

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**May 8, 2024**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, May 8, 2024, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Brent Finnegan, Chair; Adriel Byrd, Vice Chair; Richard Baugh; Valerie Washington; Heja Alsindi; and Kate Nardi. Vice Mayor Laura Dent was absent.

Also present: Adam Fletcher, Director of Community Development; Thanh Dang, Deputy Director of Community Development; Meg Rupkey, Planner; Wesley Russ, Deputy City Attorney and Anastasia Auguste, Administrative Specialist/Secretary.

Chair Finnegan called the meeting to order.

Chair Finnegan asked if there were any corrections, comments or a motion regarding the April 10, 2024, Planning Commission minutes.

Commissioner Baugh moved to approve the April 10, 2024, Planning Commission meeting minutes.

Vice Chair Byrd seconded the motion.

The motion to approve the April 10, 2024, Planning Commission meeting minutes passed (4-0) with Commissioner Nardi and Commissioner Alsindi abstaining.

**New Business – Public Hearings**

***Consider a request from Trustees Chicago Avenue Mennonite Church for a special use permit to allow a child day care center at 1552 South High Street***

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the applicant is requesting a special use permit (SUP) per Section 10-3-40 (1) of the Zoning Ordinance (ZO) to allow for a child day care center to be located within the Harrisonburg Mennonite Church located at 1552 South High Street. The church is not the operator of the day care but is leasing space to a day care provider. Note that if the church was the operator of the day care, then the SUP would not be required because in such situations the day care is considered an extension of the church and an allowable use.

The day care center is planning to provide care for around 45 children from the ages of two and a half years old to five years old. The applicant plans to convert three of the existing classrooms to space to operate the day care center. The applicant is working with an architect to make modifications required by the Building Code. The church property currently has sufficient parking to support both the church and the day care facility.

*Land Use*

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

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

Staff does not have concerns that the proposed use will have adverse affects to the surrounding area.

*Transportation and Traffic*

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

*Public Water and Sanitary Sewer*

Staff has no concerns regarding water and sanitary sewer service availability for the proposed child day care center.

*Recommendation*

Staff recommends approval with the following condition:

1. 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.

Chair Finnegan 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 their request.

Debra Pardini, applicant’s representative, came forward to speak to the request. She said I will take your questions or I will find someone who can answer them.

Chair Finnegan asked it is a large property, is any of it going to need to be fenced off if that part becomes a daycare?

Ms. Pardini said I do not believe so.

Chair Finnegan said is most of the daycare activity happening inside of the building?

Ms. Pardini said most of it will be. We do have a large green space for them to be outside as well.

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.

Vice Chair Byrd said based on the layout of the parking, I thought it would not be an issue of children being dropped off and picked up. Therefore, I would be in favor of this.

Chair Finnegan said it is quite a large parking lot so I do not think that [parking] would be an issue. There are two access points to this, one from Emery [Street] and then South High [Street]. I would assume, unless something is being fenced off or barriers are being placed there, traffic can flow either way.

Vice Chair Byrd said I would also like to comment that the added condition that staff recommended is more perfunctory just in case any special use permit has an issue, they tend to tack that on.

Commissioner Baugh said I would be supporting this regardless. As somebody that is familiar with the neighborhood, for those of you that do not know, for most of the time that church has existed is probably the bane of its existence was the fact that a whole lot of people in that neighborhood just routinely use it as a cut-through. Including some things that I thought were sad, not because of the church but because of the public. There was one time where they did a proactive thing of trying to put markers on the grass to keep people from driving over and then you can just see that people have driven over them and stuff. They solved the problem the way problems get solved sometimes, they eventually just did an expansion of the building and made it more inconvenient since you have to get in and then kind of drive around. Now people do not use it as a cut-through. I think to the extent that there might even be safety concerns with the kids there, there is a whole lot less of that then there use to be. With that, I will go ahead and move approval of the special use permit request as presented.

Vice Chair Byrd seconded the motion.

Chair Finnegan said I will just add that I know in the ALICE Report they talked about the need for childcare in the City, the shortage of childcare, and then anecdotally the number of parents that I have talked to that are really trying to find anywhere that is affordable that will care for their children during the day. I am in favor of this.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of the special use permit passed (6-0). The recommendation will move forward to City Council on June 11, 2024.

***Consider a request from Mehre Tu Zeray Tekle and Rahel Yosief Hailu for a rezoning to amend the Brookside Park Master Plan to create exceptions for 979 Roberts Court***

Chair Finnegan read the request and asked staff to review. Ms. Dang gave the following presentation:

*What is an R-7 Development?*

The R-7 zoning district is intended to provide opportunities for the development of planned residential communities offering a mix of single-family detached units, single-family attached units, and in certain circumstances, multi-family units. R-7 communities are developed under an approved master plan that incorporates regulatory text for the communities. Aside from particular provisions of the Zoning Ordinance (ZO) that must be met, the approved master plan is the “zoning” by which the development must abide. The R-7 zoning district requires a minimum of two contiguous acres at the time of application, a minimum of 15 percent open/green space, and at least two types of residential housing types, where no one type can exceed 70 percent of all residential units. Maximum density is limited to 15 units per acre.

To date, the City has five R-7 master planned communities:

- Brookside Park located at Roberts Court, Drake Lane, and Suter Street, rezoned to R-7 in 2006, and then amended in 2007 and in 2011;
- The Quarry located along Linda Lane and Smithland Road, rezoned to R-7 in 2007;
- Collicello North located along Collicello Street north of 5<sup>th</sup> Street, rezoned to R-7 in 2013;
- The Village at Chicago Park located along Saturday Drive, which is off of Chicago Avenue, rezoned to R-7 in 2014; and
- Bluestone Town Center located along Garbers Church Road and Erickson Avenue, rezoned to R-7 in February 2023.

The subject parcel is part of the Brookside Park subdivision, a +/- 7.11-acre site rezoned in June 2006 from the R-2, Residential District and R-2C, Residential District Conditional to R-7, Medium Density Mixed Residential Planned Community. The R-7 approved master plan consisted of 35 building lots and a +/- 1.44-acre parcel set aside for a park. The applicant received preliminary plat approval in September 2006 and final plat approval in June 2007. All building lots front along public streets including Roberts Court, Drake Lane, and Suter Street. The engineered comprehensive site plan was approved in April 2007, and the first building permits were approved in the summer of 2007. In October 2007 and October 2011, amendments were approved to revise the Brookside Park master plan. The 2006 master plan and amendments are attached.

The current request is to amend the master plan by creating exceptions, or alternative regulations, for one parcel identified as tax map parcel 40-B-68 and addressed as 979 Roberts Court. If the master plan amendment is approved, the applicant plans to add an addition to the building to expand the kitchen and living room areas for their family.

A master plan amendment of this type is permitted by Section 10-3-57.6 (I), which states: “The master development plan may be amended solely for a parcel(s) upon application by that parcel's owner, through a zoning map amendment process, subject to determination by the city council that the proposed use and development plan meets all of the requirements of the original master development plan to an equivalent degree in terms of meeting the purposes of the district and protecting the public health, safety, and welfare.”

*Master Plan Amendment*

Among other things, the Brookside Park Master Plan specifies allowing three different housing styles, including: courtyard homes, single family residential, and duplexes. For each housing style the Master Plan identifies the minimum lot area requirements as well as the minimum required setbacks. Furthermore, the Master Plan requires specific housing types for the courtyard and single family residential homes and a different set of housing types for the duplexes. Each of the housing types have specific dimensions and square footages for the structure.

