



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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June 1, 2021

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

SUBJECT:

Consider a request from Ahmed Abdullah for a special use permit to allow a junk yard at 1207 North Liberty Street

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: May 12, 2021**

Chair Finnegan read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site as Industrial. 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.

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

Site: Vehicle sales and illegal vehicle salvaging/junk yard, zoned M-1

North: Vacant lands, zoned M-1

East: Rockingham County Public Schools Bus Facility, zoned M-1

South: Vehicle repair and parts fabricator, and towing service, zoned M-1

West: Self-storage, zoned M-1

A junk yard is defined in the Zoning Ordinance as “[a]ny space or area or portion of lots used for the storage, sale, keeping or abandonment of junk or waste materials, including used building material, or for the dismantling, demolition, sale or abandonment of automobiles and other vehicles, machinery or parts thereof” and is currently only allowed in the M-1 district by special use permit.

On August 26, 2014, City Council approved a request from Gerdau, a producer and supplier of steel, who requested to amend the Zoning Ordinance to allow junk yards by special use permit within the M-1 General Industrial District. Gerdau was interested in locating a scrap metal recycling yard in Harrisonburg. Prior to 2014, junk yards were prohibited in all zoning districts. Staff supported the text changes for amendments stating that “[s]taff believes that junk yards may be acceptable in some areas of the Industrial District under certain circumstances and with the ability to set conditions as warranted.” After the Zoning Ordinance amendment was approved, Gerdau did not pursue plans to locate a scrap metal recycling yard in Harrisonburg and no special use permit application for a junk yard has been applied for in the City until the request presented herein.

Within this staff report, the terms “junk,” “inoperable vehicle,” and “salvage vehicle” are used interchangeably. The term “junk” is used in Title 6, Chapter 2 – Solid Waste Collection and Disposal and is defined in that chapter as “[s]crap, or discarded material, or ferrous or nonferrous metals including, but not limited to, dismantled, wrecked or inoperable vehicles or farm machinery, or parts of any of the foregoing, or furniture, inoperable appliances or fixtures, where such furniture, appliances or fixtures are normally found inside a residence or building, or parts of any of the foregoing.” The term “inoperable vehicle” is used in the Zoning Ordinance and is defined as “[a]ny vehicle not capable of being used on public streets or roads and/or on which a state inspection and/or license is not displayed or has expired for more than thirty (30) days.” Know that the ZO allows vehicle sales uses to include the storage of inoperable vehicles for a period not to exceed 90 days. The term “salvage vehicle” is used by the Virginia Department of Motor Vehicles and is defined in State Code Section 46.2-1600 as “(i) any late model vehicle that has been (a) acquired by an insurance company as a part of the claims process other than a stolen vehicle or (b) damaged as a result of collision, fire, flood, accident, trespass, or any other occurrence to such an extent that its estimated cost of repair, excluding charges for towing, storage, and temporary replacement/rental vehicle or payment for diminished value compensation, would exceed its actual cash value less its current salvage value; (ii) any recovered stolen vehicle acquired by an insurance company as a part of the claims process, whose estimated cost of repair exceeds 75 percent of its actual cash value; or (iii) any other vehicle that is determined to be a salvage vehicle by its owner or an insurance company by applying for a salvage certificate for the vehicle, provided that such vehicle is not a nonrepairable vehicle.” Furthermore, “[s]alvage certificate” means a document of ownership issued by the Department [of Motor Vehicles] for any salvage vehicle upon surrender or cancellation of the vehicle's title and registration.”

The applicant is requesting a special use permit (SUP) per Section 10-3-97 (14) of the Zoning Ordinance (ZO) to allow a junk yard in the M-1, General Industrial District. The property is located along North Liberty Street approximately 225 feet from the intersection of Mt. Clinton Pike. If approved, the applicant describes that “[t]he land will be used for mechanical and dealership purposes.” The applicant states in their letter that they “buy damaged cars from salvage auctions to repair them for reselling or sending them overseas.” The applicant has also described that they plan only to store the salvage vehicles behind the principal building in an area that would be screened with fencing. The area between the principal building and North Liberty Street is planned to be used to display operable vehicles for sale and is not planned to be fenced. It should be understood that vehicle sales, repair, storage, and vehicle body shops, which among other things

includes over the road tractors, their trailers, and heavy equipment, are permitted by right in the M-1, General Industrial District.

