



# City of Harrisonburg

City Hall  
409 South Main Street  
Harrisonburg, VA 22801

## Meeting Minutes - Final Planning Commission

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Wednesday, August 14, 2024

6:00 PM

Council Chambers

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### 1. Call To Order

### 2. Roll Call/Determination of Quorum

**Present** 6 - Brent Finnegan, Adriel Byrd, Richard Baugh, Vice-Mayor Laura Dent, Heja Alsindi, and Kate Nardi

**Absent** 1 - Valerie Washington

### 3. Approval of Minutes

#### 3.a. Minutes from the June 12, 2024 Planning Commission Meeting

Chair Finnegan asked if there were any corrections, comments or a motion regarding the June 12, 2024, Planning Commission minutes.

Vice Chair Byrd moved to approve the June 12, 2024, Planning Commission meeting minutes.

Commissioner Baugh seconded the motion.

The motion to approve the June 12, 2024, Planning Commission meeting minutes passed (5-0) with Vice Mayor Dent abstaining.

**A motion was made by Byrd, seconded by Baugh, that this Minutes be approved. The motion carried by a voice vote.**

### 4. New Business - Public Hearings

#### 4.a. Consider a request from Paulin Mupenda Makungu and Beni Ndjoni Tamnwe for a special use permit to allow a major family day home at 1561 Gilmer Circle

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said major family day home (MFDH) is defined in the Zoning Ordinance as: *“A child day care program offered in the residence of the provider or the home of any of the children in care for five (5) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.”* MFDHs are permitted only by special use permit (SUP) in all residential districts, except the R-5 district, where they are not permitted.

When considering a MFDH it is helpful to know how it differs from a minor family day home. A minor family day home is allowed by right within all residential districts and is defined as: *“A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through four (4) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single family shall be imposed on the day home.”*

The applicant has been advised by staff to work with the Virginia Department of Education (VDOE) for licensure requirements. The VDOE regulates licensing standards of family day homes and ensures that the facility and the operation of the MFDH are favorable to the welfare of the children in care. Approval and licensing from the VDOE require an applicant to maintain compliance with local ordinances and laws. VDOE requires applicants to submit a form signed by the locality’s Zoning Administrator to verify that the use is allowed at the requested location. Approval of the SUP would allow for the applicant to operate as a MFDH at the subject location with the proper licensing from the VDOE.

The applicant is requesting a special use permit (SUP) per Section 10-3-34(6) of the Zoning Ordinance to allow a major family day home (MFDH) within the R-1 District. The +/- 16,140-square foot property is addressed as 1561 Gilmer Circle and is identified as tax map parcel 91-L-24.

The applicant is planning to care for a up to 10 children and to operate Monday through Friday from 6:00 am to 5:00 pm. Staff is not recommending conditions on the hours of operation or facility schedule, and therefore, if the request is approved as submitted, the hours of operation, facility schedule, and number of children in their care may change at times, up to 12 children.

#### *Land Use*

The Comprehensive Plan designates this site as Low Density Residential and states:

These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low-density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

#### *Transportation and Traffic*

A traffic impact analysis (TIA) was not required for the SUP request.

#### *Public Water and Sanitary Sewer*

Staff has no concerns with the special use permit as it relates to water and sewer matters.

#### *Recommendation*

Staff believes the intended MFDH use should have little impact on the surrounding neighborhood and recommends approval of the SUP request with no conditions.

Chari Finnegan said just to clarify, when we were on the site tour yesterday, we saw the blue zone parking permits. There is a two-car driveway that might be big enough for two cars?

Ms. Rupkey said for this site, yes, they could fit cars and there is also a garage that they currently store a vehicle in as well.

Chair Finnegan said so to get cars in and out of there it would be using the driveway because people cannot park on the street. And the applicant is aware of that?

Ms. Rupkey said yes, I talked to him today.

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.

Paulin Mupenda Makungu, the applicant, came forward to speak to the request. He said I have a strong accent. French is my everyday language. I am a production supervisor for Cargill. I requested an application for my wife because I do not want my wife to work anymore, I want her to stay home. That is why we submitted the application to see if we can get approved for five or six kids for daycare. Her and my mom are in the house, it is why we submitted the application, to see if we can get that. Before we came here, we talked to our neighbors and we informed everyone around to let them know that we submitted an application for a daycare. We think that everybody we saw around, they 100% agree with that. We went to a couple of houses, we knocked on the door, nobody opened the door, but most of the people for our street we talked to them, we explained to them [the request] and they said they are okay with it.

Vice Mayor Dent asked are there children in your neighborhood who you imagine would be children that you would watch in your daycare?

Mr. Makungu said the first thing you want to submit a request for permit. After that, we found out how we can get kids. We do not have any kids yet. We want to get the permit first and then after that we are going to be in contact with the Department of Education. After we get our permit, we can start finding kids, but we do not have kids yet. We want to make sure everything is approved with the government and then we can get the kids.

Chair Finnegan said we did receive some comments, concerns about parking and traffic in and out of there. Do you have any concerns about...people dropping off children can use the driveway but because it is a permit parking zone I guess you can park in the streets but the people dropping off the children would not be able to park on the street. Do you think that would present a problem?