In this case, the applicant owns one side of a duplex parcel and is proposing to reduce the required setback along Suter Street from 20 feet to 10 feet and to eliminate the required housing style for their parcel. As noted above, the applicant would like to build an addition to enlarge their kitchen and living room. In order to do so, they need the reduction in the required setback along Suter Street and because the home will be enlarged, they must amend (or in this case eliminate) the specific housing type for their duplex unit.

One last amendment is a more restrictive regulation. Since the applicant desires to enlarge their home to a size greater than the dimensions listed in the house types section of the Master Plan, staff suggested to the applicant that they limit their front yard to a 40-foot minimum setback along Roberts Court. This restriction would make it so that the home at 979 Roberts Court could not build any closer to the street and would maintain a similar front setback to other buildings along the street. The existing structure is 40-feet away from the front property line along Roberts Court.

No other changes are proposed to the master plan.

#### *Land Use*

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

These areas have been developed or are planned for small-lot single-family detached and single-family attached (duplexes and townhomes) neighborhoods, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets. Mixed-use buildings containing residential and non-residential uses and multi-family dwellings could be appropriate under special circumstances. Attractive green and open spaces are important for these areas and should be incorporated. Open space development (also known as cluster development) is encouraged, which provides for grouping of residential properties on a development site to use the extra land for open space or recreation. Like the Low Density Mixed Residential designation, the intent is to have innovative residential building types and allow creative subdivision designs that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and the protection of environmental resources or sensitive areas (i.e. trees and floodplains). Residential building types such as zero lot-line development should be considered as well as other new single-family residential forms. The gross density of development in these areas could be around 20 dwelling units per acre. 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.

#### *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 finds no significant adverse effects on the surrounding properties and believes the request meets all the requirements of the original master plan development to an equivalent degree in terms of meeting the purposes of the district and protecting the health, safety, and welfare. Staff recommends approval of the master plan amendment as submitted by the applicant.

Chair Finnegan asked is this community under a HOA?

Ms. Dang said yes.

Chair Finnegan asked would it be like a covenant?

Ms. Dang said yes.

Chair Finnegan asked it is possible that if this gets approved it may or may not be in line with [covenants]...is that a separate layer of permission?

Ms. Dang said yes, correct.

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.

Tom Syre, applicant's representative, came forward to speak to the request. He said do you have any questions about the expansion of the dining room kitchen area?

Chair Finnegan asked is there anything in the covenants that would prevent this from happening or is that a separate layer [of approvals]?

Mr. Syre said we do not think so, no. The reason for it, if I may, is Mehretu and his family come from Eritrea and they are apart of the Habesha group. One of the interesting things, I have lived there for several years so I know the culture and I know the ways, the current situation in the house does not allow for communal eating. The Habesha's eat communally, they eat from the same dish. They sit around a large table and eat a stew and their bread from the dish. The current situation does not allow for that. This expansion will allow them to have their family and guests to eat communally. I have eaten over at Mehretu's house, it is crowded now. It is contrary to the way Ethiopians and Eritrean's eat. It is not conducive to a sense of community. This will vastly improve communications within the household and among guests.

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 continued saying this is pretty traditionally how houses...when people talk about starter homes, this was a pretty common and traditional...the tradition in the United States used to be buy a small house, you add on to that house and increase the size of it overtime. I would be in favor of this request.

Commissioner Nardi said I would be in favor. It does not change the fabric of the neighborhood and allows for more family space.

Vice Chair Byrd said looking over the master plan, I do not see this becoming too major of an opening of a dam for a bunch of other changes, it would just be a couple of properties on the ends that would be able to take advantage of this idea. Most of them are bound by other buildings right beside each other. I would have no issue with this application. Therefore, I will make a motion to approve the master plan amendment request.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Master Plan amendment passed (6-0). The recommendation will move forward to City Council on June 11, 2024.

***Consider amending the Zoning Ordinance to define and regulate the location of skill games; and***

***Consider amending the Zoning Ordinance to further regulate the location of tobacco, smoke, or vape shops***

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher presented both items together in one presentation for the Planning Commission. However, the information presented within these minutes is in two separate sections for each request.

*Location of skill games*

Mr. Fletcher said in 2020, the Virginia General Assembly criminalized most playing and operating of “skill games,” with an effective date of July 1, 2021. On December 6, 2021, a Virginia circuit court issued an injunction ceasing enforcement of that law. On October 13, 2023, the Supreme Court of Virginia vacated that injunction. At this time, the operation and playing of skill games in Virginia is generally unlawful.

During its 2024 Regular Session, the General Assembly passed SB 212, which addresses skill games. Governor Youngkin proposed amendments, which the General Assembly did not accept. For more information, visit Virginia’s Legislative Information System (LIS) – 2024 Session - SB 212 Virginia Small Business Economic Development Act; established at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+SB212>.

The City’s Zoning Ordinance (ZO) does not directly address skill games, which were previously treated as accessory to otherwise permitted uses. City staff is proposing to amend the Zoning Ordinance (ZO) Sections 10-3-24, 10-3-25, 10-3-25.1, 10-3-84, 10-3-87, 10-3-90, 10-3-93, 10-3-97, and 10-3-99. The proposed amendments would define “skill game” and “skill game location” and establish that a skill game location is a principal use allowed by right in the B-1 and the B-2 districts while also allowing them with an approved special use permit (SUP) in the M-1, General Industrial District. In all three districts, skill game locations would be prohibited on property within 1,000 feet of any property containing a public or private school or child day care center. The proposed amendments would also create off-street vehicle and bicycle parking requirements for the use. (NOTE: In a separate staff report, staff is simultaneously proposing similar ZO amendments associated with “tobacco, smoke, or vape shops.” Refer to the other staff report for specifics associated with those amendments.)

If SB 212 is enacted into law, then beginning July 1, 2024, skill games would become legal in many locations. The schedule of these proposed ZO amendments is intended to allow Planning Commission to offer its recommendation and provide City Council the option of adopting amendments to the ZO addressing skill game locations prior to the effective date of any potential state legislation. If City Council adopts amendments at its second reading on June 25, 2024, it could prevent skill game locations from being established on properties that are within 1,000 feet of a public or private school or child day care center.

The entirety of the proposed ZO amendments are provided within the attached document titled “Proposed Zoning Ordinance Amendments Regarding Tobacco, Smoke, or Vape Shops and Skill



Game Locations.” For ease of reference, the proposed definitions for “skill game” and “skill game location” are shown below:

*Skill game (including skill game machine):* An electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by the predominant skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash or cash equivalents whether the payoff is made automatically from the device or manually.

*Skill game location:* Any establishment that provides for the use of any number of skill games or skill game machines.

If the amendments are approved as currently drafted, should the State Code be amended to legalize skill games, then skill game locations could operate by right on property zoned B-1 or B-2, or with an SUP on M-1 property, but only if the property is not located within 1,000 feet of a public or private school (excluding colleges and universities) or a child day care center. Because skill games are currently not permitted, if the amendments are approved as presented, properties that might have previously operated skill games, might not be permitted to be a skill game location. Again, it will depend on the site’s vicinity to a public or private school or child day care center.

Note that child day care centers differ from minor and major family day homes. The ZO defines “child day care center” as:

A regularly operating service arrangement for two (2) or more children under the age of thirteen (13), where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less than a twenty-four-hour period, in a facility that is not the residence of the provider or of any of the children in care. A nursery school shall be considered to be a child day care center.

Examples of child day care centers include the Harrisonburg-Rockingham Child Day Care Center and Minnieland Academy at Harrisonburg. Note that the distance requirement in the proposed ordinance is not associated with locations of minor and major family day homes, which are often located in residential districts and within a home of the provider or of any of the children, who receive care.

