice Chair Finnegan said is there a reason why staff is not recommending tabling this?

Ms. Rupkey said we did consider the possibility of recommending that. Working with the applicant at this time, they would like to move forward with their request. With what we have worked with the applicant, this is where we are right now.

Councilmember Dent said I wondered about that too. What is the most effective way to say go back to the drawing board a bit? I know that tabling keeps it stuck in Planning Commission and even if we voted to deny it, it still could go to City Council and perhaps they could address some of these issues in the meantime. That is an open-ended question.

Chair Baugh said it matters as to who tables it. If we table it, we do not actually get to sit on it forever.

Councilmember Dent said well, it does not go right to Council the next meeting.

Chair Baugh said typically it stays and depends on the calendar. You typically buy yourself a meeting, maybe two.

Councilmember Dent said within Planning Commission.

Chair Baugh said if you do not act, it is deemed favorable and goes forward.

Councilmember Dent said within two more meetings.

Ms. Dang said it is ninety days after the close of public hearing.

Councilmember Dent said I was wondering, what is the most effective way to say, "Back to the drawing board a little bit please?" I like it a lot overall. It seems like these are tweaks that could be worked out in the process.

Commissioner Washington said when you say that a site visit was not done, who did not do the site visit?

Ms. Rupkey said on note one, there is note that the concept plan was based on limited data.

Ms. Dang said the applicant 's designer, I presume. They may be able to answer in more detail, but I presume the designer of the concept plan wrote that note there just to be transparent as to what they did and what information they have and do not have.

Vice Chair Finnegan said meaning the surveying was not done.

Ms. Rupkey said they may be able to answer that more.

Chair Baugh 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.

David Gast, applicant's representative, came forward to speak to the request. He said my company is Riverbend. We are a small boutique real estate company that operates throughout Virginia and Maryland. We own and operate approximately five hundred apartment units. We have a development pipeline of a little over two hundred and fifty acres, of which Smithland Village is a small part. The common theme throughout all of our projects is a focus on workforce housing. Our apartments are geared for individuals who are not yet in a financial position where they can own their own home. Our development projects specifically focus on that next tier of the financial ladder where we are targeting first time home buyers, young families and renters who are now able to realize that dream of home ownership. I am joined tonight by my land planner, Conor O'Donnell, who will speak to you as soon as I am done, and my partner in this project, D.R. Horton. As you probably know, D.R. Horton is the largest home builder in the United States. Since I am doing introductions, David, if you would come up for a second. Just introduce yourself and D.R. Horton, please.

David Coleman, a representative from D.R. Horton, came forward. I am a land acquisitioner for D.R. Horton. We have been operating out of the Valley, out of our Verona office, for just over a year now. I have teamed up with the applicant here on this particular project to provide our express level housing, that is really our entry level house, and that is what we would offer here if the rezoning is approved.

Mr. Gast said we understand that there is a strong need for housing in Harrisonburg. When we have reviewed the housing report, one of the stats that first jumped out at me was that only thirty-five percent of the dwelling units in Harrisonburg are owner occupied. Compared to most cities in the United States, where that number hovers around sixty-five percent. We also took note in our research that of the roughly twenty-nine hundred non-student housing dwelling units in Harrisonburg's development pipeline, only about seven percent are single family homes. We also understand from a lot of conversations with staff that there has been some frustration within the City over the difference between the gross number of lots that have been approved and are in the pipeline versus the number of homes that have actually been constructed. I understand that between 2021 and 2024, there have only been about fifty-four single family homes that have actually delivered. I know that this Commission and the City Council are focused on correcting the imbalance of housing here and providing additional opportunities for homeownership at reasonable and obtainable prices. I think there are two points that I hope we can convey to you this evening. The first is that Smithland Village is specifically designed to provide housing at an

obtainable price point. The second is that this is a development that will absolutely be put into construction. D.R. Horton is here with me tonight. They are anxious to get to work on this project, and if you are willing to grant the rezoning, we can reasonably be shovels in the ground by mid 2026. The next obvious question then is, why are we here asking to rezone the property to R-8? As I mentioned, our mission is to provide moderately priced housing to young families and first-time home buyers. At Smithland Village, we think that this mission aligns with the City's need for housing. Our site is only about ten acres. It is oddly shaped. It has got some topographical challenges, all of which add to the site costs and the development costs. We certainly looked at developing this property, by right, under the current R-1 zoning. We quickly came to the conclusion that, if we were to do so, we would not really be meeting our mission and we would not be addressing your needs for housing. We believe that when we deliver homes here, they will be at a price point of around \$400,000. If we were to develop under R-1 with the larger lots and the larger homes that would be required, the price point would have to be closer to a million dollars. I think we could all agree that the City is better served by providing more entry level homes than luxury estates at the top of the market. The R-8 zoning was created here in 2019, and it specifically provides for the development of small-lot single-family communities. It is these small lots that allow us to deliver a product at a reasonable price point, and it also allows us to produce the minimum number of lots that make this development economically viable. As staff mentioned, Smithland Village fits within a Comprehensive Plan designation of Low Density Mixed Residential. Which recommends a residential density of seven units per acre. There is good and compelling precedent for rezoning land within this Comprehensive Plan designation to R-8. The closest of which is Tuscan Village. The R-8 portion of Tuscan Village covers approximately 6.9 acres and has a density of about eight and a half units per acre. Again, Smithland Village is about ten acres and our concept plan has a density of 5.8 units per acre. You will also notice that both Tuscan Village and Smithland Village are very close together. It is about 2,000 feet from one point to the other. We know from our interaction with staff and their requests that our road network allow for interparcel connectivity, that there is a long-term vision that this land in between will ultimately be developed. Both Tuscan Village and Smithland Village would be connected. As part of our application, we have reached out to adjacent landowners to solicit feedback. I have personally knocked on doors. We have passed out literature. Two weeks ago, I had the opportunity to meet with Mr. Rublee and Mr. Gasco, who are here this evening. We had a great conversation. I think I sat in their home for about two hours as we talked about the project. I will say it is unique as a developer to have a retired City Civil Engineer as an adjacent landowner. That has never happened before, but Dan is a wealth of information, and I appreciate all the feedback that that he provided to us. That said, the only specific request that we heard during those meetings was that we include a fence or a landscape screening along the western property line. We are happy to do that. We can write that into the proffers if that is what is required. These are some photos of the homes that D.R. Horton is proposing to build here. As David said, this is part of their express series, which they have developed all up and down the East Coast to a high level of success. These homes are roughly 1,600 square feet, three bedrooms, two and a half baths. They have two-car garages. Again, geared

specifically towards that first-time home buyer. Which we think in Harrisonburg, these would sell for around \$400,000. Connor, would you like to cover the proffers?

Conor O'Donnell, a representative from Gentry Locke Attorneys, came forward to speak to the request. I am a land use planner with Gentry Locke Attorneys. I have been working with the applicant to develop the proposal, working with staff, and so I am going to speak a little bit more on what exactly has gone into this project up to now. I think to add some context, the staff presentation maybe made it sound like this is half-baked. We have been working since June with staff moving forward. There is a significant amount of time that has gone to this. While there still are some concerns, we believe that we have really developed proffers to meet staff requests. Looking again at the site here, there are some significant site constraints. Obviously, the shape is a little difficult. There are also two HEC power easements moving through here. You can see the one through the middle, quite clearly. There is another one that you cannot see towards the top of the property. Then there is also the need to consider interconnection with internal parcels. So, there are a fair amount of constraints here.

To add context to the concept plan, what it means by not doing a site visit is that the concept plan that we worked on, is that the engineer has not come on site to physically survey the property to look at the topography. It is not a fully engineered plan. That is what would come during site plan [review]. This is using GIS as a two-dimensional view and this is the constraint we work within. There is some natural friction between the development side and the planning side. From the development perspective, the costs coming with a fully site engineered plan are very significant. From the planning perspective, staff always wants as much information as possible. We understand that, but I would like to highlight that this is a potential for 50 to maybe 60 homes. This is not a nine-hundred-acre development where you can spend tens of thousands of dollars doing site engineering. Without the assurance that we can even build here from a rezoning, it is chicken and egg. In the absence of significant site engineering, with the rezoning we have tried to incorporate all of staff's comments. We have actually accepted every single one of staff's suggested proffers to make sure that whatever the final layout of this site is meets whatever the City feels like they need for their own assurance. Specifically, interparcel connection.

