



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

December 3, 2021

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: *Consider a request from Devon Lane, LLC for a special use permit per Section 10-3-48.4(6) of the Zoning Ordinance within the R-3, Medium Density Residential District to allow multiple-family dwellings of up to twelve (12) units per building under conditions set forth in subsection 10-3-48.6(e) and such other conditions deemed necessary by City Council.*

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: November 10, 2021

Chair Finnegan read the request and asked staff to review.

Commissioner Baugh said that the Virginia State and Local Government Conflict of Interests Act requires that I make disclosure, to be recorded in the City records, in any matter in which I am prohibited by law from participating. Therefore, I make the following disclosures:

1. The transaction involved is the item taken up on the November 10, 2021 Harrisonburg Planning Commission Agenda as Item 4(a), a request for a special use permit.
2. My personal interest in this transaction relates to the ethical requirements to which I must adhere as a licensed member of the Virginia Bar.
3. I affirmatively state that I will not vote or in any manner act on behalf of the Planning Commission in this matter.

Commissioner Baugh then left Council Chambers.

Ms. Dang said that 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: Single-family detached dwellings; zoned R-3

- North: Across Foley Road, single-family detached and duplex dwellings; zoned R-3
- East: Single-family detached dwelling; zoned R-3
- South: Single-family detached, duplex, and multiple-family dwellings; zoned R-3
- West: Single-family dwelling; zoned R-3

The applicant is requesting a special use permit (SUP) per Section 10-3-48.4 (6) of the Zoning Ordinance (ZO) to allow multiple-family dwellings of up to 12 units per building on a +/- 1.06-acre site consisting of two parcels addressed as 716 and 722 Foley Road. If approved, the applicant desires to keep the two existing single-family detached dwellings on the site, to vacate the property line between the two parcels, and to add a three-story multiple-family building consisting of 11 efficiency dwellings.

In the past ten years, there have been several SUP requests, of the same nature, approved along Foley Road. Those requests have predominately been for the construction of new structures within new developments. The most recent request, however, was at 728 Foley Road, which is adjacent and to the west of the subject site, and was to change the use of an existing structure from a single-family detached dwelling to a multiple-family building consisting of four dwelling units. As part of the requirements for obtaining a SUP for multiple-family development in the R-3, Medium Density Residential District, an applicant must substantiate that they have met several conditions to justify the development. Those conditions outlined in Section 10-3-48.6 I of the ZO consist of the following:

1. “Existing multiple-family development, or land planned for multiple-family development according to the Land Use Guide, is located adjacent to, across the street from, or in close proximity to the proposed development;
2. The applicant has demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities:
 - currently serve the site; or
 - are planned to serve the site according to a city or state plan with reasonable expectation of construction within the timeframe of the need created by the development; or
 - will be provided by the applicant at the time of development; or
 - are not needed because of the circumstances of the proposal.
3. The applicant has demonstrated that the proposed multiple-family development’s design is compatible with adjacent existing and planned single-family, duplex and townhouse development. Compatibility may be achieved through architectural design, site planning, landscaping and/or other measures that ensure that views from adjacent single-family, duplex and townhouse development and public streets are not dominated by large

buildings, mechanical/electrical and utility equipment, service/refuse functions and parking lots or garages.

4. The applicant has shown that the site is environmentally suitable for multiple-family development. There shall be adequate area within the site, or the development shall be designed, to accommodate buildings, roads and parking areas with minimal impact on steep slopes and floodplains.”

Staff believes that condition #1 is met because there is existing and planned multiple-family development in close proximity to the proposed development.

With regard to condition #2, staff would typically expect for the applicant to construct street frontage improvements of curb, gutter, sidewalk, and any other necessary improvements, and to dedicate right-of-way or a public sidewalk easement at the time of development to meet the condition of adequate pedestrian facilities. The applicant, however, is seeking a waiver of such requirements and has compared the current request with the SUP request at 728 Foley Road (reviewed by Planning Commission in November 2020 and approved by City Council in December 2020), where staff determined that the circumstances of that specific proposal did not warrant such improvements. The staff report for 728 Foley Road stated:

“Specifically with regard to Section 10-3-48.6 (e)’s condition #2 as stated above, staff would typically expect for the applicant to construct street frontage improvements of curb, gutter, sidewalk, and any other necessary improvements at the time of development to meet the condition of adequate pedestrian facilities. The conversion of the existing structure into multi-family units rather than demolishing the existing building and constructing a new multi-family structure, and thus disturbing more property, however, brings into question whether the circumstances of the proposal negate the need for such improvements to be made as is allowed in the last bullet of condition #2. If the applicant demolished the existing structure and constructed a new multiple family dwelling structure, the scale of the project would likely require an engineered comprehensive site plan (ECSP), and therefore, frontage improvements would also be required. The current plan to convert the existing building would not necessitate an ECSP. If curb, gutter, and sidewalk were to be constructed, the existing fire hydrant in front of this property would likely need to be relocated, creating the need for more financial investments in design and construction. While staff contemplated whether the applicant must construct curb, gutter, and sidewalk along the frontage to meet the requirements of condition #2, and further debated whether a condition should be attached to the SUP to achieve the same, in this particular case, staff believes the circumstances of the proposal do not warrant such improvements.”

Furthermore, to limit the scale of development/redevelopment of 728 Foley Road, staff recommended the following condition which was approved with the SUP: “The SUP shall be limited to the existing structure and no more than four multiple family dwelling units.” In short, staff does not believe the circumstances at 728 Foley Road and the proposal on the subject site are equivalent. The subject proposal is adding a new building that will likely require an engineered comprehensive site plan (ECSP) for the construction of a new City-owned water main and fire hydrant to serve the building. Additionally, a formal Erosion and Sediment (E&S) control review

may also be required if the proposed building and parking areas disturb more than 10,000 square feet of land. Staff does not agree with the applicant that sidewalks on the opposite side of the street (Foley Road) meets condition #2 of Section 10-3-48.6 (e) as contended in the submitted application letter. To be clear, staff is comfortable not requiring the construction of curb and gutter with this proposed development because it can be difficult to piecemeal short sections of curb and gutter into an existing street with shoulder/ditch, but, as noted below, is recommending a condition requiring the applicant to construct sidewalk along the frontage of the property.

With regard to condition #3, as proposed, the two existing single-family detached dwellings will be kept. The applicant explained they plan for the proposed new building to share characteristics and be of similar scale to surrounding properties, including a multi-story, multiple-family building containing seven dwelling units at 721 Ridgeville Road. Staff believes that constraints of the site, due to property size, lot area requirements within the ZO for each dwelling unit, and required off-street parking, will control the size and scale of the proposed multiple-family building.

With regard to condition #4, the applicant has demonstrated in their submitted conceptual site layout that buildings, parking areas, and travelways can be accommodated on the site, and there are minimal impacts to steep slopes or floodplains to contend with.

The built environment of this neighborhood, consisting of properties along Foley Road and Ridgeville Lane, has changed over the past two decades from a neighborhood consisting of only single-family detached dwellings to now include duplexes, townhomes, and multiple family dwelling units. As proposed, the multiple-family building proposed within this application is consistent with the surrounding parcels.

Staff believes that the requested SUP is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of the special use permit to allow multiple-family dwellings on the subject parcel with the following conditions:

1. All newly constructed multiple-family units shall be efficiency, or one- or two-bedroom units.
2. Prior to issuance of any certificate of occupancy for multiple-family dwellings, the property owner shall construct a five-foot wide sidewalk and dedicate necessary public street right-of-way to at least 0.5-feet behind the sidewalk. (If necessary, the sidewalk could potentially be located within a sidewalk easement. This can be determined during the design phase of the project.) While not required to build the curb and gutter or to widen the public street, the property owner is responsible for engineering design to ensure that the sidewalk is constructed at the appropriate grade and location for the future construction of curb and gutter and street widening by the City. For engineering design, the future curb and gutter location shall be equidistant from the street centerline similar to what exists across the street, and there shall be a minimum two-foot grass strip between the back of curb and sidewalk.

3. The entrance at Foley Road to serve multiple-family building(s) on the site shall be no greater than 30 feet wide.
4. The special use shall be established, or any construction authorized shall be commenced and diligently pursued within five years from the approval date of the special use permit.