Included in the packet of information for the proposed ZO amendment is a map titled Potential Skill Game Locations and Tobacco, Smoke, or Vape Shops. The map demonstrates parcels that, if the amendments are approved, *might* be able to contain skill game locations. The map is likely not 100 percent accurate as it might not have incorporated all known public or private schools or child day care centers. When a new skill game location is proposed to be located in the City, zoning staff would verify at that time that no public or private schools or child day care centers are located within 1,000 feet of the property. The map also demonstrates the addresses of properties that skill game owners—Queen of Virginia and Pace-O-Matic—reported for personal property tax

purposes. As shown on the map, if the amendments are approved, if a parcel is identified as B-1 (colored red), B-2 (colored orange), or M-1 (colored brown), then these sites might be able to contain skill game locations either by right or as required with an approved SUP.

On the map, if a blue dot, which represents a site that previously contained skill games, is shown on a red or orange parcel, that site might be able to operate a skill game location—as legally allowed by the State. If the blue dot is located in a gray-colored area, then, if the ZO amendments are approved, that site might not be able to operate a skill game location. Remember that since skill games are currently illegal, there would be no nonconforming skill game locations created if the proposed ZO amendments are approved on the schedule discussed above. Note that it is possible that there are other locations staff is unaware of that operated skill games.

#### *Location of tobacco, smoke, or vape shops*

Mr. Fletcher said, in 2023, staff internally discussed the idea of restricting the location of tobacco, smoke, or vape shops. In this effort, staff prepared draft regulations to limit the use to particular zoning districts and created maps that helped evaluate the impact of prohibiting such businesses from operating on property that was 1,320 feet (a quarter mile) or 2,640 feet (a half mile) from public and private schools or child day care centers. Staff had planned to discuss the draft regulations with Planning Commission with the hope to receive guidance from them regarding the appropriate distance they believed tobacco, smoke, or vape shops should be located from public or private schools or child day care centers.

During its 2024 Regular Session, the General Assembly passed and the Governor approved HB 947, which specifies that localities cannot restrict the location of tobacco, smoke, or vape shops to more than 1,000 feet from public or private schools or child day care centers. For more information, visit Virginia’s Legislative Information System (LIS) – 2024 Session – HB 947 Local government; regulation by ordinance for locations of tobacco products, etc. at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+HB947>.

Currently, the Zoning Ordinance (ZO) considers tobacco, smoke, or vape shops as a mercantile establishment and thus they have been permitted where general retail uses are permitted, which mainly includes the B-1, Central Business District, the B-2, General Business District, and on R-5-zoned property with an approved special use permit (SUP). City staff is proposing to amend the ZO Sections 10-3-24, 10-3-25, 10-3-25.1, 10-3-84, 10-3-87, 10-3-90, 10-3-93, 10-3-97, and 10-3-99. The proposed amendments would define “tobacco, smoke, or vape shop” and establish it as a principal use, distinguishing it from other mercantile uses, allowing it by right in the B-1 and the B-2 districts while also allowing them with an approved SUP in the M-1, General Industrial District. In all three districts, the use would be prohibited on property within 1,000 feet of any property containing a public or private school or child day care center. The proposed amendments would also create off-street vehicle and bicycle parking requirements for both uses. (NOTE: In a separate staff report, staff is simultaneously proposing similar ZO amendments associated with “skill game locations.” Refer to the other staff report for specifics associated with those amendments.)

The entirety of the proposed ZO amendments is provided within the attached document titled “Proposed Zoning Ordinance Amendments Regarding Tobacco, Smoke, or Vape Shops and Skill Game Locations.” For ease of reference, the proposed definition for “tobacco, smoke, or vape shop” is shown below:

*Tobacco, smoke, or vape shop:* A business involving the sale or sampling of tobacco products, nicotine vapor products, alternative nicotine products, and hemp products, as those terms are defined in the Code of Virginia §18.2-371.2, and any kratom products as regulated by the Code of Virginia §59.1-200, and where such products are 25% or more of the store’s total inventory or 15% or more of the store’s total display area.

If the amendments are approved as currently drafted, individuals wanting to establish a new tobacco, smoke or vape shop must ensure they are locating on property zoned B-1 or B-2 or on M-1 property with an approved SUP, but only if the property is not located within 1,000 feet of a public or private school or child day care center.

With regard to existing tobacco, smoke, or vape shops, depending upon a site’s vicinity to a public or private school or child day care center, the amendments either would have no effect on their operation or some businesses would become nonconforming. Also note that any existing or new tobacco, smoke, or vape shop could later become nonconforming if a public or private school or child day care center locates within 1,000 feet of the business.

Note that child day care centers differ from minor and major family day homes. The ZO defines “child day care center” as:

A regularly operating service arrangement for two (2) or more children under the age of thirteen (13), where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less than a twenty-four-hour period, in a facility that is not the residence of the provider or of any of the children in care. A nursery school shall be considered to be a child day care center.

Examples of child day care centers include the Harrisonburg-Rockingham Child Day Care Center and Minnieland Academy at Harrisonburg. Note that the distance requirement in the proposed ordinance is not associated with locations of minor and major family day homes, which are often located in residential districts and within a home of the provider or of any of the children, who receive care.

Included in the packet of information for the proposed ZO amendment is a map titled Potential Skill Game Locations and Tobacco, Smoke, or Vape Shops. The map demonstrates parcels that, if the amendments are approved, *might* be able to contain tobacco, smoke, or vape shops. The map is likely not 100 percent accurate as it might not have incorporated all known public or private schools or child day care centers. When a new tobacco, smoke, or vape shop is proposed to be located in the City, zoning staff would verify at that time that no public or private schools or child day care centers are located within 1,000 feet of the property. The map also shows the addresses of business license locations reported to be tobacco, smoke, or vape shops. As shown on the map,

if a parcel is identified as B-1 (colored red), B-2 (colored orange), or M-1 (colored brown), then these sites might be able to contain tobacco, smoke, or vape shops either by right or as required with an approved SUP.

On the map, if a green dot, which represents a site reported as a tobacco, smoke, or vape shop, is shown on a red (B-1) or orange (B-2) parcel, then the proposed ZO amendments might not impact their current operation. However, if a green dot is shown in a gray-colored area, that site might become nonconforming and so long as it continues to meet code requirements for nonconforming abilities, it can be maintained.

Staff recommends approving both ZO amendments.

Chair Finnegan asked if there were any questions for staff.

Vice Chair Byrd asked you were talking about 1,000 feet, is that from the border of the property?

Mr. Fletcher said the property boundary, the whole property.

Vice Chair Byrd said what caused Downtown to be grayed out?

Mr. Fletcher said the Harrisonburg-Rockingham Child Daycare is located Downtown. It is not all of Downtown of course.

Chair Finnegan said before the meeting I had the question of why a thousand feet, but you answered that. It was set by the General Assembly. That is essentially the General Assembly saying localities cannot ban these.

Mr. Fletcher clarified cannot ban them further than that.

Chair Finnegan said outright. It is pretty clear to me one skill game or 20 skill games, it is a skill game location. Is that the same for vape products? One vape product...

Mr. Fletcher said no sir, in the definition, if I could request for you to look at your staff report because it will be easier for you to read. You will see in there and I can pull it up just for folks and it talks about percentage...the last sentence which states "and where such products are 25% or more of the stores total inventory or 15% or more of the stores total display area." Of course, we all know that convenience stores often times will sell such products but the convenience store often is not just a tobacco, vape, and smoke shop. I do want to point out, I sort of alluded to this earlier, that it is possible that if we had concern about a particular location that it may have to be recategorized based upon this definition and then we would have to figure out whether or not it is nonconforming or not. Of course, they have control over it themselves. They can reduce the inventory. They can reduce the sale area in which they are going in. So there is some flexibility there about how they might transition themselves.