Before I go into the proposed proffers, I would like to go very quickly through a series of conceptual layouts that the applicant has put together over the past eight months. I hope this shows how much consideration has gone into meeting staff preferences regarding layout and housing type. This is a layout that was advertised with the sale of the property. [Referring to an image on the screen] This is not something that the applicant has put together, but this is one example of what could go here under by-right zoning. You will notice one interparcel connection and a cul-de-sac and a limited number of large lot homes. This is a development proposed in 2023 that Mr. Rublee sent us from when he was at the City Engineering department. This is a layout that he provided staff comments on. You will notice one single interparcel connection. Two connections

to Smithland Road and cul-de-sacs. This is an initial plan for all townhomes that the applicant put together. This was essentially maximizing density. Here is another one with duplexes. You will notice essentially no interparcel connection or cul-de-sacs. We are starting to move closer to what we see now. This is another plan, multiple cul-de-sacs. You will notice the theme here that it is difficult to build this development without cul-de-sacs because of the layout of the property. After meeting with staff a number of times, we came together with this plan. Staff really pushed for single family homes, that was that was critical. We made the development half single family homes, half townhomes, to try to get to the density. Then we moved forward and got rid of all townhomes together. I am showing you these to show you that there has been a significant evolution over the last eight months of the layout here. The reason that the layout is not proffered in the conditions is because when we sent staff our original proffers, we went back and forth a few times. Then we received proffers back from staff that they had edited that did not have the concept plan being proffered. I emailed notably "I see that you all removed the proffers relating to the concept plan. Was that the intention?" Instead of that, staff suggested different proffers, such as a maximum density, proffering specific home types and specific street connections. Those proffers, which I believe are significant in if you were to rezone this property, give the City what they want to see here, while also constricting the layout to work within these proffers. Number one is a density restriction. That is at seven units per acre for seventy total. Realistically, in our current concept plan, there are about mid-fifty. Seven is just a number that conforms with the Comprehensive Plan. Number two, single-family only. In R-8 you can develop single family or duplexes, by right, or townhomes with a special use permit. I showed you plans with townhomes. That was our original intention. We had duplexes. Staff really wanted to see single-family only homes. We worked with that, and we are proffering out anything else but single-family homes as a principal use. Interparcel connectivity was extremely important because if you move backwards you can see the undeveloped portion in the middle of this property. You will notice that a few of the by-right plans have limited or no interparcel connectivity. In further working with staff and constraining potential layout, we have committed to, not one, but two interparcel connections. In addition, staff was concerned about Smithland Road and the potential need for a turn lane in the future. In the proffers, there are twenty feet of the parcel that will be dedicated to road easements for future expansion of Smithland Road. Again, further constraining the site. Finally, we have two shared use paths. One along the road and one for future connectivity to the elementary school and a playground area. I fade to the background in this image, our concept plan because the concept plan is not being proffered. Again, that was removed by staff in favor of their own proffers, which we accepted all. If you were to vote on this rezoning, what you would be approving today is permitting R-8 zoning, permitting up to seventy units on this lot, which again realistically, will be about fifty given the site constraints. You would be committing to single-family only. You would be getting one interparcel connection from a main road, connecting to Smithland [Road] and a second interparcel connection. You would get dedicated easements along Smithland Road and shared use paths for future connectivity to the elementary school and the proposed playground. Again, I go back to the by-right development here. In rezoning, you have a lot of the proffers as

we have them give significant control to the City to require that we have some of their biggest priorities. Whereas if we were to move by-right, interparcel connectivity, or cul-de-sacs or anything else the City would have limited, to no, say in its development. Finally, I believe that the concept plan that we have come to, that you have seen, is essentially served as informational to develop what specific proffers would make staff feel comfortable moving forward with the rezoning. What is difficult is that if you send us back to the drawing board, which I do not believe is necessary, it is very difficult for us to know exactly what changes are needed. The concept plan is not being proffered, it is an example which has led us to the specific proffers. Which I really do believe meets all of what the City really wants to see out of this, which is specifically interparcel connectivity, number one, and type and density of homes. Thank you.

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

Councilmember Dent said I am not sure I agree with single-family only, but we can table that thought for now.

Vice Chair Finnegan said that is in the proffers.

Councilmember Dent said we can reject a proffer if we feel like it, right?

Mr. O'Donnell said the proffers are applicant suggested, and we are willing to change proffers. All of the proffers that we have accepted were recommended by staff. While we agreed to them, they are not imposed upon us. We are open. If you need to get to a point of comfort where you say well, you know, maybe sixty units would be better here than seventy. We are open to amending that right now, but as the proffers sit now, they are the controlling force of the development of this property. One final comment on the concept plan, I do not want to get hung up on that because that is not the end all be all here. Staff mentioned certain things not being placed correctly on the concept plan. Once staff removed the concept plan from being proffered, we stopped updating the concept plan and focus on proffers to make sure that whatever staff was mainly concerned about, those connections, the housing type, that we would meet those.

Chair Baugh said before we open for further comment, I will just note for everyone's benefit. Staff was contacted earlier in the day and a request was made for one person to make a presentation on behalf of a number of folks and so they talked ahead of time and I said that I would give them ten minutes on the representation that the speaker is going to be speaking for a number of people who otherwise could and would have come and would have each taken up three minutes. Then I will just sort of add, just to be clear, this does not forbid anybody else from speaking, but I am mindful that you know, in this type of situation. I will say that I think it does less good sometimes than people think to have speakers just come up and essentially repeat what the prior one did. We are

going to listen to everybody and certainly listen to whatever representations can be made about how many people you speak for, or you know who in the room is supportive.

Daniel Rublee, a resident at 1251 Smithland Road, came forward to speak to the request. I am one of the parcels adjacent to this proposed development, and as Mr. Baugh kindly mentioned, I am speaking on behalf of a larger neighborhood. We have a lot of elderly in our neighborhood. We have a lot of people with young children. We have people that have had recent family tragedies, so they have all put their faith in me to bring their concerns to the Commission. A lot of those concerns were written and put in writing into the petition that I am hoping you all received and have read. This is a copy of that. Included with that are 25 signatures of property owners and residents along the stretches of Smithland Road that goes from the roundabout up basically to the top of the hill and that represents all but two properties, one of which is vacant, the other which we were unable to contact the owner. It is pretty much everybody on the entire stretch of the road in and near this development that has signed off onto this petition speaking against this proposal. Just quickly, I wanted to describe the neighborhood that is there now. First of all, I guess this area was annexed into the City in 1983. It was in Rockingham County prior to that. There were about 25 homes plus a couple farms in the area at that point in time. The farms have now gone away. A couple were demolished. There are some farming activities in in City areas, but they are farms that extend from the County into pieces across Smithland Road. There has been about eight additional houses built since then. There are about 33 houses and that is of the whole, almost two-mile, stretch from Old Furnace Road all the way through the roundabout and up over to Keezletown Road. That is 33 houses on roughly sixty-some acres. If you start measuring house areas and lot areas, and now we have a proposal to build twice that many homes on a size of land one-sixth the size of that. That makes it for a considerable difference in density. I think density seems to be the thing that is the big focus on everybody's mind here. Density is kind of everywhere. When you look at that I think you need to consider that while there is a neighborhood out there that has existed for decades that represents, I think, a quality area to the City. It is kind of more rural in its nature in some ways.

[Referring to a map on the screen] I will point out that area in yellow has twelve units on it. That is just slightly over an acre, maybe 1.1 acres. That is twelve houses on an area of one acre squeezed between streets. Just trying to get some perspective on what we are looking at and what type of look this is going to have. I think from the neighborhood's perspective, I guess our big question is, is this the right fit for this neighborhood? One of the issues is we have a Comprehensive Plan that designates this for Low-Density Mixed-Residential; however, that is not a zoning district. We are looking at R-8 as sort of an equivalent. Well, in some ways it is, when you talk about density. In other ways, it is not.

The Comprehensive Plan discusses innovative design. It discusses communal green spaces. It discusses protection of environmental resources in sensitive areas such as tree canopies. When we look at this lot as a neighborhood, we do not see much innovation here. I think the extent of

innovation is narrower streets and tighter turns and tighter intersection in order to conserve as much space for putting lots. I will discuss the issues with that here in a few minutes. The community green space proffered of 500 square feet, that represents 0.1 percent of the total area of the site. If that is what Low Density Mixed Residential is desirable to have.

There is a substantial three or so acres of very mature forest out there. I am talking about big hardwood trees. There is another acre of the immature forest that is has been growing for 25 years or so. Those areas by this plan and by the grading needed for the site would be taken out. They are habitat for a lot of wildlife. There is a lot of wildlife that moves through this property, so that could make substantial difference in in that regard.

There has also been a lot of discussion about the layout and the proffer not proffering the layout. Well, I think the one issue that needs to be recognized here is, you cannot proffer this layout because it is shown representing a considerable number of variances to City standards. I do not think that you approve a development with proffers that require variances that would have to be granted in another format, in another arena. I am just kind of bringing that up.

Some of the issues we have with traffic and street, the Low Density Mixed Residential also discusses this whole idea of walkability and neighborhood connectivity and that kind of thing. Maybe in the future with these extensions through these properties that are now held by people who have no interest in developing perhaps there will be some of that. Right now, Smithland Road is a two-lane road. There are no shoulders. There is maybe this much pavement behind the white edge lines and then there are drop offs everywhere. Some into rock lined ditches. Moving up and down the road to discuss this with the neighbors, it's frightening to walk on that road. Most of the people with family and children, they do not walk this road because there is nowhere to escape if they find themselves in trouble. There are no bike lanes, there are no shoulders. The nearest public sidewalk is a half a mile from this property. The nearest bus stop is a mile or more from this property. Yes, there is walkability inside the neighborhood, but where do you go beyond that? The shared use path connection goes to private property that may or may not develop. Beyond that, if that happens, it would have to go through the school property which is a wooded area where they have the cross-country trails. I can speak from experience that they do not want citizens up there in that area during school hours because I was kindly kicked off as I was getting some exercise post-surgery last year.

