



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Meeting Minutes - Final Planning Commission

Wednesday, December 14, 2022

6:00 PM

Council Chambers

1. Call To Order

The Harrisonburg Planning Commission held its regular meeting on Wednesday, December 14, 2022, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

2. Roll Call/Determination of Quorum

Members present: Brent Finnegan; Adriel Byrd; Kathy Whitten; Valerie Washington; Dr. Donna Armstrong; Laura Dent; and Jim Orndoff.

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

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

Present 7 - Brent Finnegan, Jim Orndoff, Adriel Byrd, Kathy Whitten, Donna Armstrong ,
Laura Dent, and Valerie Washington

3. Approval of Minutes

3.a. Minutes from the November 9, 2022 Planning Commission meeting

Chair Finnegan asked if there were any corrections, comments or a motion regarding the November 9, 2022, Planning Commission minutes.

Commissioner Whitten moved to approve the minutes.

Commissioner Orndoff seconded the motion

All members voted in favor of approving the November 9, 2022, Planning Commission minutes.

A motion was made by Whitten, seconded by Orndoff, that this Minutes be approved. The motion carried by a voice vote.

3.b. Portion of Minutes from the October 12, 2022 Planning Commission Meeting

Chair Finnegan said there is a correction to the minutes from October 12, 2022. The corrected minutes need to be approved.

Commissioner Whitten moved to approve the corrected minutes.

Commissioner Orndoff seconded the motion

All members voted in favor of approving the October 12, 2022, Planning Commission minutes.

A motion was made by Whitten, seconded by Orndoff, that this Minutes be approved. The motion carried by a voice vote.

4. New Business - Public Hearings

- 4.a.** Consider a request from Scott D. Huston and Merridy M. Gnagey for a special use permit to allow short-term rental at 965 Smith Ave

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said 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: Across Smith Avenue, single-family detached dwelling and duplex unit, zoned R-2
- South: Single-family detached dwelling, zoned R-2
- West: Vacant land, zoned R-2

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (8) to allow for a short-term rental (STR) within the R-2, Residential District. The parcel is +/- 17,329 square feet in size, is addressed as 965 Smith Avenue, and is located north of Greystone Street.

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the ZO. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time.

As explained in the applicant’s submitted letter, they will have two accommodation spaces located in the basement of the dwelling The applicant explains that they would typically

rent to no more than four adults at a time, but would like the ability to host families with three children, and therefore are requesting the ability to have up to five guests at a time.

While the applicant has explained their operation plans for the STR, the SUP is not restricted to only the current applicant/operator. All SUPs transfer to future property owners; thus, if the applicant sells the property, any future property owner could operate a STR so long as they meet the requirements of the ZO and any conditions placed on the SUP. How the STR could be operated by any future property owner should be considered and evaluated as part of this request.

The ZO requires one off-street parking space for the single-family detached dwelling. If the STR is approved as requested, the property must have two more off-street parking spaces-one for each approved accommodation space. Unless City Council allows for a reduction in off-street parking spaces as a condition of the SUP for the STR, the site must ultimately accommodate three off-street parking spaces-one for the dwelling unit and two for the STR.

The City has approved many STR SUP applications throughout the City including within this neighborhood. Staff believes this request is similar to other applications that have already received approval; thus, staff recommends approval of the request, but only with the following conditions:

1. All STR accommodations shall be within the principal building.
2. There shall be no more than two STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to five.
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.

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 Finnegan asked if there were any questions for staff.

Chair Finnegan said there are other basement apartment STRs. On one, staff is recommending approval. On one, staff is recommending denial. With this one, the basement unit is not...

Ms. Rupkey said it does not have a full kitchen. It is one primary dwelling. It is not a duplex situation.

Commissioner Armstrong asked if the applicant has used the by-right homestay.

Ms. Rupkey said she would have to ask the applicant.

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

Scott Huston and Merridy Gnagey, 965 Smith Avenue, came forward in support of their request.

Mr. Huston said it is a house that we built for ourselves during Covid. We have been doing the homestay since April, to figure out how it would go and how we liked it. We got to our 90 days maximum in the beginning of December. We are not interested in doing more per month. Ten per month has been our average. That is what we would like to continue doing. A full year, if we had started in January, that would have run out after nine months, so we are applying for the STR.

Commissioner Whitten asked have you considered renting it otherwise?

Mr. Huston said we do not see this as precluding doing that in the future. At this point, our situation with two young daughters and my family. My parents and my sister live out of town. We have been living in a townhouse since we moved out here in 2016. With two bedrooms, we have never been able to host anybody. We have been enjoying being able to host family and friends from out of town, and also using the space for other types of gatherings. I am a contractor. I go down and do some work down there, using as a space where I can expand out of my garage to get some work done. We also have my in-laws. My wife's parents live in town. They may live with us down the road at some point. When our situation changes and our children are not at home, we would be open to doing a long-term rental.

Commissioner Whitten asked what do you rent it for?

Mr. Huston said per day it fluctuates weeks to weekends. Typically, it averages about \$100 per night. It is two bedrooms. The reason that we want to extend it to five instead of four is to accommodate a family of five, parents with three children. We are not interested in hosting five adults.

Commissioner Whitten asked you were averaging ten stays per month?

Mr. Huston said ten nights total. Most of them are two-nights, sometimes three. We do not open it up to single night stays. It has been a total of ten nights.

Chair Finnegan asked if there were any questions for the applicant’s representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Whitten asked what is the total number of STRs on Smith Avenue? Does this make three or four?

Ms. Dang said this would make the third STR SUP approval. There may be other homestays that we have not looked up.

Councilmember Dent said I am wondering why that location seems popular for STRs. I imagine it is close to EMU for families. Or it is conducive and some of the neighbors are catching on?

Mr. Huston said the proximity to EMU is beneficial. We have had quite a few people who have come to visit their children there. During the Bach festival we had musicians staying in our basement. That is an attraction.

Chair Finnegan said I would be in favor of this request for the same reasons that we have approved other requests that are similar to this where there is not a kitchen in the apartment. It is not currently a unit that is being rented out.

Councilmember Dent said I like it. I like the explanation too, that it is primarily geared to families and a combination of the applicant’s own family which would help explain why they would not go for a full-fledged dwelling unit.

Commissioner Whitten said but, again, it goes with the property. So, it is five people that it would be approved for.

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

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong No
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten No. I am voting no for the reasons that I have spoken about in previous requests, the disrepair that happens to neighborhoods when uses such as STR exist, and the increase in property value that I believe affects affordable housing.
- Chair Finnegan Aye

The motion to recommend approval of the SUP request passed (5-2). The recommendation

will move forward to City Council on January 10, 2023.

A motion was made by Byrd, seconded by Dent, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 1/10/2023. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Finnegan, Orndoff, Byrd, Dent and Washington

No: 2 - Whitten and Armstrong

4.b. Consider a request from WGG LLC for a special use permit to allow short-term rental at 524 Long Ave

Chair Finnegan read the request and asked staff to review.

Ms. Dang said the Comprehensive Plan designates this site as Medium Density Residential. These areas have been developed or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.

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

- Site: Duplex structure (two dwelling units), zoned R-2
- North: Vacant parcel, zoned R-2
- East: Vacant parcel, zoned R-2
- South: Across Long Avenue, single-family detached dwelling and duplex, zoned R-2
- West: Vacant parcel, zoned R-2 and multiple-family dwellings, zoned R-5C

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (8) to allow for a short-term rental (STR) within one unit of a duplex on a property zoned R-2, Residential District. The parcel is +/- 11,182 square feet and is addressed as 524 Long Avenue, located between Reservoir Street and Crescent Drive. The property contains an unsubdivided duplex with one dwelling unit on the lower-level and a second dwelling unit on the second-level.

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the ZO. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time.

The property owner has an approved and operating homestay use within the same unit in which they are requesting to operate the STR. Essentially, given the circumstances of the request, approving the SUP application would expand the property owner’s permission for the transient housing accommodation to exceed the homestay limit of 90 nights a year. The

subject property and its approved homestay operation is the site and scenario that convinced staff to propose the ZO amendments (that are referenced below) that if ultimately approved would require homestays and STRs be allowed only within the unit in which the operator resides.

The applicant is the property owner, who noted that their brother will reside in the lower-level unit with it being his principal residence, where he will be the operator of the STR located on the upper-level. Since the operator will not be the property owner, the operator must be present at the property during the lodging period. As explained in the applicant's submitted letter they will have two accommodation spaces within the unit with plans to allow up to four guests at one time.

While the applicant has explained their operation plans for the STR, the SUP is not restricted to only the current applicant/operator. All SUPs transfer to future property owners; thus, if the applicant sells the property, any future property owner could operate a STR so long as they meet the requirements of the ZO and any conditions placed on the SUP. How the STR could be operated by any future property owner should be considered and evaluated as part of this request.

With regard to off-street parking matters, the ZO requires one off-street parking space for each dwelling unit and, unless conditioned otherwise, one parking space for each accommodation space of a STR. This means that four parking spaces would be needed to meet the requirements of the ZO-one for each unit of the duplex and one each for the two accommodation spaces of the STR. Nonetheless, in this particular situation, if the STR is approved as requested, the one unit of the duplex would not be used long-term and would only be used as a STR, and given the circumstances that there is a great deal of on-street parking available on Long Avenue, staff recommends not requiring off-street parking for the STR. The property, however, would remain nonconforming to off-street parking requirements for the two existing dwellings.

Given the circumstances of this request, where the operator does not reside within the dwelling in which the STR will operate, staff believes the request should be denied. At the August 10, 2022, regular Planning Commission meeting, staff proposed amendments to the ZO that, if the amendments were already in effect, would have prevented the property owner from being able to apply for a STR as requested. In brief, among other amendments, staff had proposed to amend Section 10-3-205 (2) as shown below:

Sec. 10-3-205. General Regulations

(2) Operators shall maintain the ~~property~~ [dwelling](#) as their primary residence, as indicated on a state-issued license or identification card [or other documentation deemed acceptable by the Zoning Administrator](#).

Planning Commission unanimously (7-0) recommended for City Council to approve all of the ZO amendments that were proposed at the August 10, 2022, regular meeting. However, at City Council's public hearing regarding the amendments at the September 13, 2022, meeting, while there appeared to be differing opinions on the matter, Council tabled the

request and advised staff to draft an option that would allow one unit of a duplex property to be used as a STR by SUP. At this time, staff plans to bring this matter back to City Council's attention in February 2023. Also of note, is that at the October 12, 2022, regular meeting, Planning Commission received a similar request for a STR in one unit of an unsubdivided duplex at 375 Broad Street. Staff recommended denial of that application and Planning Commission also unanimously (7-0) recommended denial of that request. On November 22, 2022, City Council denied the request with a vote of 3-2.

While the outcome of the revised ZO amendment is still unresolved, under the current regulations and in this particular situation, staff believes it is in the best interest of the community to only allow such transient accommodations within the dwelling in which the operator resides. Staff believes the most recent proposed amendments for the STR and homestay regulations is a good middle ground for the many and diverse opinions as to how such uses should be permitted in the City.

With regard to the subject application, at this time and at this location, staff believes it is in the best interest of the community to deny the request. Denying the request would not, however, prevent the applicant from maintaining and operating the same unit as a homestay since the current regulations allow this ability. Staff does not believe the existing transient accommodation should be expanded and would rather have the opportunity for both units of the duplex to be available for someone or a family to use for long term housing needs rather than one of the units only being used for a transient accommodation space.

However, if there is a desire to approve the request, staff recommends the following conditions:

- a. All STR accommodations shall only be permitted within the upper-level dwelling unit of the existing principal structure.
- b. There shall be no more than two STR guest rooms or accommodation spaces.
- c. The number of STR guests at one time shall be limited to four.
- d. 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.
- e. The STR may operate without providing any of the required minimum off-street parking spaces.
- f. 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.

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

Joel Graham, 150 Crescent Drive, came forward in support of his request. My wife and I own 524 Long Avenue. We are the owners and operators of the Friendly City Inn, the bed

and breakfast immediately adjacent to this property. This STR operation is part of our livelihood and something that we have been able to gain some experience in for the last three years. My younger brother currently resides in the lower level of this property as the operator of a homestay and is the proposed operator if we are approved for the STR. Recognizing there is some conversation going on about the dwelling versus property language and how that plays out in the requests for STRs, this property being so close to the bed and breakfast is a property that makes sense to maintain as a place where staff from the bed and breakfast or other members of our property management group can live in one unit. It makes it more affordable for them and to help us financially being able to rent it out for more than 90 nights per year as a STR. This would be a tremendous help to the economics of that picture. The main motivation is that we know that there is the opportunity for more than 90 nights per year, given the proximity to downtown and JMU. Through our experience with the bed and breakfast we know there is a demand for that. This seems like a great location for our guests and for us to have operating as a STR.

Chair Finnegan asked do you own the adjacent vacant property that has a hill?

Mr. Graham said correct. On either side of the subject property there are vacant lots that we own.

Chair Finnegan asked do you have plans to build on those?

Mr. Graham said nothing imminent. Longer term, as finances allow it might make sense to develop in some way, but not in the near future.

Commissioner Whitten asked did you have another property on Long Avenue that you own?

Mr. Graham said my wife and I live on Crescent Drive, which is right around the corner, adjacent to Long Avenue.

Commissioner Whitten asked is there a STR associated with that?

Mr. Graham said yes. We operate a STR in the lower level of our house.

Commissioner Whitten asked what is the cost of a night's stay?

Mr. Graham said it varies tremendously based on what is going on in town and the time of year. Typically, on weekends in busier periods it would be between \$125 and \$150 per night. Weekdays or during slower seasons, between \$75 and \$100.

Commissioner Armstrong asked what is the reason you will not rent this long term?

Mr. Graham said it is not something that we would not have any interest in doing. Right now, the reason is that we feel we can bring in substantially more income from the property by renting more than 90 nights per year as a STR. This would allow us to make living in the

lower level more affordable for the operator and help us afford to own the property. We have considered, in slower seasons, exploring mid-term rentals, month to month for travelling nurses or businesspeople or people moving to the area as an option when STRs are not in high demand. We want to have the flexibility to do all those different things having a month to month lease. A traditional long-term rental lease would preclude us from those options.

Chair Finnegan asked if there were any questions for the applicant’s representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Byrd said I still feel that duplex properties run against the spirit of STRs. I will not vote in favor of this application.

Councilmember Dent agreed. We just got the answer of why they want the STR. It provides more income. That adds to the argument that in order to preserve long-term rentals, we need to push back where needed in the duplex cases against STRs just for the income reasons.

Chair Finnegan said I agree with the comments that have been made. It is a fine line. I do think that everyone draws a line in a different place. This is where I draw the line between the last request and this request. To the casual observer this may seem the same, but the fact that this has been rented out in the past and could continue to be rented out as a place for a Harrisonburg resident to live full time, is where I draw the line. I am not in favor of this request.

Commissioner Orndoff said I concur with your position on that.

Commissioner Byrd moved to recommend denial of the request.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend denial of the SUP request passed (7-0). The recommendation will move forward to City Council on January 10, 2023.

A motion was made by Byrd, seconded by Dent, that this PH-Special Use Permit be recommended for denial to City Council, due back on 1/10/2023. The motion carried with a

recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

- 4.c.** Consider a request from James Madison University Real Estate Foundation Inc. for a special use permit to allow multiple-family dwellings and/or mixed use buildings in the B-2 district at Peach Grove Avenue

Chair Finnegan read the request and asked staff to review.

The Comprehensive Plan designates this site as Governmental/Quasi-Governmental. These lands include properties owned or leased by the City of Harrisonburg, the Commonwealth of Virginia, the federal government, and other governmental /quasi-governmental organizations. Examples of entities included in this category are City Hall, City administrative and support facilities, Harrisonburg City Public Schools, James Madison University, Rockingham County Administrative Offices, Rockingham County Public Schools, and the Massanutten Regional Library. Properties within this designation may already include uses supplied by the entities mentioned or are planned to be used by such public entities for any type of uses necessary for their services. Some Governmental/Quasi-Governmental uses, such as James Madison University, other state agencies, and the federal government are not subject to some of the City’s land use regulations. City parks are included in the Conservation, Recreation, and Open Space Category. Furthermore, it should be understood that properties that are owned or leased by the City, which may not be designated as Governmental/Quasi-Governmental by the Land Use Guide, may be developed with public uses, as defined by the Zoning Ordinance, to operate and provide services supplied by the City in any zoning district, which as of the approval of the 2018 Comprehensive Plan, is every zoning district in the City.