In February 2019, the property was issued a notice of violation of City Code Section 6-2-6, for having junk in the form of wrecked and inoperable vehicles not located within a structure to hide it from view. In November 2020, it became known to the Zoning Administrator that in addition to repairing and selling vehicles, which are permitted uses, the owner of the property was storing and dismantling inoperable or salvaged vehicles. The property owner was informed at that time that storage of inoperable and salvaged vehicles outside is not an allowed use and would require approval of a junk yard SUP. The property remains in violation of City Code Section 6-2-6 and in violation of the Zoning Ordinance's use regulations within the M-1 district. The City continues to work through the court system regarding this matter.

In addition to compliance with City Codes, approval of the SUP is necessary for the applicant to obtain a Salvage Dealer License from the Virginia Department of Motor Vehicles (DMV) to operate at this location because the locality must certify for the DMV that the application and business location complies with local zoning requirements and/or ordinances.

The applicant has informed staff that they desire to apply for the following Salvage Dealer License types with the DMV as defined by State Code (full definitions can be reviewed in State Code Section 46.2-1600):

- *Rebuilder* – to acquire and repair, for use on public highways two or more salvage vehicles in a 12-month period;
- *Salvage Dealer* – to acquire any vehicle for the purpose of reselling any parts thereof; and
- *Salvage Pool* – to provide storage service for salvage vehicles or non-repairable vehicles who either displays the vehicles for resale or solicits bids for the sale of salvage vehicles or non-repairable vehicles.

In general, staff is concerned about the impact of outside storage of salvaged and inoperable vehicles along and near two heavily traveled corridors, North Liberty Street and Mt. Clinton Pike and the impact to surrounding properties. As noted in 2014 when the SUP for junk yards was created, “[s]taff believes that junk yards may be acceptable in some areas of the Industrial District under certain circumstances and with the ability to set conditions as warranted.” We continue to believe this today and do not believe this location is appropriate for a junk yard given its high visibility along and near the heavily traveled corridors as well as the precedent it might set from a location perspective of where such uses are appropriate. Staff acknowledges that there is a fine line between the different types of vehicular sales, repair, storage, and salvage uses, the latter which is not a use permitted by right in any zoning district. For example, there are vehicle sales, repair, and towing businesses that as part of their business operations store inoperable, wrecked, or salvage vehicles for a period of time. However, the storage of these vehicles appears to be more accessory to their sales, repair, or towing business operations and generally includes fewer inoperable, wrecked, and salvage vehicles and which appear to be stored on a shorter-term basis. The proposed use herein would be a principal use of the site.

Staff recommends denial of the special use permit request.

If, however, there is a desire by Planning Commission or City Council to approve the request, staff believes the following conditions should be attached to the request:

- 1) The SUP is limited only to the type of rebuilder, salvage dealer, and salvage pool operations proposed in this application.
- 2) The junk yard shall be restricted the storage area illustrated in the attached Exhibit A.
- 3) Screening of the junk yard must include a fence or wall and shall not consist solely of plant materials as otherwise allowed by the Zoning Ordinance for screening purposes. Screening materials shall not consist of tarps or other similar material.
- 4) 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 the revocation of the permit.

Condition #1 is intended to limit the uses to those proposed by the applicant and to prohibit operations such as demolishers, recycling facilities, scrap yards, and other operations typically considered junk yards. Condition #2 will limit outside storage and repair of inoperable and salvage vehicles to the area behind the existing principal building. If a second building is constructed closer to North Liberty Street, the area behind that new building could not be used for storage and repair of inoperable and salvage vehicles. Condition #3 adds additional requirements related to screening. Know that the ZO already requires junk yards to be screened by fences, decorative walls, or other physical or structure enclosures that are opaque to obstruct the view of storage materials that shall be at least six feet in height with a maximum of eight feet in height. It also allows plant materials to be used for screening purposes if they are three- to four-feet in height at the time of planting and meet the same intent to obstruct view of storage materials; however, staff is suggesting that in this case, plant materials alone cannot be used to meet the screening requirement as staff believes an immediate screen would be needed. Finally, condition #4 allows PC and CC to recall the SUP for further review if the use becomes a nuisance.

Chair Finnegan asked if there any questions for staff.