I think those are most of the issues that we have with the development, but I really want to harp on some other issues here that were discussed to a point in the petition. That is that the Comprehensive Plan, in my analysis, effectively eliminates low-density residential development in the City. If you look at the Comprehensive Plan Land Use Guide map, there is a Low Density Residential that is similar to what R-1 is today. However, out of the 1,650 or so acres of that, all but about 40 or 50 acres are already developed neighborhoods. They have taken all of the existing

R-1 that is undeveloped, aside from about 40 acres, and they have moved it into higher density residential areas. Now, out of those 40 or so acres, 30-some is Chestnut Ridge, which is a property owned by a prominent family for six decades or more. It has a mansion on top. It is 30 or 40 percent slopes of wooded area. It is basically a mountain. The possibility of that developing as low-density residential seems a little slim. What you are left with is a few parcels scattered in between here and here that are in and around existing neighborhoods. A couple of those parcels are just extensions of County farms that just happen to come into the City that are next to existing neighborhoods. When you look at the Comprehensive Plan and you look at the designations, the Comprehensive Plan effectively eliminates R-1 type of development from the City's future plans.

Chair Baugh said Mr. Rublee I am letting you know you have about two minutes

Mr. Rublee said we have the big focus on density. I talked about the layout not being able to be proffered. Well, there are issues with street design. There are issues with other designs. There are issues with off-street parking. I think when you consider that the City is now looking to reduce street widths and street right away widths to get rid of parking on street, parking in the single-family off-street parking requirements at one per dwelling, I am guessing assumes that there is on street parking available. Otherwise, you would think that that number would be higher. It should not have parking minimums be proffered into a plan like this. I think when it comes to that, is it fair to the City? Is it fair to the developers? Is it fair to the neighborhood? You look at this plan, with all these unknown answers, and make a decision now. I believe that, if we are looking at a rezoning here with variances required, you would almost have to identify all those things and have a plan that you can proffer, that you can stand behind that represents infrastructure that the City is willing to accept otherwise. They are going into it almost blindly, because even though they have this concept plan, they have no idea whether things that they show on it are going to be acceptable in the end because those decisions are not made here.

Just to close, we have got this idea that the City needs all this housing, and perhaps they do. I know we have a lot of developments that are approved or on the verge of being approved that would provide a lot of opportunities for this. Mr. Gast did meet with me and one of the neighbors, and he was very honorable and very straightforward. His characterization that all we asked for was a fence is not quite true because we totally were in opposition to this from the start of the conversation. That was just something we tossed in as, hey, would you be willing to add that? The question is, do we really need to maximize housing at every available parcel, or can we look at an area like this and say we need to respect the existing characteristics of the neighborhood? We need to consider what this particular piece of property is best suited for. Do we want to ask the bigger question which was, do we really want to get rid of all of the Low Density Residential Development as a future land use in the City? Thank you. I am happy to answer any questions.

Ted Williams, a resident of Park Apartments, came forward to speak to the request. He said I am going to make it short and sweet. I think this rezoning request needs to be rejected. To me, it is dollars and cents for me, as someone who lives in the City. This is the exact kind of development that will cost the City more in services it will need to provide. The taxes that will be generated from the same property. That means residents in Harrisonburg are going to have to make up the difference somewhere. That means I am going have to pay higher rent. I may have to pay higher sales tax on, you know, if the restaurant tax needs to go up, sales tax, etcetera. To me that is my real opposition to this. All the talk about need for more housing is all well and good. I am sure there is more housing that needs to be built. To me, until the City can get its hands on approving developments that do not pay for themselves, that cost current residents more money, then we need to reject these types of housing developments and not approve the rezoning. I ask you to not approve this rezoning tonight. Thank you.

Devin Oberdorff, an adjacent property owner on Smithland Road, came forward to speak to the request. He pretty much covered it all, but I will take more personal angle. First off, I can appreciate your mission. It took me a long time to find a house suitable for a single family. I am a first-time home buyer. Well, I was three years ago when I bought the house. I can appreciate the mission. One thing I do not appreciate would be the lack of communication. He stated that this has been under work since June. My family never noticed the sign before. Well, the sign was not up. We noticed the sign on February 3rd. Just a short story, it came to our attention in a game of deer alert. What is deer alert? That is when you see a deer in the window, and you yell “deer alert.” My nine-year-old son, he yelled deer alert, and I looked out and saw no less than a dozen deer crossing Smithland [Road] out of this wooded lot, but my attention really focused on this sign that popped up. I just wanted to bring some more focus to the nature of the wildlife that inhabits this area. Thank you for your time.

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

Mr. Fletcher said first off, thanks to everybody, great conversation. One thing I want to point out, I thank Conor for showing the evolution of the project. I wish that we could do that all the time. I do not know if we can or not, but I appreciated that because it really shows sort of where we started and where we ended off. The one thing that was probably from their perspective seems a little different from our perspective is that the last iteration we saw was a single-family with some townhomes. Then, we thought that they were not moving forward, and then just one day the application showed up with all single-family. In fact, the very first thing I said to Ms. Dang was, “oh, I am surprised. I was not expecting all single-family out of this development.” You know, we reacted to what was submitted for application. I point out that the Comprehensive Plan calls for single-family, which is what we pushed for, but it also calls for duplexes in special circumstances. I do not know that I would say we were a hundred percent all single-family, but we pushed for

single-family knowing that it is a very desirable housing option for the City. People really do want single-family housing, and our Comprehensive Plan calls for it in this specific location. We pushed for maintaining tree canopy and for the interconnectivity, which was huge for us.

One point of clarification about the proffers, can the proffer be accepted that would require a variance? The answer to that is yes. You have to be careful, of course, because we do it all the time, especially with townhome developments. Townhome developments often times require variances to subdivision regulations because they do not front on public streets. The reason why we gave suggestions to eliminate the proffered layout is because we did not like the layout. The design of the streets was causing for subdivision design variances to the streets that, not just us but our Public Works Department, was not really looking favorably upon. We thought, well, how can we reasonably make this work and what can we live with? We said, well, why do they not eliminate the proffered layout and proffer a density. Which is what they ended up doing, taking on our suggestions. It was not that we just were like, we do not want to proffer this because we did not necessarily think it was the right layout. We said, well, let us eliminate it because then they will have to eventually have to come back with something that meets code or something that we might be able to live with from a variance perspective. All the time, we have proffered properties that show developments where there are street design variances that we can live with, and we do offer a favorable recommendation to those during the rezoning phase. Quarry Heights being one of them. In this particular case, it is difficult. They have a very complex piece of property, and they hit the nail on the head with the shape of the property because they are trying to design this basically in a vacuum. Trying to design it all site-specific, what they own, what they have control over. In a perfect world, you would absolutely take that street through, and you would not start making intersections until you got further in, and then you would double back and take another street back towards Smithland Road. The elevation, the contours, the terrain out there makes it very difficult, and the easements make it difficult. Both side that were presented this evening gave some very good answers, and it is always nice to see Mr. Rublee again, so I always appreciate some of his thoughts. I just want to make those points known because it was not that we were just one hundred percent this has to be single family. That is what was actually officially submitted to us. Again, I was not expecting exactly that. I was excited to see if they could make it work and just the layout, and the tight turns and the small lots, all those things come into play.

Also, what Mr. Rublee said about the off-street parking, you get caught in this very tight, difficult situation. You want to reduce the pavement width because you do not want to have wider. You also do not want to have to have required parking in all those cases, but the reality is if you are building single-family homes in a location like this, you need places to park the vehicle. Whether it is in a garage or it is just on the property, you are going to end up with a lot of these curb cuts along the public street. That is why we push for alleyways behind lots so that you get the curb cuts in the alleyways. The predicament there is that the City does not maintain alleyways, so you are then increasing the cost in the construction that they have to then build the alley and then maintain the

alley. A lot of different perspectives that I wanted to capture and to make it even more of a complex situation for you.

Councilmember Dent said that is interesting. That thought I tossed out, why limit it to single-family homes? It seems to me that if we allowed some mix of duplex or even townhomes, it might make the layout easier if, say, you contracted three units into one, for instance, a triplex. Just a thought that it seems like that is overly restrictive for the sort of... I like the mixed-density developments that we have been seeing. That, you know, address several different price points and help to increase the density. In the sense of clustering to allow for more green space, for instance. I am sad to hear about the trees that would have to be taken down. Looks like it would all have to be wiped out. How can we keep trees that are already there versus plant new ones that are, you know, immature? Just a couple of thoughts, pro and con.