With regard to recommended condition #1, the applicant requested this condition to limit newly constructed multiple-family units to efficiency or one, or two-bedroom units. Staff supports and appreciates the idea to limit the number of bedrooms for the proposed multiple-family dwellings as it should help address the need for smaller dwelling units in the City. The City's 2021 Comprehensive Housing Assessment and Market Study (Housing Study), identifies this neighborhood as being within Market Type A, and describes that "Market Types A and C are areas with above median access to amenities but because Market Type A tends to be more built out than Market Type C (there are more home sales, which contributes to the Higher Market Activity score of Market Type A over Market Type C), priorities and policies that are appropriate to Market Type A areas include an emphasis on increasing density through zoning changes, infill development and housing rehabilitation to maintain the quality of housing." 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. Because smaller apartments are part of the solution for supportive housing, the location of these smaller units is critical to ensure that persons in need of services can easily access them via walking and public transit."

With regard to condition #3, the City's Design and Construction Standards Manual allows entrances serving multiple-family buildings to be up to 50 feet wide. However, staff does not believe a 50 feet wide entrance is appropriate in this context and therefore, staff recommends a condition that the entrance shall be no greater than 30 feet wide.

Lastly, with regard to condition #4, the applicant has requested that the City allow them five years from SUP approval to obtain any necessary land disturbing permit or building permits for the multiple-family buildings. Section 10-3-130 (c) of the ZO states that "[w]henver a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within twelve (12) months from the approval date of such permit." Staff is comfortable recommending an extension from 12 months to five years.

Chair Finnegan asked if there were any questions for staff and noted the arrival of Councilmember Dent.

Commissioner Whitten asked if Foley Road was on any fast track for improvement with Public Works.

Ms. Dang said that it is not.

Chair Finnegan asked what the enforcement mechanism is on the five year extension of the SUP. Is there a mechanism in place to follow up and ensure that this has been done in five years?

Ms. Dang said that in order to establish the use they would have to, at minimum, submit the building permit application. In this case, since it is proposed to be a multi-family apartment building of this scale, they are going to have to submit an engineered comprehensive site plan. Zoning is part of both of those reviews, and we would not give zoning approval if the SUP has expired. They would have to come back for a new SUP.

Commissioner Byrd asked if the building of the third building is what is triggering the sidewalk?

Ms. Dang said that the SUP, in the Zoning Ordinance, references the four conditions that are on page 2 of the staff report in Section 10-3-48.6 (e) which says that in order to approve this multi-family SUP, the applicant needs to demonstrate that they have met these conditions. Item number 2 states that they have “demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities.” There are no pedestrian facilities along their frontage right now. It is the desire to construct the third building and the need for this SUP that is triggering that requirement.

Councilmember Dent asked if there were sidewalks continuing along that side of Foley Road or only across the street.

Ms. Dang said that there are none presently. There are sidewalks along the frontage of The Angle development, now known as The Loop. There is a sidewalk in front of the property at the corner with Reservoir Street.

Councilmember Dent said that it would be an isolated sidewalk of 200 feet in length.

Ms. Dang said that is right. It would be isolated, but that is how we build the sidewalk network is in pieces like this. Eventually they will connect together.

Councilmember Dent said when I visited the site today, I saw that there was a downslope from this parking lot into the area where the new building would be. Behind that there is a huge tree. I hope they do not cut the tree down. I wonder if that change in grade makes any difference in the construction.

Ms. Dang said that the applicant is here this evening and can address that question.

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.

Frank Gordon came forward to speak to the request. Good evening, I am here on behalf of several LLCs which own property on this street, but currently only speaking on behalf of Devon Lane, LLC which is the applicant in this case. Staff has done a tremendous job in outlining what is intended. I appreciate that. I would like to acknowledge the generosity and kindness in answering any questions I had in reaching this point.

There is only one point on which we differ. That is whether or not I should build this sidewalk. Ms. Dang mentioned the differences between this project and the one on 728 Foley Road. The City did not obtain an easement or a dedication at all for that. To extend a sidewalk from this property up towards Angle Drive would require for that person to sell that property to you or taking through eminent domain. My recommendation at the time of public hearing was that you approve the project but that you get an easement, but that was not done. At the time that the sidewalk along the Foley Road frontage of The Angle was approved, normally you would require a sidewalk on the other part of that triangle (along Ridgeville Road), too, but that was waived for affordability reasons. I am sure that the developer appreciated that, although there is nothing about that property that is affordable from the perspective of the tenant. It is a nice property. I am glad that it is there, but it does not do anything to address the concerns that came out of the Housing Study.