Chair Finnegan said there is nothing in here about...one of the objections that I have heard from local residents is just the bright lights and there is nothing in this regulation that is about the outward facing appearance of the vape shop.

Mr. Fletcher said no sir, there is not. They are treated just like any other use and we cannot regulate the content of a sign. We could attempt to figure out ways to control some of the lighting but that would be a much more rigorous evaluation to figure out how to go about doing that and then light emission and how to regulate the light emission. There are localities that I think do that but yes, we have heard some of the same complaints.

Commissioner Nardi said really what we are voting on is the 1,000-foot buffer?

Mr. Fletcher said that is one of the main components. I mean you are voting to establish them as principal uses. The skill games now would get a principal use and then creating the tobacco, vape, and smoke shop as a separate use from other general retail. I anticipated that the 1,000-foot buffer would be the one that would get a lot of focus.

Vice Chair Byrd said when you say separate do you mean as being clearly defined relative to a convenience store?

Mr. Fletcher said and any other retail store that sells that sells any kind of product, clothing, shoes, whatever it may be.

Commissioner Alsindi asked will it be possible to elaborate a little bit more on "it will depend on the site's vicinity to a public or private school or child daycare center." What does depend mean?

Mr. Fletcher said I know what you are talking about, I need a bit more context about the sentence.

Commissioner Alsindi said it is on the second page...

Chair Finnegan asked on second page of the skill games one?

Commissioner Alsindi said yes. In the paragraph before the last sentence. Where it says "again, it will depend on the site's vicinity to a public or private school."

Mr. Fletcher said that is the 1,000-foot buffer essentially is what we are referencing there.

Chair Finnegan said I do have a point of order question. Do we need to hold two public hearings like open, close, vote, open, close, vote or can we open one public hearing for both?

Mr. Russ said I think you can do a single public hearing and make it clear that you can speak on either. If we had a large crowd, then you would want to organize them, but it does not look like we do.

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.

Arba Ahmad, owner of Mad River Mart at 710 Port Republic Road and multiple gas stations, came forward to speak to the request. He asked am I open to speak? I am not going to be trouble, I am going to tell you the truth. The main thing for the City, and the development for the planning, small business is the backbone for the City. Because of the small businesses the City and State collects revenue and makes money [unintelligible] developments. This kind of restriction on small businesses is going to kill the small businesses. Those families are going to be out of business. No one is going to come and help them, so they are going to go somewhere else. I moved from Chicago and opened one business. I have a gas station in Tazewell. I have five locations in Dayton; Crossroads, Dry River, Hall of Fame. I own the properties across the street from a chicken plant, the C&M Market, the whole property. I am not in favor of this as a businessman, it is going to kill the business. Those people are going to be out of business. Let's say somebody is in 1000 feet, he is affected, he is ran out business, what about 1,001 feet? What about 1,100 feet? In 1,000 feet businesses are going to be affected and 1,001 and 1,100 feet they are going to grow, they are going to make more money. In the end, the City is going to be in the loss because when some businesses run out of business, how can you collect revenue from that business? Everything is sale taxed. This is going to kill the businesses. Daycares have nothing to do with vape shop or the smoke shop. They do not know what a gaming machine is. Let's say the student comes to school, he spends 4 to 5 hours a day in school, the rest of the time he spends at home, 18 to 19 hours. We should stop or shutdown those businesses [unintelligible] in this house some students are living if the City keeps doing this around the business is going to be shut down. There are thousands of stores and businesses around the schools within 1,000 feet. They are going to run out of business. We are looking for the school and for the childcare but we are not looking [out] for those families that they are going to run out of business. Instead of that, we should support small businesses and we should give them more opportunities so that people can come here and the City grows. The Mad River gas station was shut down, it was closed when I bought it. I came here and the City was not getting any revenue from that. You can check in the system how much in taxes and sale tax I paid for that shut down location, I opened it six years ago. If the City is doing it like this... whatever you are doing for the City we really appreciate, you want to grow the City. Bring the people here, bring the business here so the City can get revenue and everyone is happy. This is going to kill the businesses and people are going to leave, what happens then? See what other states...no one is putting restrictions on businesses. The gaming machines I am not running, I never put in the gaming machine. I am not in favor, and I do not put them in my store because for the gaming machine people come and they are smoking, they are doing drugs and people do not like to go to that store. The other states they have casinos...

Chair Finnegan said if you could just wrap up your comment. I just wanted to get clarification; you are speaking against both regulations? You are against the vape shop regulation and the [skill game].

Mr. Ahmad said the gaming personally... I have never put the machines in my store because I am not in favor of those. The families do not go to those stores. When there are gaming machines there are people that are drinking and smoking.

Chair Finnegan asked you are primarily speaking against the vape shop?

Mr. Ahmad said if the store is not selling tobacco what are they going to sell? This restriction is...I respect your decision, but it is going to kill the businesses, people will go out of business.

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

Todd Rhea, 2322 Alston Circle, came forward to speak to the request. I just have more of a question about what happens when a new daycare opens. Let's say that a new daycare opens in the middle of the commercial area around the mall, what happens to the tobacco and vape [shops], do they become nonconforming if they were conforming before that new daycare opened?

Mr. Fletcher said the interpretation is yes, they become nonconforming.

Chair Finnegan said they would be allowed to legally operate but not expand...

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

Mr. Fletcher said I failed to mention during the presentation you may have picked up in the staff report that staff thought it was the right thing to do which was to send out the notices to the businesses that we had identified. We were not required by code to do so but we did send out like 70 letters. I could not remember so do not quote me on the exact number but essentially it is every location that shows up on the map.

Ms. Dang said just to clarify, that total number was the mailing to both the business address and also the property owner who could be someone out of state.

Chair Finnegan said I knew that Harrisonburg has a lot of vape shops, but it is not a hundred.

Mr. Fletcher said we sent it to the physical address of the business and to the business owner even though we were not required, we just wanted to give them a heads up.

Chair Finnegan said thank you for that clarification. It does not tally them up on here. I counted 21 skill game locations that were identified on this map and then maybe 15 or 16 vape shops.

Vice Chair Byrd said I got 16 [vape shops] when I counted.

Vice Chair Byrd said I would say that if we adopt the 1,000 feet, we basically put a freeze on all the vape businesses that are currently in the gray area. If...

Chair Finnegan said there is an important distinction, I just want to make sure is clear, that one of these two regulations prohibits it from happening. The other, they become nonconforming. With vape shops they become nonconforming, but they are allowed to continue to operate. With the skill games, they would become prohibited.

Vice Chair Byrd said that is why I said it would put a freeze on the ones on the gray, as in the ones who already exist, and there would be no new ones in the gray. I said it that way to be clear that any existing business in the gray area can still exist.

Chair Finnegan said if it is a vape shop. Vape shops can continue to operate, skill games cannot.

Vice Chair Byrd said that only applies to the vape [shops], the 1,000 feet is not for the skill games.

Mr. Fletcher clarified yes, it is. It is for both.

Vice Chair Byrd said the skill games are not legal.

Mr. Fletcher said on the map if a blue dot falls in the gray area that means that they were previously identified as a location that had them; they would be prohibited to have them if you approve the ordinance. Then the green [dots], they just become nonconforming.