Mr. Fletcher said maybe one last point, you were talking about the mixture of developments, a lot of our other developments have been in land use designations that were not Low Density Mixed Residential. They were in higher density designations for the Comprehensive Plan.

Vice Chair Finnegan said this is kind of on the edge of town. This is probably more of a Public Works question, but what infrastructure would need to be provided? There was a comment about this would not pay for itself. Which I do not know that we can verify that. I do not know if staff can speak to, the expense to the City to provide...?

Mr. Fletcher said are you talking about, like, public water and sewer? Water and sewer are available on Smithland Road. As is the case with any development, they would extend the public water and public sewer into their own development at their cost. Now, of course, you can turn that around and say that cost is handed off to the property owner or whatever, when they sell the lots. Yes, there are tap fees for all those sorts of things that come into play.

Ms. Dang said there is also a mention in the staff report about the sanitary sewage would discharge to a sewage lift station that may require modifications. Like Mr. Fletcher was saying, that cost would be on the applicant developer to make that work if that was found to be deficient.

Mr. Fletcher said the streets, of course, are also paid for by the developer. It is a very rare situation that the City builds a local street for residential development. Almost all residential streets in the City of Harrisonburg were built by a private developer on their dime and then dedicated the City.

Vice Chair Finnegan said then it becomes the obligation to the City to maintain it.

Chair Baugh said maybe I am misunderstanding or got it wrong, but I do think since the subject has been raised of what are the fiscal implications of a project like this. It seems like we do not

have a great way of looking at this in advance, apparently cause among other things, we do not. When I am looking at something like this is, we have waved the magic wand, so there are 50, 55 residences there. The most conspicuous thing from a budgetary standpoint, how many kids they are they going to put in public school? Then you work backward and you say well what revenue do you expect to generate from real estate taxes off of the property and how does that all match up? Is it average? Is it below average? What we know generally is that the traditional single-family detached home, the family that has kids there in terms of real estate taxes are probably paying more of their share than the people who are living in apartments. Presumably, this one's smaller. It is somewhere in between there. Anyway, that is what I think the point is about. Although again, I am not sure that we have any great way of looking at it or knowing what it is. I think that is maybe more of what the assertion is. The other things here are just, as Mr. Fletcher was saying, their cost of development that you just run into wherever it is, you have to have water, you have to have sewer. If you have a traffic study that says that there are road implications that need to be taken up right away as part of the development, you do that. Let me ask an off the wall question of staff. I feel sometimes like I am the only person that ever remembers that this is an option, and I sort of think I know the answer to this anyway. Maybe my punch line is, I am starting to think that that the creation of R-8, among the implications is, it really killed something that never really had much of a life anyway which is R-6. Well, we do not have many of them. In some respects, you are talking about the challenges of the..., as somebody who was around when we invented R-6, when you talk about a track like this that is large... That was really where it came from. It was, we have used up all of the undeveloped R-1 land where you can just push the street through. They have topographical issues they have odd shapes, all the things we are talking about here. Part of the idea with R-6 was to allow people to build to the contours of the land to do some stuff and maybe get more tree preservation than you might have otherwise. My suspicion is the density still does not really work for them. It is still too close to what they are talking about for the R-1.

Mr. Fletcher said R-1 is essentially four, if you can even make that work. R-6 is six units per acre.

Councilmember Dent asked R-8 is how many?

Mr. Fletcher said in R-1 and R-6 you can only build single family home. So it is four units an acre and six units an acre. R-8, if you are building single-family, by calculation is 15.

Ms. Dang said unless they proffer a reduced density.

Mr. Fletcher said the other thing about R-6 is that it is a Master Plan community. What I heard from the applicant this evening is that - which is very true for many - lots of people come in and they spend as much as their budget is going to allow in the preliminary stages and then they really invest when they get to the next stage, and they have their legislative approvals. With an R-6, you

are putting way more money up front because you are designing it exactly the way it is going to be laid out.

Councilmember Dent said R-6 is a planned community?

Mr. Fletcher said it is just like R-7. Chatham Square across from the Nissan [Dealership] on East Market Street and Betts Road is an R-6 development.

Councilmember Dent said what was Bluestone [Town Center]? Was that R-7?

Mr. Fletcher said R-7.

Vice Chair Finnegan said I did want to address some of the concerns that we heard tonight. I share a concern about the loss of tree canopy cover, as Mr. Rublee had pointed out. I do want to make it clear that tree canopy cover, wildlife habitat, I do want to make it clear that if this were to get denied by City Council, this site can still be developed, and those trees can still be removed. Voting against this is not necessarily preserving the trees. If it is private property and it is not a wildlife refuge, there is nothing stopping the current property owner from taking a chainsaw to all those trees if they wanted to clear cut it for some reason. Which is also why I think the City should look at Subdivision Ordinances to the extent that state law allows. I do not know, Mr. Russ, if any of those bills even passed that would allow Harrisonburg specifically. I think they apply to like planning district eight or something like that. I do not know if there is anything that we are allowed to do under Dillon's Rule to protect trees from being cut down on private property, whether it is under development or not.

I also hear the concern about an increase in traffic. As someone who uses a bike for most of my transportation, I do not like riding alongside cars. There is a connection between, if the number one concern is an increase in cars on the road and one of the requests is more parking, we have to understand how those two things would work against each other. The more car storage we build, the more cars there will be on the road. I do share staff's concern about, if there is going to be a sidewalk in a driveway, right now with SUVs and trucks getting bigger and bigger and bigger every year, would they even be able to fit on the driveway? Those are just two things that I wanted to address is about the cars and the trees.

I would also say I feel like this comes up a lot when it comes to we want housing and maybe the people of this neighborhood do not specifically want housing, but broadly, as a city, the City has said in different studies and different objectives that we need more housing. Is it because of the low-density residential nature of this? I recall a time that staff recommended denial of a development at the corner of North Main Street and the one that is being built right now, that staff

recommended denial because it was not dense enough. Maybe that is not the exact reason, but could you speak to that?

Mr. Fletcher said that area was designated Mixed Use which called for around 24 units an acre. You have a five-lane facility, which is Mount Clinton Pike, and you have at that particular location probably wide enough for four lanes, but it is probably only three lanes because of the two-lane facility of North Main Street. You have an environment that is very open. We believed in that scenario that going taller and higher density made most sense given the physical build environment of the types of streets that were out there. As well as it would have been in line with Comprehensive Plan for going higher density. We also thought it made more sense from a physical development perspective of the type of neighborhood they were going to be constructing. To us, it made sense that they could have built taller buildings that would have been a little closer to the public street. It did not have to be right on the public street, but that could create that physical build space for the massing of the building to be closer to the street so that it was more of that sort of apartment complex. What is out there now, which could be very successful, at the time we were saying we thought that that neighborhood they were constructing was separated away from other neighborhoods. It was just sort of confined in and of itself and was not really connected to anything else. It could turn out to be a very successful project. In that particular case the information that was presented to us, we thought higher density was most valuable there.

Councilmember Dent said as I recall, the developer did compromise to the degree that they were originally going to be all townhomes and they added multifamily several stories.

Mr. Fletcher said they added a few multifamily units along Mount Clinton Pike and I believe the height is about the same as the other spaces. It was just that developer had an idea. That was their idea and their product in that space. We just had a different vision. Which is kind of similar to this situation. It is just that they started with much higher density, all townhomes and to us that that did not seem to fit within the Comprehensive Plan because the Comprehensive Plan calls for low density residential single-family and in special circumstances duplexes. How many duplexes is always the magical question. At what point is it too many? I actually very much enjoyed seeing that evolution and you can sort of see where things start and evolve to.

Vice Chair Finnegan said I was on Planning Commission when R-8 was created, and this seems to fit the use case that at least I had in mind when Mr. Blackwell was here, and they were talking about needing smaller lot sizes to fit more housing. We have used R-8 to allow people to build porches and other things, and I feel like this is more in the spirit of why R-8 was created in my mind.

Councilmember Dent said yeah, exactly I am coming to like R-8 more and more. The smaller lots, smaller setbacks, allowing for more affordable housing, frankly. I say it all the time, Harrisonburg

is a City. We need to grow inward and to some degree upward or at least upward in density. Now it is a question of, is this the right place to build further density? Is that just where we are spreading to rather than spill out into the County. I mean I can see the pros and cons for it. Overall, I agree that I like the idea of the R-8 and the density. It just seems like cutting out any mixed density might be a mistake. I would rather have them able to build some combination of duplexes, triplexes, maybe not go as far as full townhomes. Anyway, that is my only thought for how I might want to see it revised. That and the trees, I agree.

Chair Baugh said one thing that is sort of nagging at me a little more than maybe it should, and it was interesting because I think Mr. Rublee commented about a lack of green space and granted it is a concept. Well, lack of green space is a concept. What I recall is, I did not hear staff say that they did not think there was enough green space, but they did not like the concept of a playground/public area being sort of off on the edge and up next to Smithland Road. I have to say I agree with that.