Mr. Makungu said I think in my house, as you can see in the picture, I have big garage that can fit two cars inside, my car and my wife's car. Outside, when a visitor coming to see us, they can park like five cars. I already talked to all my neighbors because the first neighbor is the teacher of my daughter and he agreed. My right-side neighbor, I talked to her, and she said sometimes people can make traffic they say it is okay. In front of my house, five cars can park. They can do all traffic in front of my house. I talk to my neighbors, and they agree. They said it is okay, we do not have any problem with it.

Chair Finnegan asked if there was anyone in the room or on the phone wishing to speak to the request.

Barbara Keppel, a resident at 1510 Gilmer Circle, came forward to speak to the request. She said I have been working with Meg as a result of this request. [This request] increases a tremendous amount of traffic into our little neighborhood and if you have been into that neighborhood that would be very congested. It would be like adding 12 additional houses in that

small little circle with people trying to get in and out. Those are my concerns, the traffic and the safety. I am out there every morning and every evening walking as well as the rest of our neighbors.

Chair Finnegan 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 Nardi said is it correct from the description that City staff has given that this designation can accommodate 5 to 12 children?

Ms. Rupkey said yes.

Commissioner Nardi said what I am getting at is the difference between five children and twelve children in terms of parking and traffic and safety is something I am concerned about but at the same time I understand the need for daycare. Just as a comment, I am balancing those two things as I confirmed how many children this designation allows.

Ms. Dang said if I may add that the designation would allow five to twelve children but if the number of children is of concern to the Planning Commission you all could recommend a condition that reduces the maximum.

Chair Finnegan said because this is a special use permit and not a rezoning?

Ms. Dang said that is correct.

Mr. Fletcher said and staff cannot speak to this, but I just want to acknowledge that the Department of Education has a system that I am not versed in about the number of children that can be provided by the provider based upon age, number of people caring for children. I cannot speak to what that is, but there is a system that the Department of Education regulated.

Commissioner Baugh said this system got put in place around 35 years ago but essentially what it is there are three levels to the system historically, and this is level two. It has taken this long for us to even see the trickle of applications because what has tended to happen was that people went into one of the other two categories. The five is sort of an upper limit of what you can just do essentially being unregulated.

Mr. Fletcher clarified that you could have four children with then by-right ability.

Commissioner Baugh said yes, four that is right. If you go over twelve you have to be a fully licensed accredited full blown regulatory process. This was the status that was created to have an interim where they basically told all of the local governments you cannot be more restrictive of this than a special use permit type item, you have to generally have some [unintelligible]. It is kind of an in between, you are not as unregulated as you are with four kids, but you do not have to go

through all the full-blown separate building and everything. Historically, there were almost none of these because everybody looked at it and said I am either going to stay under the threshold to be unregulated or I am going to a full center. We do not have a ton of these. We have probably slowly seen more over time. Staff could speak better as to the exact of how many we have in town. This is what this is somebody who has said they want to go for that middle ground. It is the regulatory system that creates the five to twelve.

Mr. Fletcher said in fact, the state dropped the number. It used to be over five and they dropped the unregulated number down to four. You can care for one to four children in the first category, and they changed the regulation and said now it is five to twelve and it used to be above five.. What I have observed over the years and what I have learned from applicants coming in, the younger the children, the more adults are needed. I never really versed myself well in that but that is what I have observed and learned from applicants over the years.

Chair Finnegan said that is instructive. Do we have an estimate or does staff know how many major family day homes [we have in the City]?

Mr. Fletcher said if I had to guess less than 10, maybe 10.

Chair Finnegan said I know that it has come up a few times.

Vice Mayor Dent said major daycare home is for children under the age of 13, is there a minimum age? If it is infants that is a different standard for how many people.

Commissioner Baugh said I do not remember what it is, but it is considerably more restrictive if you are talking about newborns and infants.

Vice Mayor Dent said it says that the applicant has been advised by staff to work with the Virginia Department of Education for licensure requirements. Licensure might require a minimum age.

Ms. Dang said as the applicant had explained they were seeking to get a special use permit first because the Virginia Department of Education will not issue the license without zoning approval. They will go through those steps with them.

Vice Chair Byrd said a citizen, a resident in Harrisonburg, has concern about an active special use permit, what department do they go to?

Ms. Dang said Community Development.

Chair Finnegan said I just wanted to enter this into the discussion that during the ARPA [American Rescue Plan Act] discussions that were had that ICAD [Institute for Constructive Advocacy and Dialogue] was doing in 2022 there were more than 3,000 people in Harrisonburg who engaged with the process to kind of identify the needs in the City. Accessible childcare for

working families was one of the top three needs identified by folks in that ARPA process. I want to keep that in mind as we are having this discussion too, this is something the City has a real need for. I know of plenty of families in Harrisonburg that are having a hard time getting their child into daycare.

Vice Chair Byrd said I am in favor of this special use permit. Even if they were able to get to the maximum, it is child daycare which means there are no cars being parked there it is more of cars coming there picking up their kids. So, there is a traffic thing the neighborhood needs to be aware of it and keeps an eye on it. If it does become a nuisance, then they know who to report to about that. Outside of that, taking care of children in a formal manor by classifying themselves under that puts them under other laws and other governmental bodies that they have to answer to. Those are the reasons why I would be in favor of this.

Chair Finnegan said any other thoughts or motions on this? Is there an appetite to put, as staff has mentioned, there is a potential middle ground here to approving it as submitted and putting suggested conditions on such as capping it at ten instead of twelve. Is that something we want to do?

Vice Chair Byrd said I have not heard any ideas; I would like to make a motion to recommend approval of the special use permit as submitted by the applicant.

