



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections
Engineering
Planning & Zoning

June 29, 2017

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Hillside Land LLC with representative Genaro Salgado for a special use permit per Section 10-3-97 (1) of the Zoning Ordinance to allow a restaurant within the M-1, General Industrial District. The 10,233 +/- square feet property is located at 924 South High Street and is identified as tax map parcel 19-D-7.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 14, 2017

Chair Way read the request and asked staff to review.

Ms. Dang said the Comprehensive Plan designates this area as Commercial. Commercial uses include retail, office, wholesale, or service functions. Restaurant and lodging uses are also included. These areas are generally found along the City's major travel corridors.

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

- Site: Cell phone repair store and towing business, zoned M-1
North: Across South High Street, truck and equipment sales and rental, zoned B-2
East: Towing business and vehicle storage, zoned M-1
South: Towing business and vehicle storage, zoned M-1
West: Welding and construction supply store, zoned M-1

The applicant is requesting a special use permit (SUP) per Section 10-3-91 (1) of the Zoning Ordinance to allow for a restaurant within the M-1, General Industrial District. The applicant owns the food truck currently illegally operating on the property and would like to continue operating at the site. There is a building on the property that is partially occupied by a cell phone repair store and partially used by the applicant for storage. The land behind the building is leased to a towing company. The property is located at 924 South High Street.

Food trucks are permitted to locate within the B-1, Central Business District and B-2, General Business District, where restaurants are permitted by right. Restaurants, including food trucks, are permitted to operate within the M-1, General Industrial District, with an approved SUP. Additionally, businesses must obtain a business license from the Commissioner of Revenue's Office, and owners must identify their place of business. Due to the mobile nature of food trucks, operators of food trucks who do not have an accompanying permanent, brick and mortar location for their business will utilize their residential home address as their place of business. Using a residential home address requires that they receive a home occupation permit from the Department of Planning and Community Development.

The City With The Planned Future

Staff became aware of the applicant's food truck operation on the M-1 property when a representative for the business came to the Department's office to apply for a home occupation permit.

The applicant has been running the food truck at the site since March 2013. If the SUP request is approved, the applicant plans to continue operating along the east side of the building with two picnic tables with umbrellas and three picnic tables underneath the food truck awning. The tables must be located on the parcel with the SUP. The carport previously located adjacent to the food truck that was used as a seating area has been removed, and the applicant is aware that if a carport, canopy, or other roofed structure is added, other than an awning attached to the food truck or umbrellas at tables, then it must meet zoning and building code requirements.

Currently, the Zoning Ordinance does not require parking spaces for food trucks; however, three parking spaces must be left available for the cell phone repair store, which occupies less than 500 square feet of the building. (Note: Staff's draft regulations for mobile vending units, which include food truck operations, will likely include minimum off-street parking regulations when permanent seating is offered by the vendor. The draft regulations will be brought to Planning Commission in the coming months for comment and review.)

If the SUP is approved, the applicant will need to work with the Building Inspections Division to meet any required building code regulations regarding electric and plumbing connections. The applicant is also aware that freestanding and wall signage pertaining to the food truck at the site is not permitted, unless solely attached to the food truck. The food truck must be maintained as a registered motor vehicle at all times.

As previously stated, the Land Use Guide designates this area as Commercial, and a restaurant use on this property is supported by the Commercial designation. Overall, staff believes the restaurant use should have no adverse effect on the health, safety, or comfort of those working and living in the area.

Staff recommends approval of the special use permit request with the following conditions:

- One parking space is required for the food truck and one parking space is required for every four seats provided by the food truck. (As of June 8, 2017, there are 26 seats, so seven parking spaces would be required, along with the parking space for the food truck for a total of eight parking spaces.) The applicant is aware if the SUP is approved with this condition, parking spaces must be provided within 30 days of City Council approval.
- The SUP is limited only to the food truck proposed.

Chair Way said quick clarification on that second condition, is that talking about food trucks generally, or this specific food truck that is currently operating there?

Ms. Dang said we were suggesting this particular food truck. If you have comments or would like to change that condition we should discuss that.

Chair Way asked if there were any questions for staff.