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

- Site: Undeveloped/vacant property, zoned B-2
- North: Multiple-family dwellings, zoned R-3
- East: Commercial uses, zoned B-2 and undeveloped/vacant property planned for multiple-family development, zoned R-5C
- South: Common area for multiple-family dwellings, zoned R-3; and across Peach Grove Avenue, undeveloped/vacant property, zoned R-1
- West: Multiple-family dwellings, zoned R-3

The applicant is requesting a special use permit (SUP) to allow multiple-family dwellings in the B-2 district. The property is +/- 9.91 acres, has frontage along Peach Grove Avenue, and is located approximately 650 feet west from the intersection of Peach Grove Avenue and Port Republic Road. If the SUP request is approved, the applicant intends to develop up to 376 multiple-family dwelling units within three structures and to provide surface parking and a two-level parking deck.

While staff would like to proceed with holding the public hearing for this request and

explaining the proposed application, staff would like it known upfront that we recommend for Planning Commission to hold the public hearing and table the SUP request until at least the January 2023 regular Planning Commission meeting. After a great deal of brainstorming with the developer and discussing potential solutions to a problematic transportation scenario regarding the site's entrance, staff continues to have significant concerns with this matter, and at this time, cannot responsibly make a recommendation on the SUP request without better assurance in knowing how the developer will accommodate the most appropriate transportation needs for the potential residents of the site and the rest of the community that travels this area of the City.

With regard to the details of the proposal, as specified by Section 10-3-93 (d) of the Zoning Ordinance (ZO), the applicant has submitted a development plan to be in accord with the requirements of the SUP. Section 10-3-93 (d) states that “[f]or multiple-family dwellings and mixed use buildings, the development plan submitted with the special use permit shall govern development on the site and shall be used as a basis for subdivision and engineered comprehensive site plan approval.” If the SUP is approved, then details of the development plan would be used to ensure that what is proposed and evaluated during the SUP review is what is developed. If significant deviations are desired by the property owner in the future, the property owner must apply to amend the development plan by going through the SUP process again.

Councilmember Dent interrupted the presentation to ask does that mean that, unlike in most cases, the layout is proffered?

Ms. Dang said the term “proffer” is used for rezonings. This commits them to a substantially similar to what is here. You are right, in other cases we show layouts and say that it is not proffered or that it is conceptual. This sheet, labeled Site Layout Development Plan is the one that matters. The other sheets included are renderings and conceptual layouts.

Features of the development plan submitted with the SUP that would be used as the basis for an engineered comprehensive site plan approval include, but are not limited to:

1. The general location of buildings and structures as illustrated.
2. The general number of stories within proposed buildings and structures as illustrated.
3. The general location of parking areas as illustrated.
4. The general location of pedestrian connections as illustrated.
5. The general location of the emergency access as illustrated.

Additionally, the applicant has proposed the following conditions, which are described on the development plan as “Owner/Developer Proposed Conditions” (written verbatim):

1. The number of dwelling units on the property shall not exceed 376 units.
 - a. A minimum of 30% of all dwelling units will consist of either studio or one-bedroom apartments.
 - b. A maximum of 20% of all dwelling units will consist of three-bedroom apartments.

2. The property shall not contain dwelling units that have more than three (3) bedrooms.
3. Owner/developer, at the time of development, will obtain necessary easements and construct the proposed pedestrian connection to the existing "Port Crossing Shopping Center" (TM 092 F 11).

Councilmember Dent asked do the dark bands here indicate steps? There is a steep grade there, right?

Ms. Dang said correct. The stippled areas show sidewalks and the lines would be steps because of the grade that we saw earlier. Staff is appreciative of proposing this condition. We support the addition of connection between parcels, such as this.

4. A minimum of 1.3 parking spaces per dwelling unit shall be provided.
5. Solar panels shall be installed and maintained on a minimum of 10,000 square feet of the building roof area (approximately 15% of the total roof area).
6. Owner/developer shall install and maintain a minimum of four (4) "Level 2" (or current technology at the time of construction) electric vehicle charging stations on the property.
7. Owner/developer proposes to construct along Peach Grove Ave just west of the subject property either:
 - a. A bus pull off and a concrete pad for a bus shelter on TM 091-H-1 at a location acceptable to the Department of Public Transportation and provided owner of TM 091-H-1 is willing to grant an easement at conditions deemed acceptable by the applicant.
 - b. Or a concrete pad for a bus shelter within the existing 80' wide ROW in front of TM 091-H-1.
8. Owner/developer shall provide a right turn lane at project entrance with a minimum of 20' storage and 75' taper.
9. The special use permit shall be established, or any construction authorized shall be commenced and diligently pursued within 24 months from the approval date of the special use permit.

Within the packet is the Site Grading Plan. It shows the heights of the adjacent existing buildings relative to what is proposed. Also included is a rendering of what the buildings might look like.

Councilmember Dent asked how many stories is that?

Ms. Dang said the development plan describes five to six, depending on the grade or the side of the building.

If the site contained the proposed maximum 376 units, and if the development met the minimum and maximum bedroom percentage breakdowns as described above, the site would contain 113 one-bedroom units, 187 two-bedroom units, and 76 three-bedroom

units. With regard to minimum off-street parking requirements, the ZO allows one parking space per unit for multi-family development in the B-2 district. The developer's proposed conditions would require a ratio of 1.3 parking spaces per unit, which would require a minimum of 489 parking spaces for 376 units. The plan of development shows 504 spaces, where 222 spaces would be located within the parking deck.

As previously stated, the property is designated by the Comprehensive Plan's Land Use Guide (LUG) as Governmental/Quasi-Governmental; this is because it is owned by the James Madison University (JMU) Real Estate Foundation. The LUG designates the adjacent property to the northwest as Mixed Use and the adjacent property to the southwest as High Density Residential. The Comprehensive Plan states that Mixed Use areas outside of the downtown area should be around 24 units per acre while High Density Residential is planned to allow up to 24 units per acre. The subject proposal of 376 units is a density of 37 dwelling units per acre, which is just under the maximum allowed 38 units per acre permitted in the B-2 district regulations. Given the site's size, the maximum number of allowed units is 385.

The property is located adjacent to existing multiple-family complexes (The Hills Southview to the west and Deer Run to the north). Likely the subject site will end up adjacent to another multi-family development-probably marketed for student housing-to the northeast of the site at 1051 Peach Grove Avenue identified as tax map parcel 92-F-10. That site was rezoned to R-5C in 2019 and then again with a proffer amendment in 2021. The developer of that project recently began the prerequisite submittals to continue with the project and to move toward an engineered comprehensive site plan review.

From a design and site layout perspective, staff typically prefers to have buildings massed closer to the public street, however, we acknowledge that there are limitations with the site's elevations and narrow property frontage. We appreciate the idea to provide structured parking. We questioned whether the applicant would consider building units on top of the structured parking with the hope that more open green space could be provided on site, but it appears that it would not be economically feasible for their desired project.

As most are aware, the City's Comprehensive Housing Assessment and Market Study (Housing Study) identified a shortage of rental housing units that are affordable to the lowest and highest income renter households (0-30% and above 80% Area Median Income (AMI)) and found that "[t]here is significant mismatch with many higher income households residing in more affordable units and lower income households residing in more costly units." Among renters, the study noted several key findings of the housing mismatch, which included that there are significantly more households than units in the 0-30% AMI tier; the vast majority of rental units are naturally occurring affordable housing; higher income households occupy rental units that cost less, and thus increasing competition for lower income households; and the vacancy rate is low at 2% (or 3.5% per American Community Survey data), which causes a tight market, "where the lowest income households have the fewest options."

The Housing Study places the subject property within Market Type C. Along with other

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

When considering the need for providing more housing in the City and with respect to the points made above from the Housing Study, providing multi-family units at this location can be a positive result for the community and for those that might reside in such units. However, staff cannot disregard the necessity to have safe and efficient traffic accommodations.

As required by Section 10-3-118 of the ZO, since the proposed multiple-family development met the threshold for the City to be able to review a traffic impact analysis (TIA), staff requested for traffic to be evaluated. The TIA, completed on October 26, 2022, evaluated the traffic impacts of a proposed 350-unit multiple-family residential development (26 units less than the number of units they are hoping to have permission to build) and analyzed traffic operations at four study intersections during the AM and PM peak hours. The TIA study concluded that “[a]nalysis indicates that site impacts are not expected to create unacceptable delays or traffic queues within the study area beyond those determined under background plus approved peak hour traffic conditions.” Additionally, “[a]nalysis indicates all site drive movements [at the development’s single entrance at Peach Grove Avenue] are expected to operate at acceptable levels of service upon buildout of the proposed site.” However, the following improvements were recommended by the applicant’s traffic engineer as part of the overall development plan (written verbatim from the TIA study):

- Construct a 50ft southbound right turn lane taper at the intersection of Peach Grove Avenue and Site Drive
- Pedestrian interconnection to adjacent commercial land uses. Current site plans provide a single point of pedestrian interconnection between the subject parcel and adjacent parcels to the north of the subject property.

On November 2, 2022, the Department of Public Works responded that they did not agree with the proposed mitigations because the proposed mitigations seemed to contradict the analysis. Since November 2, several meetings and phone calls between staff and the applicant have taken place to discuss possible options which the applicant explains in their letter dated December 7, 2022, with subject “Entrance Options for 9.91 Acres along Peach Grove Ave (TM 092-F-6).” On December 7, the applicant also submitted a TIA addendum

that analyzed a design change for a full width of 20-feet in length turn lane with a 75-feet in length taper lane. The Department of Public Works finds this turn lane design acceptable, however, staff continues to have concerns with the turn lane conflicting with the proposed bus pull off in front of 1351 Peach Grove Avenue (tax map parcel 92-F-10).

It should also be noted that staff foresaw complications with the traffic movements in this area with the subject development and the planned development at tax map parcel 92-F-10 (1351 Peach Grove Avenue). In July 2022, City staff led and facilitated a meeting, inviting the property owners and developers of both properties to discuss: the proposed entrances to each of the developments, city staff's concerns and interest to accommodate safe entering and exiting to both developments, and to find potential solutions such as jointly pursuing one entrance onto Peach Grove Avenue to serve both properties. Unfortunately, the parties could not come to an agreement and are proposing two separate entrances, one entrance for each property. Furthermore, staff wanted the two developers to work together to plan for and to construct the sites with the ability to allow for vehicles to pass between the sites. At this time, it appears the sites will not be developed with this opportunity.

Councilmember Dent asked has the adjacent developer been contacted about the idea of moving the bus stop from on their property to up the hill onto The Hills property?

Ms. Dang said I will allow the applicant to speak to that.

With regard to public transit, when routes are in full service, four routes serve Peach Grove Avenue. Residents of the proposed multiple-family development would be well served by public transportation. However, it is important to City staff that safe and efficient public transit services are provided. Yet, the proposed right turn lane and taper into the subject property (which is needed for safe and efficient vehicle operations) would impact the frontage of the adjacent property addressed as 1051 Peach Grove Avenue (tax map parcel 92-F-10) and require the bus pull off that was proposed with the 2021 rezoning of 1051 Peach Grove Avenue to be relocated because there are too many conflict points as transit bus drivers and other vehicle drivers weave around each other into and out of the turn lane and into and out of the developments. The Harrisonburg Department of Public Transportation (HDPT) does not want to force drivers to navigate this type of movement.

The applicant has also submitted a concept shown as Option E, which you all [Planning Commissioners] received by email this morning and a copy is provided in front off you, where the 20-ft. long turn lane with 75-ft. taper is shown, with a bus pull of downstream or past the development's entrance. This is described in condition 7.a.

While the applicant has been diligently working to reach out to adjacent property owners (The Hills Southview to the west identified as tax map parcel 91-H-1 and Skylar & Talli LLC to the east at 1051 Peach Grove Avenue and identified as tax map parcel 92-F-10) to pursue proposed condition number 7.a. (which is to accommodate a bus pull off to the west of the subject property), formal agreements have not been made and it is uncertain whether public transit needs can be addressed. Staff is not comfortable accepting proposed condition number 7.b., (which is to provide a bus stop and shelter-no bus pull off-to the west of the

subject property) if condition 7.a. cannot presumably be achieved. Specifically, at this location, where there would be three entrances in a short distance and where there are three lanes (one being a center turn lane), providing a bus pull off is the safest option, rather than having buses stop within the travel lane. HDPT is concerned that if buses are stopped within a travel lane, where a center turn lane could be used by a driver to maneuver around the bus, drivers stopped behind the bus will make risky maneuvers trying to pass the bus within the center turn lane. Staff recognizes that there are times that bus stops must be located within a travel lane along a street that has a center turn lane. In fact, these scenarios will end up being created when the City completes the road reconfigurations along Evelyn Byrd Avenue and University Boulevard. However, we must evaluate each circumstance on its own merit and, given the circumstances of the subject development, if there is opportunity to prevent such a scenario, staff does not want to create this situation and thus believes another solution must be found. Additionally, the proffers associated with the 2021 rezoning for 1051 Peach Grove Avenue requires that a bus pull off, along with a concrete pad for a bus shelter, and a bus shelter easement be dedicated to the City at a location acceptable by HDPT. Also, for the comfort of transit riders, the provision of a bus shelter is important. For a corridor that has high-density residential development, public transit must be prioritized.

Lastly, it should be understood that depending upon the scale and types of commercial development that would be permitted by right, those developments could generate more traffic than the proposed multi-family development. If a developer wanted to construct such a commercial development, because such a development is by right, they might not be required to address the appropriate transportation related needs that staff is concerned with as described in this report. However, such a scenario does not mean that anyone should overlook the necessary traffic needs generated by the proposed development described in this report.

As noted earlier, at this time, staff cannot responsibly make a recommendation on the SUP request without better assurance in knowing how the developer will accommodate the most appropriate traffic needs for the potential residents of the site and the rest of the community that travels this area. Staff recommends Planning Commission table the request until at least the January 2023 regular meeting.

However, if there is a desire to approve the request, staff recommends the approval only be granted with the modifications of the proposed conditions as shown below:

1. The number of dwelling units on the property shall not exceed ~~376~~350 units.
 - a. A minimum of 30% of all dwelling units will consist of either studio or one-bedroom apartments.
 - b. A maximum of 20% of all dwelling units will consist of three-bedroom apartments.
2. The property shall not contain dwelling units that have more than three (3) bedrooms.
3. Owner/developer, at the time of development, will obtain necessary

- easements and construct the proposed pedestrian connection to the existing “Port Crossing Shopping Center” (TM 092 F 11).
4. A minimum of 1.3 parking spaces per dwelling unit shall be provided.
 5. Solar panels shall be installed and maintained on a minimum of 10,000 square feet of the building roof area (approximately 15% of the total roof area).
 6. Owner/developer shall install and maintain a minimum of four (4) “Level 2” (or current technology at the time of construction) electric vehicle charging stations on the property.
 7. Owner/developer ~~proposes to~~ shall construct along Peach Grove Ave just west of the subject ~~property either:~~
 - a. A bus pull off and a concrete pad for a bus shelter on TM 091-H-1 at a location acceptable to the Department of Public Transportation and provided owner of TM 091-H-1 is willing to grant an easement at conditions deemed acceptable by the applicant.
 - ~~b. Or a concrete pad for a bus shelter within the existing 80’ wide ROW in front of TM 091-H-1.~~
 8. Owner/developer shall provide a right turn lane at project entrance with a minimum of 20’ storage and 75’ taper.
 9. The special use permit shall be established, or any construction authorized shall be commenced and diligently pursued within 24 months from the approval date of the special use permit.