Mr. Fletcher said what they are showing they actually are providing more green space than the proffer, the proffer was just the minimum. They do have green space under the power line. Elevation will change in there and the usability. What are these terms greenspace, open space, recreational space? They are all kind of the same, but they all mean something a little bit different. We saw a version where there was a parking lot in the area where the power line was, and we were like, well, that actually is not a permitted use in R-8, and we understood why they were trying to do it. They knew that they needed more parking for the people that would be coming to visit and even maybe some of the people's properties that might have more than two vehicles.

Ms. Dang said the discussion about green space, I will share my perspective. I do not want to speak for all of staff, but I remember discussing this concept with them. We have some really nice City parks throughout the City. Sometimes I get conflicted of do we really need to push a developer to provide additional playground or play areas? Maybe it depends on the type of development? You know an apartment usually I like to see some kind of play area because they do not have a backyard. Maybe in a single-family home neighborhood it is not as important. I think of Sunset Heights neighborhood and the two parks that are within walking distance from much of the neighborhood there. That functions well where the neighbors can go to a nearby park. I also recognize walkability and transportation design, and all those things all have to come together to make that work well.

Chair Baugh said you are a long way from ever making Smithland Road a big bastion of walkability and bike friendliness.

Mr. Fletcher said it depends on the type of bicyclist you are.

Councilmember Dent said well, if even Brent does not want to go there, then it is not really friendly.

Chair Baugh said I think they will typically sort of play that out whether we sort of see anything we would like to come to you on. I know I cannot make a motion.

Commissioner Washington said this is hard because I find this is in a place where we have space and when we talk about first time home buyers and being able to afford housing. When you think of low residential R-1, a lot of people cannot really afford that right now. When you think about how much space density is kind of what we need in the City in regards to where we are with housing. My concern is, I do not know how you can plan a community without all these things. Like if a more detailed investigation of the local zoning regulations will be required, I do not know how you can plan a community without a site visit and really knowing the background of what it is that you are looking for in terms of topography and how that is going to happen. That is my only concern. Other than that, I think the density is in the place where we need it. I think this would work here if it is realistic.

Chair Baugh said it has kind of been mentioned already, but then again, I think it is anything more for reiteration to the public and other interested parties that people looking in from the outside will look at this as a choice between the R-8 proposal and the forested deer-full field that we have now. That is not really our choice. Our choice is more R-8 versus R-1, so that in many respects it is a balancing act between... I have not heard anybody say they really support, but in theory I guess you could say no. We do not have a whole lot of actual planned low-density land left in the City, as has been pointed out. If you wanted to hold the line to try to push R-1 development, this is kind of the place where you would say you might do that. I think that is what you have on the one hand. I do not know that there really is a lot of support for that view, but I could see conceptually you say, well, I really think it ought to be R-1 then why would I let them rezone to something else. Then the flip side of that just really is this piece that I know is nagging at me a little bit. I get it is a balancing act, and I am not questioning the applicant when they say you know in terms of budget and approach and so on and so forth. They have sort of done what they need to do now and really feel like that. I know that is a real thing that property owners and developers run into. Yet, I got a little hung up on the playground, there is just sort of a... I feel like it is close and there is just some massaging that I would prefer to see done, which is really more of a staff-applicant thing. That is what I am seeing as the best of the considerations.

Vice Chair Finnegan said I think what we often hear is just put it somewhere else. We have limited land in the City, and in fact because of JMU and other things buying land, the landmass of the City has been shrinking since 1983. I cannot in good conscience vote for denial on this. I could support a tabling, if we think that that would be in any way constructive and buy anyone any time to make any changes. I think with that we would need to be specific about what we would like to see if this comes back.

Chair Baugh said I mean, this is one where the proffers are evolving, they are continuing to evolve. They are continuing to evolve so much that staff got new proffers today. This is ultimately a Council decision, but one of the things that I have always found very problematic was, and again, it is not a hard and fast thing, you want to be reasonable. You want to try to work with people. We want to try to help things come together. To me, at some point, you risk what Council ends up voting on. If what Council ends up voting on is materially different from what we reviewed at Planning Commission, I did this as a Council member, I would say, well, that means we need to send it back. I would hate to see that kind of happen with this too, just because that is just a pet peeve. Again, we want to work with people. We want to get things done, but I am not sure how we provide value to Council when we vote to approve or deny something, and they are asked to approve or deny something because of subsequent proffers ends up being something else.

Vice Chair Finnegan said one question would be, are there things that could reasonably be done in about a month? Changes that could be made that people would support?

Chair Baugh said it is an open question, but I guess I can look over here. I would be interested to hear staff 's perspective on this. We understand, we know you do not have a crystal ball. We are not asking you to predict the future or make commitments, but I would at least give staff opportunity, I think at this point to say... any thoughts that you guys have at this point relative of the discussion?

Councilmember Dent said just to piggyback on that, at this point you have recommended denial, what would it take for you to recommend approval? What would need to change?

Mr. Fletcher said I can give a few things. This does not mean that is everything because this is right on the spot, trying to find all the solutions, but let me point out a few things that I think are known fact. You might even get head nods from the developers as well about what they think is realistic. We are not going to know all the answers to how this is going to be able to work with a street network with single-family homes and meeting more acceptable design standards. I think that is one of the big things here. The street intersections, Thanh, could you point to the two street intersections? [Referring to the screen] That one and that one, as well as how it goes out to Smithland Road, they are too close, they do not meet the design standards. They have attempted to answer the question about making it more acceptable to meet the design standards by placing the median in there, which essentially makes the first intersection a right in/right out. We are not a big fan of the center median. I mean, it is a solution, but we are not a big fan of the median for this particular situation. The ninety-degree turns are not favorable, and they are obviously trying to make that work as well. I do not fault them for trying this design to see what is workable, but it is not a design layout that we find to be acceptable. That is why it is like if they were able to acquire more property, they could start to switch back, they would go further into the development, then

make intersections and then go further back. They are still going to be eating up land that would otherwise be reducing their density, at which point may not make the economics work for them in this specific type of development. Might they be able to make it work economically if they added townhomes in certain blocks? Probably. I still do not know exactly how they layout the streets. They have gone through many different iterations, and I am not sure what would be acceptable. The shape is just so controlling in this particular case.

Ms. Dang said can I ask a point of clarification for Mr. Fletcher? If I am not mistaken, we were talking about the median and we did not like it because what we saw here was that they are trying to maintain a narrow street and it be like a concrete median. We have seen other concepts where they really had a wider median that was really an entry or gateway into the into the neighborhood.

Mr. Fletcher said Emerson Lane has one. There are others throughout the City, even into the County.

Vice Chair Finnegan said Purple and Gold Way.

Mr. Fletcher said there are other examples.

Mr. Russ said by acceptable do you mean would recommend approval of a subdivision variance for it?

Mr. Fletcher said correct. Getting the radius of streets to an acceptable, I do not know if I want to use the word, standard because they would be deviating from something, but I just do not know.

Ms. Dang said something that we know that our Public Works Department and Fire Department were comfortable with. Which we did not have enough time to vet all of those things given the quickness of the submittal and you know, comment reviews and what not. The applicant tried. There was a lot of conversation back and forth, I want to be clear, and lots of changes that they were making and there just was not enough time.

Councilmember Dent said that might argue for tabling then.

Mr. Fletcher said it could be. I do not know what the applicant's contract is with the property owner and how much then it is going cost them to delay it even more. There are always those factors.

Ms. Dang said if you all are willing, they may be able to address some of those questions that we do not know the answers to.

Mr. O'Donnell said this is a difficult site, and you recognize that and our constraints. That is why you mentioned that you all got rid of the concept plan as a proffer because you did not like it. In a way, that works for them and that works for us because there are so many constraints on this site that it is difficult to come to you and say this median will be six foot wide. Without the topography, it is kind of an unknown. By moving away from proffering the concept plan, that leads us to prioritize a few things that you want to see, for example, the interparcel connectivity. Then it puts on us, the applicant, during the site development phase, the pressure to come up with a layout that conforms with what you all are prioritizing first. Mister Chair, I agree with your opinion, it is a conversation between do we want this as R-1 or R-8? If this is R-1, I can promise you, no one is going to be prioritizing interconnectivity. That is one of the reasons why it is so difficult for us to proffer a layout because we are proffering two interparcel connections. From our perspective, we want to put as many proffers on here that, one, make this site developable, but two, give you all what you are looking for. I hear, in general, a conversation around what do we want this area to be? I am sympathetic to that. It is rural right now, it is beautiful. There is a huge question mark in the middle about what it will be five, ten years down the road. What will be developed in the huge parcel in the middle, and will we have lost a chance to have interconnectivity? Right now, we have control over the proffers. I think that it is difficult from a developer standpoint to see the City put forth a demand for housing and a density requirement. Then we talked about not fully developing the site engineering. This is kind of the reason why, because we do not know if we have the blessing to move forward with this. As you all are debating this, I think the signal would be that if this were not to be recommended for approval, the signal to developers is that we do not want higher density. Which is like you mentioned, if you are signaling that R-1 is preferred, then that is the case and go. Everything else, Comprehensive Plan, Housing Study, point to something else and that is difficult. Even here, our density is below the recommended density for the Comprehensive Plan as this is currently laid out. If you are debating about what to do here, I think focusing on the concept plan is very useful demonstratively, but it is the proffers that I believe if we were to go back to staff, it is easy to get distracted about the median, but in reality you all have Subdivision Ordinances, you have design standards that we are required to follow. We have to follow VDOT standards. For example, this first intersection 330 feet minimum is the first intersection we can have from Smithland Road. If we do a right in/right out, it is two hundred feet. Those are the kind of things that will determine the layout, and they are coming second to the proffers that we are trying to put forward. If you wanted to proffer more to remove the single-family homes, we are open to that, but then, sympathizing with the neighbors, do you want townhomes here? We are open from the developer standpoint, density is dollars. There is obviously the friction here between what does this neighborhood want to be. Just to guide your conversation, we are totally open to working within the proffers. Please recognize that those are controlling right now, not the concept plan for a reason because this site is so difficult, and that you have robust standards in the Subdivision Ordinance, in VDOT standards. At the site plan approval process, that requires full engineering comments from DPW, from everyone, where this will be fully engineered. Again, in summary, open to changes but if we go back to staff, we are just working on proffers, which is not