Vice Chair Byrd said my statement was concerned with what is currently legal and then my mind went “well if the skill games are not currently legal, then they are locations of future problems.”

Chair Finnegan said that is why we are hearing this now because the new Virginia legislation goes into effect July 1, 2024.

Mr. Russ said if any. The Governor had amendments and he sent them to the General Assembly who did not accept his amendments, but he has not vetoed it. There may be something in the budget bill that is supposed to come out in the next week or two. There will likely be something as of July 1, but we are not 100 percent sure what it is.

Chair Finnegan said another way to put it is there are currently legally operating vape shops in the City and there are no legally operating skill games in the City currently.

Mr. Russ said yes.

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

Commissioner Washington said I have a few things. I do not smoke, does anyone up here smoke? I understand that there is an issue with children in middle school bringing vapes to school and having access to tobacco products. Here, while I am looking at the map, there really is not enough information for me to say why this is appropriate, and why it is appropriate now. I know in terms of having tobacco [and] vape shops around school areas or daycare centers that makes it inconvenient for parents who smoke to get to their kids as well. Do not get me wrong, people are going to smoke regardless. It is going to make it inconvenient for them to get what they need in terms of an addiction. Is there a larger more specific reason as to why we are looking at this and looking at this now?



Chair Finnegan said specifically the vape shops? The answer to the other one is July 1. Is that a question for staff?

Commissioner Washington said yes, for staff.

Mr. Fletcher said could you rephrase your question? Is the question why are we talking about it right now?

Commissioner Washington said that and why are we talking about this right now? Why is this appropriate? Why are we looking at this now?

Mr. Fletcher said is the question why should they be located 1,000 feet from schools?

Commissioner Washington said sure, lets start there.

Mr. Fletcher said we did not get into the science and psychology of it [in the staff report] but there are numerous articles that you can find that talk about...I hope I speak to this correctly that in generalities what I had seen was the closer a tobacco store is to a school, the higher rate of smoking. Many of the articles also talk about neighborhoods as well. The closer the product is to the neighborhood, the higher rates of smoking. It also has a lot to do with the advertising, the constant seeing of the advertising. In my view, what I interpreted that as being, is that if you are constantly driving past, every day you are going to school and seeing the tobacco signs is that it is a constant this must be normal. This is my interpretation of what I have read. There are numerous articles.

Chair Finnegan said thanks, that does help clarify the why schools. There is one very prominent one that is near...used to be a bank building on the corner of Mount Clinton Pike. That one is very prominent it is near a private school, Eastern Mennonite School, and it is in a very visible and prominent location. I would say similar to...this is not something that this body is regulating right now but adult bookstores.

Mr. Fletcher said the City Manager had communicated with me that he had received a call from a school leader about how close a particular vape shop was and how to prevent it. At the time the answer was you cannot prevent it because it is zoned B-2. It was just a mercantile establishment, and it was permitted by right and there was nothing that could be done. It was either 2022 or 2023 and I was just looking back at some of the articles we have. It is the socioeconomic disparities and vape shop density in proximity to public schools in the United States. There are a lot of articles out there.

Commissioner Washington said thank you for that, but I want to ask you is it prominent because it is near a private school? Because like you said...we know that cigarettes are expensive to folks who smoke cigarettes the most are folks who live or are apart of a specific socioeconomic class. I was just curious in terms of...you answered my question why, and I think it is important for us to think about how important it is for how close they are to public schools. I just do not feel like it was outlined appropriately or well enough here. I do agree with you.

Vice Chair Byrd said living near a vape shop that is very close to an educational facility, it has been interesting how people have reacted to its arrival. Which I find interesting because another one just down the road, technically it is close to a number of others of the same things, and no one really mentions that one because it is beside a grocery store. Brand new people go into the grocery store and buy cigarettes and think what is the difference from going into a grocery store and going into that [vape and tobacco shop]. I am looking at the map and I am just going “if HB 947 goes into effect concerning vape shops then the colored areas of the map will only be this small, it will not get any bigger unless new schools or child daycare centers are made” which is why my first comment was it would put a freeze on where those places are because I am looking at some of these other areas and going “some of them I do not see as really commuted areas and the ones that are colored, except one or two, have a lot of vape shops already there” and so I would be in favor of this because with the ones we already have we have people going “man, it feels like there is a lot.” I do not see how that would change anything and with it being frozen in that way unless businesses want to expand into the colored areas existing businesses would just have to be thriving and have no one else to compete with.

Chair Finnegan said just a point of clarification, you had said HB 947, where are you talking about?

Vice Chair Byrd said during the 2024 regular session the General Assembly passed HB 947 that localities could not restrict the location of smoke and vape shops more than 1,000 feet. This is as small as it gets [referring to the proposed ordinance amendment] and if you reduce the feet, the colored areas get bigger. From what I have heard from people is a concern about whether it already exists...

Chair Finnegan said another way to look at this is...I think a lot of people do not know this, and correct me please if I am wrong here, but gas stations are not allowed in the Central Business District, is that correct?

Ms. Dang said they would be allowed by special use permit but not by right.

Chair Finnegan said I just wanted to bring up another example of a business that we do not allow in a certain area typically. There are older gas stations that have been converted into other things or convenience stores or vape shops. We do not want a lot of gas stations downtown. The fact that it is not allowed, except by special use permit, that is not something we need to correct. I just wanted to enter that into the conversation that this is just about skill games and vape shops but there are other businesses that we put regulations around where they are located. Any other thoughts on this?

Vice Chair Byrd said I would like to make a motion to approve the ordinance amendment to define and regulate the location of skill games.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (6-0). The recommendation will move forward to City Council on June 11, 2024.

Vice Chair Byrd said I would like to make a motion to recommend approval of the Zoning Ordinance amendment concerning regulating the location of tobacco, smoke or vape shops as it was written.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (6-0). The recommendation will move forward to City Council on June 11, 2024.

***Consider a request from Cobblers Valley Development LLC to preliminarily subdivide 585 Pear Street***

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in February 2024, City Council approved two requests for this site, which included;

- Rezoning from R-1, Single Family Residential District to R-8C, Small Lot Residential District Conditional; and
- A special use permit to allow attached townhomes of not more than eight units in the R-8 district.

A copy of the approved 2024 rezoning proffers is attached herein.

The applicant is requesting to preliminarily subdivide a +/- 2.18-acre parcel into 21 townhome lots and one commonly owned lot that includes the private street. The request includes variance requests from the Subdivision Ordinance (SO) to allow lots to not have public street frontage and to allow deviation from location requirements for public general utility easements. The parcel is addressed as 585 Pear Street and is identified as tax map parcel 8-E-2A.

Note that staff is working to determine if the private streets names will be a continuation of adjoining existing street names or if the applicant will need to propose new street names. As part of the administrative final platting process, staff will ensure compliance with street naming and addressing standards.

#### *Land Use*

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

These areas have been developed or are planned for small-lot single-family detached and single-family attached (duplexes and townhomes) neighborhoods, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets. Mixed-use buildings containing residential and non-residential uses and multi-family dwellings could be appropriate under special circumstances. Attractive green and open spaces are important for these areas and should be incorporated. Open space development (also known as cluster development) is encouraged, which provides for grouping of residential properties on a development site to use the extra land for open space or recreation. Like the Low Density Mixed Residential designation, the intent is to have innovative residential building types and allow creative subdivision designs that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and the protection of environmental resources or sensitive areas (i.e. trees and floodplains). Residential building types such as zero lot-line development should be considered as well as other new single-family residential forms. The gross density of development in these areas could be around 20 dwelling units per acre. 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.