Vice Mayor Dent seconded the motion.

Vice Mayor Dent said to Chair Finnegan's remark, affordable accessible childcare is one of our top priorities in the City. The reason I asked if you have neighborhood children is because I really like the model of in neighborhood daycare so that the burden does not fall on the much steeper climb of setting up whole childcare facilities. The more we can have distributed childcare in the neighborhood, the better. As for the traffic, I see that as a minor inconvenience to a few people compared to a major need for a lot of people.

Commissioner Baugh said I think I have voted for everyone of these that have come up. I think that we mentioned yesterday we actually drove by the one time we ever had one that we were probably going to not approve, staff was going to recommend against it. Given where that property is located relative to some major roads, that was the driver on that and that applicant actually pulled the application so it never actually came to a vote. I think we have approved every one that has come up. We have had some that have had more opposition to it than this. This is a special use permit item so if it starts to create a problem, we can always go back and look at it. To my knowledge, there has been a lot of concerns about things, but we never had one where anybody ever filed a complaint. We had one that we agonized over and it was because it was located very close to a fairly major road, the opposite of this. They actually reconfigured their driveway. The other thing I would say from experience a lot of times, not just with things like this, I understand when you fear the worst you start saying if you can have twelve kids there and they are all from different families and they all showed up at one time and you look at it...if it is actually

causing a problem we can revisit it but it does not really happen because people have different schedules and come at different times. It is sort of unrelated but in a way it sort of is not I am reminded of some discussions that the County was having about these major storage units. One of the things that was put forward was look at the number of units and when all these people show up at the same time to get their things it is going to change the character. It is like, have you ever seen one of those? They are the most desolate looking things in the world because you never have everyone show up.

Ms. Rupkey said the condition that are on some special use permits about recalling it if it becomes a nuisance is not conditioned on this special use permit.

Commissioner Baugh said I will defer to Mr. Russ. There has always been a debate about whether we [include that]. My sense has been that we put that on there for ones where we kind of want notice on things. The nature of a special use permit is once you determine the property owner is not living up to the obligations you can look at it.

Mr. Russ said just to be safe we typically we have to include it on the list of conditions if any concerns at all.

Vice Chair Byrd said if the commissioners are concerned about that, we can easily vote down this motion, I will just make another motion that has the condition on it.

Chair Finnegan said can we do a friendly amendment to this?

Vice Chair Byrd said I will take a friendly amendment to add the condition.

Ms. Rupkey said if in the opinion of Planning Commission or City Council the use becomes a nuisance, the special use permit can be recalled for further review which could lead to the need for additional conditions, restrictions, or revocation of the permit.

Vice Chair Byrd said therefore the motion would change to actually add that condition?

Chair Finnegan said are we okay with that?

Vice Mayor Dent seconded the amended motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye

Chair Finnegan                      Aye

The motion to recommend approval of the special use permit with suggest conditions passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

**This PH-Special Use Permit was recommended to the City Council due back on 9/10/2024**

**Yes:** 6 - Finnegan, Byrd, Baugh, Vice-Mayor Dent, Alsindi and Nardi

**No:** 0

**Absent:** 1 - Washington

**4.b.** Consider a request from Concepcion Ortiz Vasquez to rezone 895 North Liberty Street

*Please refer to attachment 4 in Legistar for the full minutes excerpt.*

**A motion was made by Byrd, seconded by Baugh, that this PH-Rezoning be tabled. The motion carried with a recorded roll call vote taken as follows:**

**Yes:** 6 - Finnegan, Byrd, Baugh, Vice-Mayor Dent, Alsindi and Nardi

**No:** 0

**Absent:** 1 - Washington

**4.c.** Consider Zoning Ordinance amendment to modify regulations associated with the validity period of special use permits

Chair Finnegan read the request and asked staff to review.

Ms. Dang said during its 2024 Regular Session, the General Assembly passed, and the Governor approved HB 650, which specifies that in the case of a special use permit (SUP) for residential and electrical generation projects, the period of validity shall be at least three years. For more information, visit Virginia’s Legislative Information System (LIS) - 2024 Session -HB 650 Zoning; residential and electrical generation projects; period of validity at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+HB650>

Within Harrisonburg's Zoning Ordinance (ZO), each zoning district’s regulations identify uses that are allowed by right and uses that are allowed by SUP. Uses allowed by SUP are considered to have a potentially greater impact on neighboring properties or the public than those allowed by right in the district. The potential impacts warrant a case-by-case review and can be addressed through conditions.

Section 10-3-130 (c) of the City’s Zoning Ordinance states that:

*“Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced*



*and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within twelve (12) months from the approval date of such permit.”*

This means that unless City Council determines a longer time period, the applicant must continue to demonstrate diligent pursuit of the project starting within 12 months of City Council approval of the SUP. Diligent pursuit can be demonstrated with submittals, that include but are not limited to a preliminary plat, a preliminary fire review, a preliminary engineering report, an engineered comprehensive site plan submittal, or an application for a building permit. If staff determines that an SUP has expired, the property owner wishing to restart a project that required an SUP would have to reapply for SUP approval, which requires new public hearings at Planning Commission and City Council.

Note that due to Virginia Code Section 15.2-2209.1, which was first adopted in 2009 during the Great Recession, and now Virginia Code Section 15.2-2209.1:1, which was adopted in 2020 during the COVID-19 pandemic, SUPs that were approved within certain dates received an extension and may still be valid after the typical 12-month period.

