

Consider a request from Concepcion Ortiz Vasquez to rezone 895 North Liberty Street

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the existing structure addressed as 895 N Liberty Street is believed to have been built in 1945 before the property was annexed into the City in 1983. When the property was annexed, it was zoned M-1, which did not at the time allow dwellings, and the existing dwelling would have been considered nonconforming at the time.

A 1993 plat recorded in deed book 1235 on page 766 (a copy of the plat is attached) shows a two-story dwelling setback 25-feet and 2-inches from the public street right of way. It is unknown when the structure began operating as a duplex. The current property owner/applicant purchased the property in February 2024.

In June 2024, the applicant met with Community Development staff to discuss adding an addition to the rear of the building to expand one of the presumed dwelling units. During the meeting, it was discovered that the structure has been operating as a duplex. Since then, staff has been working with the applicant to verify the structure's nonconforming status. The applicant has been unable to prove that a duplex was legally established and is nonconforming.

The Zoning Ordinance states that “[w]henver a nonconforming use is enlarged or extended beyond the size, character, or intensity of the use as it existed at the time that it became nonconforming, the nonconforming status of such use shall terminate and become unlawful.” Additionally, the purpose of the nonconforming principle is to preserve rights in existing lawful buildings and uses of land, subject to the rule that public policy opposes the extension and favors the elimination of nonconforming uses. Nonconforming uses are disfavored because they detract from the effectiveness of a comprehensive zoning plan.¹

Staff has determined that the structure has lost its nonconforming use status as a single-family detached dwelling when the structure was converted to a duplex.

After discussing options with staff, the applicant is requesting to rezone the property to allow for a single-family detached dwelling in the R-8 district. The applicant is aware that if the request is denied that the residential use cannot continue on the site.

The applicant is requesting to rezone a +/- 10,312-square foot property from M-1, General Industrial District to R-8C, Small Lot Residential District Conditional. The property is located at 895 North Liberty Street and is identified as TM 40-Z-54 and 55.

Proffers

The applicant has offered the following proffers (written verbatim):

1. There shall be no more than one dwelling on the site.

¹ Albemarle Land Use Law Handbook, <https://www.albemarle.org/government/county-attorney/resources/land-use-law-handbook>

2. The setback off of North Liberty Street will be no closer than 15 feet.

The R-8 district is intended for medium- to high-density residential development including single-family detached, duplex, and, in special circumstances, townhouse development with an approved special use permit. If rezoned, although the dimensions of the property would allow for a total of two units (either two single family detached units or a subdivided duplex structure), Proffer #1 prohibits more than one dwelling on the site.

The R-8 district typically requires a minimum 10-foot front yard setback, however, proffer #2 further restricts the front yard setback to 15 feet.

Land Use

The Comprehensive Plan designates this site as Industrial and states:

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.

Staff does not believe this specific site is appropriate for a residential use. Not only is the subject site planned and zoned for industrial uses, but all properties on the same side of the street extending from the North Liberty Street/Edom Road intersection north to the City/County jurisdictional line are also planned and zoned for industrial operations. While it is presumed that the adjacent properties to the north and south are nonconforming residential uses, the site is also adjacent to a presumed nonconforming junk yard, which raises concerns about potential issues such as noise, odors, and other factors that are incompatible with residential uses and that impact the safety and quality of life for individuals that live near such areas. Staff understands a residential use has existed for many years on the subject site; however, the property has lost its nonconforming status. Staff believes approving a rezoning to continue a residential use at this location would be inconsistent with the goals and intent of the Comprehensive Plan's Land Use Guide.

Transportation and Traffic

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

Public Water and Sanitary Sewer

Staff has no concerns with the requested rezoning regarding water and sewer matters.

Housing Study

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject property within Market Type D, which notes that "[m]arket type D has lower market activity as well as lower access to amenities. This could be because the areas are stable residential neighborhoods or because the area is less developed and therefore has fewer sales and fewer amenities. Strategies that would be appropriate in the latter case include concurrent development of the housing and economic opportunities through mixed-use developments to build commerce and housing centers across the City.

Public Schools

If the rezoning is approved, no additional dwelling units would be added to the property; therefore, the student generation is zero. Based on the School Board's current adopted attendance boundaries, Waterman Elementary School, Thomas Harrison Middle School, and Harrisonburg High School would serve the students residing on this property.