Mrs. Whitten said I am wondering, historically, why it is that M-1 industrial does not allow food trucks except by special use? It seems like industrial would be the place a food truck can roll up and do very well, and people would be happy because they would be at work and they can get good food.

Ms. Dang said I believe because food trucks are relatively new and they were not considered in our zoning ordinance previously. That is the reason why we are working on creating a mobile vendor ordinance that can possibly allow that to happen.

Mr. Fletcher said historically, as you know, we have had food trucks in Harrisonburg for 30 plus years; we have just simply classified them as restaurants. Restaurants are only permitted by special use permit

in the M-1 district; it always has been that way. The very first special use permit that was allowed for a mobile vendor, and it was not technically a food truck, was located at Lowe's. I do not recall the specific date of when it was, but it was early 2000s. That is a quick history of how they are classified.

Mrs. Whitten said thank you.

Mr. Colman said I think that it is interesting that we are regulating food trucks. I say this because introducing regulations like this, are we saying this is becoming a nuisance; therefore, we are going to regulate it in a way that it will be restricted? Is there a reason for this regulation? That is my question. When you go to a big city, like New York City, there are food trucks all over the place; are they required to have parking? It does not seem like it. It seems to me that this is almost, I do not want to say "going too far," but I do not know that we have to regulate this. Perhaps this case is unique in some ways. I live around the corner, so I know that the truck has been parked there for a long time, who even knows if he moves; therefore, it could be considered a restaurant. That I can understand, but beyond that, I feel a little uncomfortable if we are just going to regulate it because we can and not because it is needed.

Mr. Finks said the difference, I would say, between Harrisonburg and a bigger city with a lot food trucks, is in Harrisonburg we do not have a lot of food trucks that are mobile on a day to day basis. It seems like not all, but a lot of the food trucks, are more permanently in one location, where they might be renting space in that location in order to use the facilities somehow. I would see what you are saying if we had completely mobile food trucks it would not make any sense for Planning to do anything with that because they are at a different location every day.

Mrs. Whitten said but if they are, they are still going to have to have a special use permit, same as if they were at the same place all the time.

Ms. Dang said at this time if they are located in M-1 they need a special use permit.

Mr. Fletcher said and they can only operate by right in B-1 and B-2. I can tell you a little history about food truck mobile vendors and why we had drafted some regulations. If you all recall a couple of years ago, when we drafted regulations for portable restroom facilities, that began with this idea of a food truck lot/court. It was in B-1, and B-1 does not require any parking. There were all these miscellaneous issues that were popping up about where they can park and then other departments came in to play, like Public Works, Public Utilities, HEC; questions about where were they dumping the gray water; it was all these different things. I cannot capture everything we talked about, but there was a significant amount of research and discussion that went on in the 2014 to 2015 time period.

My predecessor actually was the lead on that, and during transfer of duties it was stalled for a while, but as Ms. Dang said, we have resurrected that matter and brought it back to the table into staff's hands. It was recognized that there are localities that do have parking requirements for food courts, but often times when you see them in Washington D.C. they are parking on the public street. The user might perceive that there are no issues with that, but what they are doing is taking up public parking spaces on the street and they feed the meter all day long. Then, there are also issues with business licenses, and questions about whether they are getting the proper licensing to be able to have that commercial transfer of business and retail trade on public streets.

As is the case in almost all regulations, when there is a perceived nuisance, that is when the regulations come into play. There were so many issues about the portable restroom facility and where it could have been located in B-1. It could be long term, it could be short term, and all those issues got played out. What Ms. Dang was referring to with the condition here is that this is the direction we are headed with the proposed regulations when seating is provided. The condition is if the customer is not to stay at the property after they receive their food seating is not provided on site, then there should be no parking problems, because you come, you get your order, and you head out.

Mr. Colman said another issue related to the parking is that if they are on a commercial lot or on an industrial property in this case, the parking they are taking away from is the required parking at the facility. How do we balance that out? I realize in this case that there is the phone repair store and we tried to balance it out that way; but I am thinking that could be an issue also.