Staff is proposing to amend the Zoning Ordinance (ZO) to be consistent with State Code. The following is the proposed amendment to ZO Section 10-3-130 (c):

Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within thirty-six (36) months from the approval date for residential projects and within twelve (12) months from the approval date for all other projects. ~~of such permit.~~

While State Code requires SUP validity for at least 36-months for both residential and solar projects, staff has only proposed amending the ZO to address residential SUPs. This is because there are no solar-related SUPs available in any zoning district. Attached herein is a Zoning Determination dated November 6, 2023, which describes zoning regulations effecting solar photovoltaic (PV) installations, specifically describing where solar PV is allowed by-right as utility-scale and by-right as accessory uses.

Examples of SUPs that might be applicable to residential projects that would receive the 36-month approval time period include, but are not limited to:

- In all zoning districts - Reducing required parking areas.
- In all zoning districts - Walls and fences greater than the height otherwise permitted.
- In all zoning districts - Recovery residences that have more than eight adults and any number of minor dependents of those residents.
- In R-5 - Multiple-family dwellings of more than 12 units per building.
- In R-5 - Multiple-family buildings greater than four stories and/or 52 feet in height.
- In R-8 - Reduced required side yard setbacks to zero (0) feet, when single family

detached dwellings or duplexes meet certain National Fire Protection Association requirements or exterior walls meet certain standards.

- In B-2 - Multiple-family dwellings and/or mixed use buildings.

The 36-month minimum period of validity would apply only to SUPs for residential projects approved on or after July 1, 2024, which is the effective date of HB 650.

Staff recommends approval of the Zoning Ordinance amendment.

Chair Finnegan asked if there any questions for staff.

Commissioner Baugh said now I am being a legal nerd because I have no idea whether they really thought about this in Richmond but my assumption would be for a mixed-use proposal that had a residential component of any kind, that would be considered residential.

Mr. Russ said that frustrated us as well. Residential project is not a defined term. We are thinking that it is any sort of proposal that comes before this body and City Council that has a residential component.

Chair Finnegan said similar to the one we heard recently across from the wine bar that has business on the bottom and residential on top, it is residential.

Chair Finnegan asked if there were any more questions for staff. 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 Nardi said I move to approve staff’s recommendation of 36 months from the approval dates for residential projects.

Vice Chair Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

**A motion was made by Nardi, seconded by Byrd, that this PH-Zoning Ordinance be recommended to full council to the City Council, due back on 9/10/2024. The motion failed with a recorded roll call vote taken as follows:**

**Yes:** 6 - Finnegan, Byrd, Baugh, Vice-Mayor Dent, Alsindi and Nardi

**No:** 0

**Absent:** 1 - Washington

## 5. New Business - Other Items

- 5.a.** Consider a request from Everence Foundation Unique Assets LLC to preliminarily subdivide 210 Mount Clinton Pike

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in July 2018, City Council approved a rezoning from B-2C to M-1C for a +/- 19-acre site that included the +/- 6.402-acre parcel that the applicant is now requesting to preliminarily subdivide. During the 2018 rezoning, the applicant proffered to dedicate right-of-way along Mount Clinton Pike, Acorn Drive, and North Liberty Street. The proffers were fulfilled and recorded in deed book 5039 page 747.

The applicant is requesting to preliminarily subdivide a +/- 6.402-acre parcel addressed as 210 Mount Clinton Pike (tax map number 45-D-2). The purpose of the subdivision is to create smaller lots to sell for future development.

The property division is considered a major subdivision and requires preliminary plat approval, because the original tract of land is larger than five acres; therefore, it exceeds the requirements for administrative review as a minor subdivision and must be reviewed by Planning Commission. No variances are being requested; therefore, no action is required by City Council.

### *Land Use*

The subject property is currently zoned M-1, General Industrial District and is designated in the Comprehensive Plan as Industrial, which states that:

“These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. They include the major existing and future employment areas of the City.”

### *Transportation and Traffic*

The Determination of Need for a Traffic Impact Analysis (TIA) form (“TIA determination form”) for the proposed preliminary plat is attached. The TIA determination form indicated that the project will not generate 100 or more peak hour trips, which is the threshold for staff to require a TIA. Therefore, a TIA was not required.

Staff recommended the applicant consider dedicating a private access easement to Parcel “A.” At this time, the applicant is unsure of the proposed use of the property and plans to dedicate an access easement during the Engineered Comprehensive Site Plan phase of the project.

### *Public Water and Sanitary Sewer*

As required, all lots would be served by public water and public sanitary sewer. The preliminary plat illustrates where water and sanitary sewer lines would be provided so that each new lot

would have access to public water and sewer.

*Recommendation*

Staff recommends Planning Commission approve the preliminary subdivision plat of 210 Mount Clinton Pike.

Chair Finnegan asked if there any questions for staff. This is not a public hearing but if the applicant is here and would like to add anything about this request. This would also be an opportunity for us to ask the applicant any questions that we have.

Daniel Hansen from Balzer and Associates, the applicant’s representative, came forward to speak to the request. Mr. Hansen said I think Meg pretty much summed it up, I do not really have a whole lot to add but I am certainly here to answer any questions or comments you all might have to move forward.

Commissioner Baugh said I move approval of the preliminary plat as presented.

Commissioner Nardi seconded the motion.

Chair Finnegan called for a roll call vote.