Staff recommends modifying condition #1 to reduce the maximum allowed number of dwelling units from 376 to 350 because 350 units is what was studied in the TIA. Staff has communicated with the applicant that the TIA should be reanalyzed to reflect the 7.4% increase in vehicle trips and resubmitted to the Department of Public Works. Staff recommends deleting/not accepting condition 7.b.

Chair Finnegan asked if there any questions for staff.

Commissioner Armstrong said this says that the development is geared towards single-bedroom and efficiency units. Why have they expanded the parking to 1.3?

Ms. Dang said it is not just one-bedroom and efficiency units. They can have one-, two- and three-bedroom units.

Commissioner Armstrong said the proposal says that “it is further noted that the project is geared toward single-bedroom and efficiency units.”

Ms. Dang said that may be a mistake.

Chair Finnegan said it says 30 percent of one-bedroom or studio units.

Commissioner Armstrong said that is not geared toward it, is it?

Councilmember Dent added and maximum of 20 percent three-bedroom. So then 50 percent two-bedroom.

Commissioner Armstrong said did you not say that they are proposing an excess of parking spaces than what is required?

Ms. Dang said the Zoning Ordinance requires one parking space per unit. I will let the applicant speak to what they believe the market, the types of tenants that they have and what their past experience is. They want to provide 1.3 spaces. Some of the units will have three bedrooms. You have to think about visitors too.

Commissioner Armstrong said that is looking like somewhere around 480 more cars added. Is the TIA a VDOT defined process or does our Public Works have leeway in that?

Ms. Dang said there is a state VDOT process and the Public Works Department...

Commissioner Armstrong said implements it.

Ms. Dang said it is varied a little bit. Our threshold for triggering the need for a TIA is smaller than what VDOT is. VDOT generally focuses on county areas versus urban areas. I think that is the reason. We mimic what VDOT does but there are some differences.

Commissioner Armstrong said this is leading to this definition that we are looking at peaks as a.m. and p.m. I have brought this up in past applications. Given that this is feeding onto Port Republic Road which is feeding onto the JMU campus and Port Republic Road is crazy according to JMU's class schedule, not a.m. and p.m. That is not being done.

Ms. Dang said that we have Tom Hartman, Director of Public Works, and Gerald Gatobu, Director of the Department of Public Transportation, here.

Mr. Hartman asked that Commissioner Armstrong repeat the question about peak hour determination.

Commissioner Armstrong said they are always defined as looking at a.m. and p.m. However, particularly on Port Republic Road, which is accessing the campus, the peak hours can be anything according to current JMU class schedule. It is full of students, often with one student per car. I live on Port Republic Road and do not travel on it anymore because it is too congested. What I am wondering is why we are doing TIAs based on a.m. and p.m. rather than on the actual use and looking at peaks according to what is realistically happening.

Mr. Hartman said you have to remember that we are modeling. We are forecasting how many trips that one to one unit will produce on the roadway. We are using nationwide studies out of a manual called the ITE Trip Generation Manual. When they do those studies nationwide, they do not look at every hour throughout the day. They look at the trends for those different types of development. They get to a.m. generated peaks and p.m. and

generated peaks. Sometimes we have to differentiate between the peak of the site or the peak the generator. In some uses, like a coffee shop might have a higher peak in the morning versus the afternoon. Hotels will have a higher peak in the evening and not a higher peak in the morning. It is a statistical analysis. That is the nuance that we have to take into account when we are reviewing the TIA, knowing that Port Republic Road is peaky. We do our best to look at how those intersections operate during those a.m. and peak hours and how that would be pushed out throughout the day, knowing that within that 15 minute window in the a.m. or the p.m. hour is going to be consistent with what that peak hour is going to be at noon or at 2:30 or at 4:00 depending on class change. It is looking at that peak for that spec in time throughout the day.

Commissioner Armstrong said I understand, in my retired profession, we use mathematical modeling and statistical modeling, so I understand that process. Allowing an excess of parking places where there is a street that already has significant congestion, you have to look at how well is your model actually representing reality.

Mr. Hartman said for the trips on Port Republic Road and Peach Grove Avenue we use collected data from intersections. The intersections are counting traffic 24/7. We provide that data to the traffic engineers. They modeled both the existing condition of how the intersections operate today based on known information. The modeling part was to build in their impact on Peach Grove Avenue, then from Peach Grove Avenue to Port Republic Road and Neff Avenue, then getting out throughout the areas.

Commissioner Armstrong said what I understood you to say is that you are taking that a.m. and p.m. and you are extrapolating that to other periods and assuming that those other periods...

Mr. Hartman said not mathematically. We are reviewing that...

Commissioner Armstrong said you are making an assumption.

Mr. Hartman continued ...a.m. peak hour that we studied for that time period and p.m. peak hour, knowing that we can look at the volume on Port Republic Road throughout the day and that if modeled the a.m. and p.m. we are going to see something similar that we would see at a 10 o'clock class change or 2 o'clock class change without breaking the model up in to five, six or seven different scenarios for each build model.

Commissioner Armstrong said thank you for your explanation. I understand how you are doing it better. I do not think it is working very well because Port Republic Road is incredibly crazy. I am not the only person who thinks this. I interact with different people and people say that Port Republic Road is a mess. To say that we are going to introduce over 480 more cars onto Port Republic Road and there is no traffic impact of that, it is like an alternate universe for me. I think the modeling is not representing reality very well.

Mr. Harman said this is 350 units. The peak hour was just over 100. One hundred trips in the peak hour. If we are probably in the 2,000-2,500 peak hour trips on Port Republic Road,

100 out of 2,500 is four percent...

Commissioner Armstrong said I understand your model, but it is not working very well because Port Republic Road is insane.

Mr. Hartman said that is an outside discussion from the development. From Port Republic Road, we understand the challenges. We have done significant studies, improvement projects. We have two improvement projects that we are currently designing to help improve Port Republic Road. We incorporated new signal timings. All the signals on Port Republic Road now talk to each other, talk to the cloud and change timing dynamically within seven minutes if we see peaks and valleys. We are seeing improvements with the queue. It is just that there are so many vehicles that are trying to get there with two lanes in each direction, that sometimes the level of service is going to drop below what we would think would be acceptable, but it is going to be acceptable, as long as we make it as safe as possible. That is why we are pushing hard for the bus accommodations. I would rather have extra parking spaces, where the cars stay there, and the kids get on the bus.

Commissioner Armstrong asked is it an alternative to not allow the 1.3, to put pressure on the...

Chair Finnegan said that would be a question for Ms. Dang.

Councilmember Dent said I want to make sure I understood. Your role and the sequence about the discussion about the traffic lanes and the tapers and so on. What was the point at which you said, that will not do, try something else, or this is acceptable, but should do something else? I do not remember exactly.

Mr. Hartman said the first submittal of the TIA showed a taper of 50 feet based on the reasoning that they had 50 feet of available frontage to build a taper. Within the TIA, they provided a warrant analysis that is based on VDOT's standard that look at the volume of vehicles on Peach Grove Avenue, as well as the line of vehicles that need to make a right turn. There is chart and based on the determination of that chart, it said that a full turn lane and taper were warranted, which in an urban setting means they needed to provide a 100-foot turn lane and a 100-foot taper. They did not recommend that. They recommended a 50-foot taper because that is all the frontage that they had. That is the reason that we disagreed. There have been multiple discussions and meetings. We went a step above what we would typically do, instead of just a simple warrant analysis, we went into the modeling and modeled the minimum turn lane and taper configuration that will not cause a problem on Peach Grove Avenue at the intersection. That is how we got to the 20-foot turn lane, 75-foot taper based on that increased conversation and modeling that their engineer performed.

Councilmember Dent asked is that option (a)?

Mr. Hartman said it is options (d) or (e) because of the bus stop location.

Chair Finnegan said that the problem with Alternate Option E is that the property owner has not signed off on it because it is a neighboring property.

Commissioner Byrd asked you went with 350 units because you did not know that the number was 376 units?

Mr. Hartman said we did not do the study. They provided 350 in the study, then somewhere changed it. They have to update the TIA to make sure that the assumptions did not change. Then we would be comfortable with the higher number.

Chair Finnegan asked you are in favor of a new TIA?

Mr. Hartman said their site has been studied for 350 units. That is what the turn lane and taper have been analyzed for. If they want a higher one, then they would have to go back and remodel it. It might change. It could still be 20 feet and 75 feet, potentially, but we would want to see that analysis with the 376 units.

Commissioner Whitten asked is this taking into account all the school buses that also travel through there on any given morning and afternoon?

Mr. Hartman said we only count traffic for the data collection when JMU is in session and when school is in session. We do not count traffic on a Saturday. We do not count traffic on July Fourth. We make sure that we are at normal loading when we count. Any background trips with school buses or parents taking kids to and from school, all those trips are included in the background data.

Commissioner Whitten said Peach Grove Avenue is very dangerous. I drive it twice a day, every day. The turn movements going in and out of CVS and in and out of Food Lion where the signal is upcoming and people are stacked up already. The people that have to go first cut through, across traffic. It is very scary. I think a tapering lane, while it sounds great, is going to be another opportunity, when it is free, to be a passing lane.

Mr. Hartman said not in this situation, because it would lead right into the entrance. You would taper then you would be... You would not have the ability to get back into the through lane because of your radius and turning into the site. You would not have the ability to get over. It would be a turn lane taper right into the development. There would not be an ability to get back into traffic.

Commissioner Whitten said I have seen some very creative things at that very little section that we are talking about.

Mr. Hartman said the best engineers cannot prevent those types of things.

Commissioner Whitten said I understand that. What we are not talking about is the other building to be built right next door. It is going to be another 300 probably. I do not remember the number.

Ms. Dang said it was 100 four-bedroom units.

Councilmember Dent said I want to understand this terminology of storage and taper. Could you explain that?

Mr. Hartman said storage is the full-width twelve foot turn lane. You are fully off of the main line, is what we would call the storage lane. The taper is that point from where you are in the main line over to that point where you are completely off the main line of traffic. That is the taper portion.

Councilmember Dent said so the storage is the full width part at the end of the taper.

Mr. Hartman said correct. It would be 20 feet in length in this case.

Mr. Gatobu said Commissioner Whitten said a lot of what I was going to say in terms of Peach Grove Avenue. We are thankful to the applicant for considering option 4 [correction: option E]. The operations team and I had a big discussion about this. It is a matter of how many entrances you have within a certain space. There is a lot going on there. To be able to be in a 35-foot bus and look to see who is doing what and know what people do. The ideal would be to have the one entrance, but that is beyond our control. With the two it creates a lot of turning movements left and right. If you have to pull a bus into that situation, stop and then have to look again... There is a school down the road where a lot of people drive there and come back. It is matter of ensuring the safety of the driver, the passengers and the people entering and exiting those two developments. With us going a little bit farther on option 4, we at least get some clearance in terms of where the entrances are, and we can drop people off. The key is we do not know where all these people are going to go. Somebody might decide to cross the road. There are all these options that we have to consider when trying get the safest possible location for a bus stop. You have to consider the future volume for any decisions. I am also the treasurer of the transit liability pool, which is an insurance pool. The more accidents we have, the insurance goes up. That is one of the hidden costs people do not see that we have to consider. If we are the ones causing a lot of the accidents there, and it is already built, I am going to have to look for an alternative location that is safer, at my cost. Those are the things we weigh. It is not just a present decision. It is the future value of that decision that we made in 2022, but we may be talking about it in 2025.

Chair Finnegan said to clarify, when you are talking about insurance rates for the HDPT. You are saying that even when the driver is not at fault, the driver has stopped, and car rear-ends the driver. The driver is 100 percent at fault.

Mr. Gatobu said there are still costs associated. You just do not see a lot of them. This is an ideal location for transit. We have four routes going through there. At full capacity we have green, black, red, at least four. If you go by there two times for eight hours, that is 16 times, without making a mistake. You have to make sure because it is zero. We work with a lot of these developments. We worked with The Retreat which is now Redpoint. We have worked with The Cottages. We worked with JMU for Jennings Hall to make sure we have bus

turnarounds. The safety of the driver and the pedestrians is paramount in this, but the hidden cost is what happens if there is a collision long term. Injuries to not just the passengers, but the driver. Then there is the collision aspect itself. A lot of times, insurance will look at some of these things and give you a rate based on whether you are safe. Is there an increase in injuries or what they call “preventable accidents”? Are they preventable or non-preventable? In this case we have a decision to make, and there are access management standards to consider. If we make a decision that goes against those standards and there is an accident, then I am responsible. So, long-term. Eventually we will have to find a safer location which will come at my cost, as the community. That is how we look at this issue. It is not just this location; it is all of them. It is, what is the future value of this decision in transporting this many people over the long-term?

Ms. Dang clarified a previous statement about the number of units to be constructed on the adjacent property. We had said 100 units with four bedrooms. It could be allowed to have up to 126 units.

The Assistant City Attorney recommended that the Commission proceed with the public hearing even if they intended to table the request.

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

Todd Rhea, Clark and Bradshaw, came forward representing the applicant. I have been involved in representing this well qualified applicant throughout the lengthy design and planning process for this project. We are pleased to be able to present it to the Planning Commission this evening. Here with me tonight are Randy Cosby, representing the developer, Malachi Mills, our design civil engineer, Eric Strohacker, traffic engineer who has worked closely with Public Works, and Warren Coleman on behalf of the JMU Real Estate Foundation.

Before I get into my presentation, you were talking about the parking ratios. The 1.3 parking ratio is a market standard for this type of project, which proffers out four-bedroom units. It is a one-, two-, and three-bedroom units. It is exactly the same parking ratio that was recommended by this Commission and approved by City Council in the Regal Cinemas Armada Hoffer SUP back in February of this year. This is only the second request under that ordinance change that I am aware of. The Regal Cinemas project being the first, and our project here on Peach Grove Avenue being the second.

As staff has outlined in detail, the owner and applicant are requesting approval for a multi-family SUP within the B-2 zoning district in response to the need for a pedestrian oriented multi-family development within the City. The proposed SUP approval would allow for this vacant, infill parcel to be developed in a walkable residential community with fully developed neighboring commercial amenities. The approval would also directly address the class C existing need for additional housing stock, units of various types and sizes, and additional density as identified in the City’s housing study. The following excerpt

from the City's Community Development staff report from last February, when the B-2 ordinance was amended to allow for these residential SUP describes and fits the location and policy rational for the present application like a glove. I will quote:

Creating a SUP to allow for multi-family units within the B-2 district would, among other TND principles, allow residents to work, shop, and carry out many of life's other activities within the neighborhood and allow residents to walk, ride a bicycle, or take transit for many trips between home, work, shopping, and school.

It is further noted that the project is geared toward single- and two-bedroom units. Eighty percent would be either efficiency, one- or two-bedroom units. Restricted out are traditional four-bedroom, four-bathroom student housing layouts. This is the same proffer as in the Regal Cinemas project. The smaller and varied unit mix is reflective of changing lender preferences and provides options further down the affordability scale for both student and non-student rentals. The number of units adheres to allow the density within the B-2 district under the SUP request. The proposed amenities on-site include a fitness center, business and coworking area, outdoor pool and grilling area, clubroom and sidewalks. The community would also benefit, as a high-end community like this does, from professional full-time property management and maintenance staff on-site.

As staff indicated, the parking layout on this site is driven largely by the single point of access to Peach Grove Avenue that does not allow buildings to be pushed close to that public street. We also have that triangle from The Hills property between us and Peach Grove Avenue along a lot of that frontage. Also, the sloping topography, as you look at the site is higher on the left and lower to the right, is about a 7-story or 70-foot drop across that parcel. This dictates moving structures away from the property lines because there are retaining walls built on neighboring sites and our site that can hold up parking, but not necessarily structures along those lines.

The developer is also committed to sustainable features within this development plan and proposed supplemental conditions. These include solar panels to power its amenities areas, EV charging stations for resident use, and ample bike storage and parking will be provided to allow residents to access bike trip options. As this Commission has consistently highlighted, dense developments of this type are much more environmentally friendly on a per unit basis than a similar number of housing units spread out over a less dense footprint.