Sometimes I think it is helpful to compare what I am proposing to what is a by right use of this property. For that I like to draw on my experience developing housing for the undergraduate population. For that, I would not need a SUP or having this otherwise very pleasant conversation. Instead, I would build four duplexes behind these houses, each with four bedrooms per side. This would represent 32 undergraduate students and would require only 16 parking spaces. I was thinking about the Housing Study and why there are so few efficiency units in Harrisonburg. There are a number of non-discretionary expenditures that push toward a higher number of units and away from efficiencies. A four-bedroom duplex unit requires 1,000 square feet of land per bedroom. An efficiency requires 3,000, so there is three times as much cost in land to build an efficiency under the current zoning law. The duplex requires a half a parking space per bedroom, while the requirement is one and a half per efficiency unit. The parking requirement is three times more for an efficiency. The comprehensive site plan fee for this project is higher than the comprehensive site plan fee for the four duplexes for the 32 undergraduate students. Many incentives are pushing towards building for these undergraduate students. I enjoy having properties which are rented to students. They are wonderful people, but I also recognize that they are not the only people who need a place to stay, so I was interested to see if this could work out. Interestingly, the base cost of water to this building, if I put it in on one meter, is per unit. A pensioner living in one of my efficiency units will pay more for water than an undergraduate student across the street in one of those larger units.

I am not an expert on affordable housing. The Urban Land Institute and the Department of Housing and Urban Development provides some excellent resources for people interested in studying that. I noticed that they are emphasizing increased density near public transportation, which this would represent. Also, very careful to expense. There is very little room to make a mistake in that area. The cost to live in a place is born by the people who live there. Part of my fiduciary duty for my potential future tenants is to examine this expense that you are requesting. Councilwoman Dent has pointed out that this sidewalk is not going to hook up to anything. There is sidewalk across the street and the two R-5 zonings which occurred towards Reservoir Street from that have committed to building sidewalks on them. Across the street the sidewalk will go down except the last 25 feet to Reservoir Street. I understand that they are considering a zoning change there which would extend it to the end.

The cost of the sidewalk at about \$15 per square foot is going to be \$15,000. The debt service on a \$15,000 for 11 efficiency units is going to be about the same as bus fare to and from work one

week out of the month every month, forever. I wonder if this is the place to go with that. My request was to not have a condition here. Instead of doing nothing, why do we not put a different condition on it. That condition would be that I grant the City an easement of the size needed to build the sidewalk and put in a curb and gutter when that day comes, but not commit to building the sidewalk. That would keep down the cost as this is a discretionary cost. Some of these other factors such as water service are not discretionary. This would be more than you got at 728 Foley Road where affordability is not the stated goal and would provide the necessary room without reducing the potential for a reduction in unit count. Ms. Dang mentioned the potential impact on unit count. It seems that the way it is stated “(i)f necessary, the sidewalk could potentially be located within a sidewalk easement.” I appreciate the nod to that possibility, but I would prefer clarity. I do not know how many units are sliced off by making a dedication until engineering and other stuff occurs. I do not want to run down that expensive pathway. This conversation cost almost \$500. I do not want to run down another engineering and surveying pathway if it is going to knock off one or two units from the building. That would be untenable. We would be back to the 32 undergraduates at that point. I want to do this project, but it has to be a viable project. I am asking for your consideration in that case. Obviously, the decision is up the City Council, but I would appreciate your recommendation that we take a middle ground to provide an easement for a sidewalk. I appreciate your patience in listening to me and will take any questions that you might have.

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

Commissioner Whitten said that she does not see why we could not consider making that a project that happens all at one time. I think it will fit together much better anyway. This is a piecemeal approach.

Mr. Gordon said that in response to Councilwoman Dent’s question regarding the tree, any tree that can be preserved will be preserved. In the front of 716 Foley Road, we voluntarily installed a stormwater management mitigation project in cooperation with the Department of Environmental Conservation which is a rain garden which absorbs the rainwater off the front right half of that roof. It was a fun project. We did not have to do it. It was an opportunity to learn about that and reflects our interest in and dedication to environmental stewardship.