- Commissioner Nardi           Aye
- Commissioner Baugh        Aye
- Vice Chair Byrd            Aye
- Vice Mayor Dent            Aye
- Commissioner Alsindi       Aye
- Chair Finnegan              Aye

The motion to approve the preliminary plat request passed (6-0).

**A motion was made by Baugh, seconded by Nardi, that this Action Item be approved. The motion carried with a recorded roll call vote taken as follows:**

**Yes:** 6 - Finnegan, Byrd, Baugh, Vice-Mayor Dent, Alsindi and Nardi

**No:** 0

**Absent:** 1 - Washington

- 5.b.** Consider a request from MILA LLC for the City of Harrisonburg to provide water service onto property located at tax map number 108-A-29 within Rockingham County (Granite Farm)

Chair Finnegan read the request and asked staff to review.

Ms. Dang said individuals owning property located outside the City of Harrisonburg may request to connect to the City’s water and sewer system. Per Section 7-2-4 (b) of the City Code, connection requests for all uses located outside City limits, other than residential uses involving fewer than ten units, shall be reviewed by Planning Commission and then forwarded to City Council for final approval or denial. This request is for a non-residential connection; thus, Planning

Commission review and City Council approval is required.

The Rockingham County portion of this development received City Council approval on April 27, 2004 for City public utilities (water and sanitary sewer) for a then proposed development of 285 single-family residential lots. The subject property was part of a rezoning approved by the County Board of Supervisors on October 25, 2006 from A2 to R3-Conditional. A copy of the 2006 Approved Rockingham County rezoning proffers is attached.

While the County's 2006 rezoning remains valid, the City's approval of the 2004 Public Utility Application approval is no longer valid and the property owner is required to seek new approvals for City public utilities before they can receive City services.

The Granite Farm project proposes up to 225 single-family detached units on approximately 87.79-acres located in Rockingham County and 4.16-acres within the City of Harrisonburg. (When the property was rezoned in 2006, the applicant proposed 285 units; when the public utility application was first submitted in 2022, the applicant proposed 242 single-family detached dwelling units with some additional units in the City of Harrisonburg. Since that time, the applicant is now proposing up to 225 single-family detached units all in Rockingham County.) The development is located north of West Market Street (US Route 33), east of Switchboard Road, and west of Brickstone Court.

#### *Water and Sanitary Sewer*

In 2022, at the request of the Department of Public Utilities, the applicant prepared a sanitary sewer analysis that evaluated the existing sanitary sewer system and the proposed Granite Farm project. The purpose of the analysis was to model the addition of proposed flows from the project on the existing downstream sanitary sewer system. The analysis determined that Granite Farms would cause 1,999 feet of sanitary sewer lines, which are scheduled for replacement around 2060, to need upgraded sooner to coincide with the buildout of the development. An additional 252 feet of sanitary sewer lines will be added to the replacement schedule to coincide with the buildout of the development, and the expedited schedule would forego about 50-percent of the useful life of existing pipe. Through the Infrastructure Interconnection Agreement (attached herein), the applicant has agreed they must obtain approval of construction drawings for the sanitary sewer upgrades from the Department of Public Utilities prior to receiving approval of the engineered site plan from Rockingham County (agreement item #6) and to construct and dedicate to the City all offsite sanitary sewer improvements identified in agreement item #6 (agreement item #7). Agreement item #7 also allows the possibility for the Director of Public Utilities to approve share funding, schedule of payments, and substantial completion for partial improvement at the Director's discretion. At this time, the applicant has indicated they are willing to pay for and complete all engineering and construction necessary.

Additionally, water main extensions into the development will be installed by the applicant (agreement item #4) and the applicant will provide a 30-foot-wide public waterline easement as

generally depicted in Exhibit A (agreement item #5).

#### *Traffic and Transportation*

A traffic impact analysis (TIA) was accepted by the Department of Public Works on April 23, 2024. The Infrastructure Interconnection Agreement provides the necessary mitigations to address the development's impact on existing City streets. Vehicular access to the site will be provided by an extension of Shenstone Drive and Stonechris Drive (both of which are existing public City streets) and a connection to Switchboard Road located in Rockingham County. In addition, the development will include a street stub and shared use path stub for connecting into future development on City tax map parcel 37-C-2.

Know that the design of streets internal to the development are regulated by Rockingham County and the Virginia Department of Transportation (VDOT).

#### *Recommendation*

Given that the Department of Public Utilities and Department of Public Works have determined that the applicant's commitment through the Infrastructure Interconnection Agreement to make necessary sanitary sewer, water, and transportation improvements is satisfactory, and that staff has no concerns from a land use planning perspective, we recommend in favor of the request.

Chair Finnegan asked on the public utilities part... It says to supply 15 million gallons of water per day, is that the estimated amount of draw?

Mr. Fletcher said let us have Mr. Gray come up just so he can clarify a lot of these. That is why we recommended that he join us this evening.

Dave Gray, Deputy Director of Public Utilities, came forward to speak to this request. He said what you are seeing there, the 15 million gallons is our business model for total buildout of the City. We are building a water system, in terms of water supply and treatment and delivery, for 15 million gallons a day. Our projection of the City's buildout is much less than that. We are building in...we have an agreement with Rockingham County that we have to provide to them wholesale, we have the City buildout, and then we have this excess capacity that is marketable. What this project would utilize is that marketable available water.

Vice Chair Byrd said when it says open market available, that number is the number you are referring to.

