



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Meeting Minutes Planning Commission

Wednesday, September 9, 2020

6:00 PM

Council Chambers

1. Call To Order

The Harrisonburg Planning Commission held its regular meeting on Wednesday, September 9, 2020 at 6:00 p.m.

Present 7 - Gil Colman, Brent Finnegan, Kathy Whitten, Sal Romero, Jim Orndoff, Adriel Byrd, and Deb Fitzgerald

2. Roll Call/Determination of Quorum

Members present by electronic, video communication: Gil Colman, Chair ;Brent Finnegan Vice-Chair; Jim Orndoff; Deb Fitzgerald; Adriel Byrd; Kathy Whitten; and Sal Romero.

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

Chair Colman called the meeting to order and said that there was a quorum with all members present. This meeting will be held as an electronic meeting due to the emergency and disaster represented by the spread of COVID-19. This meeting will be conducted by the following electronic communication means: electronically through GoToMeeting and Granicus. The public had the opportunity to provide comments in advance via email and will have the opportunity to provide comments by phone at designated times during this meeting. Because calls are taken in the order that they are received, we ask that the public not call the comment line until the item you are interested in is being presented or discussed.

3. Approval of Minutes

Chair Colman stated that the Planning Commission has not had the opportunity to review the minutes from the August 12, 2020 meeting; therefore, the Planning Commission will vote on the minutes at the next meeting.

3.a.

4. New Business - Public Hearings

4.a. Consider a request from the Northeast Neighborhood Association Inc. for a special use permit to allow for a community building at 192 Kelley Street

Chair Colman read the request and asked staff to review.

Ms. Banks said that the two SUP requests for 192 Kelley Street will be presented together.

In February 2017, Planning Commission heard a request to amend the Zoning Ordinance to allow for Community Buildings by special use permit (SUP) in the R-2, Residential District. That request was followed by a SUP request for a community building at 192 Kelley Street. Staff and Planning Commission (6-0) recommended in favor of the two requests. The recommend approval of the SUP included the following conditions:

- Any community building shall operate substantially the same as the use proposed within this application.
- If the City receives concerns and/or complaints regarding parking, noise, or other nuisance issues associated with the community building use, Planning Commission or City Council may request to re-evaluate the permit, and if necessary, add conditions or revoke the permit.

City Council approved (4-0) both requests on March 14, 2017.

Section 10-3-130 (c) of the Zoning Ordinance states:

“Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within twelve (12) months from the approval date of such permit.”

The previous approved SUP was not established within the 12 months from the approval date; therefore, the SUP expired.

The Comprehensive Plan designates this site as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types; but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

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

- Site: Single-family detached dwelling, zoned R-2
- North: Single-family detached dwelling, zoned R-2
- East: Multiple-family attached dwellings operated by Harrisonburg Redevelopment & Housing Authority, zoned R-2
- South: Multiple-family attached dwellings operated by Harrisonburg Redevelopment & Housing Authority and single-family detached dwellings, zoned R-2
- West: Bethel African Methodist Episcopal Church and single-family detached dwelling, zoned R-2

The subject property is located on the northwest corner of the intersection of Kelley Street and Myrtle Street. City Real Estate records indicate that the building contains two stories and has approximately 1,408 square feet. The applicant is requesting two special use permits. The first, per Section 10-3-40 (5) would allow for a community building on the subject property. The Zoning Ordinance defines a Community Building as “a building for social, educational, cultural, and recreational activities for a neighborhood or community, provided any such use is not operated primarily for commercial gain.” The second request is per Section 10-3-40 (11) and would allow for a reduction in required parking areas to permit fewer than the required number of vehicle parking spaces. If approved as requested, the applicant would convert the residential dwelling to a community building use and all required off-street parking for the use would not need to be installed.

The applicant, the Northeast Neighborhood Association (NENA), is a non-profit organization that serves the Northeast Neighborhood in Harrisonburg. NENA’s website says its mission is “to work to make our neighborhood a **secure, attractive, and strong** community.” NENA’s letter describes that “the plan for the use of the building is to be a community building/museum, meeting space and administrative office for NENA... and that NENA would occupy the building as described in the 2017 application.” The 2017 letter describes that the property is proposed to be used as a museum to collect and display artifacts, to have meeting space available for events and gatherings, provide outreach to the community regarding various programs, and to serve as the association’s administrative offices. Over-night stays within the building will not be permitted. A copy of the letter included with the 2017 special use permit request is attached.

Before using the building as a community building/center, a new certificate of occupancy for a change of use per the Building Code is required. NENA representatives are aware of this and are currently working with a Virginia Registered Design Professional regarding the use change. Until a new certificate of occupancy is issued, the building remains a residential dwelling. Additionally, the applicant’s immediate plans are to get the community building open to the public; however, they do have a long-term plan to add an addition onto the rear of the building.

As part of this request, NENA is also requesting a time extension from Section 10-3-130 (c) of the Zoning Ordinance, which requires that a SUP be established within twelve months from approval date. NENA is asking for an extension of five years to establish the SUP on the site. An approved change of use permit per the Building Code would establish the community building use.

Staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of the community building SUP request with the suggested conditions:

- Any community building shall operate substantially the same as the use proposed within this application.

- If in the opinion of Planning Commission or City Council, the community building use becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.
- The special use shall be established, or any construction authorized shall be commenced and diligently pursued within five years from the approval date of the special use permit.

Concurrently, the applicant has applied for a SUP per Section 10-3-40 (11) to allow for the reduction in required parking spaces within the R-2, Residential District. Required parking for a community building use at this location is calculated at a ratio of one space for every 250 square feet of gross floor area; the building is +/- 1,408 square feet, thus six off-street parking spaces are required. Behind the existing building there is ample unused area where parking could be installed. As required, a site sketch has been provided indicating that the six off-street parking spaces and landscaping requirements might be possible in this area.

The applicant has stated that they desire to leave the rear of the property as open area to further study the history of the landscaping and garden area, and to create a replica of the original "kitchen garden" for the historic home. Provided is a letter from the Virginia Department of Historic Resources (DHR) indicating the area behind the existing building may yield important archeological information of history and that the area should remain open for further investigation to occur. In 2019, DHR awarded NENA a Threatened Sites grant to allow a professional archaeologist to survey the Dallard-Newman House property which has yielded over a hundred small-scale archaeological finds within the last year.

The applicant should understand that, if approved, the area that would have been used for parking must be recorded in the deed, must remain as open space, and shall not be used to meet any conflicting requirements of the Zoning Ordinance. It should also be understood that if any additions are made to the existing structure, the plans may not be supported by the parking SUP and therefore off-street parking requirements for the use must be re-addressed by NENA.

The intent of the community building is for people from the neighborhood and community to walk to the site. As well, staff understands the importance of the archaeological history and that installation of a parking area would impede that research. Staff recommends approval of the reduction in required parking SUP, specifically to not require off-street parking be provided for a community building use of the existing +/- 1,408 square foot building and suggests the same five-year time extension as previously discussed. There is available on-street parking and a sidewalk along the northern side of Kelley Street. Although Myrtle Street, adjacent to the site, is narrow, on-street parking is available in the 500 block of Myrtle Street, just south of Kelley Street. Staff suggests the applicant direct visitors to park in these locations.

Staff believes that, at this location for a community building use, the proposed reduction/waiving of required parking is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more

injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of the reduced parking SUP request with the following suggested conditions:

- If the City receives concerns and/or complaints regarding parking associated with the community building use, Planning Commission or City Council may request to re-evaluate the permit, and if necessary, add conditions or revoke the permit.
- The special use shall be established, or any construction authorized shall be commenced and diligently pursued within five years from the approval date of the special use permit.

Chair Colman asked if there were any questions for staff.

Commissioner Fitzgerald asked how common it is for applicants to request a five year period to establish the special use.