While staff points out that the parcel is designated as governmental, recognizing that this is a function of its ownership by the JMU Real Estate Foundation, it is not contiguous to any other governmental or quasi-governmental uses either in current use or planned on the future Land Use Guide Map. In fact, this infill parcel is adjacent to the largest designated high-density residential area in the City. That is the large brown area surrounding this site on two sides. On the other side is the developed Port Crossings Center, and the previously approved Skylar & Talli/Forbes parcel immediately to the north. Dense multi-family development at this site perfectly matches the Comprehensive Plan Land Use Guide. It impacts no existing single-family or established lower density residential neighborhoods. It

is exactly the kind of infill location designed to reduce car trips, to having all the everyday amenities of grocery shopping, restaurants, and pharmacy, which are the three most common trips, already built and located next door. The property, as Public Transit indicated, is also on four separate City and university bus lines and connected to sidewalks and multi-use paths leading into the City. This infill development is equally or more favorably located to pedestrian, shopping and transit amenities than was the Regal Cinemas infill site approved earlier this year. Our development plan and supplemental conditions were crafted consistent with that approved, multi-family SUP precedent, including densities, unit mixes and parking ratios.

In addition to providing valuable housing capacity located on transit lines and surrounded by similar and compatible uses, the site would provide large fiscal benefits to the City. Based on reasonable projections for comparable existing properties under current tax rates, the project would provide the City with direct real estate tax revenues in excess of \$500,000 per year. JMU Real Estate Foundation is the current owner of the subject property. This approval and sale would also inject valuable resources into the Foundation and our local flagship university. Finally, this approval would also return the parcel to the active tax roles as it is currently an exempt parcel and generating no revenues to the City.

Finally, let us talk for a bit about the traffic and transit issues focused on extensively earlier tonight. As an infill development, with existing developed or entitled properties surround us, and with only one public street access point on Peach Grove Avenue, we do not have a clean slate to write upon. What we have done is be fully transparent and about as proactive as any applicant that I have worked with has been with City staff and City departments to identify safe solutions within objectively demonstrated acceptable traffic, transit, and entrance service level metrics. Having been involved with many such projects, it is clear that being constrained or limited to full VDOT manual standards will do nothing but kill off much need additional housing stock applications and remove large fiscal benefits from this City in the name of simply encouraging vehicular modalities. As before this Commission and City Council roughly 15 years ago, when almost the same arguments were raised with the 865 East project on the intersection of Port Republic Road and Devon Lane. No one will deny that Port Republic Road is heavily traveled and at times congested. Such is the nature of densely developed corridors. Just like 865 East, this project has been proactively designed to meet the existing conditions with safe and feasible design solutions. The benefits to the City, in terms of housing and tax revenues, vastly outweigh the marginal impacts on the local road network. Dense development along Port Republic Road is and will be ongoing in County's Stone Spring urban development area just east of this site, and the City has designated almost all of the Port Republic Road corridor for current or future dense development in its Land Use Guide. When considering approval of projects of with large net positive impacts to the City, we can simply not afford to let marginal traffic concerns kill large design projects.

Regarding the bus stops, alternative (d) was developed after extensive consultations between our civil and traffic engineer and the Departments of Public Works and Public Transportation. The yellow is the entrance to the Forbes site with the future bus stop shown. Our entrance is the red. It shows the 20-foot stacking lane and the 75-foot taper. We

have talked about that extensively this evening as an acceptably safe option. Yes, when that bus pulls out of there from the yellow bus stop and crosses, it does cross our turn lane, but it is acceptably safe. We cannot zero out all risks, and we cannot kill \$80 million dollar projects when we do have an objectively safe turn and tape lane that is supported by objective data. We have gone so far to proactively approach The Hills. We hope to get a pull off to allow Alternate Option E, but that is not going to be as convenient a stop for both of these properties. Alternate Option D is more convenient because it is centrally located between the two. Alternate Option E does remove all the conflicts with that turn lane. That triangular portion is fairly useless to The Hills, but we cannot control that. We have made requests. Just like we have made the request to share an entrance with that site next door, it sort of made it sound like the parties could not come to an agreement. That is not a fair characterization because we agreed to provide a joint entrance. That is not on us. We are infill. They have been permitted. We have only so much power to force others to do things. We are not asking you to approve an unsafe condition. We do not have ideal circumstances. We have a lot of benefits, and we have worked very hard to objectively support and not put the City in the position to say that we are making exceptions for approval of this project.

We will update from 350 units to 376 units. We would like to not delay the process. It is highly unlikely to affect the TIA outcomes. We will have those by the time this would get to City Council. We can mix unit mixes and bedrooms to come out with 350 if we wanted to, but the flexibility of the 376 allows us to put more one-bedrooms and more affordable units in there. We would not like to table it because we can run those calculations and have them by January 10th. A further not to table tonight is that you have a very big request coming up at your January meeting that is going to be moving to City Council in February on your large affordable housing development on Garbers Church Road and Erickson Avenue. We would like to avoid having City Council have to handle this large and complex public hearing on the same session as the Bluestone Town Center. We greatly appreciate your positive consideration of the proposal. Our team has done its homework. We have been proactive with staff, and we are well prepared. We can answer questions and address any concerns the Commission may have this evening, or that we receive in public comments. Thank you for your leeway to present the property in full.

Chair Finnegan asked if there are questions for the applicant.

Councilmember Dent said I just heard you say one thing about more affordable. Do you just mean the one-bedroom as being more affordable or do you have specific affordability?

Mr. Rhea said it is a market rate project. We do not have affordability proffers with respect to the site. The one-bedroom and efficiency units, from day one, we designed this to have a lot of one-bedroom options which are less expensive than larger units, and they are less geared to students.

Randy Cosby came forward to in support of the request.

Mr. Cosby said thank you for considering our request and our project. We think it is a great

one. I have a few things to reiterate. To address affordability, there are a number of ways that we could look at it. Mr. Rhea mentioned one. HUD median area income for Harrisonburg is \$80,500 per year. For a one to three person household that is at 80 percent of the median area income makes between \$51,000 and \$65,000 per year. These people can pay 30 percent of their income towards housing, for rent. That is the standard. That is \$1,416 on the low end to \$1,820 on the high end. As Mr. Rhea said this is a market rate project. Our pro-forma rents start at \$1,200 per unit and the average rent across all the units is \$1,590 per unit. This suggests that our rents will largely serve the 70 to 90 percent area median income earners.

Chair Finnegan said this situated between current student housing up the hill and proposed, already approved not by Planning Commission but by City Council, and down the hill, the adjacent property that is also geared towards students. I can only assume that a multi-family building like this between student housing and student housing would be some sort of student housing. The market analysis... My question is, who is this for?

Mr. Cosby said we would be kidding ourselves if we said that no students would live here. Our team has not developed student housing before, purposeful student housing. When we got interested in Harrisonburg, our intention was to develop our normal product which is a professional grade housing product. Our tenants include working professionals, teachers, nurses, first responders, sometimes it is graduate students, young engineer. We have a fair amount of regional retirees in our portfolio. We went with our standard unit mix. Some of the surveying and market study that we have done ourselves, talking with some property management firms that work here, they were very supportive of our thesis to build something that is not student housing. Intuitively, to us it makes sense. We do not want to be the same thing as all our neighbors. We want to be offering a different product. Right now, we have about 22 percent studios, 25 percent one-bedrooms, 40 percent two-bedrooms, and 12 percent three-bedrooms.

Councilmember Dent said if understand it, if you are requesting that we do not table this, but we do not have an agreement nailed down, could we say that plan A is Alternate Option E if you can get that agreement and plan B could be Alternate Option D if you do not.

Mr. Rhea said we can make it a condition of your approval that the TIA be updated to 376 units prior to City Council consideration. We do not want you to let us get passed this and not update it without it being an explicit condition of whatever motion you make. We are comfortable with that being a condition.

Councilmember Dent said what about a condition that, if possible, you go with Alternate Option E presuming that you could get that arrangement with The Hills? How would that work?

Mr. Rhea said that was in condition 7.a., I believe. Condition 7.b. would put it on The Hills property, but it would assume that we could not get an easement. Condition 7.b. was a travel lane stop like you get on East Market Street and South Main Street and a lot of other places in the City. It is not optimal, but we were trying to be as proactive as we could be to

provide, at our expense, the most favorable option in the estimation of the Departments of Public Transportation and Public Works. Everyone agrees that Alternate Option E is probably the best choice. We believe Alternate Option D is acceptable and safe, if we cannot get Alternate Option E done.

Councilmember Dent said the option 7.a. is already worded provided the owner “is willing to grant the easement.”

Mr. Rhea said we reached out in earnest.

Mr. Cosby said, as staff mentioned, we have been through different iterations of the turning lane and bus stop. On the most recent, where Mr. Gatobu joined, he was rather exited to see the possibility, or he raised the possibility of moving the bus stop from the current proposed location, sandwiched in between the two entrances up to The Hills. We had a quick discussion about locating it in the travel lane. The reason that we felt that was a feasible possibility was because in our earlier conversations we proposed extending, making this a full width turn lane from the first entrance to the bus stop to the second entrance. Staff indicated that they felt a bus stop within the travel lane was much safer, which was surprising to us because in Richmond and other places we have seen it almost customary to have bus stops in turn lanes. We were trying to dance to the music that they were playing. When Mr. Gatobu mentioned the idea of having the bus stop just west of our entrance, we turned to our civil engineer and asked if we could accomplish that. Mr. Gatobu said that, at minimum, we would need a concrete pad so that we could put a shelter there. We asked our civil engineer if we could fit that within the existing right of way, which would mean that we would not need consent from The Hills owners to put the bus stop there. It would lack a bus pull-off. It would be in the travel lane. It would require a small retaining wall, but we could do it. We would be committing to doing it and bearing that cost if that was a benefit to Public Transportation. It sounds like it is, compared to the Alternate Option D situation. If the adjoining owner would be cooperative, which we would hope they would be because that is rather unusable acreage for them and I would think that they would see it as a benefit to have a bus stop with a pull-off right there, then we would be happy, and we have committed in writing to build the concrete pad for the bus shelter and the bus pull-off. That is if they would grant the easement. That is how it is currently written. Staff had made the suggestion to strike option 7.b. to build the concrete pad and have the bus stop in this location but without the pull-off if that owner was not cooperative.

Commissioner Armstrong asked the \$1,200 per month rent was for the studio?

Mr. Cosby said correct.

Commissioner Washington asked when you say units, are they pay per room or are they...

Mr. Cosby said we do not do any leasing per bedroom.

Commissioner Whitten asked, the conversation with The Hills, what is the deal? Are they not sure? Are they waiting for you to obtain agreement from Planning Commission? I do

not think that it is unusual for somebody to say they can do that, it is in their benefit.

Mr. Cosby said getting easements are not always easy. We did have a great experience with the shopping center owner, the Wheeler folks. We are trading documents with them right now. Strategically, we felt like it gave us and the City the best chance of getting this easement from the Hills if the JMU Real Estate Foundation approached them rather than the potential competing developer. That is what we have done, two separate rounds now. The first time, we got a little bit of a cold shoulder. We eventually learned that they were putting the property on the market. We have since reached back out to them and got an automatic reply that our contact was on vacation. She responded and said that she passed it one to the owner for consideration.

Commissioner Whitten asked when that occurred.

Mr. Cosby said that more recent conversation was today. We have been reaching out for several months and have had mostly contact with the property management team who have been shielding the owner from direct conversations with us. As of today, they have communicated our request to the owner.

Commissioner Whitten said that is unfortunate timing. The lobbying from your side to us is really on point I would say, but to them, not quite meeting the mark.

Councilmember Dent said that is a bit of a flag, if it is on the market. I do not know what that might mean. Could you buy it from them? Buy a piece of property to put a bus stop on.

Mr. Cosby said we are open to anything. We cannot do anything without them being responsive.

Commissioner Washington asked if the TIA includes the approved development.

Mr. Cosby said yes.

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

Commissioner Whitten asked what the school system had to say about this development.

Ms. Dang said Mr. Hartman and Mr. Gatobu had to leave for a 7:30 p.m. meeting to plan for the inclement weather that is coming. They intended to stay, but they had to go to that meeting.

Chair Finnegan said it was helpful to have them here to answer questions.

Ms. Dang said the Harrisonburg City Public Schools offered their general comment that they do for any residential development stating "[a]nytime there is the potential for an

increase in residential construction within the city or rezoning to allow for higher population density, it can have an impact on the enrollment in our schools.” They went on to acknowledge that they have over-capacity in many of our schools, but “also understand the continued demand for affordable housing within our City.”

Commissioner Whitten said Stone Spring Elementary is definitely over capacity.

Chair Finnegan said I am frustrated with the unwillingness or inability of different property owners to work together to make neighborhoods work. I know that is nothing that anyone in this room can necessarily do about that. Developers do have to comply with Public Works regulations and VDOT regulations to make them connect in the streets. If we are talking about people walking and taking the bus, it is frustrating to me that there is seemingly nothing we can do to force folks to play together nicely and to get infrastructure that works for people that do not want to drive all the time.

Commissioner Orndoff asked is there any way that we can facilitate this conversation by denying the request? Would that force a conversation?

Chair Finnegan said we can deny, approve or table. My understanding is that there were attempts made, not just by the developer, but by Community Development to facilitate that conversation.

Ms. Dang said back in July of this year, it was the director of Public Works and the director of Community Development who reached out to the Forbes and Skyler and Talli property and this development to talk. Staff did not facilitate a conversation with The Hills. The applicant with the JMU Foundation reached out to The Hills on their own.

Mr. Rhea said we did have several conversations with the contract purchaser for the Forbes property. They shut us down hard. We said we are all in for a shared entrance. They said that they have their plans approved. We are at the unfortunate disadvantage of what has been approved next door that is now hindering a better situation.

Commissioner Byrd said there are three options available. Are people considering tabling this? That is the first conversation to have before having a conversation about approval or denial. If we are going to table it, then we have other things on the agenda.

Chair Finnegan said I am not comfortable approving something that Public Transportation is not comfortable with.

Commissioner Whitten said I do not like the characterization that this is marginal traffic concerns. This is much more than marginal traffic concerns. That was not the best use of words.

Commissioner Armstrong said, to me, it is between tabling and disapproving. One of the reasons is that I do not call this affordable housing. The alternatives to the students, the young professionals were characterized as teachers, first responders and graduate students.

They are not making a median income of \$80,000. I do not think that any of those categories are. That is a lot. That is a pretty high income, \$80,000. I do not consider this affordable housing.

Chair Finnegan said it is not. I did not read this as an affordable housing development.

Commissioner Armstrong said even the descriptions of who could afford this, I do not think that is true.

Commissioner Byrd said the reason I am bringing up the question of tabling is because I am not in favor of denying this, but I am aware that since something is going to increase density, the bus is a key aspect of dealing with that density. Knowing how Public Transportation and Public Works feel about it, I would feel better about knowing that they are confident about that.

Chair Finnegan said I agree. I am not for denying this request, but I could go along with tabling it.

Councilmember Dent asked staff if the request is tabled, it does not go to City Council, but comes back to us, correct?

Ms. Dang said correct.

Councilmember Dent said I am leaning towards voting to recommend it with those conditions regarding the traffic.

Mr. Fletcher said tabling the matter to January 2023 gives them the opportunity to continue to communicate with the adjacent property owner. It does not mean that they will come back with an answer. We could end up being in the same place. At least it provides and additional opportunity for them to continue to work. As our staff report lays out, we cannot find ourselves in a responsible position to offer a recommendation. We want them to continue those conversations. It would be back here in January if it is tabled. It has been years since we have recommended to table a request, but it has been done in the past when we have these situations where there are still unresolved items.

Commissioner Orndoff asked if a denial would achieve the same goal?

Mr. Fletcher said if you deny the request, they are prohibited from reapplying for a substantially similar development for one year, per the code.

Commissioner Whitten asked what is the clock on the one next door?

Mr. Fletcher said they are in fire review still. They are in an early stage of engineering design. They have not yet entered their engineered comprehensive site plan review, which is a substantial review process, but they are making progress.

Commissioner Armstrong said we have also not discussed this 1.3 parking which is not

consistent with the direction that Harrisonburg really wants to move in, which is to reduce car travel. I feel like the target here needs some pressure put on them. They do not need, "oh, park as many as you want, and if you feel like it, take the bus." I do not think that is what we need to be doing. We have not had the opportunity to talk about that. We have a heavy agenda still. It is not just the engineering of the entrance.