Recommendation

Staff realizes how difficult of a situation the details of this case present, which is further complicated by the demand for housing in the City. While the City is working hard to find solutions for more opportunities for housing in the City, from a land use perspective, staff cannot recommend in favor of this request given that the current zoning aligns with the future plans for the area and because we do not want to promote residential uses adjacent to the existing industrial uses.

Chair Finnegan asked the proffer is that not more than one dwelling. Is a duplex one dwelling or two dwellings?

Ms. Rupkey said that would be two dwellings.

Mr. Fletcher said [a duplex] it is two dwellings and what the proffer is intended to mean is that only one dwelling can be on site.

Ms. Dang said so you cannot have a duplex.

Commissioner Nardi said it would remain single family.

Mr. Fletcher said it must revert to a single family.

Chair Finnegan said just to clarify what we are dealing with here is either this gets approved and it reverts back to the single-family use if it gets approved by City Council that way or it cannot be used for residential at all.

Ms. Rupkey said correct.

Mr. Fletcher said unfortunately that is the case.

Vice Chair Byrd said the dwelling today... is one of them an accessory dwelling unit or is it just treated as two dwelling units? Does it meet all of those legal requirements of being physically two dwelling units?

Mr. Fletcher said I would answer it by saying we do not know all of the specifics of the structural integrity of the type of dwellings that they are. It kind of gets us to the complicated nature of this request. Staff, correct me if I am wrong, but our records indicate a single-family unit, a single-family structure is what our records show.

Ms. Rupkey said from what we could find that is what we came to determine.

Mr. Fletcher said nonconformities are very rigid. It is very narrowly tailored. You have to maintain the thing you have and you cannot expand it. We would go through this series of questions trying to determine can you add an addition to this unit? Can you not? We thought it was single family but you are telling us it is a duplex, when did it become a duplex? To get back to your question, that scenario gets debated a lot about what is a duplex because people refer things as duplexes that might not meet today's criteria as being a duplex -where they are fire wall separated, separate units, roofline to the floor, from a building code perspective, considered two separate things. There are no doubt structures all across the City that have in some way shape or form have been operating as two separate units that casually get referred to as duplexes.

Ms. Dang said in this case it does not meet the current building code requirements for a structural duplex, and for years it has been operating effectively as two units, a two-household structure.

Mr. Fletcher said they were effectively operating like two separate units. Whether or not they met any building code requirements to meet the safety requirements to these two separate units, we cannot say.

Vice Chair Byrd said that explains the comment that was in the report from staff because I was curious about that because that was an uncertainty in the written report and I am hearing the same.

Mr. Fletcher said when you said accessory dwelling unit, what did you mean by that?

Vice Chair Byrd said last month in our meeting there was a lot of discussion on what a lot of different structures were. My main concern was one structure having two dwelling units how would we as the City know what...

Mr. Fletcher said we do not define an accessory dwelling unit today, therefore, in my view it is a duplex, it has been operating as two units, so it is just a duplex.

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.

Concepcion Ortiz Vasquez, the applicant, came forward to speak to the request. Ms. Vasquez via interpreter Maria Cardosa said I bought this property in February of 2012, they gave me the property. Seeing that the property was big, I requested to see if I could add an addition or something on the property, so I came and put in the application. That is why I am here. Well, I bought it for a necessity to be with my family. I have been living here for 18 years and the owner put it for sale and I tried to talk to him to see if he would leave me the property, he left it and he financed it and all. They told me when I put the application, they told me I had to put in an application to see if it qualifies or if it does not qualify. That is when they told me that the property is in an industrial zone. I do not know what that is. I had been living there for 18 years but I did not know what zone it was. I bought it to live there and because everything is close by, my work, things to do, and anything I need to go buy. I do not drive, I walk. While I am walking around everything is close by to the bus. I bought it because I had a necessity. Now I am fixing up the house because I got it and it was a little bit damaged and now, I am investing money in it

so that it is a pretty house. I am asking you to please if you can understand and comprehend if you can change the zone to a residential zone, which is what I need to live.

Vice Mayor Dent asked if this is approved and you have to revert from two units to single family, are you capable of doing that?

Ms. Vasquez said what I do not understand is the one singular family if it is technically only one home?

Commissioner Baugh asked are there two families living there now.

