



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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July 5, 2023

**TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA**

SUBJECT: Consider a request from Lock-Minn Holdings, LLC for a special use permit to allow restaurants at 837, 841, 871, 887, 889, 891 Chicago Avenue

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: June 14, 2023**

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the Departments of Community Development and Police have been working with the property owner to rectify violations associated with 837, 841, 871, 887, 889, and 891 Chicago Avenue. The applicant has been working with staff and his tenants to remove inoperable vehicles from the undeveloped sections of the Rockingham Drive public street right-of-way and to ensure the individuals working at the automotive repair business do not store or repair vehicles outdoors without proper screening. The applicant is requesting a special use permit (SUP) per Section 10-3-97(1) of the Zoning Ordinance (ZO) to allow restaurants in the M-1, General Industrial District on a +/- 12,274 square foot property that consists of two parcels addressed as 837, 841, 871, 887, 889, and 891 Chicago Avenue and identified as tax map parcels 39-F-2 & 3. Rather than seeking the SUP to allow brick-and-mortar restaurants, the applicant specifically seeks the SUP to allow for up to two food trucks on the two parcels. The food truck currently located in this general area (where its location has been either on the corner parcel or the adjacent B-2C-zoned parcel identified as 39-F-6) has been operating illegally. This is because restaurants, including food trucks, are only permitted to operate within the M-1, General Industrial District with an approved SUP. Food trucks are permitted by right within the B-1, Central Business District and the B-2, General Business District, where restaurants are permitted by right. (Note: Existing proffers on the adjacent B-2C-zoned property, among other things, prohibit food trucks on that parcel.)

Land Use

The Comprehensive Plan designates the property as Mixed Use and states that:

“The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of

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

An overarching goal of the Mixed Use designation is to combine commercial and residential uses in the same area. Taking this into consideration, in general, staff does not have concerns regarding the idea of allowing food trucks to appropriately locate and operate along the Chicago Avenue corridor. However, the small size of the subject properties combined with the number of existing uses, which are served by inadequate off-street parking (both in the number of spaces provided and with on and off-site maneuverability), and how those uses operate already causes concerns.

The current uses on the subject properties include two automobile repair facilities with bays on both levels of the property addressed at 891, 837, 889, and 887 Chicago Avenue. Then, on the property addressed at 841 Chicago Avenue, there is a tire shop with a service bay and storage space that is being used for a food truck that is illegally operating on the adjacent, B-2C-zoned property. To be in conformance with the ZO with regard to off-street parking, with the uses currently operating, eight off-street parking spaces would need to be delineated. Staff has concerns about how the current operations function with the amount of off-street parking that is currently provided. If one or two food trucks operated on the properties, it would add another element of concern. Know that as of May 31, 2023, when staff visited the site, the off-street parking spaces delineated on the property did not meet the minimum parking space dimensional requirements of Section 10-3-25 (1) of the ZO and while some parking spaces might be widened or lengthened, staff is concerned that it would not leave enough space for the travel ways within the parking lot. It appears that the parking spaces on this site were delineated sometime between 2015 and 2017. While the property might be nonconforming to off-street parking regulations, because they are proposing to add a new use, the applicant has been advised that if they receive approval to allow one or two food trucks on the property, they must ensure that minimum off-street parking is met for all uses.

Transportation and Traffic

When reviewing the site, staff noticed that one of their delineated off-street parking spaces is located within the southernmost entrance along Chicago Avenue. Staff informed the applicant they would need to add a parking block or post and chain to better control how traffic maneuvers on and off the site from Chicago Avenue.

Public Water and Sanitary Sewer

Generally, staff does not have concerns with water and sanitary sewer service if food trucks operate

from the site. The water may be obtained by an approved water connection to the property owner's metered public water service. The sanitary sewer shall be disposed of through an on-site dumping station as defined by the Virginia Department of Health and approved by the City or hauled to the Harrisonburg Rockingham Regional Sewer Authority.

Recommendation

As noted above, given the small size of the subject properties combined with the number of existing uses, which are served by inadequate off-street parking (both in the number and size of spaces provided as well as the on and off-site maneuverability), staff has reservations about approving a SUP to allow for food trucks. Staff recommends denying the SUP request.

If there is a desire to recommend approval of the SUP request, staff recommends imposing the following conditions:

1. If the existing parking lot layout is maintained, the property owner shall install a parking block, post and chain, or other feature acceptable to the City between the parking stall and the entrance along Chicago Avenue within 6 months of approval.
2. Brick-and-mortar restaurants are prohibited.
3. Only one food truck is permitted among tax map parcels 39-F-2 and 3.

