



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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

SUBJECT: *Consider a request from 7-Eleven, Inc. for a special use permit to allow for a vehicle fuel station at 380 North Mason Street*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: February 12, 2020**

Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site as Mixed Use. The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

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

- Site: Convenience store, zoned B-1
- North: Across East Gay Street, retail shopping center, zoned B-1
- East: Across Community Street, single-family detached dwellings, zoned R-2
- South: Retail automotive store and Fire Department, zoned B-1
- West: Across North Mason Street, Colonnade mixed use building, zoned B-1

The site is a +/-1.2-acre corner and through lot with frontage along North Mason Street, East Gay Street, and Community Street. Currently, a 7-Eleven convenience store, a use permitted by-right in the B-1 district, operates on the site. If the SUP request is approved, the applicant intends to redevelop the site with a new, modernized, +/- 4,050 square feet, 7-Eleven convenience store and vehicle fuel station. (The existing convenience store is +/- 2,556 square feet.) The site previously contained a fueling station; however, the pumps and associated tanks were removed in October 2014 and the site's nonconforming status was lost two years later.

As part of their request, the applicant has placed several self-imposed conditions on the site if the SUP is approved. The conditions, written verbatim, are as follows:

1. Upon request by the City, the Owner shall dedicate to the City right-of-way along the western parcel boundary, approximately 10.5' from the property boundary line (approximately 17.5' from the back of the curb along North Mason Street), for the shared use path ("North End Greenway").
2. Only one entrance shall be permitted from North Mason Street to serve the convenience store with vehicle fuel station.
3. Only one entrance shall be permitted from East Gay Street to serve the convenience store with vehicle fuel station. This entrance shall be located to align with the existing driveway serving the shopping center across the street (as recommended by the Traffic Impact Analysis report).
4. No parking shall be permitted on the Property along its boundary with East Gay Street.
5. All fuel pumps shall be located on the west side of the principal structure between the building and North Mason Street.
6. As long as the area between the primary structure and Community Street is undeveloped, no additional trees, shrubs, or fencing may be planted or installed in the area east of the convenience store between the store and Community Street. The foregoing shall not prevent the Property from being redeveloped or prevent additional development on the Property in the area between the current store and Community Street.

These conditions would provide for the necessary right-of-way for the future construction of the North End Greenway shared use path; prevent multiple entrances along North Mason Street into the site; remove the existing entrance along East Gay Street and align the single new entrance with the Rose's Shopping Center entrance, which will provide better movement of vehicles in and out of the site; not allow parking within the development along the East Gay Street boundary; and

require the rear area between the principal structure and Community Street to remain open, void of trees, fences, etc., unless developed or redeveloped with a permitted use (the intent of this condition is to provide better sight observance from the public street into the rear of the property). The last condition was brought about after a Crime Prevention Through Environmental Design (CPTED) review by the Harrisonburg Police Department.

The applicant has also submitted a conceptual site layout. It should be understood that this layout is for conceptual purposes only. If the SUP is approved, the development of the site would not be bound to the exact layout provided. The layout does, however, demonstrate the self-imposed restrictions described above. As is the case with all sites, the project must comply with all zoning and land development regulations and any conditions placed on the SUP that might be approved by City Council.

To the east of the subject site, across Community Street, are single-family detached dwellings, zoned R-2. Staff is concerned that the redevelopment of the site with a vehicle fuel station will add vehicular traffic, noise, lighting, and smells related to fumes from the gas pumps, which could negatively impact the health, safety, and comfort of persons living in the area. In other locations in the City, where properties adjacent to residential uses have rezoned to B-2, staff has suggested that those applicants consider proffering out vehicle fuel stations as a by-right use because of these concerns.

The subject site is located in the northeast quadrant of the B-1, Central Business District, with commercial/retail, business/professional offices, governmental, residential, and public safety uses located to the north, south, and west of the property. The applicant describes in their letter that the “[p]roperty is located in north downtown which has a more suburban character than the core downtown and government center;” however, the City’s Comprehensive Plan’s Land Use Guide indicates this area as planned for Mixed Use. This area could redevelop to have a character similar to the core of downtown south of Elizabeth Street where more walking, biking, and public transit use is encouraged and not necessarily motor vehicles. As noted in the applicant’s self-imposed conditions, the North End Greenway shared use path is planned for the area, which will encourage more people to walk and bike in this area. However, by reestablishing a fuel station at this location, staff believes we are moving in the wrong direction for this area of the downtown.