Ms. Vasquez said no, it is just me with my family.

Vice Mayor Dent said I am trying to understand why it is two units now.

Ms. Vasquez said I honestly do not know because the guy that was renting [to me] was renting to different people and now that I got it, I live by myself with my family.

Vice Mayor Dent said in that sense it would not be a hardship to go from two units to one for the family.

Ms. Vasquez said yes that would be better.

Vice Chair Byrd said can you repeat again when you were informed that the property was in an industrial district, before or after your purchase?

Ms. Vasquez said after the purchase because I came to ask for an addition for a room and that is when they, in their office, explained it to me that the zone was industrial. It was after because before that I did not know that.

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

Chair Finnegan said if this was BZA it would be open and shut... I agree with staff it is nonconforming and it lost its nonconforming status, but we are not the BZA.

Vice Chair Byrd said I would not make declarations about what the BZA would and would not say.

Chair Finnegan said my comment meaning if we are trying to determine if it has lost its nonconforming status. I agree with staff that if it was being used as a duplex it has lost its nonconforming status.

Vice Mayor Dent said lost its nonconforming status, that means that what is going on there is no longer legal so no longer permitted. If it were officially nonconforming it could be allowed to stay that way.

Mr. Fletcher said nonconforming uses are legal uses, so start with that understanding. The way that the code is written is that if you increase your nonconformity... lets say you have a nonconforming home with eight people living in it, you are legally nonconforming and you add two more people, you have now lost all of your nonconformity because you increased it and therefore you have to revert all the way down to the number that is required by the current code. If you were R-1 and you had nonconforming 8 and you went to 10, now you have to go to a family or two [unrelated persons]. The awfulness of this case is she bought a property not knowing that there was an illegal unit that was added at some point in time. Someone before her added a unit with no permissions and they would not have been given permissions because it was nonconforming and because they added it, they lose all residential abilities.

Chair Finnegan said there are trailers right next door, those are nonconforming residential. I think the ones further towards Ashby Avenue are also nonconforming.

Vice Mayor Dent said legally so?

Mr. Fletcher said as much as we know.

Chair Finnegan said I think that is what makes this tough. There are nonconforming dwelling units there that are residential on either side of it.

Commissioner Alsindi said before we, if we are going to make any decision on it, is there anything from the legal point of view that could be at the benefit of the resident now before this complicates a decision?

Mr. Russ said there is nothing at this point that is left. It is just a rezoning opportunity.

Commissioner Baugh said I have had two thoughts along those lines and I am going to kind of throw them out there. One is we got the looming Zoning Ordinance rewrite. I do not know that anything like this is addressed there either and it is a tentative draft but it is worth thinking about. The other issue is while this is the most extreme example I have seen. We kind of just did one of these on the other end of this area. We do have this industrial swath on the north end of town that does have a fair amount of nonconforming residential. I am just working back to downtown. I have talked with residents over the years about it and you sort of scratch your head. The people who comfortably at a nonconforming use where they can stay. I do not know if we would want to go down this path, but as I am sitting here trying to think the same things. We knew the answer to the questions about is there any way to make this work and that is the reason we have the recommendation from staff that we do, there is not any way to make it work under the existing zoning. I am going to say something, food for thought, but given that there may be some other spots like this, would there be any rationale for creating a special use permit category under M-1 that might allow something like this?

Vice Mayor Dent said I kind of like that. The way we have started to allow mixed use residential in business districts, can we do something similar in the industrial districts? Not today but once we redo the zoning?

Chair Finnegan said that is a good suggestion. I would also say if in the context of doing a Zoning Ordinance and updating the Land Use Guide, I would think this would still remain Industrial. I am 51% in favor of this rezoning request. Staff's not wrong. If we rezone this, that is going to be a different color and it is going to make it harder... The whole purpose of a Land Use Guide is we are aiming towards what do we want the City to look like in the future and it complicates it. I do think that Commissioner Baugh your suggestion it is not something we can do tonight but it is something worth thinking about so that we can avoid this situation in the future where we are having to chose between making that a place that no one can live or messing up the zoning map.