helpful because we want to meet your concerns. If you have suggested proffers, we would be open to changing them or adding them. I am just not sure what they are right now. As staff had mentioned, there is a concern that at this point we have given so many proffers that it has made it undevelopable because you know the changes that you got today were reducing from three to two interparcel connections. Nothing significant, but you can see how constrained it is already. We are open if you have any suggestions, but I am not sure what types of proffers right now would inherently meet your desires without reducing flexibility more than it already been reduced. Thank you.

Chair Baugh said does anybody have any questions they want to direct to Mr. O'Donnell?

Councilmember Dent said this is more for us, I guess. Since I have just tossed out the idea of why do we not eliminate the only single-family? I have not heard much traction on that, but that would also involve a little bit of back to the drawing board or at least refiguring what proportion of what kind of densities, like minimum eighty percent single-family. The rest could be duplex or townhomes. How do we determine that? I might have unwittingly thrown a wrench into it more than just sort of allowing more flexibility, if we chose to go that way. I think that overall we are kind of stymied on this, my inclination is to go ahead and recommend it to Council with the caveats of this is still a work in progress and that progress happens through the site planning and the engineering and all that will happen with staff and VDOT and the Fire Department. All that will happen to, I hope, finalize the issues that are still outstanding. Rather than just say no, we do not like this, so it is not happening. That just seems a bit too abrupt. Even though, again, Council could overturn that, what is a reasonable recommendation for a work in progress? I have been kind of grappling with that. Given all that, just to move forward, I will make a motion to approve it as is rather than raise the whole omit the proffer or whatever. I move to approve this, as presented.

Vice Chair Finnegan seconded the motion.

Chair Baugh said I am not quite there. I like the tabling idea better. I think we are looking at the same question we are just maybe close, but on other sides of the divide. As I am conceptualizing this for me to vote yes on this, that is saying what we have now is close enough. I am confident that it will all get worked out fine between staff and City Council and everything. I am not a million miles away from that, but I am not there.

Commissioner Washington said I would also go for tabling it as well.

Chair Baugh said anything you want to say that is germane to how you intend to vote on the motion or what you would like to discuss?

Councilmember Dent said you could vote no to the motion to recommend and then counter move to table.

Chair Baugh said do you want to withdraw the motion then?

Councilmember Dent said withdraw that motion and somebody move to table.

Commissioner Alsindi said I will make a motion to table the request.

Commissioner Washington seconded the motion.

Councilmember Dent said tabling means it has got to come back ideally so that we can say yes.

Chair Baugh said staff, do you need anything else from us at this point? Anything that would be helpful in addition to us at this point?

Mr. Russ said what are the things that would change that would not require this body to approve a subdivision variance? I guess I am getting caught up on, other than the location of the playground, what is not controlled ultimately by the Subdivision Ordinance and the Design and Construction Standards Manual? The things that staff does not like about this other than loss of tree canopy and the location of the playground. All of that requires them to come back to this body and ask for a subdivision variance or variance from the Design and Construction Standards Manual, right?

Ms. Dang said yes, and I am questioning if I am concerned about how parking will be addressed, I suppose we could deny reducing the street width because you cannot have on street parking because they had not explained to us or shown how they would address off street parking.

Mr. Russ said I'm trying to figure out what the applicant would change that would change anyone's mind, short of hiring an engineer to do a full engineered site plan.

Councilmember Dent said which they would not do before we approve it.

Vice Chair Finnegan said there was talk about that second proffer, the only single-family proffer, which staff had mentioned that they were surprised that it only showed single-family.

Councilmember Dent said that could be an option to open that conversation and see if that might reduce some of the pressure on the streets and the layout.

Chair Baugh said Mr. Russ, I think there is a lot that I think is well taken about your point. Even then, we have already said, well, it sort of handles parking. I think if I was convinced that it was

more, we have only got two things, and they will actually get addressed at site plan, which is kind of what you are saying. I am not sure it really is that. It does seem like there are the other things around the periphery. There is also a part of me that when the when the proffer shows up the day of the meeting with the amendments on it and it is not what we reviewed until tonight, if it is the one thing that addressed the one hitch, which it is sometime great. Particularly if we are talking about one meeting. I am not entirely convinced yet that it really just is as simple as, yeah, there are two or three concerns there and they really get addressed. They are going to have to make the streets work through site plan. There are maybe just a couple other things beyond that.

Mr. Russ said I just wanted to make sure that we had identified enough for staff and the applicant to actually make some change.

Mr. Fletcher said what Mr. Russ pointed out is a version of what we internally talked about. As we as we continue to work on the Zoning Ordinance amendment, I said we, as an entity, need to make ourselves comfortable if we start rezoning areas of the City that are undeveloped, that have allowable higher densities, that would just come in to just meet the subdivision regulations like what Mr. Russ is saying, are we comfortable with that at this stage? There are so many different philosophies about how we want to move forward with the Zoning Ordinance amendment because you could just give the higher densities, or you could wait for the rezonings to get something that is more proffered to be laid out in a way you wanted. What he is saying is absolutely true. I mean, they have to come back with something that meets all those design criteria. If we are not comfortable with that, I am not really sure what that means for the Zoning Ordinance amendment.

Ms. Dang said there are some other examples that I can think of, like Quarry Heights. I am going to say an example with hesitation because the scale is different, right? The scale of the project, the size of the development, but we have seen other projects where we have proffered the general layout of street. That is because that is the layout that we wanted. Any other layout we may not have been comfortable with. We wanted to make sure different parts of that property were served with the public street network in a particular way. I just offer that a street layout could be proffered. We were not ready to accept the original proffer that was submitted by the applicant with their layout because it was not a layout that we wanted, that we thought was acceptable to meeting all the street standards or what we would agree with for variances.

Mr. Fletcher said I might be wrong about this but what I have observed over the years is that it is harder to get a rezoning, it is easier to get a subdivision variance. When you have the zoning in place and you have somebody up there telling you, "I am allowed to have this density, I just need this variance that is just a slight deviation away from the design criteria." There is going to be a point where staff is like, can it work physically? Yeah, you could design it that. Does it impact efficiency in the way traffic moves? Yeah, but then somebody may go well, it is good enough. I do not want us to find ourselves just to accept it and here we are fifty, sixty years down the road, why

in the heck did they design the street that way? I also think that there is a component of this that you build this into the entire City of all the proposals that we have seen. If those projects had been moving forward, how would you feel about this one? The number of units have already been to this approval. The number for single-family is so low compared to townhomes and apartment units. This is an area we are planning for single-family. They are showing single family, we want to be able to approve it, but it is not in the layout that we hope to allow it.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	No
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Baugh	Aye

The motion to table the request passed (4-1).

Councilmember Dent said just to explain my motion, my vote no to table was I would rather see it go forward one way or the other.

Consider a request from Daniel W. and Nancy R. Brubaker Trustees to rezone (amend proffers) for a +/- 12-acre site addressed as 210, 290, and 280 West Mosby Road

Ms. Dang said 164-unit multiple family development on property addressed as 210, 290, and 280 West Mosby Road, which are identified as tax map parcels 7-C-2 and 3. The site was rezoned from R-2, Residential District, R-2C, Residential District Conditional, and B-2C, General Business District Conditional to R-5C, High Density Residential District Conditional. The approved special use permits allow for multiple-family dwellings of more than 12 units per building and for multiple-family buildings to be greater than four stories and 52 feet in height. The applicant still plans to construct an “affordable residential community” that would not exceed 164 multi-family dwelling units, but would like to amend one of the current, regulating proffers. The approved 2023 proffers are attached herein and the 2023 staff memorandum and supporting documents are available here: <https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6339874&GUID=9FFDCB41-D913-4C14-8E99-17C1449F1880&Options=&Search=>.