Mr. Gray said yes and that is what is available to us in our model the way we are building our system. We have this excess capacity and we are just looking what to do with it.

Chair Finnegan said this is in the memo "per their current zoning the calculated demand is much less, 1.75 MGD..." I am seeing a lot of numbers here and I am just trying to ask, what is the estimated draw of this development?

Mr. Gray said at the time of the application, I think it was 63 thousand. Their application that they turned in, which was 242 units, was about 63 [thousand] gallons a day.

Ms. Dang said it was 62,920 [gallons a day].

Mr. Gray said that table shows we have 370,000 available and they are asking for 63 [thousand gallons a day].

Chair Finnegan said you or your department do not have concerns about this impacting...my biggest question is this might be okay for now but 10, 20, 30 years down the road we are in a drought and oh shucks we cannot provide water to the people in the City. I guess I am trying to get a sense of how easy is it to predict how much water the City is going to need and our ability to continue to serve the residents of the City.

Mr. Gray said I will go back to the 15 million gallons a day, that is what we are building a system for. That number that you were referencing that talked about different land use, we know what our existing demand is. We know what lands are undeveloped and City staff got together and we said okay, well if the undeveloped lands develop based on zoning, that gives us one number of what we need to reserve for future capacity. However, [Future] Land Use is a different animal. Land Use gives us a different number and then there is this question of which number is right. We have built this around the assumption that the Land Use is really the way things are going to go. The City wants to see things grow that way, so that is what we built our model around. That is why you see the different numbers on the table, depends on which way things go. If things go the way we want, buildout the way we expect them to, we are going to have this excess capacity. We are building our raw water supplies, our water treatment plant, everything is built to deliver 15 million gallons a day. In non-draught scenarios we have our Shenandoah River source available, we have 34 million gallons a day available. Build a plan for 15 [million gallons a day] but we have 34 [million gallons a day] available. If we look back at the drought of '02 and we look at our water withdrawal permit restrictions, we are looking at 11.6 [million gallons a day] as what is available during the worst drought we have seen but we have a contingency plan for that. We are working on a project for some offline storage, which is kind of like a savings account. We have that 34 million excess that is set aside and when we need it, we will put it, we will use it and then we will put it back. It is a large offline storage project to kind of buffer that. It is almost a belt and suspenders approach. To answer your question, we feel pretty comfortable that we are going to be able to deliver the 15 [million gallons a day].

Vice Chair Byrd said I just wanted to make sure that I was understanding the table provided. It says drought season peak, is that what you are referring to? Is that what you are working on to make sure you have things set aside...

Mr. Gray said it has been a long time since Mr. Collins prepared that. I do believe that is what that is. We have normal domestic demands and then what we are seeing right now is increased

demands because of drought or water irrigation.

Vice Chair Byrd said if City Council approved it then its amount would be removed from the open market, and it would be moved to rural water sales? Current rural water sales are .88 MGD.

Mr. Gray said that is a little bit of an older number, again this was written in 2022. The Director and I looked today and in fiscal year '24, which we just closed out, we sold 830 thousand gallons to rural customers last year. That generated \$1.8 billion in revenue to the City's water fund. There is a reason we like to sell water to the County customers; it is a big revenue source for us.

Vice Mayor Dent said as I sort of understand it, water is not the problem we are concerned about. We are looking at this huge new raw water supply. A possible tighter constraint is the sewer capacity. What can you say about that?

Mr. Gray said our allocation at HRRSA [Harrisonburg Rockingham Regional Sewer Authority?] right now is 12.8. Our buildout projection for the entire City is 10.5million gallons a day. That gives us some capacity to work with. You are right that the sewer system, I liken it to the I&I which you have heard us talk about, the infiltration and inflow, that wild water gets its way into the sewer. It is kind of like a thief, it steals our capacity and that is what we are fighting constantly, that is just typical of anyone operating a sewer system.

Vice Mayor Dent said is that why we want better stormwater management for example, so it does not infiltrate the sewer?

Mr. Gray said it is not tied to that. This is just an effect of an aging infrastructure.

Mr. Fletcher said and maintenance of existing facilities.

Mr. Gray said some of the City's system was built in the 1870s, very old stuff. There are things that we can do to renovate it and rehab it in place, some of it has to be remove or replaced. As it ages, cracks develop. Stuff was built with brick manholes, sometimes water finds its way in. Our charge is to find those places that it is coming in and seal them up and get it back out. We would rather sell that sewer capacity to a customer and not pay to treat that wild water at HRRSA. Everyday we are chasing that wild water out of our system.

Chair Finnegan said on the point of future upgrades, they are going to pay for some of the upgrades that are needed to take water to this. What is the lifespan of that? Let us say in a couple years it is built. It is brand spanking new, they put it in, how long until it needs to be replaced?

Mr. Gray said that is hard to say. We anticipate a 100-year service life is pretty typical for us but that is 100 years we are collecting this revenue. That revenue has that component of replacing those assets as they age.



Chair Finnegan asked if there were any other questions for staff.

Commissioner Baugh said this is something that I did not know until I was on Council that your water and sewer money goes for water and sewer. They do not take excess money and allocate it. You can in sort of lump sums at time or two in years where you have actually seen a buildup, I think that has actually happened a time or two. This is not part of the general revenue from a budgeting standpoint. Enterprise fund was the term I was looking for, the money that you pay for this goes into a system that is dedicated to this that includes maintenance long term for replacement, expansion, all of that stuff. It is not a part of the general budget.