Commissioner Baugh said my recollection is that if we were willing to consider going down that path [this is] not the first time that we had someone come in and we thought sometimes even with recommendation of staff that the way to deal with this particular issue is an ordinance amendment. Historically, what I believe has happened is once it is identified that you are in that world, everything kind of goes on hold for enforcement or anything with this while this gets sorted out. Whether that is something that we could not just ask for right now or whether we feel it needs to go to Council for that decision to be made. That, maybe, I am not so clear about I can affirm that there are situations that you knew was not allowed under your existing ordinance, but once the decision was made to at least consider an ordinance amendment, that then went into limbo or whatever pending the resolution of the ordinance amendment process.

Chair Finnegan said are you suggesting potentially that we table this?

Commissioner Baugh said I do not know the answer to that question. Off the top of my head that is certainly one way to do it. Again, I think that with some of these things if you table them...the applicant would have to ask for it to be tabled. If the applicant does not ask for it to be tabled, we cannot force it into limbo.

Mr. Russ said you could for another meeting or two, there is a limitation on the number of days.

Commissioner Baugh said and then it is deemed approved and goes up to City Council.

Commissioner Alsindi said I am not sure how valid the question is but I have to ask it. Listening to the applicant and I do not want to draw any conclusions or imply anything. Would the value be higher for an industrial piece of land as compared to residential? Either way the answer has the applicant gotten enough consultation and advice before taking this decision.

Mr. Fletcher said I do not have the answers to those.

Commissioner Alsindi said at least I am able to draw the question with not necessarily having an answer to it.

Vice Mayor Dent said for one thing on the question of tabling, what that does is stall it from going to City Council? It is interesting to hear that after a certain number of days it is considered approved and goes to Council anyway.

Commissioner Baugh said if the applicant asked us to table it, then it would. But by the same token unless staff had some reason to think that we were seriously going to look at something like an ordinance amendment that just puts staff in the position of they voluntarily tabled something that we know is an illegal use.

Vice Mayor Dent said that is just sort of a technical point, I have another point here. Setting aside the technicalities of the zoning and the industrial and what not, from a human level this seems cruel and I think that is why it is so tough. They come trying to improve their house and are told that there is a possibility they could be kicked out.

Vice Chair Byrd said we have discussed before this kind of concept of proactive rezoning and one of the concerns I heard when that was brought up was that it was just the zoning done for what we genuinely with good thought wanted to see what the City looked like in the future. Then the time being there are certain spots where things are not as smooth and clear cut. The more I look at this area I just go “this area does not look like one of those clear cut places.” Does the City have all of its industrial space filled out that some companies would just be willing to buy up that land and tear those houses down? Is there that type of demand in the City? When I see many areas that are zoned for industrial there is still grass and nothing built on it, it becomes my concern. I understand wanting to keep to our guide of what the future is but I see certain spots in the City where I just think having a plan of what it will be in the future and what it should be zoned at now in the present I see those as two things that could exist in the same world. When we zone things for the future but currently people are doing one thing, those individuals are going to act on what thing exists as now and then they bump into the law and they go this is your plan in the future. All of my thoughts were more focused towards the future legislative body that has to look at this and go what are we saying as a City. These words are for the legislative body that has to actually make the decision that we would rather people who are still living somewhere not live there when we know that we are already talking about housing issues anyway in the City. It is not like we would be encouraging displacing people to somewhere we know where they are going. It is just one of those matters that just is going “we displaced them because we made a decision at some point in the past and we have good reasons why we made that decision.” I do not disagree with those reasons but at the current point in time are those reasons needed to be acted on now. When I look at this situation, I do not see the industrial usage of that area as vital now.

Chair Finnegan said it is industrial all up and down that street.

Vice Chair Byrd said I know the zone and what most of the structures there are.

Chair Finnegan said it smells industrial; it sounds industrial; and it looks industrial.

Vice Chair Byrd said like I said there are good reasons that someone would zone that industrial. I am not saying that those reasons are not valid. I am just going if currently people have decided to put up with the negatives of being there, unless there is something that would really move me to

go “oh wow, we really need these people gone so that we can put that thing there.” I have a hard time going why can we not accommodate people being there?

Chair Finnegan said I think to Vice Chair Byrd’s point, I do have a question, I am assuming those lots next to it are owned by a different property owner?

Mr. Fletcher said correct.

Chair Finnegan said so it is not one owner that owns several lots. To your [Vice Chair Byrd] point if at some point in the future someone wants to put something industrial there, they would have to buy up each individual lot.