Ms. Banks said that we have done a five-year extension previously with a SUP request on Mt. Clinton Pike for a financial institution. That time limit has expired. We have offered two year extensions on others.

Commissioner Fitzgerald said that she remembers one and two year periods, but I did not remember any that were five. This makes a ton of sense, right now, with the current economic conditions to provide the flexibility.

Commissioner Whitten asked if the reason for the extended period is because of the non-profit status. We have had some requests to extend time. Most of my recollection is that we have not granted them very frequently. We have to be careful about that, although I am comfortable with it in this case. I do not think that extending it to five years is something that should be taken lightly.

Chair Colman said that he remembers the original SUPs. It is great to see something like this. It is historical and has tremendous social value. It is important for us to consider as we look at the new zoning ordinance, when we have situation like this where there may be things that have more value than the required parking. We need to think seriously about more than, have a variance perhaps to completely do away with any required parking there. Especially in a neighborhood like this, where the richness of the neighborhood is reflected there. It makes sense to waive the requirements for parking when you have a condition where this is an archaeological site. I am happy to say that I support both SUPs.

Chair Colman 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.

Sarah Brooks called to speak to the request. I am here on behalf of the Northeast Neighborhood Association. Our address is P.O. Box 1026, Harrisonburg, VA 22803. I have come at the

request of Karen Thomas, NENA president, and the Board. We appreciate your consideration of our request and the time that you have invested in working with us. Your presentation provided was thorough that I do not know if I can add anything further to it. I am here as someone who is especially interested and dedicated to pursuing the historic investigations at this site. I am a museum studies specialist and I was privileged to work with our archeologist Dennis Blanton in the investigations this summer. We received a grant to support that work. We do anticipate that we will continue to expand investigating the site. We would like to present that as fully as we could in a future museum. Its role as a community center is the primary function that the building and the property would serve. We are grateful for you thinking about all these contributions to the immediate community.

Chair Colman asked if there were any questions for the applicant’s representative. Hearing none, he asked for the next caller. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Whitten moved to recommend approval of the SUP to allow for a community building at 192 Kelley Street, with conditions as presented.

Commissioner Finnegan seconded the motion.

Chair Colman called for a roll call vote.

- Commissioner Orndoff: Did not vote due to technical difficulties
- Commissioner Byrd: Aye, via chat message
- Commissioner Finnegan: Aye
- Commissioner Fitzgerald: Aye
- Commissioner Whitten: Aye
- Vice Mayor Romero: Aye
- Chair Colman: Aye

The recommendation to recommend approval of the special use permit, with conditions, passed (6-0), with Commissioner Orndoff not voting due to technical difficulties. The recommendation will move forward to City Council on October 13, 2020.

This PH-Special Use Permit was recommended to full council.to the City Council due back on 10/13/2020

Yes: 6 - Colman, Finnegan, Whitten, Romero, Byrd and Fitzgerald

No: 0

4.b. Consider a request from the Northeast Neighborhood Association Inc. for a special use permit to allow for the reduction of required parking areas at 192 Kelley Street

The commissioners discussed the impact of technical difficulties on the votes, suggested alternatives and asked Mr. Russ how to proceed. Mr. Russ stated that it would not have been a

deciding vote and that Mr. Orndoff could later state how he would have voted for the record.

Commissioner Finnegan said that, as staff pointed out, the intent of the community building is for people from the neighborhood and community to walk to the site. I think this is a neighborhood space, run by NENA, so I am in favor of it. I move to recommend approval of the SUP to allow for the reduction of required parking areas at 192 Kelley Street, with conditions as presented.

Commissioner Fitzgerald seconded the motion.

Chair Colman asked why the parking requirements were not considered for the full extent of the proposed development, not just for the building, but for the future addition to the building?

Ms. Banks said that the addition will add substantial square footage to the building. The parking requirement is one parking space for every 250 square feet of gross floor area. I cannot remember what the total was, but there is not enough area in the back for the addition and required parking spaces. This works now. It gets the community building up and running. The parking does not have to be installed if this is approved. When they are ready to proceed with an addition on their building, then parking will have to be addressed in some fashion. This parking SUP will not carry over. They will be building the addition into where today's parking would be.

Commissioner Whitten said that I can appreciate the walkability in the neighborhood. While the archaeological information that we have is not conclusive, we expect that there are artifacts in the ground. If a museum is installed, there will be a desire from people outside of this area and this neighborhood to visit this place. The parking is more of concern to me. It might not be a concern at this point, but they need to be making a plan for parking along with that addition.

Chair Colman said that these situations should be considered in the zoning ordinance rewrite. We know that parking is always an issue and has many implications.

Chair Colman asked for a roll call vote.

- Commissioner Finnegan: Aye
- Commissioner Whitten: Aye
- Commissioner Orndoff: Aye
- Vice Mayor Romero: Aye
- Commissioner Fitzgerald: Aye
- Commissioner Byrd: Aye, via chat message
- Chair Colman: Aye

The recommendation to recommend approval of the special use permit, with conditions, passed (7-0). The recommendation will move forward to City Council on October 13, 2020.

A motion was made by Finnegan, seconded by Fitzgerald, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 10/13/2020. The motion

carried with a recorded roll call vote taken as follows:

Yes: 7 - Colman, Finnegan, Whitten, Romero, Orndoff, Byrd and Fitzgerald

No: 0

4.c. Consider a request from Orange Sky Investments LLC for a special use permit to allow a short-term rental at 165 New York Avenue

Chair Colman read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

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

Site: Single-family detached dwelling, zoned R-2
North: Single-family detached dwellings and duplexes, zoned R-2
East: Single-family detached dwellings, zoned R-2
South: Single-family detached dwellings, zoned R-2
West: Single-family detached dwellings, zoned R-2

On August 14, 2019, Planning Commission received a request from the applicant to operate a short-term rental (STR) at 165 New York Avenue to a maximum of 14 STR guests during the lodging period. At that time, staff recommended that the special use permit (SUP) request be denied because the property was not the applicant's primary residence and there would be no STR operator present during the lodging period. Planning Commission also recommended denial (6-0) of that SUP request.

Between the August 14 and September 10, 2019 City Council meeting, the applicant amended their application stating that the applicant/property owner would be moving to the subject property and would make it his primary residence. The applicant had also reduced the requested number of STR guests at any one time from 14 to 12. Staff presented the updated request to City Council on September 10, 2019. Given that the circumstances of the request had changed and made it similar to previously approved requests, staff's recommendation also changed and staff recommended approval of the SUP with conditions.

Given the changes to the application since Planning Commission's first review, City Council did not take action on this item on September 10, 2019 and referred it back to Planning Commission for review and recommendation. On October 9, 2019, Planning Commission recommended denial of the SUP (6-0) and on November 12, 2019, City Council denied the request (5-0).

On August 25, 2020, City Council held a public hearing and voted to approve amendments to the Zoning Ordinance to create a new use called “homestay” and to add this use as a by right use in certain zoning districts and amend regulations that apply to STRs. If the amendments are adopted, both by right homestays and STRs by SUP will require that the property be the operator’s primary residence and that if the operator is not the property owner, then the operator must be present during the lodging period. The amendments are expected to be adopted on September 8, 2020 the day before the subject request is presented to Planning Commission.

The applicant is requesting approval of a STR operation at 165 New York Avenue, which is located approximately 175-feet east of South High Street. The single-family detached dwelling is a six-bedroom home of which five bedrooms would be rented as STR accommodation spaces. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant desires to rent for STR to a maximum of eight STR guests during the lodging period.