Chair Finnegan said I would agree. There are cities in the United States that are implementing parking maximums at this point. Now, we see why we are doing that. I will also mention that 99 percent of the time, the applicant has no control over... The applicant says this is what the market demands. In this case, we have an organization that is connected with the primary place where people will be driving to. If JMU wanted to do something about the demand for parking, they could do that and do have control over that. They could implement an HOV deck on campus, where only cars that have two people or more could get into the deck, for example, as mentioned by a bus driver who drives that route. The demand for driving... We put the housing out here, away from the destination. In this one case, I do think that pressure could be applied to reduce the driving in other ways, in ways that other applicants do not have.

Commissioner Byrd moved to table the application.

Commissioner Orndoff seconded the motion.

Councilmember Dent said I would prefer to move ahead with recommending it, but if we do not have the feeling in the room that we will do that...

Commissioner Whitten said I think this cake is not baked.

Chair Finnegan said my primary reason for siding with tabling it is that bus and what Public Transit said about it.

Commissioner Whitten said and traffic and repercussions because of that that are not marginal.

Chair Finnegan said I will also say that I do not love the additional 0.3 parking spaces per unit.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent No
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten Aye
- Chair Finnegan Aye

The motion to table the request passed (6-1).

A motion was made by Byrd, seconded by Orndoff, that this PH-Special Use Permit be Tabled. The motion carried with a recorded roll call vote taken as follows:

Yes: 6 - Finnegan, Orndoff, Byrd, Whitten, Armstrong and Washington

No: 1 - Dent

4.d. Consider a request from Maria Sonia Trejo to rezone 793 North Liberty St

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the Comprehensive Plan designates this area 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: Nonconforming single-family detached dwelling, zoned M-1

North: Nonconforming single-family detached dwelling, zoned M-1

East: Across North Liberty Street, industrial uses, zoned M-1

South: Nonconforming single-family detached dwelling, zoned M-1

West: Across an undeveloped alley, industrial uses, zoned M-1

On August 17, 2022, staff from the Building Inspections Division noticed work being completed on a covered deck on the subject property without permits and verbally informed the contractor they must stop the work and get appropriate permits. On September 2, 2022, a permit was submitted and upon review, Zoning staff informed the applicant's contractor that the property is zoned M-1, General Industrial District and that the residential use on the property is nonconforming. It was explained that the Zoning Ordinance (ZO) prohibits the expansion of the nonconforming use, which includes prohibiting the expansion or construction of a new covered deck.

The applicant's contractor and city staff met on October 14, 2022, to discuss options for complying with the ZO, which includes entirely removing the uncompleted covered deck, returning the deck to its original size and footprint, or to rezone the property to the R-8 district.

The applicant is requesting to rezone a +/- 5,975 square foot property from M-1, General Industrial District to R-8, Small Lot Residential District. The property currently contains a single-family detached dwelling and is considered nonconforming since the property is zoned M-1. Without reviewing a physical survey of the site, the existing single family structure could also be nonconforming setback regulations. The reason the applicant is requesting the rezoning is to bring nonconformities with the property, including use and,

potentially, setbacks, into conformity. If the rezoning to R-8 is approved, the property owner could have a building permit issued to complete construction of the covered deck. If the rezoning is denied, then the property owner must remove the deck or return the deck to its original size and footprint.

The R-8 district is intended for medium- to high-density residential development including single-family detached, duplex, and, in special circumstances, by special use permit, townhouse development. As previously described, the Comprehensive Plan's Land Use Guide designates this area 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. The Comprehensive Plan goes on to say that 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. It depends on the exact dimensions of the parcel, but if the request is approved, the property owner might also gain the ability to somehow redevelop the site to contain a duplex. If the parcel is at least 50 feet wide, the site would meet the R-8's dimensional requirements to allow for a subdivision and to construct a duplex (one unit on each parcel). Staff does not believe such a scenario is inconsistent with the Comprehensive Plan.

Staff believes that this request does not have any major adverse effects to the surrounding properties and is consistent with the Comprehensive Plan and recommends approval of the request as submitted by the applicant.

Chair Finnegan asked if there were any questions for staff.

Commissioner Whitten asked why are we not looking at three lots instead of just one? It makes no sense to do it with just one. I feel that this should be a City function. We know that these are residential. They should be treated as residential. Let us rezone all three, potentially more. It does not make sense to me to isolate one lot that wants to put a deck and not take care of this.

Ms. Rupkey said that based on the fact that they had the permits, there is a time constraint that they were restricted to that would not provide the amount of time needed to get all the property owners.

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

Maria Trejo came forward and spoke through an interpreter. In addition, her friend Austin Miller came forward to speak on her behalf.

Mr. Miller said I will do a little talking for her because I know the project. The patio that she originally had was rotting. She wanted to extend it bigger. I am from Richmond, so I

never gave a thought that the zoning would be a problem. It is different how you work here and how you do things here. We started making the patio. Then she decided she wanted the overhead, so I put the overhead on. The house is small. Now we can sit outside, eat outside. When it is raining, we can put the shoes out there when we come in the house. It is a two-bedroom, one bath, a little living room and a little kitchen. By the doing that, extended a little bit to sit out there when family comes because it is a small area. We were not trying to do something out of the ordinary. We were trying to extend a little bit so that we could sit outside, cook on the grill. We are requesting if it could stay. It is built. It is done. It is a matter of whether we can keep it. Whatever needs to be done, we are here to take care of it.

Ms. Trejo said what he said is accurate. I want to thank you for giving me the time to bring this. I want to make the patio because my house is very small and I would like that space, especially when my family comes.

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

Chair Finnegan said this kind of request is about the letter of the law. They are following the rules, but there are times when I think that the rules overreach a little bit. I think this is one of those situations. I think this is a perfectly reasonable addition onto the house.

Commissioner Whitten said if it was not in M-1. That is the thing that has to be addressed. That is what we are doing. They are just trying to do their job.

Chair Finnegan said I believe that staff is treating everyone the same. There are times when people are trying to do very reasonable things to their houses, and they run into these kinds of entanglements.

Commissioner Whitten said this has been family type housing for a very long time. It is unfortunate that this was not cleaned up a while back in terms of rezoning it and making it a rezoning on behalf of the City. I am sorry that neighbors are having to come in piecemeal like this.

Chair Finnegan asked if this is something that we can fix in the Zoning Ordinance rewrite?

Ms. Dang said there are many reasons why we want to resume the Zoning Ordinance rewrite, and this is one of them. That is something that we have already discussed. There are areas along Liberty Street, West Washington Street... There are homes designated in our Comprehensive Plan as neighborhood residential that are non-conforming because they are zoned M-1 and we recognize that. That is something that we want to address.

Commissioner Whitten said I can see the scenario where the neighbor sees that patio and decides that they want one too.

Commissioner Washington asked there was a patio there before and they were making it

bigger?

Commissioner Whitten said bigger and covered.

Councilmember Dent asked did building the roof kick in the notice?

Ms. Dang said it was expansion of the physical footprint of the deck as well as adding the roof. If they were to replace it, they could do that repair and replace it. It is the expansion that they wanted to do. I appreciate you recognizing the non-conformity with the other properties and the need to address that.

Commissioner Whitten moved to recommend approval of the request.

Commissioner Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten Aye
- Chair Finnegan Aye

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on January 10, 2023.

A motion was made by Whitten, seconded by Byrd, that this PH-Rezoning be recommended for approval to City Council, due back on 1/10/2023. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

4.e. Consider a request from Van Delay LLC & Michael L. Marston to rezone 178 & 188 South Mason St

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the Comprehensive Plan designates this area as Mixed Use. The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use

neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way. Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

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

Site: Commercial uses, zoned B-2

North: Nonconforming multiple-family units, zoned B-2

East: Offices, zoned B-2

South: Across East Bruce Street, parking lot and single family residential, zoned UR

West: Across South Mason Street, parking lot, zoned B-1

The applicant is requesting to rezone a +/- 6,355 square foot property from B-2, General Business District to B-1C, Central Business District Conditional. The property is located at the northeast corner of the intersection of South Mason Street and East Bruce Street.

The property has been nonconforming to off-street parking requirements for some time. When there is a change of use, the Zoning Ordinance (ZO) requires that the number of off-street parking spaces be provided on the basis of the change. This can sometimes be problematic in the B-2 district especially for smaller parcels to be able to accommodate all of the allowable uses in B-2. The applicant has been trying to find tenants to fill the space previously occupied by a professional office but has not been able find a tenant with a use that can meet off-street parking requirements. While the applicant also owns the parking lot on the property across East Bruce Street, addressed as 202 South Mason Street, and currently uses the parking lot to support the uses on the subject property, the ZO does not allow those parking spaces to be counted towards off-street parking requirements for the subject property.

Currently, there are six painted angled parking spaces and two parallel spaces (one on the south side of the building, closest to East Bruce Street, and one on the east side of the building to the rear of the parcel). The property owners have proffered the following (written verbatim):

Within 90 days of rezoning approval, the property owner shall improve and maintain the existing paved area between the parking

spaces and Bruce Street as generally illustrated in Exhibit A by painting, landscaping, or delineating in a way that is deemed acceptable to the Zoning Administrator to prevent this space from being used as parking. This proffer shall remain in place so long as the site remains substantially developed as exists at the time of the rezoning.

The purpose of this proffer is to improve the safety of this space by prohibiting vehicles from parking within that area and then backing into the public street.

Along with being nonconforming to off-street parking regulations, the property is also nonconforming to parking lot landscaping requirements and the B-2 district's setback regulations. By rezoning the property to B-1C, the site would at least become conforming to minimum off-street parking requirements as well as setback regulations because the B-1 district has no minimum requirements for either of those two requirements.

As noted above, the site is designated as Mixed Use, which often times when a property is located in the downtown area, it can be associated with the B-1 zoning district. Staff has no concerns with the request and recommends approving rezoning the property from B-2 to B-1C with the submitted proffer.

Chair Finnegan asked if there were any questions for staff.

Chair Finnegan asked to view the image of the overhead. That parking lot in the lower corner across the street belongs to this property but cannot be counted because it is bisected by a street. Is that correct?

Ms. Rupkey said correct.

Chair Finnegan said something that might be worth considering in the Zoning Ordinance rewrite is that rules like this where... It would make sense to not count the parking if it were across an arterial road like Port Republic Road. If it across a small street like that, that parking should count. There are different designations for different kinds of streets. There are collector streets, arterial streets, local streets. Would this be considered a local street?

Ms. Dang said yes, it is a local street. It is substandard, which is why it is as narrow as it is.

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

Tom Wilson, co-owner of 178 and 188 South Mason Street, came forward in support of the request. It was built in the 1920s. It is a unique property. It is an undivided duplex. It has the potential for two businesses there. On the southern side, there is a haircutting place. On my side, the northern side, was my CPA office for 22 years. The property lines up more with the Central Business District now more than it ever has. You can see what the issue

with the parking is. It is a so ironic that we have a parking lot, but that is not considered parking as far as what can go in there. Historically, it has been a lot of things. When I bought the building in the mid-1980s, there was Blue Ridge Records on one side and Blue Ridge Books on the other side. I spent a lot of time in there. I think it is conducive to smaller retail. It is a small property. My side is 1335 square feet. It is conducive to a small office but because of the rules for B-2, it would not be allowed. Also, going from B-2 to B-1 opens up the option of making one or both sides affordable housing. One townhouse-style apartment could be on either side. That is the reason we are applying for this.

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

Chair Finnegan asked if the parking on the other side of the street used by...?

Mr. Wilson said it is used by both. The entire building on both sides are able to use that parking lot. There are 10 places in there.

Chair Finnegan asked, behind the building, is that a one-way loop?

Mr. Wilson said yes. The street is a two-way street, but you cannot enter it from Ott Street. There is not a lot of traffic on that section of Bruce Street.

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

Commissioner Whitten said I think it is cool that the statement is in here that “[t]hese areas are prime candidates for ‘live-work’” because I think that you could literally live on one side and have your office on the other side. I do not see any problem with it.

Commissioner Whitten made a motion to recommend approval.

Commission Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten Aye
- Chair Finnegan Aye

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on January 10, 2023.

The Planning Commission recessed at 8:24 p.m.

The Planning Commission reconvened at 8:28 p.m.

A motion was made by Whitten, seconded by Byrd, that this PH-Rezoning be recommended for approval to City Council, due back on 1/10/2023. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

- 4.f.** Consider a request to amend the Zoning Ordinance to create and define a new use called "Cooperative Sober Living Residence" to be allowed by special use permit in certain zoning districts

Chair Finnegan read the request and asked staff to review.

Ms. Dang said the City is aware of three properties in the City that are in violation of the Zoning Ordinance for exceeding the residential occupancy regulations of the zoning districts in which they are located. The three properties include 760 Collicello Street, 339 West Water Street, and 69 Middlebrook Street. The overoccupancy of these units, however, is different from other overoccupancy violations that have been identified. In these three examples an organization known as Oxford House, Inc. has coordinated efforts to help individuals, who are recovering from drug and alcohol addiction, to reside in these units with other individuals in similar circumstances so that they can live in-as described by the Oxford House website-"a democratically run, self-supporting and drug free home." The Oxford House website notes that "[t]he number of residents in a House may range from six to fifteen; there are houses for men, houses for women, and houses which accept women with children."

City staff first became aware that 760 Collicello Street was an Oxford House sometime in 2019, learned of 339 West Water Street in December 2019, and then of 69 Middlebrook Street in May 2022. Notices of violation letters were sent to the property owners in 2020 and communication with Oxford House representatives had taken place. However, the violations went unresolved until May 2022 when the most recent complaint about 69 Middlebrook Street was received.

On June 29, 2022, staff sent notice of violation letters to the property owners and to the residents at the aforementioned addresses and sent copies of those letters to Oxford House, Inc. On July 17, 2022, on behalf of the three aforementioned Oxford Houses, its residents, and Oxford House, Inc., and the property owners, Stephen G. Polin, Esq., General Counsel for Oxford House, made a request to the City for reasonable accommodation pursuant to the Federal Fair Housing Act, 42 U.S.C. 3604(f)(3)(B), by requesting: "a waiver on the limitations of the maximum number of unrelated persons who can reside together as a family under the City's definition of family, and equal treatment in the City's single family zoning laws that is applied to"residential [sic] facilities." Mr. Polin's letter goes on to state

that “[s]pecifically, I am requesting that the City waive any state licensing requirements and staffing requirements that pertain to ‘residential facilities,’ and treat the use of these Oxford Houses as the functional equivalent of a family, and the use of the property as a single family use.” A copy of Mr. Polin’s letter is attached.

The Fair Housing Act requires municipalities to make “reasonable accommodations” to their rules, policies, practices, or services, when the accommodation is necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. Under federal law, addiction is considered a disability; therefore, accommodation requests to the Zoning Ordinance that would facilitate recovery from addiction must be considered and, if reasonable, granted. These often take the form of “group homes.” Additional information is available in the 2016 Joint statement of the Department of Housing & Urban Development and the Department of Justice titled “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” which is attached.

Virginia law requires localities to treat as a “single family” the residents of any group home or other residential facility that is subject to licensing requirements from the Department of Behavior Health and Developmental Services with eight or fewer residents. In addition to state licensing requirements, these group homes must have one or more counselors or other staff members.

Group homes affiliated with Oxford House and other similar organizations are not subject to the same state licensing requirements and are resident-operated - in other words, there is no outside counselor or staff member who operates the home. Localities are often asked to accommodate these group homes by treating them no differently than state-licensed group homes.