With regard to condition #3, the applicant has requested approval for two food trucks. If individuals want to allow food trucks, staff is recommending allowing only one food truck. In other words, if a food truck locates on tax map parcel 39-F-2, then a food truck cannot locate on tax map parcel 39-F-3.

Chair Finnegan asked if there were any questions for staff.

Commissioner Armstrong asked I do not exactly know how to ask this, I was just checking the next application and since it is an application to make legal their current parking uses is that...

Mr. Fletcher said it is a different site.

Chair Finnegan said it is right adjacent.

Commissioner Armstrong said yeah it is right adjacent. When I went and visited, the food truck was right there, adjacent, it is very proximate. Is that going to impact this at all? If that is approved, if that parking area with whatever conditions is approved, will that alleviate any of this? I know, they are separate.

Ms. Dang said I guess there is a couple of...

Ms. Rupkey said if say this one is denied and you end up approving the other one, a restaurant would be allowed by right on that one so they could keep the food truck on that lot.

Ms. Dang said that is correct. The proffers for the other application that we have not presented yet, would allow the food truck to be there. It would also allow for customers to park but the operations as they are currently occurring today, could not occur with the current zoning or with the proposed rezoning.

Mr. Fletcher said I am wondering, to get back to your question Commissioner Armstrong, you were asking if it gets rezoned then they can use it for parking would that help the situation...

Commissioner Armstrong said on this application, with one of the trucks staying, it is one alternative you give.

Mr. Fletcher said I think, and correct me staff if I go off base here, but I think some of the concern that we had... it is very difficult to separate everything that is going on out there and in some respects if the rezoning were approved in the next application or if City Council were to approve it next month, really what we have been witnessing out there today is what would end up happening, right? Because they are in violation of two things currently. They are in violation of the food truck being located there and then they are also in violation of the adjacent property which is the next application in using that space as it has been used. What they are trying to rectify is both of the situations and if they were to be rectified from a technical standpoint, there is still a considerable amount of activity and maneuverability and just concern about how that space functions. So, would it correct the situation? Technically by code, yes. Does it alleviate staffs concerns? My guess is, I do not think so because of just the enormity of the confusion of how that space operates.

Ms. Dang said thank you for recalling our discussions about drivers entering and exiting the site and the space between the building and the back of curb essentially. The parking spaces that are delineated out there are narrow and as Meg pointed out in her report the parking spaces that are delineated out there do not meet our standards, they are too short for a typical passenger car to park in. So, something has to change. It cannot exist the way it is with the addition of the food trucks.

Mr. Fletcher said for me, and I know Meg has already stated this, but I kind of like to think about breaking it down into four concerns. One is the small size of the subject properties. Two is the number of existing uses; there is a lot going on. Not that we do not want some very productive commerce to go on out there, we just want to make sure it is an efficient and effective and safe for folks. The parking is the third. It is inadequate and the space and maneuverability is of concern. The fourth is really just how the uses have been operating, which you have to remember that automobile repair is very difficult to separate the different kinds of automobile repair, then what is permitted in the different zoning districts from B-2 to an M-1. If a site is zoned M-1, automotive repair can occur outside in the open air, but in B-2 it is to occur inside. There has been...and maybe in good faith, the operators were confused in that. So, it is just trying to piece all of that together. Then by adding food trucks to the site, two trucks we think is too many. If you all think one is

okay, that is for you all to decide, but it just seems to be too much for us to be comfortable offering a favorable recommendation knowing that we are not meeting certain standards.

Ms. Dang said if I may add also, just to confirm is that, in M-1 the repair and storage of inoperable vehicles, so repaired vehicles and storage of inoperable vehicles can occur outside, but it has to be in a screened area.

Mr. Fletcher thanked Ms. Dang for the clarification.

Ms. Dang added that is a distinction whereas in B-2 it has to be within a permitted structure.

Mr. Fletcher thanked Ms. Dang again.

Chair Finnegan said just to clarify, that is the violation. So, there are currently inoperable vehicles that are not behind...

Ms. Dang said ...and repair operations occurring in the lot.

Mr. Fletcher said we have not issued official notices of violation. The applicant is clearly trying to rectify them. We are trying to work with them, but we also just have concern with what is going on.