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent for STR five accommodation spaces, the property should provide five off-street parking spaces. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling unit. There is a large parking area in the rear of the property, which can accommodate up to five vehicles and an additional three vehicles can park within the driveway, for a total of eight off-street parking spaces. Staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

If the request is approved, staff recommends the following conditions:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than five STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to eight.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the items identified in the Pre-Operation Form when short-term rental guests are present.
5. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
6. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding

properties. If the applicant later wishes to create living spaces within an accessory building for a STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 limits the total number of guest rooms and accommodation spaces on the entire property to five. Condition #3 limits the total number of STR guests to not more than eight. Condition #4 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the items identified in the form when STR guests are present. Condition #5 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to delineate off-street parking spaces. Condition #6 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained his plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP as approved. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Because the City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations, staff recommends approval of the request with the suggested conditions. Staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Chair Colman asked if there were any questions for staff.

Commissioner Whitten asked if the City had heard any comments from the neighborhood.

Ms. Dang said that there was a call received today. I failed to ask my colleague if it was the same person who called her last week. They are one or two people who called. The first one was inquiring about the application. The person who called today did not want to identify themselves. Our colleague did encourage them to call in this evening, but they had some hesitation about doing so. They did express concern regarding the lack of limitation on the number of days on the property could operate as a STR in a calendar year, and they suggested 90 days. They expressed that this feels like a commercial establishment in a residential district. That is the only phone call. We did not receive any letters.

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

Nicholas Hantzes, Hantzes & Associates, Chantilly, VA, called representing the applicant. I would like to thank the Planning Commission and staff for working with us to make sure that the previous concerns of the community have been addressed. My client is committed to address

those concerns. We hope that this time around he will be approved for STR. He is currently renting the property as a long-term rental to people in pharmaceuticals, at Merck, and some nurses. He has a history of renting to good tenants. That is an important consideration for a community, that the owner of the property respects the community and make sure that there are high quality tenants. I am happy to answer any questions.

Chair Colman asked if there were any questions for the applicant's representative. Hearing none, he asked for the next caller. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that he does not love this. We have to be consistent with what we have allowed in other neighborhoods. The letter from the attorney states that the new application provides that the property will be Mr. Smallwood's primary residence. When people apply for these, we take them at their word. The Planning Commission is not in the business of enforcement. There are no comments here from neighbors about objections. I question how the parking map will work with eight vehicles. It works on paper, but it is hard to imagine that working physically, with eight cars in that driveway. I am probably going to vote in favor of this, but I am not crazy about it.

Commissioner Whitten said that it comes at no surprise that I am having the same concerns as Commissioner Finnegan. I do think that this format of calling in is very difficult for neighbors to be able to voice those concerns. There is some sentiment that people are concerned about speaking their mind or giving their name. I do not know what that is about. I agree with the comment made by the person who called. This feels more like a commercial, like a niche hotel, where you have one owner living on one side of the City and one owner calling it his primary residence. I cannot question whether it is primary residence or not. The other concern is that we are not just granting the SUP to this owner. We are granting it to the property. While this owner can say that they will rent only to high quality tenant, you just do not now. Eight people is a lot for no limit on number of nights. I do not think that I am going to vote for it.

Commissioner Fitzgerald said that she agrees with the comments that Commissioners Finnegan and Whitten made. I am comforted by the sixth condition that states that the SUP can be recalled for review, which can lead to the additional conditions, restrictions or even revocation of the SUP. If what is quite possible does happen, and it becomes a problem in the neighborhood, there is an avenue that we could use to correct that problem.

Commissioner Whitten said that the problem with that is that I feel that it is a paper tiger. We need to be careful using that as a good reason to vote in favor of something.

Commissioner Fitzgerald said that it does say that it is in the opinion of the Planning Commissioner, which means that a Planning Commission with a different group of people could have a very different opinion about what is a problem and what is not. I get the point. You are not wrong.

Commissioner Whitten said that the other piece of that is that we would be in a situation of having to go into the court system which is a big expense to the City to incur. Mr. Russ is much more capable of speaking to this than I am.

Chair Colman said that City Council’s record has been that they have approved most of the STR requests. This has been the most controversial and this is the one that they voted down. The main reasons that we had before were that neither the owner nor the tenant were going to be present and the number of people. That appears to have been mitigated. It is not something that we can go out and prove. Presented this way, we have to be consistent with City Council. I agree that because it has been in front of us once or twice, and we have seen it through the process, we feel somewhat uncomfortable, but it is a SUP and the conditions are set there. It might be more difficult than not to revoke something like this. Perhaps because of COVID-19, there are not that many people speaking out as there were before. Therefore, it appears that there no significant opposition or significant nuisance to the neighborhood. For the same reasons as Commissioner Finnegan expressed, I will likely be voting in favor of it.

Commissioner Fitzgerald made a motion to approve the SUP with conditions, as presented.

Commissioner Finnegan seconded the motion. I will be voting in favor because of what the application says in that this is a primary residence.

Chair Colman called for a roll vote.

Commissioner Whitten No. I will vote no because of my concerns for the neighborhood. I would reference the land uses surrounding the property. They are all single-family detached dwellings. If we follow the logic that everybody should be able to do this, we could have a whole block of these. The proximity to campus and other things that people might want to do would certainly lend themselves to this particular little neighborhood turning into a bed and breakfast city. I am going to vote no.

- Vice Mayor Romero Aye
- Commissioner Byrd No, via chat message
- Commissioner Finnegan Aye
- Commissioner Orndoff Did not vote due to technical difficulties
- Commissioner Fitzgerald Aye
- Chair Colman Aye

The recommendation to recommend approval of the special use permit, with conditions, passed (4-2), with Commissioner Orndoff not voting due to technical difficulties. The recommendation will move forward to City Council on October 13, 2020.

A motion was made by Fitzgerald, seconded by Finnegan, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 10/13/2020. The motion carried with a recorded roll call vote taken as follows:

Yes: 4 - Colman, Finnegan, Romero and Fitzgerald

No: 2 - Whitten and Byrd

5. New Business - Other Items

5.a. Consider a request from Patrick Mannion to close +/- 502 sq. ft. of undeveloped public alley located between 671 East Rock Street and 672 East Wolfe Street

Chair Colman read the request and asked staff to review.

Ms. Dang said that the applicant is requesting to close a portion of an undeveloped alley within the Northeast Neighborhood area of the City. The alley is approximately 12-feet in width and runs parallel to East Rock Street and East Wolfe Street. The entrance to the alley begins at Hill Street and runs east for approximately 490-feet and does not connect to Summit Street. The properties identified as tax map numbers 33-R-19, 20, 21, 22, 23, and 24 between the end of the alley and Summit Avenue were platted as part of a different subdivision and an alley was never dedicated or reserved behind those properties. At the entrance to the alley at Hill Street, the alley can be traversed over a grassy area by a vehicle for about 150-feet before encountering dense vegetation that prohibits further travel through the alley. This alley has the appearance of being the backyards of the homes fronting on East Rock Street and East Wolfe Street.

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

- Site: +/- 502 square feet of undeveloped public alley adjacent to tax map parcels 33-R-9 and 33-R-18, zoned R-2
- North: Single-family dwelling, zoned R-2
- East: Single-family dwellings, zoned R-2
- South: Single-family dwelling, zoned R-2
- West: Continued +/- 430 feet in length portion of undeveloped public alley leading to Hill Street, zoned R-2

The applicant owns 663 East Rock Street and desires to close the alley in order to expand the property for future development of a single-family detached home. The property owner on the other side of the alley at 672 East Wolfe Street has expressed interest in acquiring half of the alley.

During staff review, it was determined that while a public easement or right of passage was dedicated with the subdivision titled “Map of the Eastern end of Garber and Garber’s Addition to the Town of Harrisonburg,” dated March 1905 and filed in the Rockingham Clerk of Court’s records in deed book 74, page 380, the underlying fee remained with the dedicators of the 1905 subdivision who at the time were John N. Garber, Gertie F. Garber, Annie Z. Garber, and B.F. Garber. The process of determining the present owner of the land for rights-of-way would likely require extensive title searching. An alternative available to the applicant to gain title of the alley, is for the applicant to file for quiet title with the Rockingham Circuit Court to request that a judge

determine ownership and clear title to the property and grant it to the applicant and adjoining property owners, if appropriate. If the applicant and/or adjoining property owners are granted a quiet title to the alley, the City requests that the applicant inform the Department of Community Development so that City tax maps can be updated to reflect the change.