Currently, the only process to request a reasonable accommodation for a group home requires the applicant to request an amendment to the Zoning Ordinance. On September 13, 2022, at a regular City Council meeting, City Attorney Chris Brown requested City Council’s input on different options for Zoning Ordinance amendments to ensure compliance with Federal Fair Housing laws. Staff recommended a City-initiated amendment related to group homes to ensure consistency, enforceability, and alignment with City Council’s priorities and preferences and offered to City Council two options to address the City’s needs (written verbatim from the staff memorandum):

1. Creation of a “group home” use, permitted by special use permit in any residential district. This option would allow Planning Commission and City Council to consider each request individually and tailor appropriate conditions to the specific site after hearing any relevant concerns expressed at the public hearings. For example, there may be valid concerns related to availability of parking, depending [sic] on-street parking availability in the area, where conditions related to on-site parking or limited occupancy would be appropriate.
2. Creation of a “group home” use, permitted after review and approval of a request for a reasonable accommodation by staff. This option would not allow for public hearings prior to the approval of a group home. Staff’s decision would be

appealable to the Board of Zoning Appeals.

City Council directed staff to prepare a Zoning Ordinance amendment to create a use permitted by special use permit in any residential district.

Staff proposes to amend the Zoning Ordinance to ensure compliance with the Fair Housing Act, which requires municipalities to make “reasonable accommodations” to their rules, policies, practices, or services, when the accommodation is necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling.

The following is the proposed new use and associated definition to be added to the Zoning Ordinance:

Cooperative Sober Living Residence: A dwelling unit occupied by multiple unrelated residents in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988 that provides a non-institutional residential environment in which the residents willingly subject themselves to rules and conditions intended to encourage and sustain their recovery. Residents of a cooperative sober living residence are similar to a family unit, and share kitchen facilities and other common areas of the unit. Cooperative sober living residences do not provide on-site supportive services to residents.

The additional components of the amendments include adding the Cooperative Sober Living Residence use as an allowed use by special use permit to the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, R-8, MX-U, B-1, B-2, M-1, and U-R. A property owner who desires to allow a “cooperative sober living residence” to operate within a dwelling would apply for a special use permit, which would require the typical periods for staff review, posting of signs, mailed notifications to adjacent property owners, advertisements in the local newspaper, and public hearings at Planning Commission and City Council.

Staff is proposing to add the use to the B-2 and M-1 districts as there could be residential dwelling units that are nonconforming in those districts and thus a property owner could apply for a special use permit to allow a “cooperative sober living residence” in those units.

Staff recommends approval of the Ordinance amendments.

Chair Finnegan asked if there were any questions for staff.

Councilmember Dent said one word that jumped out to me was “handicapped.” I think that is an obsolete use. Sure enough, there is a footnote to the Joint statement that states “[t]he Act uses the term ‘handicap’ instead of ‘disability.’ Both terms have the same legal meaning... This document uses the term ‘disability,’ which is more generally accepted.” I suggest changing that word from handicapped to disabled.

Mr. Russ said that is fine. We can use either one. They are interchangeable.

Commission Whitten asked what the Virginia law requires. How does that come into play with what we are discussing? You have here that Virginia law “requires localities to treat as a ‘single family’ the residents of any group home or other residential facility that is subject to licensing requirements...” Now, they are not subject to licensing requirements, and they do not meet the definition of what the State is discussing because they do not have counselors or staff members. Are we changing the way things have been done in Virginia to accommodate one non-profit or business? I do not know what they want to be called. They are a non-profit, I guess, Oxford House. The Dillon Rule still happens here.

Mr. Russ said that the Department of Behavioral Health and Developmental Services is the licensing authority for certain types of group homes where you are receiving actual behavioral health or developmental services treatment directly from a professional, on-site. The same department also has certified group homes which Oxford House or any organization can apply to be a credentialing agency for the types of homes that we are talking about tonight. Oxford House and the Virginia Association of Recovery Residences both do credentialing for these homes and the State will maintain a list of all the homes that have been certified by one of their approved agencies.

Commissioner Whitten asked they would not certify these homes because of the lack of staff?

Mr. Russ said these would be certified but they are not licensed which is an odd distinction that they have made in the last two or three years that they have created the certification process for group homes that do not need...

Commissioner Whitten said it seems like what is happening is Oxford House is telling us how we need to write this according to their plan of operation. We do have to allow people to be able to live a sober living type of residence, but do you necessarily have to adopt their protocol for how that happens? If we do not, then they say that they will not come to our community.

Mr. Russ said under Federal law, as long as what they are asking for is reasonable, we have to accommodate them. The State has created the system with the licensure and the credentialing. Federal law still trumps state law. In order to comply with the Fair Housing Act, you have to at least consider these requests when they come forward. They may or may not be reasonable. They are on a case-by-case basis. The intent is for it to be individualized to the property. It is like if you ask for a reasonable accommodation for a disability at work. You are supposed to engage in an interactive process with your employer where you discuss what sorts of accommodations might be acceptable and what might best meet their business needs. Something similar is supposed to happen with these sorts of requests. It would be on a case-by-case basis with the SUP applications.

Chair Finnegan said what do we actually have purview over? It sounds like City Council has directed staff to go the route of the SUP instead of having staff decide it. We create this designation because we are required to, then people make the requests for the SUP, and

those get potentially denied. Then the City is...?

Mr. Russ said when we review those requests, we will have to look at the test for approval under the Fair Housing Act rather than our normal zoning practice. Generally speaking, courts have found arguments persuasive that up to eight individuals in single-family home is reasonable and necessary in most cases. A lot of the cases come out of Oxford House since they are the largest, national organization. The theory is that you need some wiggle-room for vacancies, it may have only six or seven people living there at a time. You need a sufficient number of people living there at any given time for the therapeutic benefits of living in a cooperative environment. Courts have found that fairly persuasive. It is somewhere around eight people.

Chair Finnegan asked other cities in Virginia have similar ordinances that allow for up to eight?

Mr. Russ said yes. They approve them through SUPs or they have the Zoning Administrator issue a determination that the group living there merits protection under the Fair Housing Act and should be treated as a family.

Chair Finnegan said capping it at eight... Are there cities that have gone lower than that and been sued and the lawsuit was won? What are we being forced to do by the law versus what do we actually have purview over?

Mr. Russ said that the most recent lawsuit in Virginia came out of Winchester. They ultimately settled and agree to allow up to eight provided that there is not more than one person per bedroom. That was the outcome of the settlement that they came to with the organization that wanted to operate the facility there.

Commissioner Armstrong said that "eight" number does not seem to accommodate the women with children situation. That is just not enough.

Mr. Russ said there may be situations... The way that we have worded it, they can request for larger numbers. They would have to explain the reason for the request, the unusual circumstance that they are wanting to address.

Commissioner Armstrong said this model is based on peer counseling and peer support. I thought that in the last line there it should say "do not provide on-site *professional* supportive services" because it is by design support.

Councilmember Dent said regarding the Joint statement, number 23 on page 17, "[d]oes the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?" It says the "Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures." I

thought, we should do this, then I realized that this is exactly what we are doing. We are creating the formal procedure with this amendment.

Mr. Russ said this only addresses one type of reasonable accommodation. In some areas that have historic districts with very strict architectural guidelines that need to be followed, you would need to make the variances to allow someone to install a ramp that would not have been there when the area was originally built one hundred years ago, and you froze your architectural guidelines. Any dimensional regulation could be handled with a variance request to the Board of Zoning Appeals (BZA). This is the only use that I have been able to find that gets requested as a reasonable accommodation. There are some communities that have a catch-all, anyone who thinks that they have a reasonable accommodation that they want to request, can make one and make their case.

Commissioner Byrd said we are discussing the language in blue, correct? There is no "eight" in there.

Ms. Dang said after the staff report there is the Ordinance Amending and Re-enacting Multiple Sections page which states that "[o]ccupancy shall not exceed 8 individuals unless specifically approved by City Council." Thank you for bringing that up.

Councilmember Dent said my favorite part of this is number five in the Joint statement which states that the City "may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics." That is the pushback to people saying that they do not want it in their neighborhood. Too bad, it is a reasonable accommodation, unless there is something legitimate such as parking or the structure or something like that.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and asked if there was anyone wishing to speak to the request.

Robert Steere, 1652 Central Avenue, came forward to speak to the request. I am former member of the Planning Commission and a graduate of the Virginia Tech Residential Certified Planning Commissioner course. I am here to voice concerns and inquire on legal processes regarding the proposed Sober Living Residence zoning change. It is my understanding that when the third or fourth Sober Living Residence was created on Middlebrook Street in the Pleasant Hill neighborhood, it is the first time this was brought to the attention of the City. There are three or four other units in the City. I ask the following: Were the proper signs notifying neighbors on Middlebrook of its existence posted for the required amount of time before presentation to the Planning Commission? If not, why not? When I served on the Commission, one of the subcommittees that I served on was to actually create the wording requiring the posting of the neighborhood changes that had to be done. Zoning requests that were to before the Commission required the owner to post a sign at the property weeks ahead of the hearing, informing the adjoining owners of the requested zoning change. What about the current properties if they have not received the postings, why not? Are the neighbors of these properties even aware of their existence to

the proposed zoning change hearing notice in the Daily News Record? This Ordinance has been in place for many years, probably 20 or 22 years. I recommend that a certified letter be sent to every adjoining property owner of record making them officially aware of these units' existence so that we may present concerns to the proper authorities. The potential, or implied potential reduction in property values of these properties should be addressed, especially in R-1 and R-2 zones. The current units may be in violation of the current zoning laws. Why have not the owners of these units had legal action taken against them. It is also my understanding that all the properties are owned by the same enterprise and that they are not local residents, therefore creating absentee landlords in established single-family neighborhoods, in family homes such as the Pleasant Hill area where I live. Another example of this zoning change is a large scale development being proposed across from the High School at the corner of Erickson Avenue and Garbers Church Road. I have read that one of the descriptors of the project would be to "create a neighborhood." By placing these types of units in a neighborhood area such as R-1 and R-2 would seem to do just the opposite of that. This type of zoning seems to allow anyone to do just about anything in any district based on the lack of enforcement of current zoning laws. As far as the group owning these units go, lack of knowledge of the law is absolutely no excuse. I have copies of these if anybody would like to see it.

Steven Polin, general counsel for Oxford House, called in regarding the request. While we appreciate the efforts that the City to address Oxford House's request for reasonable accommodations; however, we believe that the present text amendment is inappropriate and the wrong way to go on this. I prepared a letter which you do not have. We sent it to staff this evening. Oxford House is seeking to be treated in the same manner as those facilities or those houses that are licensed by the State. Everyone knows that Oxford House does not have staff nor are we licensed, but in terms of an equal opportunity to use and enjoy a dwelling, which is language right out of the Fair Housing Act reasonable accommodation, we believe that it is necessary to treat us in the same manner. Oxford House has been in Virginia since 1990. We have houses throughout the State. I think that we have more houses in Fairfax County than we do in any other jurisdiction in the State. I can give you examples of the number of jurisdictions that will accommodate Oxford House either through acting administratively through zoning or have the City Attorney making a determination to treat Oxford House in the same manner that it treats State licensed housing. Fairfax County allows Oxford House to have up to eight persons without having to go through a zoning process. Arlington County and Arlington City allows Oxford House to have up to eight persons without having to go through a zoning process. Fredericksburg does the same thing. Winchester, the lawsuit that was referenced, allows up to eight without having to go through zoning. Hampton, we just recently had a situation where the city made a determination that we could have up to eight. Virginia Beach is another city where we can have up to eight. There are others throughout the state. What Harrisonburg is proposing in terms of creating a SUP process for Cooperative Sober Living is, to a certain extent, unprecedented in the State and takes a different direction. By requiring this, we believe this violates the Fair Housing Act, not the reasonable accommodation provision, but Section 3604(f)(1) and (2) and particularly (f)(2) "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of handicap." I have looked at the SUP

process. It is a zoning process, so there are clocks involved, \$425 application fee plus \$30 per acre, requires submission of the site plan, and then the Planning Commission and the City Council are allowed to put special conditions on the SUP. On top of that there are public notices. There are notices of the hearing posted in the yard. Neighbors are sent notices. None of this is required under Virginia law because such housing has to be treated as single-family uses. It is our position that there are other, less onerous mechanisms available to the City in terms of addressing it. One mechanism would be to enact a reasonable accommodation process. This reasonable accommodation process would *unintelligible* the Fair Housing Act, that someone like Oxford House or other unlicensed, unstaffed sober living provider would make a reasonable accommodation application to the City and the City would consider it on its merits and either approve or deny it based on whether it meets the criteria. The other would be to give someone within the City the same authority to do so. In listening to the discussion on this, the members of the Planning Commission have made several references to the Joint statement. Under number 23 “Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?” in the middle of the paragraph it says that if “a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability.” By requiring unlicensed and unstaffed cooperative sober living houses to apply to zoning for SUP is a more onerous process or proceeding than what state licensed housing gets because they do not have to do anything. It is more onerous compared to what other jurisdictions within the state have dealt with this issue. This is the first time that we have encountered any jurisdiction within the Commonwealth believing that by requiring setting up a classification based on handicap would require a SUP. We believe that the whole process violates the Fair Housing Act. If you have any questions, I would be happy to answer them. If not, thank you for your time.

Anthony Bopp, 69 Sharon Street, came forward regarding the request. I am going to offer you two alternatives to the proposal that is in front of you. The Americans with Disabilities Act says that the localities have to make reasonable accommodations. I would think that if you took what was written up, the proposal from staff, and simply omitted R-1, that it would be a reasonable accommodation. She is shaking her head no, but if you allow people to put a recovery house in R-2, R-3, R-4, R-5, R-6, R-7, R-8, B-1, B-2... I go before reasonable people. I would say that is reasonable. I would say what is unreasonable is to say you can put a house anyplace you want to regardless of what the zoning laws are. I think that omitting R-1, but you can go anyplace else, is reasonable. What is unreasonable is saying you can go anyplace you want to. The second thing is, what really bothers me as an individual, that somebody would come in here and break the law and then come before us and say you have to change the law so that we are not breaking the law. Never mind the circumstances, that just bothers me. The third thing I would like to show is that I have the Oxford House annual report, and if you allow me, I am going to read one sentence. “Once sequester of houses is developed in an area, it becomes to expand.” Do not think that this is the end of it. This is just the beginning in terms of bringing Oxford House into this community. The last thing is, I think of R-3 as the appropriate place for multi-family housing. We have a district. It is not like we are saying that Oxford House cannot come in.

It is just that Oxford House has to pick the places according to our zoning laws where they can come. And the last thing is, if you do not like that. If you do not like anything that I have said, then I recommend that you follow Virginia law and make Oxford House go after the State of Virginia, that we are following the Virginia law about the counselors and about the licensing. That is what the law says. All we are doing is following Virginia law, so they would not have to sue us. They would have to sue the Commonwealth.

Mr. Steere came forward with a question. Since these are as a non-profit organization, does that mean that all of these units come off of the tax rolls? If so, you are probably talking about a value in excess of a million dollars that residents in the City have to pay what comes off the rolls by these individuals.

Sandy Bopp, 69 Sharon Street, came forward regarding the request. I am an American person with a disability. I have Type I diabetes. I have had it for 47 years. I have never asked for any kind of help except maybe some paint on the curb or maybe a street lighting which everyone has been very accommodating with. What concerns me is, yes, we all know someone with a drug or an alcohol problem, every family has them, but we do not need them in a house together. I know they are supposed to have support, but these boys, and they are nice boys, but they do not want to be here either. I try to be fair with them. I walk every day. The sad part is that they are not from around here. How many addicts or rehab people are we going to bring into our community. We already have lots and lots who need help. I think that we need more housing in the City, but we also need more elementary schools. There are a lot of kids in my neighborhood, and I am concerned about them. I always worry about the children. Somehow, we have to put safeguards about this. I wish they would have invited the boys to come here. The young gentlemen to speak on their behalf and say what they like about the community and what they dislike about the community. They do not have anyone that comes and checks on them. I have never seen anybody come there to give them support or help them with their issues. If you have an illness, you definitely need help.