Chair Finnegan asked if the \$15,000 sidewalk includes factors it has to be made of concrete, it has to be...

Mr. Gordon said that with the supply chain issues that we are currently facing, a good rule of thumb is somewhere between \$12 and \$15 per square foot. The sidewalk they are asking for is five feet wide and 200 feet long, that is 1,000 square feet. The \$15,000 assumes that it is a sidewalk. I feel that they would want a concrete sidewalk. In addition, that is going to produce further stormwater runoff. Under the current method of using concrete, it is greenhouse gas emitter in its production.

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

Chair Finnegan said that the applicant raises some relevant and interesting issues that we need to address. I do not believe that we have to sacrifice affordability for walkability. I do not think that has to be an either-or choice. Although, if there are regulations that make that an either-or choice, that is something we need to address that is bigger than this request. I think that often times regressive regulations push newer buildings to be built and that is not affordable at market rates. There are some interesting issues at play here.

Commissioner Whitten said that his (Mr. Gordon's) points are well made. We are frequently told by developers that "by right I can do this" or "it could be a lot worse." If you let me do what I would like to do, I will give you some greenspace and we will make a deal. Often, we do that and often it makes sense. When you look at it in these terms, it could be one thing but they would like to build affordable housing, which we say is what we want, then we can afford to make a deal. I have lived and died needing sidewalks in Harrisonburg because I believe that. In this case, I am not feeling that strongly about that 200 feet of sidewalk.

Chair Finnegan said that one of the concerns we often have here is whether we are setting a precedent. If we give a pass to this one, then the next person says that we gave a pass to that the last time. If that is indeed the direction that this body wants to go, then we would have to address condition number two. As far as the other conditions go, I have no objection to them. It sounds like we will be talking about condition number two.

Councilmember Dent asked how does the easement work if it is not immediate construction?

Ms. Dang said that the proposed future curb and gutter would have to be within a dedicated public right of way. If the existing property line is not behind the curb, then it will need to be moved. The sidewalk, two-foot grass strip, and the half foot behind the sidewalk is what can potentially be located within the easement. The half foot behind the sidewalk is needed for future maintenance, so they have a spot to put their forms without encroaching on the private property.

Councilmember Dent said that still does not quite understand about the future curb and gutter. It might need to be constructed at some point in the future and that determines the location of how far the sidewalk is set back. Is that right?

Ms. Dang said that is correct. There is a centerline of the street. Across the street it has been determined what that centerline is, where the curb and gutter, the face of the curb, is across the street. We would expect from that centerline the same distance on this side for where the gutter pan and the face of the curb would begin. That establishes that location. Once you get to the curb, there is a two-foot grass strip, a five-foot wide sidewalk and that half foot of maintenance area. The City needs to have the curb and gutter within the public right of way. Public Works would be willing to put the rest of that area under a public sidewalk easement. That land is owned by the property owner, but they would be granting the City permission for the public to use that as a sidewalk, as well as permission to do maintenance of that public sidewalk in the future.

Councilmember Dent said that then the easement determines where the sidewalk would be in the future without requiring it to be built now.

Ms. Dang said that it is where the sidewalk has to be placed in the future based on the measurements of the centerline to the curb and gutter, to the two foot grass strip, to the sidewalk. Then we would determine the area where the easement would be located. The expectation would be for it to be dedicated before we issue a certificate of occupancy.

Chair Finnegan asked if the regulations for curb and gutter and sidewalk dictated by Federal or State law or within local purview?

Ms. Dang said that it is a combination of engineering best practices and materials used. She believes that ADA requires 48 inches width for sidewalk and general practice is five feet. Curb and gutter is part of engineering design for drainage. Our locality feels that most locations it is best to handle drainage with curb and gutter in an urban environment.

Chair Finnegan said that is beyond the scope of this request, but I was curious as to where those regulations come from because it has an impact on cost.

Councilmember Dent said that she was surprised and slightly disturbed to hear that an efficiency requires three times the land and the parking.

Mr. Gordon said that it requires three times the land per bedroom. Duplexes are 8,000 square feet for an eight bedroom, which turns out to be 1,000 square feet per bedroom. An efficiency requires 3,000 per efficiency unit. It goes back to being defined by unit, so a duplex the 8,000 square feet required for a duplex ends up as 1,000 square feet per bedroom.