Filing a quiet title would be done independently of applying to request the City's vacation of the public easement or right of passage. Therefore, the applicant is requesting the City's consideration to vacate the public easement through the alley. The applicant is aware that if City Council votes to approve vacating the public easement (first reading at City Council), the applicant is responsible for having a survey and plat prepared in order for the City Attorney to draft the ordinance to finalize vacating the easement (second reading). After City Council's first reading, letters will be sent to adjoining property owners, who will be given 60-days from the date of the letter to notify the City of their interest to purchase half of the public easement and vacate it.

During staff review, the Department of Public Utilities, Columbia Gas, and Harrisonburg Electric Commission offered no comments as no utilities have been identified within this alley and there are no plans to add future utilities.

Staff recommends approval to vacate the public easement/right of passage within the alley.

Chair Colman asked if there any questions for staff.

Commissioner Finnegan said that every time he sees an alley closing request, I do not love them, but this one clearly terminates. It does not connect through to Summit Avenue. If someone further up the street wants to do the same thing, does the alley remain in small pieces as it is being closed? How does that work?

Ms. Dang said that could occur. It has happened in past alley closure applications.

Commissioner Finnegan said that means there are stranded sections of alley.

Commissioner Fitzgerald said that she loves the snippet of history about how that ended up being an orphan piece, and the idea that the folks responsible for that are a hundred years in the past. It is just wonderful. Every once in a while, some of these come up and you get to have little pieces of Harrisonburg history filled in. That was a good one.

Ms. Dang corrected her previous statement and said that we have not had the segmented scenario happen. Someone could request it, but it would be up to the Planning Commission's recommendation to City Council to approve it. To staff's knowledge that has not occurred before.

Chair Colman said that we have denied alley closures before because it would fragment the alley and not allow the through way. Even though a lot of these alleys are not in use, people could walk

through them. They are a public right of way, a public access. In this case, it does not go through. It would seem that in the last section of the alley, there would be no harm done. If it were in the middle, we would look at it in a different way.

Ms. Dang said that the last request was for the alley between Rock Street and Wolfe Street. We had a lot of discussion about traditional neighborhood development and wanting to maintain those alleys for the potential of being used for access in the rear in the future. That was also a mid-block request.

Commissioner Whitten said that they received an email that afternoon.

Ms. Dang said yes. There was a public comment that we received this afternoon and that I forwarded to the Planning Commission.

Chair Colman asked for Ms. Dang to read the email.

Ms. Dang said the email came from December Lorimer and reads as follows:

In general it seems like a pity right now, during the pandemic, to close alleys, which are stress-reducing green spaces good for solitary walking.

If this particular alley section is not used much, it may be because the way up to it is somewhat cluttered, has plants that cause a rash similar to poison ivy, and also (unless I have misunderstood) it is fenced off.

Trying to get the lay of the land, I walked uphill from the posted sign on Hill St. towards the area between the two houses. The alley was somewhat cluttered with deadwood etc., but still passable and pleasant. Further uphill, the bamboo is very pleasant (but likely inclined to spread). At the top, just before I could reach the section in question, I found the way entirely barred by a popsicle-stick style fence, belonging to the house at 672 Wolfe St.

It looks as if there may also be a perpendicular alley exiting from within this fence onto E. Wolfe St (and possibly onto Rock St.? although this is fenced off by the Rock St. property). If so, that would obviously make this particular alley more valuable as a walking space, since it would not be a blind alley. If the wooden fence were removed.

Apart from the fence, the biggest disincentive to walking up the alley is probably the lily-of-the-valley. Which will smell wonderful when it blooms, but causes a poison-ivy-like reaction. (Photograph of itchy, dark red welts all over my ankles available upon request.)

It is always a pity to lose green space for walks. Especially if the real problem is that it has not been properly looked after, and has been enclosed. This seems to create the wrong kind of incentive system for property owners.

Chair Colman said that even though it is a blind alley, I like knowing that this alley is sometimes used by people. We do not know how many people have been walking there, but they do have value and some people do value it. The value can be to the community, not just the immediate neighbors.

Ms. Dang said that Commissioner Byrd has commented in the chat. He states, "My ankles have also had the sores mentioned in the email. It appears that the alley is not used especially if the 672 property becomes a residence."

Commissioner Finnegan said that he agrees with the comment by December Lorimer that this does create an incentive for property owners to not keep up an alley. Alleys are a weird public-private entity. I use the alleys extensively in my neighborhood. There are some dead end alleys that I do not walk down because they do not lead anywhere. I would feel differently about this alley closure if it was not for the fact that they are expanding it to add a single-family home which is what neighborhoods are for, first and foremost, housing.

Commissioner Whitten said that is also the request on Wolfe Street was desire for, was to add on to a single-family house.

Chair Colman said that dead end alleys may not be a through path, but there is a path for the people who live there as an exit. It does not have to go through for them to use it. I know that nobody maintains those alleys and the City does not enforce the maintenance. I agree that it is an incentive for people to let them get overgrown and claim them. We have seen all kinds of things, including sheds. If nobody else is using it, there is a use right there. It might not be an allowable use, but people sometimes take advantage of that.

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

Patrick Mannion, P.O. Box 539, Harrisonburg, called in to speak to his request. I am applying to close the alley behind my property at 663 East Rock Street. It is worth noting that the address at the property is not actually 663 East Rock Street. It does not have an address, since it has been separated from what is shown as lot 56. Lot 57 is the property that we are discussing. My original intent to purchase the alley, but it is not owned by the City. Since I have spoken with title agencies and a lawyer, I found out that the title search will cost more than the property is worth. I will not continue that. I still want to close the alley and try to include it as part of the yard. I spoke with the adjacent property owner at Wolfe Street. She told me that she is no longer interested in getting half of it now that she knows that it would not be property ownership, but access rights. I hoped

to get the entirety of the alley as permission to use it as part of the yard. Originally, I wanted to get a bigger footprint for the house, but that does not sound like it will be worth what I would get out of it.

Chair Colman asked if there were any questions for the applicant. Hearing none, he asked for the next caller.

Panayotis Giannakouros, City resident, called to speak regarding the request. Some time ago, the City thought comprehensively about what to do with what are called paper alleys. This alley that we are talking about tonight is an example of a paper alley. At that time, the City made, what I believe is the correct decision, to not close paper alleys en masse. That is a good principle to go by. We should not be giving over public land unless there is a compelling interest. In this case, the applicant can already use the area in way that they please. They are not under specific maintenance requirements, as has been pointed out. It was pointed out as a negative, but it is a positive, because it does allow the people adjoining those alleys to use it in a way that they like. If people are walking through it, being a public alley, they can help maintain it, as well. It is a public alley. We should not be giving up public alleys. In this case, I do not hear a compelling reason why we should deviate from that principle.

Chair Colman asked if there were any questions for the caller. Hearing none, he asked for the next caller. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Ms. Dang said that it was new information for staff that the applicant will not explore the acquisition or the quiet title of the land. If they do not do that, it could not become theirs with vacating of the right of passage easement. It would still belong to the Garbers or their successors or heirs. These things would have to go hand in hand for the applicant to use it as part of their property.

Mr. Russ said that if they wanted to use it for the lot line for setback purposes, there is no one to tell them that they cannot use it. Whoever the heirs of the Garbers are, they probably have no idea that they technically have an interest in this sliver of land. We would not issue a building permit, if they do not own the land. In some ways they could make use of it. I would have to think about it more.