Vice Chair Byrd said if they buy up one lot, they could build their industrial thing there.

Chair Finnegan said by right.

Vice Chair Byrd said what I am saying is that the resident who is still living there would go “oh my goodness, my neighbor is doing this thing.” I go well you live beside an industrial area that the City has said for years should be an industrial area. Therefore, the onusthe City should just stop it. I think they should decide to stop themselves.

Chair Finnegan said like I said, I am more in favor of this than I am against it but I do think there are good reasons to vote against it and I do understand staff’s recommendation and I think that they are not wrong about that but also we are taking into consideration some other things tonight.

Mr. Fletcher said I have a few points that might help a little bit for some clarification on things. First, I wanted to back up to the tabling matter just so that there was clarity on that. If Planning Commission tables it there is a time period in which you must act. If you do not act in that time period then it is assumed approved and it moves onto City Council. If the applicant tables it, it is in that limbo period. It is in their court to bring it back. I do not want to leave that to say that they can just be forever in limbo. They need to sort of make a decision about how to move on. We definitely have worked with people on that. In fact, this was scheduled to come before you last month and they decided to table it to this month just to push it off. For historical purposes, there are already two special use permits that were ordinance amendments that we did a few years ago to allow for residential uses in M-1, they are very specific. One is that you can have residential uses when they are attached to a recreational use. That is an M-1 special use permit you can apply for. A second is associated with boarding and rooming houses. We made an amendment to allow a boarding and rooming house in M-1. It is not like it is out of left field and not something that has been done before. Chair Finnegan is correct that these are very tough. We debated and challenged among each other, brainstormed trying to find different solutions, trying to find different things and we kept coming back to the science of planning and being like this is where we have to end up. I think it is probably clear to your terminology that it almost seems cruel and is very difficult. To the point of the undeveloped M-1 properties, you always have to remember what is available for M-1 properties to develop, maybe the infrastructures not in place. In fact, you are going to hear a preliminary plat this evening that they intended to develop it into three lots but only are doing two. Some of it had to do with utility infrastructure. Undeveloped fields could be because of

infrastructure. As I noted earlier, we do not define accessory dwelling units, I just wanted to be clear on this. Oddly enough we do define accessory living unit but when this body talks about accessory dwelling units, we are talking about something a little bit different. That accessory living unit is like an entirely different thing.

Ms. Dang said the term is not used anywhere except in the definition section. I think it is a holdover from something else.

Mr. Fletcher said from a previous iteration of an ordinance. My last point is that if you are interested in staff investigating a special use permit option, you could table it if you wish. We can discuss and draft something up. In the meantime, the applicant, if they wanted to, could even call us at some point before the next meeting and say actually [they] would like to table it to actually talk to staff more, I would welcome the opportunity for the applicant to chat with us a little bit more and we can delve into it. It is entirely up to you but there was this question that was not directly asked of staff of is staff interested in doing this and it definitely something we can investigate.

Vice Chair Byrd said I want to be clear that as far as how we currently have things written in our ordinance, I understand staff's recommendation. I would agree with how staff have done their job. Which is why my comments were more to the legislative body who are elected. They have to make a decision based on how the residents and the voting citizens of the City might react to the choices made. If we think that staff would be able to come up with... without putting too much pressure on the other things they have also have to get done... By tabling it, a better solution, I would be in favor of that. But currently I am against denial. I would be in more favor of approving the request to just press City Council to have to make a decision.

Commissioner Baugh asked is there any particular reason that adjusting M-1 is...does staff have concerns about that? If so, what are they at this stage? I will put it bluntly, how bad of an idea do you think that is to even consider?

Mr. Fletcher said your second question is easier to answer. Special use permits are designed, it says it in the code, they are uses that are not to infringe upon the use of the adjacent properties abilities to use their by right abilities. It should not infringe upon their ability to be used. I do not think it is a horrible idea for us to investigate. I do not think we even talked about an ordinance amendment in M-1 for something like this because it was so much for us to look at what is going on with this area. A lot of people in Harrisonburg probably drive through this area and they sort of have their blinders on just thinking I am in the industrial zone and not realize that there is not even just this one and the adjacent property and the mobile units. There is a property across the street that is nonconforming to the best of our knowledge. It is zoned M-1, it is planned for business but there are residential uses. These things are all over the place and when you take even a bigger picture this is just a tiny little block of residential. We talked inside, outside, upside down trying to figure out different ways because we knew the sensitivity of this situation and you cannot help feeling for folks. I think we can welcome the opportunity if that is where you are headed. We can discuss different options. We can bring you an option and I do not know if we will recommend in favor of the option, but you could like the option. There is so many different iterations to the way this could play out, but we can draft something.