Commissioner Armstrong said one food truck how much traffic is there? That is a small operation. Is it servicing primarily pedestrian traffic? Either workers on site or a pedestrian neighborhood. I only know that when I visited, it just happened to be there was very little traffic and there was no traffic on site. It was in the afternoon.

Vice Chair Byrd said that sounds like a question for the applicant.

Chair Finnegan agreed.

Commissioner Armstrong said I guess that the City would say to me "That is not relevant. These parking requirements, do not take that into account that is not relevant," right?

Mr. Fletcher said food trucks do not require parking. What we inform folks of on our website, which we call it mobile vending, is to ensure that that mobile vending unit does not sit in a parking space that is required by the operating business on site. So that you are not reducing the capacity for the onsite operation to have its sufficient spaces for parking. You cannot set up in a location that impedes sight distance when you are pulling out of the site. So, you have to remember that parking is irrelevant to a food truck in some respects. Now, you may, and we have talked about it before at other sites, where food trucks garner a great deal of traffic, necessitate parking, especially if they are providing onsite picnic seats because if they are providing picnic seats, they are inviting traffic to come and stay. So, there is a lot of different things to take into consideration.

Commissioner Armstrong said I apologize for belaboring this I know we have a full agenda, but I do appreciate entrepreneurship. So, that's where I am trying to reconcile here like you mentioned.

Vice Chair Byrd asked staff for clarification on the number of structures at the property.

Ms. Rupkey said if you look at the map right here, 841 is this one right here this front parcel or the front building. Then the rest of the addresses, part of it is on the property that is addressed as 841, the second building with the storage bays. There is one right here in the back and then there is an automobile bay and another one on the bottom of this property. So, it is like double decker.

Vice Chair Byrd asked whether we are saying that for all three of those buildings are what the 8 parking spaces are for.

Ms. Rupkey answered yes.

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

Russell Lockey, property owner and applicant, came forward regarding this request. He said I purchased the property about two and half to three years ago and the food truck was in operation and the parking lot was in operation. I was not aware that we were in violation until it was pointed out to me after our purchase. I am trying to get it fixed so that we can operate it without violation. The goal is if the food truck is permitted on the property, the current...there is a automotive repair facility at the other end of the building that is more likely or not going to be shut down and the building will be used simply for storage for the food truck. Refrigerators and freezers. No cooking. No cleaning. The food trucks will remain outside. The idea is to relocate the food truck slightly closer to the building, which actually opens up parking in the adjacent lot. Then, I will be glad to restripe as necessary or put bumpers in as necessary to restrict traffic flow to make it flow more smoothly.

Mr. Lockey continued and stated that the majority of traffic in the past for the food trucks has been in the evening and Friday night and Saturday night. They just parked in the parking lot right next to it. In some cases, they park in the Dollar Store parking lot right next to it on the other side. Then if you look at the layout of the B-2 lot that I am trying to change the restrictions on, part of that is B[-2] but there is actually a section of M[-1] along that building that we can park five cars in that, which is technically apart of the original area, so if you need nine spaces, I think I have 9 delineated at the top lot. In theory I have spaces for five more cars along that back building that would be on the same parcel. So, I think I have enough parking separated out. Now, I understand that part of the M[-1] lot in the back that they can work on the cars outside, but we need to put a fence of some kind up to separate the M[-1] from the B[-2]. I am willing to do that. I am willing to delineate parking within the B[-2] lot and make it more obvious as to where the cars could park.

That is my goal to try and get in compliance and do what I can to facilitate my tenants' ability to do their job. There is some discussion of one of the tenants on the lower side leaving and that is a weird building because you have four doors, and each door had a separate address that is why there are so many addresses –it is one building, but it has four doors on it. So, every door has its own address. Two technically on Chicago Avenue and two of them are technically on Rockingham Drive. It is weird. Sometimes Rockingham Drive is North Dogwood. So, it is bizarre. I am really just trying to neaten all of that up. My goal is to clean all of that up and make sure that they are

not doing auto repair in the parking lot anymore except for the M[-1] section that is right adjacent to the building. They are not parking the inoperable vehicles except on the backside where it is screened. And that we open up the truck if possible. Like I said, if we get the automotive repair facility out of 841, there is possibility of opening space for another food truck on the other end of the lot. But once again, we would keep the traffic flow. Just for reference there is 30 feet between the sidewalk and the front of the building. I think that is more than enough to park cars diagonally along the side and have enough room for cars to move behind them to get through there.

Chair Finnegan asked if there were any other questions for the applicant. Hearing none, he closed the public hearing.