Commissioner Finnegan said that it is unclear what we are voting on if this is not moving forward. I have on my property a right of way where a stop sign is. I mow it. I maintain it. I also know that it is not my property. It is functionally part of my yard. Almost every property in my neighborhood is like that. It either has an alleyway or some right of way property around it. That is not uncommon. If we are not actually closing the alley, if they are not going to purchase it, then I am not clear on what we are voting on. If that is the case, I am inclined to make a motion to deny.

Ms. Dang said that an option that we have is to table this item so that staff can continue

discussions with the applicant.

Chair Colman said that sounds like a better option to me. They can use the alley. They just cannot restrict anyone else from using it.

Ms. Dang said that Commissioner Byrd sent a stating, "I share the confusion in light of the new information."

Commissioner Whitten asked if the property was on the tax roll.

Ms. Dang said that it is not.

Commissioner Whitten said that it is not public either. It is privately held.

Ms. Dang said that it has not been represented on the tax map as taxable property. In light of the new information, we could look into it. I am not sure what we will do since figuring out who to tax is basically impossible.

Mr. Mannion called back regarding his request. I want to add that when I spoke with the attorney and the title agency, they told me that in order to do the quit title, one of the things you have to show is that there has been fifteen years of no use where one person has owned the property adjacent to the alley and the alley has not been used. Use includes the easement from the City. It would have to be fifteen years that the City does not have an easement on the property. Then it would be more likely that the quit title will go through. I am thinking of doing this to be able to show a potential future homeowner that might purchase this property that in the future they could obtain the land as part of their property as well. Put a fence around it, make it part of your yard. Keep it nice. I would like to add that there are fences in the alley, not just adjacent to that, including in the alley that I am hoping to close. The fence that is there is rotting and will be removed. It is the only part of the alley that is clean, what is in my part of the yard. The rest of it is overgrown or fenced. I am the only person mowing it, keeping the weeds down, and keeping the trees from coming up. If anyone is concerned about having green space to walk in, I am the only one that has anywhere you can walk.

Chair Colman said that your intent is to pursue this alley closing. Is that correct?

Mr. Mannion was no longer on the phone line.

Commissioner Finnegan said that it sounds like he is taking the path where you document for fifteen years that it is not being used. I do not know how you document it. That is what I heard.

Chair Colman said that it sounds like the fact that City has an easement on the property counts as it being used.

Mr. Russ said that it sounds like adverse possession, also known as squatter's rights, where someone makes use of land that does not belong to them. The person who owns the land, if they do not say anything for ten, fifteen, twenty years, at some point lose their right to the land. You cannot adverse possess against the government. The government's rights to that easement is never extinguished by the City not using it. It does make sense that they may need a period of time after easement is gone before they can claim the land.

Chair Colman asked if they can legally claim the removal of that easement or right of way if they do not own the property.

Mr. Russ said that would not be a problem.

Chair Colman asked if we should table this or take a vote on this alley closing. A recommendation from staff would be appreciated.

Ms. Dang said that staff does not have any concerns if you choose to vote on it this evening. Staff's recommendation would remain the same.

Commissioner Finnegan said that he is not clear, so he does not feel comfortable voting for a motion. I move to table this request until we sort through what exactly this request is about.

Commissioner Whitten said that the point of clarity is not with the public right of way. The point of clarity is about the ownership of the property. By giving over the public easement, the right of passage, by voting in favor of that, we clear the deck for the applicant to pursue whatever the process is for ownership to be able to build this house and have this yard that he is already maintaining. I do not think that is unclear. I think we could make his path clearer, if we are comfortable with that piece of property not having the public right of way, which literally does not exist anyway.

Commissioner Whitten moved to vacate the public easement right of passage.

Commissioner Fitzgerald seconded the motion to vacate the public easement.

Commissioner Finnegan withdrew his motion to table the request. I intend to vote no, not because I am opposed to what this property owner is trying to do, but because I do not feel comfortable closing the alley at this time.

Vice Mayor Romero said that he will also vote no for the same reason. I have asked multiple times, what the long term plan is when it comes to alleys. Every situation is different, but I believe that we have to have a plan moving forward and I still have not gotten a response that satisfies me. Between now and the City Council meeting, I will be reaching out to know more about this particular alley. I have the luxury to vote no on it today and to reach out to staff and learn more about it and then change my vote, if necessary, at City Council.

Commissioner Fitzgerald said that she agrees with Commissioner Whitten's reasoning about this. The clarity that we can provide to the applicant in the process is by allowing him to take the next step forward. The end of an alley that does not go anywhere, this is a better use for it after some period of time than how it is used now. He is maintaining it. There is the idea that it can be used in a valuable way for single-family housing in the future. I am going to support that use rather than the current use that it has right now.

Commissioner Whitten said that we cannot afford to do a lot of things that we need to do in this City, like building schools. How in the world can we possibly think that we are going to have a plan for alleys that are really minutia when you get right down to it? It is not logical for planning staff to figure out what we should be doing with alleys. I do not agree with that. That is not a good use public funds.

Commissioner Finnegan said that he disagrees with Commissioner Whitten. I believe that this can be handled at the neighborhood level where these communities are. I do not think that the City needs to spend a dime on this. I do think it is worth addressing, perhaps when there is not a pandemic.

Commissioner Whitten said that we have this other one on our plate, still, over by Spotswood Elementary School. Those neighbors have not been able to work that out in a lot of years. I disagree with you on that point, too. You think that people are in agreement a lot more than they are in their backyards and in their alleyways. You need to think about that.

Commissioner Finnegan said I have functional alleyways in my neighborhood. I think about it all the time.

Commissioner Whitten said I have paper alleys in my neighborhood.

Chair Colman said that he has seen community organizations do a lot things like that, especially in the north side of town where they have cleaned up alleys or created paths as a community. I think it is doable and worth considering. Different people use alleys for different reasons. I hope that is an inspiration for other people to do the same. Those people can be the ones maintaining them. There is no benefit to this request right now. This is something that he is doing for the future, for someone else who may buy the property. It is preemptive. Are we allowing anyone else to do that? He will not be able to change setbacks or anything by closing this alley. It is only a preemptive act for a future owner. That concerns me and for that reason, I might be voting no. There is not a direct benefit to him. He can continue to use it as anyone else can. There is no limitation to his use.

Chair Colman called for a roll call vote.

Vice Mayor Romero

No

Commissioner Fitzgerald Aye
Commissioner Whitten Aye
Commissioner Finnegan No
Commissioner Byrd No, via chat message
Commissioner Orndoff No
Chair Colman No

The motion to recommend approval of the request failed (5-2).

A motion was made by Whitten, seconded by Fitzgerald, that this Action Item be failed. The motion failed with a recorded roll call vote taken as follows:

Yes: 2 - Whitten and Fitzgerald

No: 5 - Colman, Finnegan, Romero, Orndoff and Byrd

The Planning Commission and staff discussed the procedural implications of the failed motion. Since the motion failed, a new motion is required. Staff inquired whether the commissioners voted no because they did not want to approve the vacation of the easement or if they are seeking additional clarity. If the commissioners are seeking clarification, then a motion to table to may be appropriate. If the commissioners wish to deny the request, then a motion to recommend denial would be required.

Commissioner Orndoff voted against the motion to recommend because it is not appropriate to take an alley out of circulation unless the person who is asking for it be vacated is willing to purchase it.

Commissioner Whitten said that he cannot purchase it.

Commissioner Finnegan said that the challenge he is having is the problem with communication on the online platform. If we were in person and someone made a motion, then someone could second that motion. It is unclear who can hear and how people are communicating. It does interfere with the way that Robert's Rules of Order works.

Commissioner Fitzgerald said that its possible that Commissioner Finnegan would have received a second on his motion from other members who eventually voted no on the motion. I think he is right that the complications of the technology are having an effect on the decisions that we make.