Commissioner Baugh said if I have to vote on this right now, I think I am going to vote against it, but I think I am going to vote against it because I am not convinced that we have exhausted the options of trying to do it. I prefer for us to back up and take a look at it because I will say this, the planning nerd in me really does not like that R-8 sitting there. Here is my stupid question, does R-7 work?

Mr. Fletcher said cannot even apply for it because they do not have enough property to apply for it.

Commissioner Baugh said that also does beg the question of whether you can change R-7 instead of M-1. The only reason I say that is because it is not a million miles away from a bunch of R-7.

Mr. Fletcher said it is not even that far from properties that we are planning for residential, you can see it on the map [referring to the map] that tan color is Medium Density Mixed Residential and where Commissioner Baugh is going is the fact that, for those that have been around for a long time, when that created it was in a time period in which we said R-7 is kind of like Medium Density Mixed Residential and that is where he is making that leap to R-7.

Commissioner Baugh said it was an evolution from the old R-3.

Mr. Fletcher said I do not remember exactly what the evolution was. Not only is it planned for Medium Density Mixed Residential, but it is zoned R-7 because that is Brookside Park and that was our first R-7 zoning. It is difficult and what Ms. Rupkey alluded to earlier is that even when you take a much broader view, that whole side of North Liberty Street from this nearby intersection of Edom Road all the way to the City-County boundary is zoned and planned for M-1. We can take a look.

Vice Mayor Dent said when you relayed the couple of examples where you have put a special use permit in M-1 for residential, they are very specific uses like next to a recreational. What I am kind of thinking off the top of my head is in this whole annexed area where long before zoning was a thing there were all sorts of things mixed together, do we really want to raze everything and make it all industrial, I do not think so. I think preserving some of the possibility for existing mixed use is beneficial for the City. Could the annexation have something to do with the rationale? Like existing buildings even if they are no longer legally nonconforming can still be accepted if they are brought in under some special use permit? Just a thought off of the top of my head.

Mr. Fletcher said it gets complicated. The whole rationale of nonconformities is that they disappear, that they conform at some point. The State Code says that they get to keep it, they get this private property right to maintain their nonconforming operation but there is this sort of background philosophy of they have to be careful maintaining exactly what they have and then if they do not have it anymore, it needs to conform.

Vice Chair Byrd said despite the fact that I was also in favor of tabling, if it was possible, that special use permit idea would be able to formulate in a reasonable amount of time? My concern is

residential zoning negatively affecting industrial zoning. I do not want this area to be viewed like the R-7 area. I want to recognize that the City is going in the future we want this to all be industrial.

Chair Finnegan said that echoes the concern that I heard from Commissioner Baugh, which is we have already designated this as Industrial, let us not mess it up.

Vice Chair Byrd said I am just putting it out to the rest of the Commissioners that if there is a thought that we can come to on that, I would also be in favor of tabling it, if we can come up with a reasonable thought about what would we be asking staff about, concerning the special use permit.

Chair Finnegan said speaking for myself, I would be in favor of tabling it.

Commissioner Nardi said I would like to table it.

Chair Finnegan said it seems like there might be an appetite to table it.

Commissioner Alsindi said before we table it, I have a question, which one would benefit the applicant, if they ask to table it or us? If so in the first case, is it possible to do it now incase after hearing all this debate have they decided to?

Chair Finnegan said they have the option to. Regardless of how we vote whether we table it, whether we vote yes or vote no, the applicant has the opportunity after this meeting to table it themselves.

Commissioner Baugh said if they do not, that is effectively a decision of saying if you are not going to move on it, I want to move forward with it regardless.

Commissioner Alsindi said I am almost interested in knowing if the applicant in this case, listening to all this debate, if they think it would be in their best benefit truly to table or not. If they see the interest and where it is heading.