Commissioner Whitten said that there are residences that are not too far away from this location. Are there safety concerns with children or teenagers, minors, who would be attracted to something like this? Is fencing enough if this use exists and is in proximity to a residence? I am also concerned about the fluids, the gasoline, the oil, the anti-freeze, the stuff that is in cars, when they come to a junkyard and the proximity to the stream. We have gotten involved in the Northend Greenway. It is a wonderful place to ride bicycles, walk, push strollers. The stream has been cleaned up to a large degree. I remember when there were no fish in it. Now there are fish in it and the aquatic life is doing much better. Those two things concern me, the attractive nuisance and the water. If we allow it, is a fence that blocks it visually all that they would legally have to do?

Ms. Dang said that any operation, this operation or others, the potential for trespassing and people hurting themselves on the property exists. It is the property owner's responsibility to try to keep people out, but if people enter the property, it is trespassing.

Mr. Fletcher said that staff did not seek out comment from the Police Department regarding the issues that you are talking about. We can, if that is something you want us to investigate. This is a SUP, so if you see particular conditions that you believe are warranted, you have the authority to recommend those conditions to City Council to help curtail some of those issues.

Commissioner Whitten said that she is satisfied that her statements are now on the record. Staff's arguments are very sound.

Councilmember Dent said that she seconds Commissioner Whitten's concerns about the environment and the safety. When I went to the site, it looked like the corner lot that appears on the map to be a grassy, open area, has been taken up by a gravel lot with trucks on it. Has that been sold? It seems that they are spilling over into the adjacent lot.

Mr. Fletcher said that we have multiple things going on in this area of the City. The City Engineer has been working with the property owners on the adjacent lots to understand what is going on. I believe that they had moved some dirt and created entrances without permits. The violations were brought to staff's attention. We have begun the rectification process with the City Engineer and others to get that site into compliance. There is an active investigation and active issues that we are working through on those adjacent properties.

Councilmember Dent asked if it was a different owner.

Mr. Fletcher said that it is a different owner, if you are referring to the two adjoining parcels. I have not been to the site to see where the trucks are in relation to where the property lines might be. What you are describing sounds very familiar to the information that was shared with me by the City Engineer.

Councilmember Dent asked if we move ahead with the recommendation to deny and City Council votes to deny the permit. What happens then?

Ms. Dang said that the owner would have to remove the vehicles from the property. They cannot operate. They would still have the violation for having inoperable vehicles stored outside, as well as operating as a salvage dealer.

Mr. Fletcher said that the automotive repair and salvage dealer and storage is a fine line. There are different avenues for them to rectify it. They cannot have them outside and storing them. We would continue through the court system that we have already begun. Large buildings, certain types of salvage vehicles can be located inside of buildings. It is the yard, the junk yard, that is the issue. If a larger building was built, or if they were to be able to store the vehicles inside of the building, those uses are storage. The breaking down of the metal would be inside the buildings. What we are talking about is outside.

Councilmember Dent said that they would be able to rectify the situation just by putting another building there. That is not a just do it, as it would be expensive. When I saw it, I agree that the flimsy tarps on the chain link fence were not doing it for me.

Chair Finnegan said that if you go further south on North Liberty Street, there is in that area some sort of scrap yard or metal recycling facility. Is that metal recycling scrap yard in M-1? How far is that from the site?

Ms. Dang said that the property has a non-conforming use on it from when it was annexed into the City.

Ms. Banks said that it started as French's and then became F&S. It is non-conforming. It came into the City in 1983.

Commissioner Hull said that comparing this proposed permit with businesses such as the Auto Auction and autobody repair shops, how does the City view that differently? Is it because those vehicles are going to be on the site for a longer period of time? Or is it the fact that they are being stored outside?

Ms. Dang said that there is the ability for auto repair shops to operate by-right in the B-2 and M-1 districts. Additionally, with vehicle repair we do allow for inoperable vehicles to be on the site but it is limited to 90 days. It is a more short-term thing as opposed to a longer term that the applicant proposed would be one of the principal uses of the property. I understand that there are salvage vehicles that the Auto Auction auctions off there, as well. As I understand it, that property was also annexed into the City in 1983 and that type of salvage use is potentially non-conforming. I have not dug into the full history of all of the operations at the auto auction and what is legal or non-conforming.

Mr. Fletcher said that he would say it differently. Not what is legal, but what is non-conforming, what is accessory, what is the principal operation, what is the turnover, what is happening out there. The key is that it was annexed in 1983 and has been operating ever since. Even if it was a junk yard or recycling scrap metal like we have in other places, if it is non-conforming, they have the legal ability to remain. If there is confusion about automotive repair, autobody shops, junkyard operations, that is ok. It is confusing. There is a fine line between them. We will do our best to clarify whatever questions you have.