Commissioner Byrd said, via chat message and read by Ms. Dang, "I voted no because the property is not yet a residence. No information was presented to suggest how this addition would aid that endeavor for the unnumbered lot between 663 and 667."

Chair Colman said that he agrees. Right not there is no impact. This is a preemptive action. That is why I will not support it. He can still use the alley.

Ms. Dang said that if the Planning Commission chooses to table the item, staff can communicate

with the applicant and write a new memo detailing what the applicant is proposing to do and explain the situation with this new information.

Commissioner Finnegan moved to table the request

Commissioner Whitten seconded the motion.

Chair Colman asked for a roll call vote.

Commissioner Finnegan	Aye
Commissioner Byrd	Aye, via chat message
Commissioner Orndoff	Aye
Vice Mayor Romero	Aye
Commissioner Fitzgerald	Aye
Commissioner Whitten	Aye
Chair Colman	Aye

The motion to table the request passed (7-0).

A motion was made by Finnegan, seconded by Whitten, that this be tabled. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Colman, Finnegan, Whitten, Romero, Orndoff, Byrd and Fitzgerald

No: 0

- 5.b.** Consider a request from Cobbler’s Valley Development Inc. to preliminarily subdivide a +/- 5.66-acre parcel into two parcels by dedicating public street right-of-way at a site addressed as 585 and 611 Pear Street. A variance from Section 10-2-41(a) of the Subdivision Ordinance is requested to allow for a narrower street width.

Chair Colman read the request and asked staff to review.

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

considered as well as other new single-family residential forms. The gross density of development in these areas could be around 20 dwelling units per acre. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

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

Site: Vacant land; zoned R-1

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

East: Vacant land; zoned R-1

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

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

The applicant is requesting to preliminarily subdivide a +/- 5.66-acre parcel to create a new public street to serve as the entrance to a new residential development located in Rockingham County. The new public street would bisect the +/- 5.66-acre parcel and create two new parcels of 3.13 acres and 2.24 acres. If the preliminary plat is approved, construction of the new road (Cobblers Court) is anticipated upon approval of the Engineered Comprehensive Site Plan (ECSP), which is already in review. At this time there is no plan of development for the two new parcels, although once platted, these parcels could be built upon or further subdivided.

Both new parcels would have frontage along Pear Street and Cobblers Court. The City's Street Network Plan designates Pear Street as a collector street, which requires a minimum of 50 feet of right-of-way (ROW). As shown on the plat, the applicant would dedicate ROW of up to 25 feet from the centerline of Pear Street along the entire frontage of the subject site. Street improvements of curb, gutter, and sidewalk will also be constructed along the Pear Street frontage as indicated on the plat.

With regard to water and sanitary sewer, water is available in the Pear Street ROW. Sanitary sewer is within a portion of the ROW; but does not extend to Proposed Lot 2. Per Section 10-2-63 (b) of the Subdivision Ordinance, "[e]very subdivision shall be provided with satisfactory and sanitary means for a sewage disposal system as required by the department of public utilities and the city manager." The applicant has indicated on the preliminary plat that the existing sanitary sewer within the Pear Street ROW could be extended to the entrance road, Cobblers Court, where it can serve proposed Lot 2. This satisfactorily addresses Section 10-2-63 (a) and (b) of the Subdivision Ordinance with regard to water and sanitary sewer for the preliminary plat. Prior to final platting of the subdivision, all public improvements necessary to dedicate the public street ROW and to establish the sanitary sewer connection shall be constructed/completed or an approved surety shall be accepted for such improvements.

Regarding stormwater management for the site, the applicant states that best management practices, or BMPs, for the new parcels are not known at this time and will be determined with future development of those lots, which is acceptable from a preliminary plat perspective. All stormwater management for the Pear Street improvements and proposed Cobblers Court will be addressed in the ECSP, with a wet pond located in Rockingham County.

The applicants are requesting variances to Section 10-2-41(a) of the Subdivision Ordinance which states:

“Proposed streets shall conform to the standards and specifications outlined in the Design and Construction Standards Manual, except that variances to the standards for streets, alleys, blocks, easements, sidewalks, and all such related features may be approved on a case-by-case basis by the city council when:

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

Cobblers Court is considered a local street; therefore, 50 feet of ROW is needed to encompass 30 feet of pavement, 2.5 feet of curbs and gutters, 2-foot grass strips, 5-foot sidewalks, and 6 inches of buffer strips beyond the sidewalks. A variance to reduce the pavement width from the required 30 feet as per Section 3.6.4.1 of the DCSM to a 22-foot pavement width is needed so that it could match what is permitted by the Virginia Department of Transportation (VDOT) Road Design Manual, which is what would be built in the County. The applicant has described within the application how the narrow width meets the standards of 10-2-41(a). The applicant’s letter is attached.

Staff does not have concerns with the requested deviation as described above and supports that particular variance.

In addition to the above noted variance, the applicant is also requesting to deviate from Sections 3.3.3.1 and 3.6.4.1 of the DCSM, which requires the construction of sidewalk on both sides of the proposed street. The applicant has described within the application how constructing sidewalks on only one side of the proposed Cobbler Court, specifically on the west side meets the criteria of Section 10-2-41(a). The applicant’s letter is attached.

The proposed public street will serve as an entrance road to a development within Rockingham County, which is planned for a maximum of 400 dwelling units. As the proposed Cobblers Court enters Rockingham County, the street is essentially centered in the middle of the planned development, with 275 townhomes planned to the northwest of the street and 175 single-family detached and duplex dwellings planned to the southeast. Safe connectivity out to Pear Street for the residents of this development is essential. In an effort to achieve Goal 13 and Objective 13.1 of the Comprehensive Plan, Strategy 13.1.4 states, “[t]o develop pedestrian and bicycle-friendly environments in the City that connect residential neighborhoods to community facilities, to

commercial areas and employment centers, and that connect residential neighborhoods to each other, to promote a healthier community.” Providing sidewalk on both sides of the street achieves this. The applicant’s letter indicates that sidewalk is only required along one side of the street within the county development and if sidewalk were to be constructed on the south side of Cobblers Court within the City, it would end at the Harrisonburg City limits, with no sidewalk to ever connect to on the portion of the street in Rockingham County. Although sidewalk is not required along both sides of the street within the County, it is still allowed and there is nothing preventing the applicants from making the connection.

Staff does not support the applicant’s request to deviate from the DCSM Sections 3.3.3.1 or 3.6.4.1 to not be required to provide sidewalk on both sides of the street. In addition to Strategy 13.1.4 discussed above, supporting these deviations would also work against Strategy 13.1.5, which is “[t]o continue to implement measures to expand the network of pedestrian infrastructure (sidewalks and shared use paths) so that all streets will have pedestrian accommodations on both sides of the street.”

Staff recommends in favor of the preliminary plat with the applicant’s request for the narrow pavement width; however, staff recommends denial of the applicant’s request to deviate from the requirements of the DCSM Sections 3.3.3.1 and 3.6.4.1 requiring sidewalk to be constructed along both sides of Cobblers Court within the City.

Chair Colman asked if there were any questions for staff.

Chair Colman said that he agrees with Commissioner Finnegan’s comment that the flow of the meeting and the communication is not quite the same via remote meeting. We do not have the same feedback or the same synergy as we do when we are together and understanding each other’s comments, especially when we have connectivity issues.

This is an interesting request here and I would like to hear what the thoughts are on the variances.

Commissioner Finnegan said that he agrees with staff that there is nothing preventing this development from having sidewalks. Just because the County does not require it does not mean that the City should not require it. That is a decision that they can make, if they are only working on bare minimums. We do not control what happens in the County and the County does no control what happens in the City. I am inclined to agree with staff that I do not support the variance for the sidewalk in the portion that is in the City. If they choose to end the sidewalk there, then that is their choice.