Mr. Fletcher said we have had over the years, multiple people come in and were notified that they were setting up shop on an M-1 property, which it was not permitted. We explained that they would have to apply for a special use permit, but they did not want to go through that trouble to be able to get it at the desired location, because they knew exactly what you all had already pointed out.

Mr. Colman said let me ask you this also, the ice cream truck what do you do with them? Will they be taking public street parking technically, but they are moving more quickly than a food truck.

Mr. Fletcher said now we have moved out of the zoning world. Since it is in the public right-of-way, it becomes a matter of the Commissioner of Revenue for a peddler's license; the Police Department with regard to traffic and movement; and then also Public Works if there is any kind of problem associated with the moving of vehicles on the street. We are out of the zoning world at that point.

Mr. Colman said yes we are, but at the same time if we say, "okay, you deal with somebody else for that," and all the food trucks say that is what we will do. Then they will drive around and park on the corner for a couple of hours and move on to the next corner.

Mr. Fletcher said and I believe they can do that today, they just have to have the proper licensing.

Chair Way said I think it is a very interesting discussion and I am really looking forward to balancing the inherent kind of public nature of these things not being a full-on restaurant.

Mr. Fletcher said if you are interested we can speak with the Commissioner of Revenue if you want to follow up on that. I am going by memory of discussions about those different types of licenses.

Mr. Colman said it would be interesting, because I think by creating stricter regulations in terms of special use permits and perhaps parking requirements, we are intentionally pushing people to the streets, not that we are, but potentially we could be.

Mr. Fletcher said I respect that this is somewhat different than, for example, the Schwan's Truck, which drives into a neighborhood and parks its vehicle, walks up and down the street, and says here is my menu, which you can order from and some of the items I have in the truck.

Mr. Baugh said going back to that original question how did we get here, I am reminded on how our ordinances, and zoning ordinances in general, have historically been very neat and tried to set boundaries; these things go here, those things go there. I was reminded that a very prominent member of City Council was seriously arguing about how he did not think that the idea of conditional zoning was a very good idea. Why? Because the idea of you set your zoning categories, you tell people what was in what category, and that is what goes in there; and so, conditional zoning uses all that stuff. Why do that? Just make the ordinance the way you want. It was a different mindset, one that I think we have moved on from. I think that is a little bit about why we are in the place we are.

Chair Way said that is so ironic and appropriate, because what we are dealing with here is flexible; the food truck is supposed to be mobile and it is suppose to capture mobility and flexibility.

Mr. Baugh said the old ordinances did not like things like that. They wanted things to be in certain places.

Mrs. Whitten said to me there is a difference in a food truck that has been in the same place for five years and one that does move around; it is merely not the same. This one actually has, like a shed kind of thing attached to the back of it. If this actually had to move, I think you would have to take that off. It is nailed

on, it has been constructed on to the back of the truck. That is different too in what I would consider really a mobile food truck.

Chair Way opened the public hearing and asked if anyone would like to speak in favor or against this request.

Reina Salgado, 924 South High Street, owner of Salgado's Pupuseria y Taqueria food truck, said we have had that food truck for four years and we have had good customers. We have never had any problems like health problems or any crash on the parking lot. It surprised me when we heard we had to do something like move; but I hope, and I cross my fingers that we can continue to work there, because we like to work there and we have a good customer base. Like I said, it is your decision and I hope we do not have to move from there.

Chair Way closed the public hearing and asked Planning Commission for a motion on the request for the purpose of discussion.

Mrs. Whitten said just so the applicant understands, the discussion that Planning Commission just had has very little to do with this particular food truck. I do not want you to think that you are not welcomed in this city, because you are. I move to approve the special use permit at 924 South High Street (Section 10-3-97 (1), To Allow Restaurants in the M-1, General Industrial District) as presented by staff.

Mr. Colman seconded the motion.

Chair Way asked if there was any other discussion. Hearing none, he called for a voice vote on the motion.

All voted in favor (6-0) to approve the special use permit at 924 South High Street (Section 10-3-97 (1), To Allow Restaurants in the M-1, General Industrial District) as presented by staff.

Chair Way said this will go forward to City Council on July 11, 2017.

Respectfully Submitted,

Alison Banks

Alison Banks
Senior Planner