Commissioner Armstrong said I mean especially after hearing the applicant, I would be inclined to support alternative A. Which is in suggested conditions on page 3, which includes only one food truck permitted because...

Chair Finnegan said do you mean alternative B?

Commissioner Armstrong said I mean alternative B. Did I say A?

Chair Finnegan said yeah

Commissioner Armstrong thanked Chair Finnegan and said that is what I would be...The second food truck was pretty iffy. I mean even the applicant was very unsure about that. So, that would be my inclination is to try to make this work.

Chair Finnegan said for the purposes of this discussion I will just kind of summarize that at the bottom of page 3 if the desire is to recommend this request for approval the existing parking lot is maintained. This is what you are making reference to in that, it would only be one food truck permitted with brick-and-mortar restaurants prohibited. I struggle with this one. This is my neighborhood. When I look at that section of Chicago, I would describe it as being blighted.

Chair Finnegan then referenced an image on the screen and said we see a sign structure with no sign in it. I mean that is because we need to change the sign ordinance, but there is a pile of tires. When you walk through that walking path, there have been cars stored in that area on the other side of the fence I have seen that. There is a lot that needs to be cleaned up in that area. And I agree with Commissioner Armstrong. I think the reason I struggle with this is because we have businesses that are allowed that are okay, like Family Dollar, because it is part of a corporate family of Dollar Stores that is proliferating and all over the country. Then, we have got small entrepreneurs who want to start a food truck and want to operate a business. I struggle. I do not like the way that looks. I do not think it is aesthetically appealing in any way. I think it looks sloppy and bad. At the same time, I think we need to think about people who want to start businesses and have entrepreneurship in the City and not squash that and allow bigger corporations to come in. I do struggle with that. And I think I would also be in favor of... I could support alternative B as well. I feel like I could live with that.

Commissioner Armstrong said I am sorry I do not want to dominate. It is not just the entrepreneurship of the property owner; it is also that when I look at that I see jobs. There are people working there.

Chair Finnegan said and there are business owners that do not own the property, but they own their business and they have been operating there.

Vice Chair Byrd said looking at this application in and of itself that in connection with the next application about the adjacent property, I see a parking lot here. I am not as much concerned about the tires. I have noticed with old structures, especially the ones involving automotive repair, they tend to involve stacks of tires for some reason or another. But we have seen another that came before us about this concern about the storing of these vehicles. I am concerned that businesses who operate these type of businesses in the City need to make sure they are checking themselves with these ordinances, so they do not keep bumping into this. We have seen this randomly and haphazardly. So, involving this particular property, I am not against food trucks being in the parking lot. I am against two. I am not seeing the parking spaces or any space that would be able to accommodate two trucks. From what was presented today and mentioned by members of the board, I would likely be in favor of alternative B as well.

Chair Finnegan said I would also add, and I do not envy staff's position in making these kinds of recommendations because it is hard. I will say that in general, I am not in favor of denying a request on the basis of not having enough parking spaces. I just want to enter that into the record. That is not really my concern here, my concern is about just the general way that this property has been kept.

Vice Chair Byrd said there was a question that I forgot to ask staff. Will the special use permit expire if condition one of the conditions listed one, two, and three?

Chair Finnegan asked are you talking about the next request?

Vice Chair Byrd said no this request. Because if we are talking about going with alternative B, then I should have thought about it more about what it says in the first one within six months of approval.

Ms. Rupkey said it would be a zoning violation.

Vice Chair Byrd said it would be another zoning violation.

Ms. Rupkey said yes.

Mr. Fletcher said since we are talking about parking and this particular proffer, I think the applicant had mentioned that he believed that it was 30 feet between the curb and the building, you want to allow him to correct it?

Chair Finnegan allowed the applicant to correct his prior mistake.

Mr. Lockey said it is 30 feet from the inside of the sidewalk. From my side of the side of the asphalt is 30 feet wide from the sidewalk to the building.

Mr. Fletcher said in knowing that, I was double checking our Design of Construction Standards Manual just to see what requirements were for travel way widths. Depending upon the angle of a parking space, whether it is 45 or 60 degrees, it is going to determine depth. So, if you take into consideration there is only enough space to have a one-way travel lane, if you did 45-degree parking, you would need 33 feet to make it work. And then if you were going with 60-degree parking, which would be the worst scenario for them, you would need 36 feet. Those scenarios are with a one-way travel lane not two lanes. I just wanted to clarify that just because there was a comment of it being adequate. Of course, from a standard standpoint, it is not. So, I would encourage, depending upon what happens, that we try to figure out the safest solution for people that are trying to pull into that parking lot. Because if it should really be one way, you do not want people confused in which entrance they are turning into. That is one matter, and then with regard to the number of parking spaces, policy wise staff is encouraged by lesser parking, but we also have to make a stance on when it is not legally meeting the requirement.