Commissioner Whitten and Fitzgerald agreed with Commissioner Finnegan.

Chair Colman said that he understands some of their points, however their argument is not very robust. When it comes down to the sidewalk not being necessary as a sidewalk to nowhere in front of lots 1 and 2. We do not know what lots 1 and 2 are going to have. There might be

something there that would use the sidewalks on either side, especially with all the traffic going through there, so it would be nice to have sidewalks on both sides on lots 1 and 2. I do not see it as a sidewalk to nowhere. There is a potential there. Without any plans, we do not know. In response to the comments by the attorney stated that “[t]hird, adding a sidewalk, which is at best a preference or luxury rather than a necessity”, it is part of the ordinance, not just that we want a sidewalk. We and the staff have to respond to it because it is part of the ordinance, not because they see it as a luxury. On the other hand, I understand the point that they are trying to minimize impervious areas to prevent pollutant load and support an environmental approach. The impact of this sidewalk is minimal. We need to weigh what the greater benefit are. Given the length of sidewalk that is requested to be reduced, I do not know that it warrants that. I do agree that the runoff and environmental responsibility is a good approach, but other things might outweigh that.

Commissioner Whitten said that they had a reduction in pavement width. There is more pavement width related to that street. They can put the sidewalk in and still feel good about the impervious surface.

Commissioner Fitzgerald said that she is in agreement with staff’s recommendation to accept narrowing the entryway. That seems sensible and safer than having a divergence at the City line.

Commissioner Whitten said that if you have a narrower street width, there is all the more reason to provide a safe passage on either side of the street, so that people are not walking in the street.

Commissioner Finnegan said that he agrees with Commissioner Whitten on that.

Vice Mayor Romero said that he agrees with the other comments. It does concern me that applicant is aware of staff’s concerns, yet they were not willing to make any changes until this came to us today. I would say that they had the opportunity to make any changes that they would have deemed necessary, so I plan on voting no to this, or rather, supporting staff in their recommendation.

Commissioner Byrd, via chat message read by Chair Colman, I agree with Commissioner Whitten on the narrow street and the sidewalk comments.

Ms. Banks clarified that the reason for the updated staff memorandum today was due to dealing with the issue of the sanitary sewer line. The variance requests were already on the table. There was not going to be any further discussion. The applicant was aware of what our recommendations would be. The clarification for today was just for the sanitary sewer line. Although this is not a public hearing, I believe that even though we have comments from the attorney, we also have the engineer on the phone to answer questions and offer comments.

Chair Colman said that he believes that the comments on the sidewalk were part of the letter that came in from the attorney in the later package.

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

Carl Snyder, Valley Engineering, called in representing the applicant. I appreciate the Planning Commission taking the time to weigh this out and hear this, this evening. I do not have anything to add beyond the narrative that we provided for the variance request, in addition to what Todd Rhea, the applicant’s attorney provided. I do want to reiterate something that was in Mr. Rhea’s commentary. If City Council is willing to grant the variance request for the sidewalk on one side, this is not being proposed as a mere cost savings. They are willing to invest real money into providing additional landscaping, a streetscape of sorts. In addition, while there are no plans at this point for any development on either of the City parcels being proposed, on the side where we are requesting the variance to remove the sidewalk there is a wetlands that runs parallel to the proposed Cobbler’s Court. There is a divergent in the wetlands where two come together. There is not an easy, direct connection there. To further complicate the matter, that parcel has the huge Dominion Power high transmission line that runs through with a 100-foot easement. There is a lot that inhibits any future development on that piece.

Chair Colman said that there are certain encumbrances there, the powerline and the wetlands, but given time, those things can be relocated and removed. It is a limitation, but not an impossibility.

Chair Colman asked if there were any questions for the applicant’s representative. Hearing none, he asked for the next caller. As there were no more callers, he closed the public comment portion and opened the matter for discussion.

Commissioner Finnegan made a motion to recommend approval of the preliminary plat as presented by staff with the narrowed pavement, and to deny the applicant’s request to deviate from the sidewalk requirements.

Commissioner Whitten seconded the motion.

Chair Colman called for a roll call vote.

- Commissioner Byrd Aye, via chat message
- Commissioner Finnegan Aye
- Commissioner Fitzgerald Aye
- Commissioner Orndoff Aye
- Commissioner Whitten Aye
- Vice Mayor Romero Aye
- Chair Colman Aye

The recommendation to recommend approval of the preliminary plat, as presented, with the variance request for narrowed pavement and denying the variance request to deviate from

sidewalk requirements passed (7-0). The recommendation will move forward to City Council on October 13, 2020.

A motion was made by Finnegan, seconded by Whitten, that this Action Item be recommended to full council to the City Council, due back on 10/13/2020. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Colman, Finnegan, Whitten, Romero, Orndoff, Byrd and Fitzgerald

No: 0

6. Unfinished Business

None.

7. Public Comment

None.

8. Report of Secretary & Committees

8.a. Proactive Code Enforcement

Ms. Dang said that the proactive code enforcement remains temporarily suspended pending the hiring of a Zoning Technician. In addition, we may not be able to continue the program for the duration of the COVID-19 public health emergency. Proactive code enforcement requires two people who would be in a car together, which does not allow for safe distancing. We will resume when we are able to do so.

8.c. Rockingham County Planning Commission Liaison Report

None.

8.b. Board of Zoning Appeals Report

None.

8.d. City Council Report

Vice Mayor Romero said that there were two City Council meetings since the last Planning Commission meeting. I will start with the August 25, 2020 meeting. The rezoning request for an events center on Charles Street passed (4-0). The request from Stoneburner Land, LLC for a SUP to allow a business and professional offices at 1821 South High Street passed (4-0). A request from Stoneburner to subdivide a lot of 6.4 acres at the same location was also approved (4-0). At the September 8, 2020 meeting there were two applications. The first was to consider a request from C-Side LLC to rezone 225 and 245 Old South High Street. It passed (5-0). A request from GC LLC for a SUP to allow business and professional offices at 110 West Grace Street passed (5-0).

Ms. Dang said that Homestay and Short-Term Rentals amendments to the Zoning Ordinance also passed and are now effective.

9. Other Matters

9.a.

Ms. Dang said that the presentation that introduced the Zoning and Subdivision Ordinance Update project was presented to City Council on August 25, 2020. The link was provided to the Planning Commission in advance of the City Council meeting so that the commissioners would have the opportunity to attend the presentation and be able to ask questions today.

Staff had planned to present to City Council the list of recommended Ordinance Advisory Committee member that they would consider appointing, as well as some more information about who we recommend and how the stakeholder groups would be arranged. That was presentation was postponed. We needed more time to gather recommendations and more time to compile the list; therefore, we will be going back to City Council on September 22, 2020.

The stakeholder groups are eight groups that will meet in a series of eight meetings. Ms. Dang shared on the powerpoint slides a list of the types of people we envision would be included in these introductory conversations and information gathering meetings. The first group is comprised of developers, engineers, attorney, architects and builders. We have 16-20 persons that we would identify for this group, which would be split into two separate groups. We will have a group of residential developers and the real estate industry. Another group would be business owners and commercial property managers. There will be two groups of people who live in Harrisonburg. That would be 16-20 community members. We have providers of social services and a collection of individuals and organizations that have been identified for as environmental groups. This is a cross-section of people that we are looking to interview or have included in the stakeholder groups. We will share with you once those individuals have been identified. The meetings will begin the first week in October.

I would like to introduce Brian Mabry, with Kendig Keast Collaborative, is here (via GoToMeeting) to discuss and answer questions that you may have regarding the Zoning and Subdivision Ordinance Update project.

Mr. Mabry said that he would be happy to answer questions.

Commissioner Whitten asked if Mr. Mabry has any experience with trying to have meetings in communities with the current COVID-19 situation.