Vice Mayor Dent said the idea of an enterprise fund is a sort of self-funded, utility subdivision of the City. They fund themselves by water rates. It is interesting to hear “we want to market this water” okay, fine if that works for you. It is run like its own business in that way.

Chair Finnegan said it is not a public hearing, but you are welcome to speak if there is anything you would like to add.

Bryan Lily with Dewberry, applicant’s representative, came forward to speak to the request. He said I think staff did a good job of representing the application. Dave Gray gave some good information on the numbers so nothing really to add but if you have any questions, we are here.

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

Vice Chair Byrd said I will make a motion to approve the public utility application request as submitted by the applicant.

Commissioner Nardi seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the public utility application request passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

**A motion was made by Byrd, seconded by Nardi, that this Action Item be recommended to full council to the City Council, due back on 9/10/2024. The motion carried with a recorded roll call vote taken as follows:**

**Yes:** 6 - Finnegan, Byrd, Baugh, Vice-Mayor Dent, Alsindi and Nardi

**No:** 0

**Absent:** 1 - Washington

## 6. Unfinished Business

### 6.a. Consider Zoning Ordinance amendments to allow and regulate urban honeybees

Chair Finnegan read the request and asked staff to review.

Ms. Dang said on June 12, 2024, Planning Commission held a public hearing to consider a request to amend the Zoning Ordinance (ZO) to allow and regulate the keeping of urban honeybees. Planning Commission tabled the request to allow staff time to further research and respond to public comments received. Please refer to the June 12, 2024 agenda packet and staff memorandum for details about the request available at <https://harrisonburg-va.legistar.com/Calendar.aspx>.

After drafting some changes and responses, staff met with Dorn Peterson and Mike Hott, two local beekeepers. In brief, after seeing staff's updated proposal, Mr. Peterson expressed that he understood staff's concerns about staff safety, not waiting to open up beehives to determine if they are occupied or how many frames are inside ... and he thought the changes we proposed were a good compromise.

Below is a summary public comments received on June 12, 2024 and staff's recommendations:

1. **Comment:** Comment at the June 12, 2024 Planning Commission public hearing from Dorn Peterson included in the minutes extract attached herein. Mr. Peterson suggested for properties under 10,000-square feet to allow three to four hives and to not count hives that are smaller than 10 frames.

**Staff Response:** Staff recommends keeping the limit of 2 beehives on a parcel up to 10,000 square feet, which is supported by best management practices described in 2VAC5-319-30. - Best management practices for the keeping of honeybees, and which states:

“An apiary operator shall limit the number of colonies that he places in his apiary as follows:

1. If the property on which the apiary is located is 1/4 acre or smaller, the apiary shall not have more than two colonies. The apiary operator may increase the number of colonies up to four colonies for not more than 60 consecutive days for the purpose of queen mating and swarm control.

2. If the property on which the apiary is located is more than 1/4 acre, but less than 1/2 acre, the apiary shall not have more than four colonies. The apiary operator may increase the number of colonies up to eight colonies for not more than 60 consecutive days for the purpose of queen mating and swarm control.

3. If the property on which the apiary is located is 1/2 acre or more, but less than one acre, the apiary shall not have more than six colonies. The apiary operator may increase the number of colonies up to 12 colonies for not more than 60 consecutive days for the purpose of queen mating and swarm control.

4. If the property on which the apiary is located is one acre or more, the apiary shall not have more than six colonies per acre. The apiary operator may increase the number of colonies up to 12 colonies per acre for not more than 60 consecutive days for the purpose of queen mating and swarm control.

5. If all colonies are placed at least 200 feet from all property lines, there is no limit on the number of colonies that an apiary operator may place in his apiary.”

Note that Virginia’s Best Management Practices cites “colony” whereas the City’s ordinance regulates “beehive” structures. Staff recommends regulating beekeeping based on the number of beehives rather than whether or not the beehive is occupied by a colony or the size or number of frames inside the beehive. For the safety of staff, we do not want to open up beehives to determine if they are occupied or how many frames are inside. Additionally, staff believes it would be easier to review and approve permits and conduct enforcement by beehive and not the number of or type of colonies, or number of frames within a beehive.

In addition, to address queen mating and swarm control, staff recommends modifying proposed Section 10-3-219 (2) (b) which previously stated:

For the purposes of subsection (a), the temporary housing of a swarm for no more than 30 days from the date the swarm was acquired shall not count toward the maximum number of beehives on the property.

to state:

For the purposes of subsection (a), the persons keeping honeybees may have two additional beehives above the minimum allowed for not more

than 60 consecutive days for the purpose of queen mating and swarm control.

Know also that the Shenandoah Valley Beekeepers Association and other beekeeper associations in Virginia have listings of local sellers of nucleus colonies, also called nucs or splits, and queens. Staff is also aware of other local beekeepers who may not be listed, but will provide or sell nucs and queens to other beekeepers.

The Virginia Bee Law requires honeybees on combs, hives and equipment with combs be accompanied by a certificate of health issued by the Virginia Department of Agriculture and Consumer Services' Office of Plant Industry Services prior to being sold in Virginia. In addition, any person who brings honeybees on combs or used equipment with comb into the Commonwealth must first obtain an Entry Permit from Virginia's State Apiarist. Queens and packaged honeybees brought into the Commonwealth must be accompanied by a certificate of health issued by the state of origin.