#### *Transportation and Traffic*

A Traffic Impact Analysis (TIA) for this development was performed during the rezoning process. The subject property's existing regulating proffers provide for the necessary mitigations to address the development's impact on the existing streets, as well as, to create a network of connected streets within the development to distribute traffic. The necessary transportation improvements will be constructed as the development progresses.

Proffers 3, 4, and 8, from the 2024 rezoning committed the developer to constructing sidewalks and dedicating public access easements over the private sidewalk along the private streets. Public access easements provide access for the public to be able to use privately owned and maintained sidewalks. These easements are shown on sheet 2 of the preliminary plat.

#### *Public Water and Sanitary Sewer*

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

#### *Subdivision Ordinance Variance Requests*

Section 10-2-42 (c) of the SO requires all parcels to have public street frontage, however the applicant is requesting a variance to that section to allow townhome lot numbers 13-21 to not have public street frontage. This particular variance has been approved multiple times throughout the City for many existing townhome communities and staff has no concerns for this project.

The second variance request is to Section 10-2-43 of the SO, which requires a 10-foot-wide public general utility easement along front lot lines and any lot adjacent to public right-of-way and the same type of easement of at least 10 feet in width centered on the sides or rear of lot lines. Sheet 2 of the plat illustrates the proposed locations of the necessary public general utility easements and where some of the locations are modified. Public general utility easements are provided for utilities, including water, sanitary sewer, storm sewer, electric, natural gas, television cable, telephone cable, and others deemed a utility by the City. The proposed public general utility easements would not preclude utility companies from negotiating alternative easements with the property owner(s). The requirements, as specified in Section 10-2-43, are intended to ensure that necessary areas are reserved for the needed utilities in traditional subdivisions. The proposed locations are sufficient for this development and staff does not have concern with the proposed development deviating from this section of the SO.

Staff supports both variances that have been requested.

#### *Housing Study*

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject site within Market Type B, which has "neighborhoods [that] are characterized by high income earning households, large volumes of housing sales and lower population growth." The Housing Study further notes that houses in these markets are quick to sell and that "[p]riorities and policies that are appropriate to Market Type B areas include the preservation of existing affordable housing while at the same time working to increase access to amenities."

#### *Public Schools*

The student generation attributed to the proposed 21 residential units is estimated to be 8 students. Based on the School Board's current adopted attendance boundaries, Bluestone Elementary School, Thomas Harrison Middle School, and Harrisonburg High School would serve the students residing in this development. Harrisonburg City Public Schools (HCPS) staff noted that schools are over capacity in many of the schools.

#### *Recommendation*

Aside from the variance requests as described herein, the plat meets all other requirements of the Subdivision Ordinance. Staff supports the variance requests and recommends approval of the preliminary plat.

Chair Finnegan asked if there were any questions for staff. He continued to say this is not a public hearing, but I do think if...does anyone have questions for the applicant that you would like answered.

Commissioner Nardi said can you help me understand, I am looking at this map and I am seeing lots of open land and we have a Comprehensive Plan. I am probably the least familiar at this point, but I like the fact that they are townhomes. Just when I see all this land around that is going to

developed, I just wonder about the timing of it all and I guess I need more information but that is on me.

Chair Finnegan said if you have a question for staff, this is the perfect time to ask if you have a question about the Comprehensive Plan.

Commissioner Nardi said [to staff] can you tell me a little bit about where this area is in this phase of development or its developmental maturity? What do the plans say in terms of what is next for this area?

Ms. Rupkey said our Comprehensive Plan map is right here where it has the low density mixed residential. The portion that is in the white is County.

Mr. Fletcher said there is an error on the screen that is not Low Density Mixed [Residential], that is Medium Density Mixed [Residential]. It is 20 units an acre I think is what we are planning for. Ms. Nardi, have this image in your head and then go to the aerial. Everything that was white in that other image is the County and they have their own zoning regulations and their own Comprehensive Plan. Mr. Snyder is here this evening, who represents the engineer and the developer, and they might be able to speak to some of your questions if you are talking about the timing and how things are going to happen. The development that Meg and Thanh have discussed here is in line with our Comprehensive Plan because it is in line with the types of housing that we were planning for this area and the type of density that we were planning for this area. If you had a time machine and you go back like three years, there would be nothing out there and, as Mr. Snyder is going to probably point out if he wanted to speak to it, they are busy out there but more of the hum is in the County right now and then they are going start moving to the phases in the City.

Chair Finnegan said as a clarifying follow up for Commissioner Nardi, this has already been rezoned, this is just a preliminary plat. Would the applicant like to speak to where you are at in the process of building this entire development?

Carl Snyder, applicant's representative with Valley Engineering, came forward to speak to the request. He said this is actually just a small portion of a much larger development. The bulk of it is in the County. There is one other piece to this development that is on the other side of Cobblers Court right along Pear Street. Currently, all of the townhouse sections in the County and the previously approved City section are under construction for earthwork right now. I have been tasked by the client on this project that as soon as the preliminary plat is hopefully approved, to proceed in with construction drawings asap. As far as the timing to go to construction, I cannot speak to that. I do know that I have been asked to keep it moving.

Commissioner Nardi said my question was more about land use planning as opposed to timing of the development itself.

Vice Chair Byrd said the variance was concerned with the topography of the land, if my memory serves me correctly.

Ms. Rupkey said the variance was to not have public street frontage for all the lots and then to not have to provide the public general utilities that are running through the center lines of internal property lines and the easements are going to run along Pear Street.

Vice Chair Byrd said you said the variance about where it is fronted?

Ms. Rupkey said the private street will be for the internal of the development where I have colored it in gray right here. Although these lots along Pear Street technically will have street frontage along Pear Street, they are not requesting the variance for those lots particularly but for these bottom lots here [referring to the screen] will have the private street frontage.

Mr. Fletcher said Pear Street is the public street, those lots that are page up, they actually have public street frontage and they do not need the variance. The units will likely face internal to the private street is what the reference was. The lots on page bottom require the variance because while to the general person driving through will think it is a public street, it is actually a private street. Our code requires that lots are subdivided on public streets, so they are requesting to deviate from that standard and from the public street.

Vice Chair Byrd said thank you. I was mixing it up with a different development.

Commissioner Baugh said the alternative here is do you require the developer to bring the streets into the City street system? That is really what this is. It is allowing the smaller streets and the additional flexibility, which again we have routinely approved.

Chair Finnegan asked if there any questions for staff.

Commissioner Baugh said I will move approval of the preliminary plat with the variances as presented by staff.

Vice Chair Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of the preliminary plat request passed (6-0). The recommendation will move forward to City Council on June 11, 2024.

***Consider a request from J&D Group LLC to preliminarily subdivide 465 Pear Street***

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in February 2024, City Council approved two requests for this site, which included;

- Rezoning a +/- 3.15-acre parcel from R-1, Single Family Residential District to R-8C, Small Lot Residential District Conditional; and
- A special use permit to allow attached townhomes of not more than eight units in the R-8 district.

A copy of the approved 2024 rezoning proffers is attached herein.

The applicant is proposing to preliminarily subdivide two parcels totaling +/-3.51-acres into 41 townhome lots, one common area lot, and two private street lots. The request includes a variance request from the Subdivision Ordinance (SO) to allow lots to not have public street frontage and to allow deviation from location requirements for public general utility easements. The parcel is addressed as 465 Pear Street and is identified as tax map parcels 8-E-3 and 5.

Note that staff is working to determine if the private streets names will be a continuation of adjoining existing street names or if the applicant will need to propose new street names. As part of the administrative final platting process, staff will ensure compliance with street naming and addressing standards.