Chair Finnegan said that another way to look at it is that if this operation had been happening since 1983, we would not be having this discussion right now. We are having this discussion because this is a more recent development.

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.

Ahmed Abdullah, 1207 North Liberty Street, spoke in support of his request. I am working from 1998 in the City of Harrisonburg, starting at Cargill. I decided to start the business. I started this garage to work on the cars, fix them up and resell them. I am not doing the salvage dealer. I buy a damage car, fix it and resell it. I do not do any demolition and parking. (*Other statements were made, but they were unintelligible.*)

Chair Finnegan said that he is having trouble with the audio. To clarify, you are saying that you do not do what you consider demolition of the cars onsite.

Mr. Abdullah said that he has a dealership. I have a dealership license. I am a rebuilder. I buy the damaged car from the auction. I fix it and resell it. If I do not have the storage to place the cars, park the damaged cars, I cannot get any damaged car and resell it. That is the only reason that I am asking for that special permit to keep the damaged car on the fenced area until I fix it. When I fix it, I am trying to resell it. If do not have this license, I cannot get any damaged car or any kind of car to be repaired. If you will give me the permit, you can write down for me whatever I have to do. That would be okay for me. I am not doing this for a salvage yard or reselling parts. All I want is to get the damaged car, fix it, rebuild it, and resell it. If I do not get this permit, I cannot get anything approved from the Department of Motor Vehicles or from the dealer board. That way I wasted money for building that 7,000 square foot building.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he asked for the next caller. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said that it sounds like a lot of this is about definitions. It sounds like Mr. Abdullah has one set of definitions. He does not consider this a junk yard. The City does. From his comments, there is no demolition. It is not what he considers salvage. One thing to keep in mind is that whether we call it a junk yard, whether we call it salvage, whether we call it cars sitting on the lot for a while, the issue is the number of cars, the volume of cars sitting on the lot. We can argue about definitions, but when you drive by that site, we all know what we are talking about.

Commissioner Whitten said that there are a large number of cars. I cannot imagine what is sitting there being repaired in the foreseeable future. I do not know if we have any timeline on how long the ones that are there have been sitting there. It would seem to me that it has been quite a while.

Commissioner Byrd said, when we are discussing structure, is it because there is not an actual, a real fence, that encompasses the storage area and brings it in current violation of the Zoning Ordinance?

Ms. Dang said that this property would be in compliance if the inoperable vehicles were stored inside the building, not viewed from the outside.

Chair Finnegan said that it would be inside a building, if all of those cars in the back were in a warehouse of some sort. This issue would not be before us right now. Is that fair to say?

Ms. Dang said that is my understanding. That is the violation. He had inoperable vehicles stored outside for a long period of time.

Commissioner Byrd said that if there had existed a fence that made this so that nothing would be viewed, that still would not count as a structure in relation to the City Code Section 6-2-6. Correct?

Ms. Dang said that is correct. The fence does not count as the structure or inside a building.

Chair Finnegan said that it would have to be a metal barn or warehouse or some other four walled structure with a roof. This is an industrial area, but I agree that this would not be before us if this use and this land was in compliance with what was allowed in M-1. I am currently not in favor of this request. If he could find a way to put a structure around it. I understand that it is potentially cost prohibitive or storing them off-site somewhere. I do not see a way forward here and I am not in favor of granting this request.

Commissioner Byrd said that he lives around there and drives those roads. When I was going by, it is hard to tell where that property begins and ends relative to the businesses that exist beside it. There are so many cars there. As you continue down that road, there are other gravel lots where people are parked. It is a very unclear place. I cannot find a reason to support this request. It sounds like he is trying to retroactively cover bases. If there already existed a fence that surrounded the storage area, I might have been more moved by the arguments. This sounds like a person parking cars on their property because they have the property, not considering what that means to anyone around them or what the current laws are. I am aware of the bike trail near that property. I ride a bike on it. Earlier others mentioned about people in the community, the residents near it. I am not a big fan of things being viewed as nuisances, but I can see where they would get that argument. I would not be in favor of this application.

Commissioner Whitten moved to recommend denial of the request.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Baugh	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Hull	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend denial of the SUP request passed (6-0). The recommendation will move forward to City Council on June 8, 2021.