Additionally, this ordinance is not meant to allow large apiary production, but rather to allow for backyard hobby beekeeping. It understandably may be limiting to someone who is on the production side of beekeeping and seeking to do so from their single-family detached dwelling.

- 2. Comment:** Comment at the June 12, 2024 Planning Commission public hearing from Commissioner Byrd is included in the minutes extract attached herein. Commissioner Byrd questioned whether the term "temporary housing" in Section 2 (b) is clear.

**Staff Response:** Staff has modified Section 2 (b) and the term "temporary housing" is no longer used.

- 3. Comment:** Written comment from Amy Mercer received by staff following the June 12, 2024 Planning Commission meeting is attached herein. Ms. Mercer requested consideration to reduce the minimum distance that beehives can be from property lines from 10-feet to 5-feet.

**Staff Response:** Staff recommends keeping the requirement for beehives to be no closer than 10-feet from property lines, which is supported by best management practices described in 2VAC5-319-30. Best management practices for the keeping of honeybees:

An apiary operator shall maintain all colonies at least 10 feet away from property lines to prevent an individual from impeding normal bee flight activity from a hive.

Staff recommends approving the ZO amendments as presented.

Chair Finnegan asked if there were any questions for staff.

Vice Chair Byrd said since my concern was addressed, I will make a motion to approve the Zoning Ordinance amendment.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (6-0). The recommendation will move forward to City Council on September 10, 2024.

**A motion was made by Byrd, seconded by Baugh, that this PH-Zoning Ordinance be recommended to full council to the City Council, due back on 9/10/2024. The motion carried with a recorded roll call vote taken as follows:**

**Yes:** 6 - Finnegan, Byrd, Baugh, Vice-Mayor Dent, Alsindi and Nardi

**No:** 0

**Absent:** 1 - Washington

**7. Public Comment**

None.

**8. Report of Secretary & Committees**

**8.a. Rockingham County Planning Commission Liaison Report**

Commissioner Alsindi said I attended the meeting on August 6th and they had one case under the public hearing. It was a rezoning from A-2 general agriculture to R-2 medium density residential. The Planning Commission approved the rezoning with some debate on usage. The applicant wanted to build two duplexes on those two parcels and it seems there was not enough frontage. As far as the rezoning that was approved. The other issue they had was under the new business and they approved renewing the appointment of Kevin Flint for the Capital Improvement Program.

**8.b. Board of Zoning Appeals Report**

Vice Chair Byrd said that the BZA did not meet.

**8.c. City Council Report**

Vice Mayor Dent said I was asking Adam when I first got here, how far back do I go given that I have not been here in three months. One was that there was not a meeting in July and in June I was at a conference and May I was not feeling well.

Chair Finnegan said Mr. Fletcher did give some updates in your absence.

Vice Mayor Dent said at the July 9 meeting since there was not a meeting the next day here at Planning Commission. We did ultimately pass the request from...when did we do the request from Farhad Koyee...

Mr. Fletcher said the special use permit for manufacturing on the south end of the City on Baxter Drive. We may have covered some of that. I cannot remember.

Commissioner Nardi said that was the supplements and the housing.

Vice Mayor Dent said I mentioned it again in Council even though I had not been here for that. There was some public comment concerned about manufacturing and its nosy and has smoke and stuff and no it is not because it is essentially a high-tech kitchen. More recently, last night there were not any public hearings since we had not been fed anything from no July meeting. There were several things that presumably affect Planning Commission. We had a resolution declaring a drought warning for the City. Voluntary conservation and a good presentation from Mike Collins on what that means and what their concerns might be. If the drought continues when the students come back, it could become even more of a stress on the system. Otherwise, let us hope for rain. Over long term, scant rain depletes the aquifer anyway. Combined Erosion Control and Stormwater Ordinance to simplify the regulations. The SPARC, Sponsoring Partnerships and Revitalizing Communities program, which is basically funding to help make home buying more affordable, Liz Webb presented by knocking off 1% of the interest rate on a mortgage. It does not sound like much, but it adds up over the years. The idea is that they would work to layer that with things like the fee waiver program to help make it more feasible for local developers to create affordable housing, that is my interpretation. There was an ARPA update. The big news is we appointed Tyler Blanks as the new Zoning Administrator. I was very thrilled to hear that because we can keep the momentum for the zoning update among other things.

Ms. Dang said we still have a vacant position [to fill] since he was promoted.

Ms. Dang said we did the work session just last month and our staff continues to meet each week. Now that Tyler's added to the [Zoning Ordinance Rewrite] team and we are going to

continue to keep our prior Zoning Administrator, Evan Winkler, onboard to assist us part-time. He is remotely assisting us on continuing to keep the momentum going. It is still a lot of work and there is still much to be done and it takes us a long time to get through these sections of ordinances. To the point of Mr. Blanks being appointed our Zoning Administrator, we are very excited to have him be in that position.

Vice Mayor Dent said just out of curiosity, he has been on staff for some time, what was his position before?

Ms. Dang said he started with us in 2021 as a Zoning Technician, he was then promoted in 2023 to Zoning Specialist, and now he is Zoning Administrator. He has prior experience with the City of Lynchburg where he did an internship working with the Zoning Administrator there for a period of time before coming here to us.

## **9. Other Matters**

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

Ms. Dang said we have four rezoning applications, so we recommend just having one meeting in September.

## **10. Adjournment**

The meeting adjourned at 8:17pm

### **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](http://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](http://www.harrisonburgva.gov/agenda-comments)