#### *Land Use*

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

These areas have been developed or are planned for small-lot single-family detached and single-family attached (duplexes and townhomes) neighborhoods, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets. Mixed-use buildings containing residential and non-residential uses and multi-family dwellings could be appropriate under special circumstances. Attractive green and open spaces are important for these areas and should be incorporated. Open space development (also known as cluster development) is encouraged, which provides for grouping of residential properties on a development site to use the extra land for open space or recreation. Like the Low Density Mixed Residential designation, the intent is to have innovative residential building types and allow creative subdivision designs that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and the protection of environmental resources or sensitive areas (i.e. trees and floodplains). Residential building types such as zero lot-line development should be considered as well as other new single-family residential forms. The gross density of development in these areas could be around 20 dwelling units per acre. 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.

#### *Transportation and Traffic*

A Traffic Impact Analysis (TIA) for this development was performed during the rezoning process. The subject property's existing regulating proffers provide for the necessary mitigations to address the development's impact on the existing streets, as well as, to create a network of connected streets within the development to distribute traffic. The necessary transportation improvements will be constructed as the development progresses.



Proffers 3 and 9 from the 2024 rezoning committed the developer to constructing sidewalks and dedicating public access easements over the private sidewalk along the private streets. Public access easements provide access for the public to be able to use privately owned and maintained sidewalks. These easements are shown on sheet 3 of the preliminary plat.

Proffer #5 from the February 2024 rezoning required the developer to provide an easement for a bus shelter and build a concrete pad in a location that is acceptable to the Harrisonburg Department of Public Transportation (HDPT). The proffer allows for flexibility that if adequate sight distance cannot be achieved at a location acceptable by HDPT, then the easement and concrete pad will not be required. At this time, HDPT has determined that a bus stop location is not feasible along the Pear Street frontage of this development.

#### *Public Water and Sanitary Sewer*

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

#### *Subdivision Ordinance Variance Requests*

Section 10-2-42 (c) of the SO requires all parcels to have public street frontage, however the applicant is requesting a variance to that section to allow all townhome to not have public street frontage. This particular variance has been approved multiple times throughout the City for many existing townhome communities and staff has no concerns for this project.

The second variance request is to Section 10-2-43 of the SO, which requires a 10-foot-wide public general utility easement along front lot lines and any lot adjacent to public right-of-way and the same type of easement of at least 10 feet in width centered on the sides or rear of lot lines. Sheet 3 of the plat illustrates the proposed locations of the necessary public general utility easements and where some of the locations are modified. Public general utility easements are provided for utilities, including water, sanitary sewer, storm sewer, electric, natural gas, television cable, telephone cable, and others deemed a utility by the City. The proposed public general utility easements would not preclude utility companies from negotiating alternative easements with the property owner(s). The requirements, as specified in Section 10-2-43, are intended to ensure that necessary areas are reserved for the needed utilities in traditional subdivisions. The proposed locations of the public general utility easements are sufficient for the development and staff does not have concern with the proposed development deviating from this section of the SO.

Staff supports both variances that have been requested.

#### *Housing Study*

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject site within Market Type B, which has "neighborhoods [that] are characterized by high income earning households, large volumes of housing sales and lower population growth." The Housing Study further notes that houses in these markets are quick to sell and that "[p]riorities and policies that are appropriate to Market Type B areas include the preservation of existing affordable housing while at the same time working to increase access to amenities."

#### *Public Schools*

The student generation attributed to the proposed 41 residential units is estimated to be 15 students. Based on the School Board's current adopted attendance boundaries, Bluestone Elementary School, Thomas Harrison Middle School, and Harrisonburg High School would serve the students residing in this development. Harrisonburg City Public Schools (HCPS) staff noted that schools are over capacity in many of the schools.

*Recommendation*

Aside from the variance requests as described herein, the plat meets all other requirements of the Subdivision Ordinance. Staff supports the variance requests and recommends approval of the preliminary plat.

Chair Finnegan asked if there any questions for staff.

Vice Chair Byrd said on sheet PPZH2 at the top it says stairs with handrail. Is that just like in the other one about the accessory route, are those things that we can expect to be there when this is all finished?

Ms. Rupkey said sorry, can you repeat your question.

Vice Chair Byrd said at the top there is...

Ms. Rupkey said stairs with handrail along Pear Street?

Vice Chair Byrd said yes, I am just asking, for all the things in the preliminary plat drawing can we expect to see?

Ms. Rupkey said just the general location of the lot lines. When a development goes to site plan review certain things may cause elements to shift.

Mr. Fletcher said they may introduce a ramp or grade it differently.

Chair Finnegan said there is some sort of pedestrian connectivity whether it is terrain or whether it is stairs.

Ms. Rupkey said the sidewalk that is going to Pear Street on PPZH2, that was not apart of the proffered connection. It is the one on page one.

Chair Finnegan said I think this came up in the Bluestone Town Center plat several months ago... about fronting on streets? I think staff recommended that [the units] continue to front on the public street and then in this case staff was recommending approval. I was just wondering if you can for clarification why one and not the other? I know that they are apples and oranges.

Mr. Fletcher said you have to take every development circumstantially as to what is going on. For Bluestone Town Center, because of the way the lots were laid out and to create more of that community feel, we did not want those units to feel like they were separate from the rest of the development. Those units had the opportunity to front on the public street. There are examples

across the City, where in hindsight, it would have been best practice to have required fronting public streets. There are examples across the City where the units back deck is right out on the public street. Just one example, although the units look great, it is a different environment, Charleston Town Homes. Very nice units, but you have this line of decks that are backed up all the way on a public street. In hindsight, may have suggested to reorient those units to have the front door on the public street. This is a very different environment. The units are separated a lot further from the public street. There are elevational changes that are much more dramatic. These will actually sit quite a bit lower from Pear Street. The orientation is very much focused to the private street. You are pulled into that... I am internal to the community and rear is along that public street that is multiple feet away. Those units that were on Bluestone Town Center are just sort of like an island of a very different approach. We just did not want that community to feel like it is separate from the rest of the community.

Chair Finnegan said that is helpful to get some context there. We did lose a Planning Commissioner along the way, Commissioner Washington. I would like to proceed; we still have a quorum.

Commissioner Baugh said I will go ahead and move approval of the preliminary subdivision with the requested variances as presented by staff.

Vice Chair Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the preliminary plat request passed (5-0). The recommendation will move forward to City Council on June 11, 2024. Note: Commissioner Washington left the meeting during the presentation.

At this point in time, the Commission took a 3-minute recess.

### ***Planning Commission Annual Report 2023***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said we have before you the 2023 Planning Commission Annual Report. This report includes a listing of all of the items that were considered by the Planning Commission, staff as well as Planning Commission's recommendations, and then you can also see in the column there the City Council actions. These are all the items including rezonings, special use permits, ordinance amendments, and capital improvement plans, basically every item that has been on your agenda. This particular item will need to be voted on with your approval so that we can move

forward to present to City Council at the June 11 meeting. I am happy to answer any questions or if you see any errors, please let me know.

Chair Finnegan said we are looking for a motion to approve for...

Commissioner Baugh said submission of the report to Council.

Chair Finnegan said so to move to City Council.

Vice Chair Byrd said we have Jim Orndoff marked as Board of Zoning Appeals representative and his resignation date, but you do not have me mentioned.

Chair Finnegan highlighted requests where staff, Planning Commission, and/or City Council recommendations/votes differed from each other.

Commissioner Baugh said I move that we approve the submission of the 2023 Annual Report to City Council as presented.