Chair Finnegan thanked Mr. Fletcher and then asked whether there were any other thoughts on this. It sounds like there could be some support. Just for the Vice Mayor Dent's...there seems to be at least some support from these three members who would support alternative B allowing one food truck.

Vice Chair Byrd said one more thing about that. Just want to remind my fellow members that based on what we just heard from staff and what they hope to do, this might not solve the problem. It might end up within six months, if this gets approved by City Council, it will still be in violation. But I would still feel that this gives the applicant a chance to improve the situation That is the last thing I will say about that.

Commissioner Armstrong said can I just clarify what Mr. Fletcher said that it would require 33 feet at a 45-degree angle. They are 3 feet short. Does that mean that they would also need to apply for a parking reduction?

Mr. Fletcher said it really does not. What complicates this particular situation is no one has questioned, and therefore staff has not investigated, what is the legality of whether the parking lot layout is considered nonconforming or illegal. There is some argument to be made that it could be considered nonconforming because this area did not always have curb and gutter. For those that have been around for some time you will remember that Chicago Avenue was... the infrastructure was different. There was sheet flow off of the street, no curb and gutter, no sidewalk. This area, this particular site in fact, probably utilized some of the public street right-of-way as part of their parking. The City, I am almost positive, probably purchased some of the right-of-way to make Safe Routes to School improvements along this section. So, to answer your question Commissioner Armstrong, I do not know, sitting here trying to think through all of this, whether or not it would be considered not possible because there could be some nonconformities that allow them some flexibility. I solely was looking at it from the design standpoint.

Ms. Dang said but adding the food truck kind of changes the...it is adding a new use onto the site. Which is why it is scrutinized right now.

Mr. Fletcher said like the staff report notes, it adds another element of concern.

Chair Finnegan asked whether this applicant would then need to come back and ask for a parking variance potentially?

Mr. Fletcher said it is hard to tell.

Ms. Dang said there is no zoning variance available. The special use permit that is available requires open space be provided. The buildings pretty much take up the whole lot. Therefore, there is no open space available to be able to apply for that special use permit.

Commissioner Baugh said I will also throw out too, just because I can think of some other spots, where you get back to this sort of dirty issue about the public right-of-way. That comes up not infrequently, where you have a roadway that has maybe been there for quite some time and visually everybody kind of has their own concept of where the private property ends and where the public property starts, except for it is not like that. And one of the things that does come up is that one of those situations where, I will just say, let us say you allow it and it turns out later to be a problem, you do not really have a lot of discretion on that. If somebody is getting their parking and it is determined that they are only able to do it by using the public right-of-way and that it is discovered the City really does not have any choice but to tell them to move. For reasons having to do with, among other things, the insurance stuff. That option to say, "well it is not hurting anything." Thus, I think you have a lot of these situations, where the City does not go looking for it and it is out there. I have known of situations, where I think in particular if somebody in the neighborhood does not like it and then you call it to everybody's attention, and then suddenly it is an actual problem. Again, it is not something you have the discretion to just say well just leave it alone.

Vice Chair Byrd said in light of all of this discussion, I will then move to approve the special use permit request with suggested conditions from staff, which are listed as one, two, and three

Commissioner Armstrong seconded the motion.

Chair Finnegan said just to clarify that is alternative B? Recommended approval of the special use permit with suggested conditions.

Commissioner Baugh said just to be clear about this, by approving this, what you are saying is they have six months to work out the parking?

Mr. Fletcher said it is only associated with the one parking space in the entrance.

Ms. Dang said they should not be able to move the food truck there until the parking situation is figured out.

Chair Finnegan clarified that it should be re-delineated and remeasured.

Ms. Dang said yeah. Because condition one is just about the entrance.

Mr. Fletcher said it is only about the entrance and the parking space that is in the entrance.

Commissioner Baugh said that is why I wanted to flesh that out.

Chair Finnegan said I do have a clarifying question before we get to the next item. Does alternative B... is there anything we should know about item 4c that could impact...

Mr. Fletcher they are unrelated.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Chair Finnegan	Aye

The motion to recommend approval of the request passed (6-0). The recommendation will move forward to City Council on July 11, 2023.