Staff recommended denial of the proposed ZO amendment to add vehicle fuel stations by SUP in the B-1 district. Along with that, staff does not believe it is in the best interest of the City to support this SUP request for a vehicle fuel station at this location and therefore recommends denial of the SUP request.

However, should the ZO amendment request be approved as was presented by the applicant, and should there be a desire to approve the SUP request herein, staff suggests that all the applicant’s self-imposed conditions become part of the SUP and be approved with the following additional conditions:

- There shall be no more than four (4) fuel dispensers;
- The footprint of the area encompassed by the canopy over the pumps may not exceed 75 percent of the size of the footprint of the principal structure.

Note that the conditions recommended above mimic the regulatory provisions that staff had recommended as a lesser option for those individuals to consider that might have desired to allow vehicle fuel stations by SUP as was discussed in the ZO amendment staff report.

Staff believes a redevelopment allowing a vehicle fuel station of any size on this site would have a negative effect on the adjacent neighborhood. This site is along the fringes of a residential neighborhood to the east and currently, there is a lot of pedestrian traffic from the neighborhood to the existing convenience store. If the proposed ZO amendment described in a separate staff report is approved as submitted by the applicant, then, unless conditioned otherwise, approval of this SUP request without staff's suggested conditions grants the ability to have up to eight (8) fuel dispensers, equal to 16 fuel pumps, with a canopy footprint the same size as the principal structure that is built on the site.

As noted above, staff recommends denial of the request.

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

Lori Schweller, representing 7-Eleven, came forward to speak to the request. As we discussed in the last item, the proposed Zoning Ordinance amendment would permit fueling stations on B-1 parcels by SUP only. That would give the Planning Commission and City Council an opportunity to evaluate on a case by case basis whether fueling stations were appropriate for any particular parcel through the legislative process and public hearings. That would give you control to only permit them where they are appropriate. The SUP review criteria include some of the following, the health, safety and comfort of persons living in the area.

We have discussed with the Harrisonburg Police Department their security concerns about this block. Our revised concept plan is showing you elements that provide for better visibility and security of the site than would currently be there. There will be healthy food options at the store and then the convenience of having fuel on site for residents and workers. In speaking with the Economic Development Director, I understand there is a real need for fuel in this part of the City. It is definitely an area that people come into to use County services and City services. The site is served by all public services, all utilities, and their negligible increase in traffic. We did do a traffic impact analysis. It would not hinder the development of this parcel or neighboring uses. 7-Eleven does not intend to develop in the grassy area behind the building. There is nothing here that would deter it from doing so. You have heard the conditions. I will not repeat those.

As far as safety and security, these are some of the things that we have been working with the City Police Department on and that would include site lighting, fencing, shrubbery and glass windows along the front of East Gay Street. I should have pointed out that East Gay Street would be flush with the sidewalk to give it the more walkable feel on that side of the building. Currently, in the back of the building you can see there are trees in that grassy area and, because of the lay of the land, you can see in the second picture the building could easily be obscured by trees. The plan was to add street trees along Community Street and a new sidewalk and more shrubbery to make it more inviting and a beautiful place. Unfortunately, that contradicts the security concerns of the police. That is the reason why we are showing you a concept plan and conditions that would

remove that foliage in the back. This is what it looks like currently. We saw this green buffer as an asset, hoping to buffer it from the community.

We did a Traffic Impact Analysis (TIA) and we found that the levels would not be increased significantly compared with those under a no build conditions. We have talked about aligning the driveway on East Gay Street with the Roses shopping center. We have made the North Mason Street entrance narrower, so it moves that as far south as it can be, away from the intersection for safety purposes. The City traffic engineer did find the TIA with those mitigations to be acceptable. There is a little bit of concern about traffic. I would like to point out that delivery trucks, such as this 50-foot delivery truck, already do visit the 7-Eleven to bring goods, visit the post office, Goodwill, AutoZone another retail in the area. You would not have an influx of trucks that you are not already experiencing in the area. The Roses shopping center is a transit hub for all the city bus routes, so there are a lot of buses in that area. 7-Eleven stores do pull their fuel customers from existing traffic and from the nearby area. I am happy to take any further questions about the special use permit request.

Hearing none, Chair Colman asked if there was anyone wishing to speak to the request.