Councilmember Dent said that seems like an unfortunate, unintended effect of the Zoning Ordinance.

Mr. Fletcher said that it depends on how many bedrooms you intend to design in each unit. In the example that he gave, the 1,000 per bedroom is the ratio. If it is a three bedroom unit, then the ratio is different. If it is two bedrooms, the ratio is different. It is just that specific example.

Councilmember Dent said that the unfortunate side effect is that it pushes towards the four bedroom units that are typically designed for students when we know that what we need are smaller apartments for singles and couples.

Mr. Fletcher said that there are some indirect situations, unintended situations that can occur.

Commissioner Whitten said it affects affordability. How much rent are they paying for one bedroom? They are paying a lot more than an affordable apartment would be.

Commissioner Byrd said that he remembers the last time they discussed a property on Foley Road. We were having a lot of discussion about sidewalk construction and should we allow a waiver to postpone construction. It sounds like that is what the applicant is focused on.

Chair Finnegan asked if he was talking about the last applicant.

Commissioner Byrd said yes. We were talking about concerns about setting a precedent. It depends on what we were saying we were doing something for. Clearly, on the other side of the road it would be harder to argue against piecemeal sidewalk because there are already two sections. On this side of the road, there is sidewalk on either end, but there is nothing in the middle. This would begin that. I would like to be consistent. If they do not need to build it right now, I would like to be practical. A delayed condition is reasonable to me.

Chair Finnegan said that a delayed condition is how number two is currently worded. In the end they have up to five years. Is that what you are talking about?

Commissioner Byrd said no. If they had a sidewalk easement, they would mention that. The five year thing is for the whole SUP. If they do not build it, then all this is for nothing.

Commissioner Armstrong said that there are two precedent issues. One of them is cost as a reason to waive to some of these values and requirements such as pedestrian accessibility and sidewalks. The other is precedent that there is sidewalk on the other side. It does not appear to be functionally limiting pedestrian accessibility, whether or not this piece goes in. There are two different precedents there. I think that the precedent arguing that cost is a reason to waive this requirement is a bad precedent. That is never going to go away. That precedent is going to apply forever to all projects whether they are low cost units or not. That is not how this decision should be made. That is going to set a strong precedent going forward that will apply to everything. I do think that, having been to the site and being a strong supporter of sidewalks and a walker, it did not seem to be inhibiting the walkability of that street. Certainly, an emphasis can be made that if there are any opportunities on the opposite side to increase that continuity, that would be desirable.

Chair Finnegan said, to clarify, would you be in favor of changing condition number two?

Commissioner Armstrong said I would, but not because of the cost. That is not a good reason to it.

Commissioner Byrd said that I was not arguing because of the cost. I was thinking about the continuity of the street. One side already has a lot of sidewalk. On the other side, we are just starting the process. That was my concern.

Chair Finnegan said that these issues have come up when we have discussed alley closures in the past. No two alley closures are the same. There are different conditions. We have granted alley closures for some reasons and denied alley closures for other reasons.

Councilmember Dent said she likes the idea of condition number two to be a sidewalk easement for future construction.

Commissioner Whitten added dedicating the property.

Chair Finnegan said that would be dedicating the easement?

Mr. Gordon said to not confuse dedication and easement. I would have a deeded easement. Dedication is that it is your land. Easement means that I still get to use it to build units.

Ms. Dang said that she wrote down some language based on the discussions.

Prior to issuance of any certificate of occupancy for multiple-family dwellings, the property owner shall dedicate necessary public street right-of-way to encompass curb and gutter and deed a public sidewalk easement to include the two foot wide grass strip, a five foot wide sidewalk, and 0.5-ft behind the sidewalk. The future curb and gutter location shall be equidistant from the street centerline similar to what exists across the street.

Chair Finnegan asked if the commissioners were in agreement with the new language.

Commissioner Byrd moved to recommend approval of the request with the conditions, as amended.

Commissioner Whitten seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Abstained
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the SUP request passed (6-0). The recommendation will move forward to City Council on December 14, 2021.

Commissioner Baugh returned to Council Chambers.