Ronald Diehl, 1706 Central Avenue, came forward regarding the request. Oxford House can be googled. I did get some information on their 2021 Annual Report. Mr. Bopp mentioned about the cluster houses, if they can be approved once then it is easier to get them for existing additional houses. If you approve one, you are going to get more. In single-family neighborhoods, the real issue is that Oxford House wants only R-1 districts to buy, and they buy before they get approval from Planning Commission. There are currently 3,231 houses in this country. There are 26,000 residents. It works out to 8.1 persons per house. I keep hearing that it is an upper limit to have eight residents per house, but to do these numbers, they have certainly some houses that are three-bedrooms or two-bedrooms that cannot support eight people. I know that the house on Middlebrook Street... I do not if they came before the building department to get approval for a bedroom in the living room, but it was built out that way. To be honest with you, to have a residential house to meet fire code, to meet city planning, it is a stretch to say that these residential houses are going to do that. The safety factor of having this many in a house that Oxford will only accept the city that says you have to go by what we want, and they buy in different parts of the City and tell you what you have to do under the Fair Housing Act. I am not sure I do buy that. The

organization is doing a great purpose, but they are doing this in something other than what was meant to be a single-family dwelling. Eight people does not quite... On average, 8.1 people are in these houses. I feel like the city of Wilmington, North Carolina turned them down and they turned them down for a reason. They could not find cause that they were able to prove to that city that they had met all of their codes. I thank you for your time.

Paul Stevens, Regional Manager for Oxford House, Inc., called in regarding the request. Mr. Polin asked me to provide some comment to clarify a little about the certification process, and in response to a couple of things that were said. Oxford House does not own any of these properties. There are local landlords that rent directly with the specific individual Oxford House. The State of Virginia decided a few years that they wanted to have a process through the Department of Behavioral Health and Developmental Services by which recovery residences were certified and they identified Oxford House as having high quality standards for our model. We were identified as one of the organizations that would be able to certify to credential recovery residences and to hold them to the high-quality standards of our model. We have had a very long relationship with the Commonwealth of Virginia and the Department of Behavioral Health. Now we certify Oxford Houses on behalf of the Commonwealth. There is a fair amount of oversight of that process. The houses are self-governing. They are financially self-supporting. The individual, local people living in the house pay their own way, the utilities and the rent. They form a community of houses that will look after each other and hold themselves to standards. There are Oxford House, Inc. employees. As a result of the contract that we have with the Department of Behavioral Health we have a few outreach workers. Their job is to go around, train the houses, offer technical assistance, and make sure that they are complying with the standards of the Oxford House model so that they are running well and being good neighbors. That interaction happens on a regular basis. I have a staff person who will go to Harrisonburg and meet with the houses very regularly, weekly, monthly at least. If you have any questions, I would be happy to answer them.

Chair Finnegan said I have a question in relation to the comment from Mr. Polin earlier about the SUP versus how it is done elsewhere in the state. Can you speak to that?

Mr. Stevens said that there is no jurisdiction in the Commonwealth where we have ever been asked to apply for a SUP, and we have 158 Oxford Houses in quite a few localities. As far of the nuances of the differences between the two processes, I would leave up to Mr. Polin.

Commissioner Armstrong asked do you see differences between R-1 or higher R values in terms of establishing houses in your program.

Mr. Stevens said that the success of our model relies on the idea that they be functionally and legally treated as a family residential unit. The idea is that people recover better when they are in good homes, in good neighborhoods. Any restrictions on that would be a compromise of the model.

Commissioner Whitten said we had someone who was testifying at a public hearing regarding where the residents are coming from. You mentioned local, that they would be

local residents. People coming from outside the area to Harrisonburg just to live in an Oxford house, is that the model?

Mr. Stevens said we do not dictate where the individuals are coming from, but the houses do not solicit applications from outside of the community. They do come from inside and outside of the community.

Commissioner Whitten asked how would they find their way to Harrisonburg, if they were from outside the community, to live in an Oxford House here?

Mr. Stevens said it probably varies, case by case. I would be only conjecturing. We have people who come into Oxford houses from a variety of places. Some of them just decide that they need to get sober, seek out mutual support groups and decide that they need supportive housing. Some people will go complete a treatment program somewhere and then want to return to the community and then return to the community to seek work and supportive housing. There are any number of places that they could come from. We have Oxford houses throughout the rest of the Commonwealth, so for people that reside in other areas, there really is no need for them to come to Harrisonburg because we have other Oxford houses and VARR has other recovery residences throughout the rest of the Commonwealth.

Commissioner Whitten said it sounds like there are other localities the use the SUP process in the State of Virginia, according to our attorney.

Mr. Stevens said that none of the Oxford houses that are currently open and operating in the Commonwealth have ever been asked to go through a SUP process.

Mr. Diehl said the bus stop in front of my house which is 1706 Central Avenue. I have talked to several individuals, and they were from Alexandria and other parts of the State. They were not close to this region. When you ask him about where the people come from, he did not answer you in a very direct way. I see people that are not from this area. If we could poll them, I would say that it is infrequent if somebody is.

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

Chair Finnegan said often times with these types of hearings, there are people in opposition and people speaking for them. We now have heard from Oxford House, and they are against it. The folks in the room are against it. It sounds to me like City Council maybe picked the wrong choice of the choices to pursue.

Councilmember Dent said I am looking at a letter we received from Strength in Peers which is a wonderful, local organization that has been trying to find ways to establish sober recovery housing. They are indicating their support for the amendment and have been advocating for these for a while. I have noticed that, even though they are supporting it,

they say “[z]oning rules and procedures that prohibit recovery houses, limit them to certain zoning districts, limit the number of persons, or require a public hearing process have a discriminatory effect.” A SUP requires a hearing process.

Chair Finnegan said Strength in Peers probably did not know. The SUP is not a rezoning, but it is similar to a rezoning in that there is a public hearing.

Councilmember Dent said based on their recommendation, but without that understanding, perhaps we need to revisit it as some process that does not require a public hearing but does allow in all zones. That is what they would be advocating.

Chair Finnegan said I am confused as to how to proceed because I do not feel that I can support this, but I also... It sounds like there needs to be another way to do this. If we deny this, it would go to City Council, and City Council would say “we kicked it to Planning Commission.”

Councilmember Dent said and we kicked it back. Mr. Russ, this would be a question for you and Chris Brown because they were offering the two options, the SUP or some sort of administrative review.

Ms. Dang said that with an administrative review, staff would make the determination. There would be no public notice.

Mr. Russ said Oxford House’s position has always been that public hearings stigmatizes the eventual residents. You have to come out to a public hearing and say that the people who live in this house are recovering from addiction and there are negative consequences to that. One way of avoiding that is having staff review, having the City Attorney or the Zoning Administrator review and issue a letter. The neighbors do have standing to challenge the Zoning Administrator’s determination with the BZA if they do not like the Zoning Administrator’s determination, but it would avoid a public hearing. Although, if it wound up at the BZA, then there would be a public hearing.

Commissioner Washington said from my understanding, the Oxford House functions as a family. As a family of eight, to require a SUP for that sounds discriminatory. If they are seen as a family rather than a dense housing situation with multiple different people living there independently, that is different. Is there a chance to change the wording? The ask for a SUP does sound discriminatory in its effect of excluding housing in R-1 and other areas.

Ms. Dang said what I am hearing from Planning Commission is an interest in another option that we could take back and talk internally and present, Option A, here, and the administrative option. I do not know if that is countering what City Council has directed, instead of going to City Council and letting City Council decide based on your recommendation if there should be another option that is created. As far as timing goes, with the large proposal that you are expecting in January, we are not going to have time over the holidays to discuss it. I am not concerned that we will lose time if this went to City Council and they decide if they want to adopt this option or if they want to draft something

else based on what you are discussing.

Chair Finnegan said I would suggest two things. One, that City Council's option to pursue this option as opposed to the administrative option was not the right choice. The second is that there will be a new City Council, with two new members of City Council. I would be in favor of recommending denial and having it go to City Council.

Commissioner Washington asked could we table it as the previous option that we tabled.

Councilmember Dent said I would prefer to table it and go back to the drawing board better than to deny because you want to advance it in some form. With the public hearing process having a stigmatizing or discriminatory effect, maybe that is not the right way to go. I do not know what motion to make to recommend that back to City Council.

Chair Finnegan said the SUP is not the right path.

Commissioner Byrd said among the things that I have heard related to this and how people have been discussing it, I would be in favor of denial if it is going to include a SUP request. The definition, I am fine with, with the suggested changes from "handicapped" to "disabled" and adding "professional" to supportive. I have no issue with it applying to all the zones that could have residences, I am fine with that. I highly believe in the prejudice and discriminatory effects of a public hearing for multiple reasons. I see how people will feel that they need a say about what is in their neighborhood, but they are just putting people in a residence. Making it a bigger to-do sounds like it is defeating the purpose. If I for some reason got on something, and we have seen studies where people have gone on stuff because drug companies did not inform doctors and stuff... There are many reasons why people end up doing things. Then I go to a place and cannot go anymore because the community found out that we are there... As long as there is a SUP requirement, I am not going to be in favor of it.

Chair Finnegan said what Commissioner Byrd just said is why I would be in favor of denying this. It is not about tweaking the language. It is not send this back and give us a different version of a SUP. The SUP is not the right path. I am in favor of denying.

Councilmember Dent said based on that logic, I could go with that, as long as we make it clear to City Council that we support the sobriety housing, but the SUP is the wrong way to go because of the public stigmatizing and the outing of the people who live there.

Commissioner Washington said I used to do case management in Charlottesville for two years. I saw a lot of people who suffer from addiction. A part of what I saw, the reason why people move around so much, is because Oxford House is in demand. If the Oxford Houses in Charlottesville are full, they go elsewhere. I would not say, in terms of where they are coming from "local versus regional," because to some folks that is still a community. Also, in some cases, folks do not want to be in the same community where they fell into addiction. There are different reasons why people travel. It is because of necessity and because they want a fresh start. What is the difference between someone moving here for

sobriety and someone moving here for a job? I think that a lot of the comments that I heard tonight were discriminatory. You referred to the statement that said for whatever reason you cannot say no to this. It is discriminatory to question that because you have an addiction and you are in my neighborhood, that looks bad. You do not know what people are going through and to be good neighbors, you should be able to accept someone who is a millionaire versus someone who has an addiction problem and that looks different for everyone.

Commissioner Whitten said that could be the same person.

Commissioner Washington said absolutely, it could be the same person. You are right. Also, to expect the SUP for a family house does not sound right. The need for an ordinance amendment is important, but to require a SUP is discriminatory.

Commissioner Whitten said I hear that. My discomfort with this is that this one organization that has their model is saying that we have to buy their model. There are other sobriety houses. There are other means and methods of doing this. Their percentage of success is not particularly high, compared with others. Mr. Stevens mentioned a person that checks in frequently, and I feel that there should be some accountability for the people who live there and not just from them because they are, by their own admission, struggling. They are trying, every day, to do better. That is the definition of being a part of a support group or being a part of AA. It is a daily journey. It feels a little strange for us to say that we believe in this model, we want to make an exception to our zoning. It is an exception to our zoning. I am fighting the problem of having fraternity members being able to call them a fraternity house versus just a bunch of guys that live together. There is a difference, and the behavior is different. These are two different things, but it does have a likeness to it. It does have an impact on neighborhoods if there is upset. If you read very much about Oxford House online, it is all not a rosy picture. That is just the facts. You cannot imagine a family that would always have a rosy picture. You put eight individuals in a house together that are struggling with addiction, there are going to be personality issues. There are going to be conflicts. I do not think that it is unreasonable to think that there should be some accountability beyond just welcome to our neighborhood, we want you to be here, we want to support you any way we can. What else does Oxford House do to make them accountable to a neighborhood. There is a responsibility on that end too.

Commissioner Armstrong said they do certify their houses for the Virginia Commonwealth. The people checking, I assume is through regular social services outreach. That certification has to be accessible to local social services who can support that unit. I think that is what he was describing, so there is accountability through the certification process.

Commissioner Washington said what I heard is accountability for the Oxford House. Also what I heard was an assumption and a prejudice towards folks who live in this communal living based on stuff that you read on the internet rather than... You are judging the individual before they get there. I think that is part of what was said in this packet, trying to avoid prejudice for the living situation. While good intentioned, what you did was make an assumption based on statistics that you got on the internet rather than knowing that person

going through recovery locally in Harrisonburg.

Commissioner Whitten said if you want to call that prejudiced because I did go and look at other localities and problems that have occurred, I think that is what most of us do when we look at other zoning issues too. We look at how it is working in different localities and how they are working here. Are there problems? There is nothing wrong with doing research. The way that you said “on the internet” makes it sound like it is some made up story. I believe that it was credible information that I was reading. I always look for sources. I am somewhat insulted that you consider that that comment would be prejudiced. I do not believe that is true. I think that when you put eight people in a house, that have a common problem with addiction, you are going to have some issues. I want to know that there is somebody that is guiding, directing, leading... People that have an alcohol or drug problem do need that support. They do need more than just each other. There is a much bigger problem there to start with that landed them in that house. To be able to be a supportive community, we have to be able to ask for that accountability. I think that is not prejudiced at all.

Commissioner Washington said I did not mean to offend you or insult you in any way. Based on the language in the Fair Housing Act, what you said based on what you read from the Oxford House website and from other people and other municipalities, I think that you are judging the person prior to getting there. One thing that I want to correct it on is that you called it a problem, when these folks have disabilities. That is one thing, in terms of language that we need to be aware of because you are stigmatizing folks who are seeking help for their disabilities. The language is “disability.” It has a negative stigma when you say “problem.” They are different things. And it is not a density issue. It is how we define “family.” That is something that we are getting muddled in, density versus the definition of a family. These folks are coming in as a family. It is a family house. It is not eight independent folks living independently.

Chair Finnegan said these are all valid points. What I would like to focus here at 9:49 p.m. in this meeting is what to do about this ordinance amendment.

Commissioner Byrd made a motion to recommend denial.

Chair Finnegan said Commissioner Whitten was talking about accountability. My question to Mr. Russ is what accountability can the City require regardless of whether we would like Oxford House to do it or not?

Mr. Russ said one of the things that we can require is that they go through one of the credentialing entities that State approves. Between now and whether this goes back to City Council, or you want to meet again, I can make sure that we can have a better understanding of what that process looks like. Whether it is just submitting a form, or someone from the State comes by every so often, or what exactly that process is, to give you a better understanding about what it means to be credentialed, and what that looks like moving forward. Not just when you first become credentialed, but how do you maintain that credential. We can make sure we have more information.

Commissioner Orndoff asked do we have the authority to send this back to staff and ask for a re-do?

Chair Finnegan said we can recommend denial or approval or table it tonight.

Mr. Fletcher said we reacted to what City Council directed. You can make a call as recommendation as to what you want. If you are looking to recommend denial, we can take it, or we can hear you say you recommend denial. We can bring it to the attention of City Council and they may advise otherwise and not put it on the agenda.

Commissioner Byrd said I apologize. I was trying to cut the commissioners off. I am always concerned when commissioners are talking to each other about each and not the application. I do like the definition, but I have an issue with the SUP. I move to recommend denial.

Commissioner Orndoff seconded the motion.

Councilmember Dent said I would like to add, to send with the denial, that we mean that as a recommendation that City Council pursue a different path.

Chair Finnegan said when I vote to deny, it is not because I am against Oxford House, it is because I do not like the SUP process for this use.

Commissioner Whitten said this is not just Oxford House. It needs to be called what it is Cooperative Sober Living Residence. It does feel like they have coopted this conversation. We are bending to what they desire us to do. We should never do that when it is a general topic like this. There are other sober living opportunities.

Chair Finnegan said such as Strength in Peers. They do not want a public hearing process.

Chair Finnegan called for a roll call vote.

- Commissioner Armstrong Aye
- Commissioner Byrd Aye
- Councilmember Dent Aye
- Commissioner Orndoff Aye
- Commissioner Washington Aye
- Commissioner Whitten Aye
- Chair Finnegan Aye

The motion to recommend denial of the Ordinance Amendment passed (7-0). The recommendation will move forward to City Council on January 10, 2023.

A motion was made by Byrd, seconded by Orndoff, that this PH-Zoning Ordinance be recommended for denial to City Council, due back on 1/10/2023. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

4.g. Consider a request to amend the Zoning and Subdivision Ordinances to modify the required information placed on public notice signs posted on properties

Chair Finnegan read the request and asked staff to review.