Currently, proffer number 3 from the 2023 approved rezoning states:

A minimum of 82 units will be age-restricted, in that at least one member of each household must be aged 55 or older and will comply with applicable laws and regulations relating to age restricted housing.

The applicant is requesting to amend this proffer so that they can apply for funding through the Section 811 Project Rental Assistance (PRA) program, which provides project-based rental assistance for extremely low-income persons with disabilities linked with long-term services.¹ The applicant's letter goes into more detail into why they are requesting to amend the proffer and they propose the following new proffer number 3:

A minimum of 82 units shall meet the federal regulations in the Fair Housing Act exemption for properties intended and operated for occupancy by persons 55 years of age or older.

All other proffers would remain the same as was approved in 2023.

The Fair Housing Act has provisions to allow exemptions of housing for older persons from liability for familial status discrimination. In order to qualify for the "55 or older" housing exemption, a facility or community must satisfy each of the following requirements:

- At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
- The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and
- The facility or community must comply with the U.S. Department of Housing and Urban Development's regulatory requirements for age verification of residents.²

By amending the proffers, the applicant intends to align the approved rezoning with the definition of the Federal Fair Housing Act when providing housing for residents aged 55 and older. The proffer amendment does not alter the applicant's objective of providing an age-restricted community, but rather would provide the flexibility for a percentage of the units to not meet the age restriction, which is already permissible through the Fair Housing Act. The new proffer, which references the Fair Housing Act's exemption, would require a minimum of 66 dwelling units to be rented to households with one person who is aged 55 years or older (82 units x 80% = 65.6 units).

Additionally, the applicant had originally contemplated two 82-unit buildings for this site – one "family" building and one "senior" building. Since the 2023 rezoning, the applicant found that when competing for tax credits, it would be optimal for them to reduce the number of dwelling units in the family building by two units and increase the number of dwelling units in the senior

¹ HUD Section 811 Project Rental Assistance Program, <https://www.virginiahousing.com/en/partners/rental-housing/hud811>.

² U.S. Department of Housing and Urban Development, "The Fair Housing Act: Housing for Older Persons," https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_housing_older_persons

building by two units. This is the reason why in their letter, the applicant describes they plan to apply for “811 Rental Assistance for disabled residents for 11 of the **84** total units”. Rental assistance may be provided to individuals who may be younger than 55 years but may not be older than 62 at the time they begin receiving this rental assistance (though they may continue to receive it after turning 62).

Staff recommends approval of the rezoning (proffer amendment) request.

Chair Baugh asked if there were any questions for staff.

Councilmember Dent said in that paragraph, where it talks about 811 rental assistance, why does it have the emphasis on 11 of the 84 total units? Where do those other two units come from? Look at the paragraph “811 Rental Assistance for disabled residents for 11 of the 84 total units emphasis added.”

Ms. Dang said thank you for bringing that up. Just a little minor thing. So what the applicants contemplated was two buildings, each of them would be 82 units for that total of 164 units. In their letter, they explain that they would increase the number of units in one building from 82 to 84 and adjust the other building still maintaining the 164 total. I wanted to call attention to that and maybe that made it more confusing, but I called attention to that because 84 does not match 82, and it tripped me up when I saw that.

Chair Baugh said instead 82 plus 82 it will be 84 plus 80.

Ms. Dang said yes.

Chair Baugh said the face to the outside would not be identical, but it would it be darn close?

Ms. Dang said right. I will add that the applicant is available on the phone.

Chair Baugh 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.

Mark Slack, the applicant, called in to speak to the request. I listened to Thanh’s description of what we are trying to accomplish and that is to open up the opportunity to apply to Virginia Housing for 11 units of 811 certificates for residents who are disabled. The 811 certificate program taps out at age 62. What we are hearing from the Department of Behavioral Health is that the market for residents over the age of 55 is already pretty slim, but we are looking to add these units of rental assistance to the property to help, one addresses this constituency, and two, to help the economic viability of the property. We cannot apply for the rental assistance until we make sure that the land use is consistent with the 811 certificates.

Chair Baugh 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.

Vice Chair Finnegan said Chair, I would support this. I understand why the adjustments are being made. It makes sense to me. I would be in support of this. I will move to approve.

Councilmember Dent seconded the motion.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Baugh	Aye

The motion to recommend approval of the rezoning request passed (5-0). The recommendation will move forward to City Council on March 11, 2025.

New Business – Other Items

Consider the FY2025-2026 through 2029-2030 Capital Improvement Program

Mr. Fletcher said I will not be going over what I did last month, but I wanted to point out there was a clerical error on page 20, specifically here at the total available funds that needed to be removed from the total that would be needed. This should have been a little over 28 million. That was incorrectly input in. That effects the total which effects the total needed and effects that total. I was able to find that and was able to correct that. That sheet is what I gave to you earlier this evening, so the corrected version is there. The corrected version is online. Again, it was just a clerical error, and I can pinpoint exactly how this happened. A couple of weeks ago, when the Finance Director decided to demonstrate funds available for Fire Station 4 I had to go back and change a whole bunch of data. The difference between those two numbers is 4.6 million, which is the exact amount that it is listed in for Fire Station 4. That is where the error came from.

The other information I was just going to show is just in graphical form here, just showing the CIP's data, the total data in different formats. This is just showing the five-year totals across the different funds that are in the CIP, clearly the General Fund, it is making up quite a bit of all of the funds, almost 50 percent here of all the funds. Same data shown differently, so this is the same totals the five-year horizon and then it is broken up by department. You can see the totals from the departments, of course, Public Works and water making up significant amounts and then Transportation there coming in higher amounts than what we typically see from them, but those showing some public infrastructure needs for the transit facility itself, capturing a couple million dollars worth of improvements at the facility that we hope to be able to provide. Then, looking at the year-by-year totals, this is a very typical scenario where the upcoming fiscal year we really want to try to get those projects in. Oftentimes they are not able to be funded, and you usually see that tailing off as we hit the five-year horizon. This is not typical of a breakdown of each of the fiscal years in the five-year horizon. Then the sobering graphic here, showing the total that we need there in the orange and then in each year, what would be left to be able to meet those demands which is the total that we have available in each of those fiscal years. It just shows the great need that we have across all of the different projects across the City. [Referring to the graphics on screen]

I would be happy to put any of those back up, but we recommend in favor as is presented by staff. Again, I just want to thank all of our colleagues across all the different departments because it is a big, huge team effort.

Vice Chair Finnegan said would it possible to share those slides?

Mr. Fletcher said we will get it to you.

Vice Chair Finnegan said the visual representation is helpful.

Mr. Fletcher said this is the one that always kind of gets me every year when you see the demands of what we want and then what we actually can provide.

Vice Chair Finnegan said in terms of general funds, the property taxes is the number one source of revenue for the City, correct? I think it is easy for this body to say we only do yes, no, you can build an apartment, but I think it is important for us to understand what land uses bring in what kind of revenue.

Mr. Fletcher said it shows the demands from the results of those projects, but it also goes to show where we have projects planned and where projects are coming in adjacent to them and how we work together to be able to fund some of these projects or partially fund some of those projects. You might capture some proffers that might provide sidewalk or street improvements and things like that, that can reduce some of these costs. For the most part you are looking at the real demands of what the City would have to be providing.

Councilmember Dent said I almost hate to do this, but to bring up the elephant in the room that the federal government's funding priorities are in flux, to put it mildly, where, if any, does it affect our just guesstimates of what might be available in any given year?

Mr. Fletcher said I will be straightforward, I cannot really answer that question. A lot of the other funds that are represented in the CIP are bonds and grants that we might be receiving and a lot of times those are state grants for Smart Scale, for transportation projects. You might pick up a couple of grants here and there for Fire Department projects where they might pick up a couple hundred thousand dollars here and there. I do not really know how to answer your question.

Councilmember Dent said even state grants are often passed through as a federal. As you say, this is not a budgeting tool, but it is a planning tool. We have to look at where do we think the money is actually coming from if it is not from the federal government anymore.

Vice Chair Finnegan said I have similar questions about... because some of the projects that were in the CIP in years past have been taken out because they are funded, they are scheduled to be done, so they are no longer in there. My question is that federal funding that is no longer going to be available for the things that were already funded. Is there going to be money clawed back or just not paid out? It is a huge concern.

Councilmember Dent said one example is, it seems likely that the direct pay essentially tax rebate from the IRA, Inflation Reduction Act, is probably going to be nixed. Keith Thomas, Sustainability Manager, said that would be a rebate. We have already planned on the budget to build the thing, and if we do not get the rebate, oh well, it was a bonus anyway. That is unfortunate, but I am more concerned about things like the EECBG [Energy Efficiency Conservation Block Grant], the matching funding we are counting on for the solar panels on the Turner Pavilion. Is that going to be blocked now? We do not know. I mean, that is one example of many things that could be in jeopardy. That is a good point that things that are already in the pipeline and planned and approved are not in the CIP. How many of those are in jeopardy?