Vice Chair Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of Planning Commission Annual Report passed (5-0). The recommendation will move forward to City Council on June 11, 2024.

### ***Community Development Annual Report 2023***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said the next report is our Planning and Zoning divisions' report to you all that describes a brief summary of our zoning activities, minor subdivisions that have been reviewed and approved, and then final plats as well. As you can see, proactive code enforcement continues to be on hold due to staffing challenges and vacancies. For those of you who may not know, proactive code enforcement, when we had been doing this program, basically there is a map of the City that staff had divided it into 36 sections and staff would visit each of those sections once every three years on a schedule. As we drive through the City we would observe if there were any obvious zoning or other code violations, then we would cite them. But due to vacancies that we have in our office and other responsibilities that we have, we have not been able to continue this program. We hope to resume it one day.

Mr. Fletcher said our staff also looks at special use permit conditions and proffers and all of those things so that when they go out. They see if there are special use permit conditions or proffers in that sector and they check those as well.

Chair Finnegan said is there anything in this report that... I guess these are things we can consider as we are looking at the Zoning Ordinance revisions.

Ms. Dang said maybe, I guess you would relate it to things that this body would have reviewed where things that had been preliminary plats that now have been final platted, administratively reviewed, and approved and then recorded at the courthouse.

Mr. Fletcher said a lot of the preliminary plats that you have seen recently are multiple lots and then they move into the construction design and then they will actually want to get their land disturbance permit and then they will start final platting those lots. They might even do it in phases. Say if there were 100 lots, they might plat 20 and come back and plat another 20.

Commissioner Baugh said from recollection, it took us awhile to get the first 22 chicken permits issued and now we have 22 in a year. Of course, I think part of the suspicion is that we had chickens and people were getting permits.

Chair Finnegan said I know of chicken coops in my neighborhood, I do not know if they are legal.

#### **New Business – Other Items**

None.

#### **Unfinished Business**

None.

#### **Public Comment**

None.

#### **Report of Secretary & Committees**

##### ***Rockingham County Planning Commission Liaison Report***

Commissioner Baugh said last night they had a number of matters. First one was the Town of Elkton showed up for a rezoning for a parcel just out of town. The water tank, I think it was established in 1891, they need a new one. They needed a rezoning to be able to put the new one on it. There was a rezoning of just over eight acres just south of the City on Route 11, Helmuth Builders. They basically do a lot of backyard sheds and similar type things. They had asked for a rezoning from A-2 to their industrial, I-1C. It had been turned down. The rationale was that there were some significant road improvements that are anticipated out there and the Supervisors were concerned that it was still too indefinite. That moved along enough. What they proposed was a

rezoning from A-2 to I-1C but one of the proffers was they would not expand anything beyond the current use until the road improvements are completed and they kind of went through a timetable. VDOT is doing acquisitions. They hope to start in 2026 but who knows, it is subject to available funding and all the stuff that you go through with those types of projects. I think Planning Commission had approved it before and the Board of Supervisors had turned it down. Now that things are clear, they approved that. Then there was a request for just under ten acres a little east of downtown Briery Branch. It is currently in an Agricultural and-Forestal District... Family wanted to do some family division it looks like, and I think in that program every time it comes up to renewal everybody has the opportunity to opt in or out. When you come up off cycle, there is a committee that reviews it. They reviewed it and everybody thought it was fine. I think somebody commented they did not think they would every turn down one of these. They unanimously approved that. They continued to report on their tabled matter about their changes in poultry house setbacks and maximum number of new houses that can be built. They were all looking forward to a work session May 20 to hopefully get something approved. That was it. They finished at just over a half an hour.

Chair Finnegan said did you say downtown Briery Branch?

Commissioner Baugh said yeah. It is not in Briery Branch it is east of Briery Branch.

Ms. Dang requested volunteers for upcoming Rockingham County Planning Commission meetings.

### ***Board of Zoning Appeals Report***

Vice Chair Byrd said the BZA met. There was an appeal concerning 813 Chicago Avenue concerning a B-2C to B-2 decision that was made where the Planning Commission recommended denial (5-1). City Council recommended denial (3-1). During the appeal process, of course, this was not mentioned any concerns related to how relative to law these things are handled in some particular way. The applicant was more concerned with not understanding what they wanted and what their application to the bodies was, that was the feeling I got. There was some frustration among the board members. It felt that there was something odd about the whole situation. The BZA recommended denial (3-2). The thing is, when I was reading the report, as a member of that body I feel it is necessary...I wish our council member was here to remind people that when things have a lot of proffers on it to say exactly why you are against that particular application, so that the person knows if it is going to get denied if it is even worth continuing to pursue. My feelings, from what the applicant was saying and how it was denied by the bodies, it sounded like there was a disconnect. The applicant was concerned about a parking lot, or maybe where vehicles in the process of being repaired, are being stored. Reading what the two bodies discussed while recommending denial, it did not sound like they were discussing any of that, they were discussing other things that were also related to the property. The only thing that I can liaison back is, if we are denying something, just make sure that we state something about the application. This thing I do not like. This thing I do like. So that the applicant can have a better gauge. If I had changed my mind, that person could have gotten approved at the BZA. That is how frustrated a number of members were and I just felt that one was not right. I do not think the BZA should be used for people that are confused about... I wanted this and I did not feel like I got to present that. Me,

reading back from the minutes of the two meetings, going "I was at one of them" and I am not sure you would glean enough from what the bodies were saying. Not so much from what staff reported. I was in favor of how staff represented the information, it is just we have more interaction with staff on this type of matter and they are just meeting with staff about their issue and there might be a disconnect. There was also a concern of sometimes an applicant might not understand that staff can give them advice about their application, that has nothing to do with staff's evaluation of the application and therefore their recommendation is towards us. That is what I felt was swaying some BZA members. My assessment of all that is we should be a little clearer in why we are for and against particular aspects of an application. Especially if it looks like a motion of denial.

Ms. Dang said I agree with Commissioner Byrd about when you all make a motion to approve or deny, it is helpful [to explain your reasons]. Particularly for your vote to when it goes to City Council, for them to understand why you voted the way that you did. Thank you for sharing that. If I may recap, the BZA appeal it was an appeal of the Zoning Administrators' decision on our determination that that property was not in compliance with the 2013 proffers that did not allow any use on that site. That should have been the focus of the BZA meeting but at the meeting there was as Vice Chair Byrd is explaining there was a lot of discussion about the use of it. Which, in my opinion, was not relevant to the BZA determination but nonetheless, a bit of time was spent on that.

Commissioner Baugh said BZA is not a general appeal from decisions by Council. BZA is about Zoning Administrator's ruling. Which is a much narrower issue.

Chair Finnegan said it is hard because we want to make it about what we...if we object to something in the covenants, that is not our place to make decisions on. I remember one particular conversation about an alley off of Myers that just went way off the rails. We got into it should be gravel and that is not what the request was, it was about closing a portion of the alley. That is a good reminder to be specific and particularly before we take a roll call vote if it looks like it might be a split vote it is always good to say "I will be voting against this because..."

Ms. Dang said that is a good distinction I think; when there is a contentious or split vote otherwise sometimes it is just generally understood that everybody is in agreement you all can probably move on.

### ***City Council Report***

None. City Council meets next week.

### **Other Matters**

#### ***Review Summary of next month's applications***

Ms. Dang said in front of you all there is a list of the items that we have for next month and given the number of items in our judgement, our recommendation is to have one meeting next month and that would be on June 12.

***Adjournment***

The meeting adjourned at 8:01pm.

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Brent Finnegan, Chair

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Anastasia Auguste, Secretary