Mr. Mabry said that they have had a few meetings that were virtual. We have had many meetings like this, where we present a PowerPoint or answer questions. An example that comes to mind is working as we currently are in Littleton, Colorado, just outside of Denver. We are doing what we call the virtual envision studios. These happened fairly close to when COVID happened. We were

planning on having a typical, in person, gathering where we get input from community members on various urban design related items that impact Littleton. COVID came and we had to quickly shift how we were doing things. It became a forum, sort of like this, where ended up with almost a hundred participants. We would give a PowerPoint presentation, but also polling questions, multiple choice or open ended, and we would give the people participating a chance to weigh in on different questions as we were working through the PowerPoint. We would then compile those responses into a meaningful report. A lot of the discussion that would have occurred in person, we were able to capture virtually. You cannot capture everything like you would when people are gathered around a table and drawing on a map, expressing different ideas that way. I think that will become more normal now. Yes, we have had virtual community meetings and been fairly successful at it.

Commissioner Whitten asked if that community had any reluctance on the part of the community to participate in the process.

Mr. Mabry said that community has not. By virtue of different factors, they have been open to digital and virtual exercises like that. Other clients we have were not as open. I have not gone a work trip since March, but I do have one coming up at the end of this month. We are going onsite because that is how the client wants to do things. As it stands now, we can do that, if we need to. That is not a problem for our firm. Some firms are not travelling at this time, but we are open to travelling, if we need to.

Commissioner Finnegan said that what he has noticed is that we have had fewer public comments and less participation in these meetings. I have been on the Planning Commission for four years. I have seen a decline. That may have something to do with the time of day that these are taking place. Is there a preliminary plan to stagger different meetings at different times of the day so that different people can participate?

Mr. Mabry said that he has talked with staff about obtaining the opinions of people who do not typically weigh in on these types of things or who might feel left out if they are not on the Ordinance Advisory Committee or if they are not one of the stakeholders who get interviewed. Even if they are not part of those groups, we still want to reach as many people as we can. This is a technical and legal document. It is a little different from your Comprehensive Plan where you can often get people and it is easier to have them dream about how they would like Harrisonburg to be in the future. This is more of a technical exercise, so we are often needing to ask people who have had experience with the current document. We would like to know what they feel the pitfalls are or what the good things are, what they want to make sure we do not change, what they want to throw completely out. Sometimes the target audience might be different. As far as the timing of the stakeholder interviews, or other functions like that, I am not sure what time of day those will be. We often have functions that we call "Open Houses". In this project, there is at least one, if not more, in the evening when we presume that people with day jobs would be able to make it. At that point, we would do a short show and tell about where we are on the project and do it in a very lay-person oriented way with lots of visuals. We have gone farther with it and had

entertainment sometimes. It is all part of what the barometer is for what the community wants. That is another way that we try to get people involved as early as we can, so that they do not feel like they are only getting in on the tail end of something.

Commissioner Finnegan asked if we are including the Harrisonburg Fire Department as one of the stakeholders? I ask because we have had conflicting ideas around things that might have to do with zoning ordinances that the Fire Department is considering one set of circumstances and we are considering it differently.

Ms. Dang said that the Fire Department is included in this project as part of the Staff Technical Team. They are one of many City departments that will be included in this process. There will be six meetings throughout the project duration. They are a stakeholder in that respect.

Chair Colman asked how does Kendig Keast get a cross-section of the population involved? We have the different groups that we are trying to put together. What do envision from that? How do see bringing them together?

Mr. Mabry said that the stakeholder interviews are not heavily structured. We try to have them free flowing where we are talking a group. Builders are the audience of one of the stakeholder groups, so we try to talk about the things that they are more interested in, such as lot count and regulatory hurdles. If we are talking with downtown merchants, then we are going to be talking more about urban design and signage. We try to customize our conversation with each of these groups to fit who we are talking with. It can be hard because the Zoning Ordinance and the Subdivision Ordinance are legal documents, but they are legal documents that lay people are often looking at. It can be more of a challenge with those types of documents than with a Comprehensive Plan to get lay people engaged. It is a good thing that you have at least two groups of people who are citizens of Harrisonburg. We do not have that too often. That will be a good thing. That is going to bring some diversity in the message that we are hearing that we might not hear from other places when we are talking with design professionals, engineers, architects, builders, or historic preservation advocates. I saw that social service people were on there. That is rare, too. I think that there is a wide cross-section getting us started on this project for the stakeholder interviews. This document in the end will be highly user friendly. Leading up to that it will be hosted on a project website that will have previous presentations, a schedule, background documents, etc. The City can work to publicize that website. It will be a clearinghouse for people to obtain information and become more involved or at least stay up to speed on what is going on. We will have that on our minds constantly- how to reach the broadest audience that we can for this project.

Chair Colman said that our City is short on housing stock. Housing is a huge need here and will continue to be. I expect that part of the focus of this will be how can we provide more housing, for all the different cross-sections of the population. We need affordable housing, but affordable depends on where you are. As we talk about the also want to consider the low-income needs that continue to grow.

Mr. Mabry said that we bring with us some best practices that we try to talk about with all the communities we work in. We also have to provide customized solutions that will help you achieve the policies that you adopted in your Comprehensive Plan. That is one of the two or three main jobs of a Zoning Ordinance and Subdivision Ordinance. That is protect public health and safety and implement the policies of the Comprehensive Plan. You have a brand new one, so you want to make it more of a reality.

Commissioner Fitzgerald said that one of the things that jumped out to me in the presentation was this idea of making it more user friendly. The old ordinance, which is from the 90s, is organized in a very linear way. The presentation talked about how the organization will be different because it is on the web. Positioning this on the internet defines, in a way, the way the thing is structured, and thus, makes it more user friendly. I think that is going to be a great advantage. I am looking forward to watching the process.

Mr. Mabry said that we take great pride in our sister company, enCodePlus which is the platform where we draft the code on the back end. On the front end, the code is posted and displayed for the users. There are many user-friendly tricks that we can do on there that make it a lot easier to understand.

Chair Colman said that Mr. Mabry mentioned another city or town where you have done this process. I am curious to see how that is presented on their website. What was the name of the project?

Mr. Mabry said that location is Littleton, Colorado. I do not know if that is public. I will provide staff with a link for that. They have both a City maintained website with a lot of information on it and then there is the code website. I am not sure how they link, what they repeat or what each one contains, but I will staff the link to those for distribution.

Chair Colman said that watching the presentation was encouraging. We are looking forward to getting on with it. The difficulties of this medium make it hard to get feedback, but hopefully you can figure out a way to get us as much feedback as possible and get people involved. We really want the community to be involved.

Chair Colman asked if there were any more questions for Mr. Mabry. Hearing none, he thanked Mr. Mabry and said that they look forward to working together.

10. Adjournment

The meeting adjourned at 9:00 p.m.

NOTE TO THE PUBLIC

In accordance with the Emergency Ordinance to effectuate temporary changes in certain deadlines and to modify public meeting and public hearing practices and procedures to address continuity of operations associated with pandemic disaster, adopted on April 6, 2020, the public will not be able to physically attend the Planning Commission meeting.

However, a phone line will be live where community members will be allowed to call in and speak with Planning Commission during the Public Hearings and the Public Comments portion of the night's meeting. We ask those that wish to speak during the public comment period to not call in until after all the public hearings and public comment on those have been heard. This will avoid anyone calling on any other item from holding up the queue and then being asked to call back at a later time.

The telephone number to call in is: (540) 437-2687

Community members also may provide comment prior to the meeting by emailing:
Thanh.Dang@harrisonburgva.gov.

Community members will be able to watch the meeting live on:

- The City's website, <https://harrisonburg-va.legistar.com/Calendar.aspx>
- Public Education Government Channel 3