Ms. Dang said notice requirements applicable to land use proposals are found in Virginia Code Section 15.2-2204, Section 15.2-2285, and 15.2-107. Posting of signs on or near the affected parcels is not required by the Virginia Code but may be required or recommended by the locality. The Harrisonburg Subdivision Ordinance requires signs be posted on the subject property for which a property owner is requesting a variance from the Subdivision Ordinance regulations while the Zoning Ordinance requires signs be posted on properties associated with rezonings, special use permits, zoning variances, and for zoning appeals of a decision or determination made by an administrative officer in the administration and enforcement of the Zoning Ordinance.

Staff proposes to amend the Zoning and Subdivision Ordinances to allow modification of the required information placed on signs posted on properties for rezonings, special use permits, zoning variances, zoning appeals, and for properties to which the property owner is requesting a variance from the Subdivision Ordinance regulations. The purpose is to allow for standardization of signs. Staff desires to use one sign design for all types of posted signs, to have them professionally printed/manufactured, and to use signs that would be easier for staff to install compared to the current signs. Attached is an example of what the sign might look like.

Staff proposes that the QR Code and the weblink on the sign would direct community members to a City webpage with public notice and hearing information and would include a copy of the submitted application materials.

Additional amendments to the ordinances would state that failure to post the signs or failure to remove the posted signs within the required time period would not invalidate Planning Commission or City Council decisions.

Chair Finnegan asked if there any questions for staff.

Commissioner Armstrong said I would urge you not to rely on these QR codes. There are still people who, by choice or affordability, do not carry smart phones. I would not be able to access this. If there were a note under the internet address... Speaking of discriminatory, I could not access this.

Ms. Dang said this is just a sample. We could do that. The QR code could be shrunk. We could reformat the text. It says that for information call or visit.

Commissioner Orndoff said will there be a QR code regardless?

Ms. Dang said it is a tool. It is the combination of the code, the phone number and the URL.

Chair Finnegan said it is three different methods of getting the information.

Commissioner Armstrong said I would think that, underneath this address, you could put a note "for detailed description."

Commissioner Orndoff said it says, "for information." I think we should keep it as simple as possible.

Commissioner Armstrong said I do not find this simple. I find these smartphone things to be incredibly complicated.

Commissioner Byrd asked the QR code is directing to this site, correct?

Ms. Dang said yes. It will not be application specific. It would go to a webpage that people have the option to go to. Or they can call us or stop by our office. We could add our office address.

Commissioner Whitten asked the QR code just goes to the webpage?

Ms. Dang said yes. On the webpage they would see a list of the public hearing items.

Chair Finnegan said it would go to www.harrisonburgva.gov/notices <<http://www.harrisonburgva.gov/notices>>.

Ms. Dang said what we would like to do is reuse the signs so that we are not printing signs for each application.

Chair Finnegan said to give background, you said it is the time-consuming nature of the current signs. Each one has to be laminated. Each one has to be individualized and stapled to the board.

Ms. Dang said I want to continue to receive recommendations about the sign content and how it is formatted. We can continue to do that through January when City Council will be considering these amendments. We hope to move quickly to get the signs manufactured so that we can use them immediately. We need to replace some signs. Your objective is about the Zoning Ordinance text, but I am happy to receive recommendations about the sign content.

Chair Finnegan asked, if we approve this tonight, when will that be finalized?

Ms. Dang said it would go to City Council on January 10, 2023. If City Council approves it

on January 10, the second reading would presumably be a vote in favor of the ordinance amendment. Through the month of January, we would continue to work with the sign company to begin getting them manufactured.

Councilmember Dent asked what do you see when you go to that site?

Ms. Dang said what I have discussed with Michael Parks, Director of Communications, and the City Clerk, Pam Ulmer, is that the website would direct you to the same page where the public hearing information is currently posted. We would probably clean it up in a way so that the applications would be listed there as individual PDF documents. That is what we would be adding. The public notices and the advertisements would continue to be there for both City Council and Planning Commission. The Friday before the Planning Commission meetings, you receive the staff report which includes the applications. We have not been in the practice of posting the applications online the three to four weeks before the staff reports are distributed, but we can do that because we already share that with people who request it.

Councilmember Dent asked would it be listed as “this address will be heard on this date”?

Ms. Dang said the details are yet to be determined. What I envision is that, on that webpage right now, it starts with the City Council items, then the Planning Commission and the BZA. Within the Planning Commission section, there would be upcoming items for whatever date. Then we would bullet list with PDF links to each application item.

Commissioner Byrd said referring to the size of the QR code, as long as someone can take a picture of it with their phone in the car, then that is the point of the QR code. If I have to get out and walk up to it, then I might as well write down the website.

Commissioner Whitten said I do not understand why the website is not better because the QR is taking you to a more general place it sounds like.

Councilmember Dent says it takes you to the same place.

Chair Finnegan said it is the same address. It just saves you the trouble of typing it in.

Commissioner Armstrong said I am sensitive to persons who are not accessing computers. That is a real issue. Whether it is intimidation or money or skill, or any of that. All of this requires you to do that and to have access to that.

Ms. Dang said they could call us. That is what is available now. They could still call us or stop by our office. I think we could add our office address, which we do not include now on our signs. We only include our phone number.

Commissioner Armstrong said what is on the sign currently is information that they can connect to. This is something that is happening here, right next door to me. There is a relevance to that that is not here. This is just public hearing or City action. It is pretty

vague. I get why you want to do this because you can use the same sign. I am not sure it is going to accomplish what is being accomplished now.

Commissioner Washington asked is there an opportunity, instead of using signs, to have frames where you can slide paper in and out? You would buy 20 frames and you would slide the front and more specific information on the back so that you get this information but more specific information on the back so that you do not have to interact with the phone or QR code or the internet?

Chair Finnegan said this is general and you are saying something site specific? A paper that is laminated and put on the back?

Commissioner Washington said I am suggesting sleeves to slide in the information. You could reuse it.

Commissioner Whitten said something similar to what the realtors use, where it has the flip up box if you want to take the paper with the specifics.

Commissioner Orndoff said I think that staff is trying to get around reprinting site specific information.

Commissioner Whitten said I understand that, but people do have the need to know this information.

Commissioner Orndoff said there are three ways that you can contact the staff that installed that sign.

Commissioner Whitten said but you are contacting them based on what? They do not know what is happening.

Commissioner Orndoff said it says, "public hearing or City action pending on this property."

Commissioner Byrd says we see with the current signs, people come into the hearing and say that they say, "I saw the sign," but they did not read it. They say they do not know what is going on.

Commissioner Whitten said a lot of them do read them.

Councilmember Dent asked what is on the current signs now?

Ms. Dang said there are pictures within the package, but I do not think you will be able to read them.

Councilmember Dent said if you want to get away from having to print something new each time, this is a good solution. I like where Commissioner Washington is going with

having some information to slide in to say the address even.

Chair Finnegan said they are wooden with paper taped on them.

Commissioner Whitten said they say alley closing or rezoning or SUP.

Chair Finnegan said you have to get right up on it to read it.

Commissioner Byrd asked could you make different versions of them?

Ms. Dang said these signs are very heavy, bulky and prone to injury. We are out there with a large sledgehammer. It takes quite a lot to replace the sign because it requires weatherproofing. We are looking for something that looks nicer, professionally printed and put together where we can simply place the order and pick them up. I hear your concern and trying to think through what Commissioner Washington was suggesting about something on the back. The question is, do people know that there is something on the back. I like that you are trying to think of an idea, and I appreciate that.

Commissioner Orndoff said I think it needs to be printed on both sides because you need to not put it in front of the building. You need to put it so that it can be read from both directions.

Commissioner Whitten said you cannot read that while you are driving.

Commissioner Orndoff said if you want to read it, you pull over and write it down.

Chair Finnegan said you cannot read the current sign right now, but you can see that there is a sign.

Councilmember Dent asked what is the dense text?

Chair Finnegan said that is information about request.

Ms. Dang said usually what the sign would contain is something like it is a rezoning request, the name of the applicant, the address, the parcel number and the zoning district.

Commissioner Orndoff made a motion to recommend approval of the Ordinance amendment.

Commissioner Byrd seconded the motion.

Commissioner Orndoff added with the stipulation that this is done for a period of six months or a year to see if it works.

The Planning Commission rejected the proposed stipulation.

Commissioner Armstrong asked if the request was for the format and information on the slide.

Ms. Dang said this is not what you are approving. What you are approving is the text in the Ordinance. What I could offer is bringing back the draft sign text before we manufacture them so that we could get more input from the group if that makes you more comfortable.

Commissioner Washington asked about language access. Harrisonburg is a very diverse space. How do people who speak Arabic, Spanish or other languages access this information through this sign?

Ms. Dang said I do not have an answer to that.

Chair Finnegan said we are voting on the language, not the sign, but perhaps the signs could have translations in smaller text.

Councilmember Dent said the website itself, that we are pointing them to, could have links to the languages.

Commissioner Byrd said the main change is the type of action proposed, variance, SUP, etc. That is in the language. If people want all stuff to be still on the sign, that is the language of the amendment.

Chair Finnegan said we are voting on this red language and this blue language.

Ms. Dang said yes, and there is another component that is the last sentence in each of them are the same that says:

Neither the Commission's recommendation nor the City Council's decision on a land use action shall be invalid solely due to the failure to the removal of a posted sign or failure to post a sign.

The State code does not require the posting of signs. It is what our local ordinance requires. As Mr. Steere spoke earlier, he must have been involved in drafting the ordinance.

Commissioner Byrd clarified that the proposed signs would not include the details. It would be the pending action.

Commissioner Armstrong said it says the type posting. "The city shall determine the number of signs required, placement, and type of posting." Would that not be "type of posting"?

Ms. Dang said that had to do with the type of sign, not the content.

Commissioner Armstrong said but I think that is what Commissioner Byrd is saying. You are not going to print the content anymore, that is going to be online. This allows for that

latitude still, the type of posting.

Ms. Dang said we could always do more, but it sounds like Commissioner Byrd was asking if the group accepted including less information on the sign than what we are currently doing.

Commissioner Byrd said I was clarifying that the language is not going to have the details as the current signs has. If people are going to have an issue with that, it is something to keep in mind.

Commissioner Armstrong asked is that correct?

Ms. Dang said that is correct. In the draft language, the red text that is being stricken is the change proposed or the SUP proposed, and we are replacing it with a generic notice of a public hearing or pending City action.

Commissioner Orndoff said and you are adding the sentence at the bottom of each one. The rest of it is staying the same.

Commissioner Armstrong said I will not support.

Commissioner Washington said I like details. If it is a generic front, could you tape the details on the back?

Commissioner Armstrong said or it could be two slots. It does not have to be front and back. It could have generic on top and some detail on the bottom and you slide it in.

Ms. Dang asked is the sleeve waterproof and does it hold up? I do not know the answer to that. If you want to recommend amending staff's recommendation and revert back to the other language, we could move forward with the last sentence to each of them.

Chair Finnegan said we have a motion to recommend approval and a second. Is there an interest to make an amendment to the current motion?

Commissioner Armstrong said a proposed amendment would be to recapture this red language, take out the pending, and leave the rest of it the same.

Chair Finnegan asked would you support that?

Commissioner Armstrong said yes.

Commissioner Orndoff and Councilmember Dent said they would not support that.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong No

Commissioner Byrd Aye
 Councilmember Dent Aye
 Commissioner Orndoff Aye
 Commissioner Washington No
 Commissioner Whitten Aye
 Chair Finnegan Aye

Chair Finnegan realized the Planning Commission failed to open the public hearing, so he opened the public hearing and 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 called for a roll call vote.

Commissioner Armstrong No
 Commissioner Byrd Aye
 Councilmember Dent Aye
 Commissioner Orndoff Aye
 Commissioner Washington No
 Commissioner Whitten Aye
 Chair Finnegan Aye

The motion to recommend approval of the Ordinance amendment passed (5-2). The recommendation will move forward to City Council on January 10, 2023.

A motion was made by Orndoff, seconded by Byrd, that this PH-Zoning Ordinance be recommended to full council to the City Council, due back on 1/10/2023. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Finnegan, Orndoff, Byrd, Whitten and Dent

No: 2 - Armstrong and Washington

5. New Business - Other Items

None.

6. Unfinished Business

None.

7. Public Comment

None.

8. Report of Secretary & Committees

8.a. Proactive Code Enforcement (On Hold)

8.b. Rockingham County Planning Commission Liaison Report

Commissioner Orndoff said they considered three items. The first was a request to rezone 19.776 acres from RR-1 (Residential or Recreational) to A-2 C (General Agricultural with conditions) on Forest Hills Road at the end of Hensley Hollow Road. It was recommended for denial. The second was a request to rezone 589 Willow Rose Dr, McGaheysville from A-2 (General Agricultural) to R-3 C (General Residential with conditions). It was tabled. The third was a request to rezone 12941 Indian Trail Rd, Broadway from B-1 (General Business) to A-2 (General Agricultural). The property is located on the south side of N Valley Pike (Rt. 11) at the I-81 Interchange and was recommended for approval.

8.c. Board of Zoning Appeals Report (No December Meeting)**8.d. City Council Report**

Councilmember Dent said City Council approved the STR SUPs on Ott Street, Wine Drive, Smith Avenue. The SUP request to allow multi-family units on Smith Avenue was approved. The biggest thing was the Wilson Avenue request. I supported it and described why. We had some considerable discussion about the list of housing developments that we have approved. The rezoning on Wren Way was tabled by the applicant. The rezoning request for Dorval Road was approved.

9. Other Matters**9.a. Review Summary of next month's applications**

Ms. Dang said with tabling Peach Grove Avenue, we now have six items on the agenda. The dates are January 11 and January 17, 2023. If you want to have two meetings, I have a recommendation as to how to break that up, or we could proceed to having them all in one evening.

Chair Finnegan said we initially did this because of some long meetings that we had last year or last winter. I know that there are going to be a lot of comments on the HRHA request. It is already 10:30 p.m. tonight. I did not think that this meeting was going to go this long.

Ms. Dang suggested having items three and four, the Zoning Ordinance amendment for the R-7 district and the rezoning for the Bluestone Town Center to be on January 17th, and the other four items, including the Peach Grove Avenue, to be on the regular meeting date on January 11th.

Councilmember Dent asked does the Bluestone Town Center depend on a tight timeframe to get LIHTC (Low-Income Housing Tax Credit) applications in and will January 17th still be sufficient?

Ms. Dang said all of the items would still go to City Council at the first City Council meeting in February.

The Planning Commission consensus was to split the meeting into two meetings in January.

Commissioner Washington asked once the requests are approved for STRs, we do not have to continue to approve or deny them every time? Do you we have to through STRs every time they come up?

Ms. Dang said yes, they are site specific. We have the by-right Homestay ability and then the STR that exceed the four guests and allow for more than 90 days in a calendar year that guest can stay.

Chair Finnegan said the compromise regulation that we reached was the splitting of the by-right and the SUPs.

The Planning Commissioners indicated their availability for both January meetings and agreed to the agenda format recommended by staff.

10. Adjournment

The meeting adjourned at 10:27 p.m.

NOTE TO THE PUBLIC

Staff will be available at 4:00 p.m. on the Tuesday before the next Planning Commission meeting for those interested in going on a field trip to view the sites on the next agenda.

INTERPRETATION SERVICES

Language interpretation service in Spanish, Arabic and Kurdish is available for Planning Commission meetings. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least four (4) calendar days in advance of the meeting by contacting the City Clerk at (540) 432-7701 or by submitting a request online at: www.harrisonburgva.gov/interpreter-request-form

El servicio de intérpretes inglés-español está disponible para las reuniones públicas de la Comisión de Planificación. Para asegurar la disponibilidad de intérpretes, cualquier interesado deberá solicitar la presencia de un intérprete al menos cuatro (4) días calendarios antes de la reunión comunicándose con la Secretaría Municipal al (540) 432-7701 o por medio de la página por internet al:

<https://www.harrisonburgva.gov/interpreter-request-form>

NOTE TO THE PUBLIC

Residents/Media will be able to attend the meeting.

The Public can also view the meeting live on:

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

A phone line will also be live where residents 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

Residents also may provide comment prior to the meeting by visiting this page:
www.harrisonburgva.gov/agenda-comments