Panayotis Giannakaouros, resident of Harrisonburg, came forward to speak in opposition to the request. If the special use permit is permitted under the rezoning, then on a case by case basis I would offer you testimony that this would be one place where it should not be done. There are a number of reasons. First of all, I would like to say that I am dismayed to hear the input from Harrisonburg Police Department. That way of thinking has affected much of our City. It has decimated many of our public places, most saliently in that neighborhood and in Liberty Park, if you want to have a look at what that has done. The theory that they must be working under I do not know. I would like to talk to whoever came at HPD.

I will give you a little history of this parcel. In 2013, we renamed a street for Martin Luther King. Subsequent to that, the community that had been mobilized came forward with substantive requests. The substantive request that was brought forward, in a mass movement that was the most significant event of that year according to the Daily News Record, was to stop punishing our nephews who have served their time. That was a part of mobilization around the City, a little piece of which involved the green space behind the 7-Eleven lot. I think that it has come forward, and I want to emphasize that I do not think 7-Eleven is the opposition here. They were very helpful in cooperating with the community to turn that green space into an amenity that everybody could use. As we worked on that site, the hundreds of people who went by to go to the convenience store stopped and took an interest and took an active part in maintaining and envisioning that green space. As we worked with it, we found that indeed it was the last undeveloped, unpaved spot after the tearing down that happened during R-4 redevelopment. On that site, you can see the outline of the continuation of old Mason Street. Above that, on the steeper hill were the sites of three houses whose foundations you can still see. I believe we can also see some of the plantings that were present around those houses. That area, after it had been cleared, remained a center for community activity. There were carnivals. There were other activities. It was a natural place for gathering. We have heard testimony now that it remains enfeebled as it is, a place for gathering. I think the fact that locals hang out is not a dis-amenity. I would speak against moving in this direction as HPD has pushed us. I do sympathize with 7-Eleven. After we stopped being able to have that project

there, and part of the reason we were not able to continue that project, was because we felt like we were doing something transgressive at the time. We felt like the City is going to say something. "You can't do this. This does not abide by the norms of having a cut lawn. We cannot get away with this." Everybody who took part loved it, but people felt responsible. A number of things converged, and that made us back off. After that ceased, I saw that 7-Eleven went back to a reasonable maintenance routine where they prevented succession, but they allowed customarily the thing to grow up and it was an amenity. There is plenty of research that shows that such greenspace has psychological and health positive effects and negative effects on crime.

A few months ago, I noticed that crews had come in and cut down that space. I stopped one of them to ask what is going on. They said that the City finally got to 7-Eleven and is pressuring them. I do not know if that is true. I could not get any 7-Eleven folks to confirm that. So far, I am starting to see the City and how we think about our public spaces and our police department being the actors here driving how 7-Eleven is pressured to develop that lot. I think we should not go in that direction. When we were having that 7-Eleven project, I testified repeatedly that it was a part of a contribution to a rapid decline, a precipitous decline, in our crime rate. I speculated many times as to why there might be a correlation. The thing that I kept coming up with was that there was a greater sense of agency within the community. Only recently, I found that there was another person, as broken windows policing and so on is becoming increasingly discredited, who agreed with me, who has also seen that agency did contribute to drops in crime. He had some statistics. This author says, "It is a strange thing how demonstrations tend to solve problems." Keep in mind that we had mass movements for those two years, that we could call demonstrations. Some were. It is little known that crime rates go down in almost community where you have demonstrations. In Montgomery, Alabama, when we had a bus boycott, the crime rate in the African American community went down 65% for a whole year. That is a little bit like what we saw in Harrisonburg. Any time we have had demonstrations in the community, people have found a way that they have had a channel to express their longings and a way to fight non-violently to get at the power structure to know that you are doing something, so that you do not have to be thwarted. This is Martin Luther King in a speech that was published the day he died. I think that is the thing to guide our planning and our looking forward, and perhaps to support 7-Eleven in doing something alternative to make that not be a food desert anymore, to bring that green space forward, to bring the history forward, rather than forcing them to turn to the profit motive and put in toxic gasoline pumps. They are not a problem because they smell bad. They are a problem because they are toxic fumes.

Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks moved to recommend denial of the SUP.

Commissioner Ford-Byrd seconded the motion.

Commissioner Finks said that denying this request is a matter of function. If we were to approve this SUP, it would be in conflict with the previous item.

Chair Colman said that there was a picture from across the street, the Colonnade, which is a mixed-use building. It is not too far from the downtown district. I hope that all that area will become a mixed-use area. That is the land use that we consider when updating the Comprehensive Plan.

All members voted in favor of recommending denial of the request (6-0). The recommendation will move forward to City Council on March 24, 2020.