Mr. Fletcher said I guess indirectly it is probably to their benefit if they table it, but it gets into this weird category of how long we can administratively continue to allow an illegal use. I think that there is a general understanding. We do this, we do it all the time whenever somebody has some type of illegal operation we are like alright, let us get it figured out, let us find a solution and we bring you a rezoning or we bring you a special use permit or we bring our own Zoning Ordinance amendment. There is time that is occurring there, right? As long as it is within reason and that we are all actively working together to bring a solution, everybody is pretty comfortable with that.

Vice Mayor Dent said my hunch, staff can correct or confirm this, is that if we table it, it is with a specific request to staff to come up with an ordinance amendment for a specific kind of special use permit. If they table it, they are not giving that direction to staff the way we could. That would argue in favor of our tabling it with a request to staff, I think.

Commissioner Baugh said I think what we are saying here, somebody tell me if I am wrong, is that if we vote to table it, presumably staff will communicate with the applicant and then that issue gets

sorted out at that level. The applicant is either going to have... to explain to her here is what happens if you table it yourself then that means that everybody has free time to work on it. If you do not, which is your right, you can insist that Council take this up within a couple of months and that is something we would work out.

Commissioner Nardi said I am just thinking about the difficulty at the same time of tabling and getting more information and the applicant. Again, the concern for the applicant in having to wait time for a decision.

Commissioner Alsindi said if we table, is there a possibility that the applicant might, after consulting, debating and contemplating on the whole debate here and afterwards want to change their thoughts on how they use this. Is it possible for the applicant afterwards to think of changing into a warehouse for example or storage?

Mr. Fletcher said I mean it is possible if they want to sell the property.

Commissioner Alsindi said I am just trying to understand if tabling might also open the door for the applicant to come up with some solutions in case.

Chair Finnegan said in my opinion, tabling it buys a little bit of time for staff, for us, for the applicant to try and figure out a solution. In my mind, I would like to see an outcome where a residential use can continue there but we are not rezoning that to residential. If that is a possibility, that would be my personal preference on that.

Vice Chair Byrd said if we were to table it, I would say that we would ask staff about a special use permit... is there a way to formulate a special use permit that has certain requirements that meet a number of the complexities that staff has mentioned that is related to that block? Further down North Liberty [Street] across from the manufacturing facility, we changed the zoning of a house on that property to R-8. If we had that tool available, I would have likely gone with a M-1 special use permit tool as opposed to changing that zoning. I am saying that as a person that just said earlier that I would be in favor of this person's application because of how I am trying to address, how I see it.

Ms. Dang said further south on Liberty Street, that property was not designated Industrial, it was designated Neighborhood Residential. That is why it is was easier to support the rezoning to R-8, it was in line.

Chair Finnegan said I will say, this stretch is a bit awkward here and the further you get down closer to the new [Liberty Street] Mercantile you are passing George's and then all of a sudden you are at a wine bar. There is a lot happening on this side of town and it is the result of lots of different uses over time. Do we hear a motion?

Vice Chair Byrd said I make a motion to table this matter. Asking staff about an M-1 special use permit that addresses the concerns that staff has. I am aware that you may come back and go "well this is a thing we came up with, it still does not address all of our concerns," but is that not what discussing special use permits is all about anyway?

Commissioner Baugh seconded the motion.

Chair Finnegan said we have a motion and a second with the understanding that staff will explore the possibility of some sort of M-1 special use permit that would allow the residential use to continue but not rezone it as residential.

Mr. Fletcher said I am confident we can come up with something.

Commissioner Baugh said this is just me speaking personally, if you guys can come up with something that works, bring it back to us it does not have to be the M-1. I encourage you guys to be as creative on this as you can be.

Vice Mayor Dent said the basic premise is let us find a way to allow this if possible, as far as possible. In the sort of human and housing and what the applicant described she can walk to work, she can walk wherever. Instead of saying let some chicken plant buy them out, that is also not a valid direction for us to go given that there nonconforming residences around there. Find a way to make it work please.

Chair Finnegan said I also want to add that Vice Chair Byrd did say I want to acknowledge staff's work on this and on everything else that you all are working on. This is not easy and I kind of loathe to ask you to do more. I do appreciate staff's willingness to work on this.

Commissioner Nardi said I can imagine myself coming back and saying there is not a way, this is what the bottom line is. As awful as that feels, I can imagine two scenarios so I just want to see them.

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 tabling of the rezoning request passed (6-0).