Vice Chair Finnegan said as someone who on my day job works on federally grant funded projects, I will say I have never seen grants get pulled back the way they have. Normally it is just let it play out we are not going to renew that, but this is a completely different thing.

Councilmember Dent said it has ripple effects throughout the whole country, the whole economy.

Mr. Fletcher said if I could change topics to the questions that were answered, I hope those were sufficient. I do not know if you had any further questions beyond those questions that came up because of the responses.

Vice Chair Finnegan said I think the one that I was most confused about was where is the intersection of Ott Street and MLK [Avenue], but then I realized what I think of as a parking lot entrance is technically a little stub of it. Is that a public street?

Mr. Fletcher said that is absolutely correct.

Vice Chair Finnegan said the City plows that?

Mr. Fletcher said I do not know the answer to that, but it shows up as City right-of-way on the maps. and Before MLK [Avenue] before Cantrell [Avenue], I think you used to actually be able to turn from Ott [Street] before they did the stairs and the regrading and everything. I think you used to come out of Ott [Street].

Chair Baugh said the road used to end there. You got to that point and did not continue. The link continuing over to [Route] 33 did not exist. There were people who are still alive who were around when that was built.

Mr. Fletcher said two dimensionally there is an intersection, but is there really?

Chair Baugh asked if there were anymore questions for staff.

Councilmember Dent moved to approve the CIP as presented.

Vice Chair Finnegan seconded the motion.

Chair Baugh called for a roll call vote.

Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Baugh	Aye

The motion to recommend approval of the CIP passed (5-0).

Public Comment

None.

Report of Secretary & Committees

Rockingham County Planning Commission Liaison Report

Commissioner Alsindi said I attended the meeting on February 4th. There were six matters on the agenda. All the issues and matters on the agenda were approved. For the Capital Improvement Program, there was a big emphasis on schools, water and sewage. Then it seems that there have been some discussions on that because I attended only the meeting but prior to that there has been some discussion, the same as we did. An explanation of the process, as well. Again, education, schools, school renovation, those issues for the Capital Improvement Program. There was a rezoning request from B-2C to B-1 having to do with a well. A case that was, if I am putting it correctly, unique or unusual was the agricultural-forestal withdrawal request. It seems that the grandson wanted to come back and work on the farm. However there has been an LLC that has been signed at some stage between the father and the sons and daughter but the grandson could not come. They withdrew the request from the Mauzy agricultural-forestal district in order to reconsider how the grandson could come back, which was favorable to continuously have the family working for generations on the farm. They probably need to reconsider from a legal point of view to resolve the issue. There was also an ordinance amendment considering the BX district requiring water service and sewage. Additionally, any new BX district shall be located in an urban growth area as designated by the comprehensive plan or a plan adopted by the County. That was also approved. These were the cases and issues discussed at the meeting.

Councilmember Dent said I have a question about the BX growth area, they are requiring water and sewage does that mean our water and sewage or their own?

Vice Chair Finnegan said they have their own out in the urban growth area, like by the hospital.

Board of Zoning Appeals Report

None.

City Council Report

Councilmember Dent said the January 14 meeting, we opened the CDBG funding public comment period. A request from Florence LLC to rezone 160 Carpenter Lane. I do not entirely remember

that, but I think we approved it. East Kaylor Park Drive for the entrance to the high school. Conveyance of a portion of Cardinal Drive and Eastover to JMU. I thought I was having déjà vu for a regular item we approved the issuance by HRHA of revenue bonds for this project on Mosby Road. Approximately 80-unit multifamily and 84-unit age restricted. We approved the bonds for that. We appointed Shannon Porter to Planning Commission. We approved the Zoning Ordinance amendment to allow acceptance of cash proffers. Interestingly, that was a four to one vote. Councilmember Alsaadun voted against it with the observation that a cash proffer from a developer, they would most likely pass on the cost of that to the residents and might impact the affordability. Data centers came up, we approved that as a special use permit in M-1 only. More about Kaylor Park Drive the Rocktown High School access easement to Oakbox LLC, we approved it.

Mr. Fletcher said that was not something that came to Planning Commission.

Mr. Russ said that was allowing moving the location of the entrance. That is Oak Hill apartments.

Councilmember Dent said that was a cool thing from my perspective.

Mr. Russ said they allowed them to rearrange where they connect to. I think it is Reservoir [Street].

Councilmember Dent said there is a very essentially dangerous intersection coming out on to Reservoir [Street], but they are connecting to Eastover [Drive], which will also reconnect back to Paul Street and give them more connectivity. That is a good thing? Alright, so that was January 14th.

Chair Baugh said that would be right in, right out like the other?

Mr. Fletcher said it would be full access because it is on Eastover [Drive].

Councilmember Dent said rather than just onto Port [Republic] Road. We did a reenacting thing on personal, property and real estate tax relief. A presentation on the Community Connectors program. We appointed David Powell to EPSAC .

Other Matters

Review Summary of next month's applications

Ms. Dang said we will actually have eight items now. The one on Smithland Road that we just received this evening, if it is ready to come back in March. We have a handful of special use permits and rezonings. A Zoning Ordinance amendment not initiated by City staff, and some other matters that you see there. Our recommendation is for these to proceed in one meeting.

Mr. Fletcher said I wanted to bring up the thirty percent thing. With Mr. Russ continuing to challenge me, and then I continue to read through, and I had to draw this out. What I was discussing earlier with Mr. Callahan was not right. I am confused as to why he brought it up because I still do not think what he said was accurate. I had to draw it out. Whoever said that they thought it was still relevant, it is true. The thirty percent rule is still true, because what the code says is that it has an established rear yard and the required rear yard, that is both. That is the established rear in the

back and the required distance. What the amendment was doing, and this is what was bothering me as we were trying to think on the spot why Tyler still said that they could not build the building. It finally occurred to me that the why is because their amendment was requesting to be in the set back. Otherwise, you have to meet the principal setbacks. They were going to be building within the required setback, which was they want to go up to five feet. Can somebody remind me did he say that by us pushing it back ten feet reduces the size of his building? Is that what he said? I drew out the same size building was supposed to be same size building at a five-foot and a ten-foot set back. If you have a five-foot set back, you actually have more building in the required yard, and therefore you would take up more than thirty percent. By pushing the building back ten feet, you have less building in the required and therefore less of it to be thirty percent. I am still very confused by what he was saying. I do not know if my statements mislead anybody, and I do not know if that made a difference in your vote. If it did, we can always call the applicant.

Vice Chair Finnegan said ultimately, we were reducing the setback. It seemed to me like a compromised solution. It was twenty-five and reduced it to ten.

Chair Baugh said I think he was just looking at it as simply as at five feet. I have a five-foot area, that is a forbidden zone. At ten feet, I will have a ten feet area that is a forbidden zone. Therefore, I have got less spot to put the building in. The point is while we have not gotten there quickly or elegantly, that is not a problem. He is incorrect about that. Actually, when you when you think about if he has it his way, he is going to be...

Mr. Fletcher said it is going to take up more of the space that he is allowed to have.

Chair Baugh said there is a forbidden zone.

Mr. Fletcher said it was bothering me in the moment because I was like, Tyler said there was a reason, and I could not remember. He was like there is a reason and then I had to draw it out. This is supposed to represent a ten foot and a five foot. I was like, well, if he has to hold a ten, then he only has a little bit of it counting toward thirty percent. If it is five, he has much greater area counting toward the thirty percent.

Chair Baugh said he just thinking that there is a forbidden zone, and I cannot do anything in the forbidden zone.

Mr. Fletcher said if that made a difference in anybody's vote I wanted to make sure that was captured.

Councilmember Dent said where I was confused was the definition of the required backyard along the street.

Mr. Russ said it is more typical to just have rules about percentage of lot coverage. Ours only applies to this weird no man's land along the public street.

Ms. Soffel said I worked with Mr. Blanks, the Zoning Administrator on drawing it out, calculating with the ten-foot set back and so forth. What the thirty percent means for this garage according to what he had laid out, and he would still exceed the thirty percent with the five and with the ten. We got the numbers down. I did not bring those calculations or those drawings with me, but he

would still have issues with that. Like I said before, there are some strategies. Shift things around, turn them, whatever.

Chair Baugh said he was thinking I have thirty percent of a shrinking area, and the answer is actually with the ten foot is thirty percent of a larger area that he is worried about.

Vice Chair Finnegan said as we are talking about that, the other thing that I wanted to mention was the CSPDC Housing Study. I hope that everyone at least has a chance to look over it. I think in order to make a lot of these projects pencil out, setbacks matter. If broadly, ten feet was mentioned a couple of times by staff. This is in line with other zoning designations, ten feet setbacks. That is where we are headed. I think ten feet is a number to keep in mind. Is that the right number? Is that where we want to go? I did want to also point out that the Housing Study is recommending density bonuses. That is one that was one of their recommendations for affordable housing. I encourage you to, at least, skim it. It is worth looking at it, and it has a lot to do with what we are doing here.

The meeting was adjourned at 9:12 PM.

Richard Baugh, Chair

Anastasia Montigney, Secretary