

MINUTES OF HARRISONBURG PLANNING COMMISSION

May 8, 2019

The Harrisonburg Planning Commission held its regular meeting on Wednesday, May 8, 2019 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Gil Colman; Mark Finks; Brent Finnegan; Zanetta Ford-Byrd; Sal Romero; Kathy Whitten; and Henry Way, Chair.

Members absent: None.

Also present: Adam Fletcher, Director of Planning and Community Development; Wesley Russ, Assistant City Attorney; Thanh Dang, Assistant Director of Planning and Community Development; Alison Banks, Senior Planner; and Nyrma Soffel, Administrative Assistant.

Chair Way said there was a quorum with seven of seven members in attendance. He asked if there were any corrections, comments, or a motion regarding the April 10, 2019 Planning Commission minutes.

Commissioner Finnegan moved to approve the minutes as presented.

Commissioner Finks seconded the motion.

All members voted in favor of approving the April 10, 2019 Planning Commission minutes as presented (7-0).

New Business

Preliminary Plat – Burgess Road (360 Hospitality, LLC)

Chair Way read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Commercial. Commercial uses include retail, office, professional service functions, restaurants, and lodging uses. Commercial areas should offer connecting streets, biking and walking facilities, and public transit services. Interparcel access and connections are essential to maintaining traffic safety and flow along arterials. Parking should be located to the sides or rear of buildings.

The following land uses, as well as the properties' existing zoning, are located on and adjacent to the property:

Site: Undeveloped property, zoned B-2

North: Shopping centers, zoned B-2 and B-2C

East: Hotels, zoned B-2

South: Across Evelyn Byrd Avenue, hotels, zoned B-2

West: Vacant building, zoned B-2; across Burgess Road, shopping center and restaurants, zoned B-2C

The applicant is requesting to preliminarily subdivide one parcel into two lots consisting of one 3.74 +/- acre lot fronting on Evelyn Byrd Avenue, and one 2.66 +/- acre lot fronting on Burgess Road. As described in the applicant's letter the subdivision will create a parcel for construction of a new hotel on one of the newly created parcels. The property division is considered a major

subdivision (preliminary plat) because the original tract of land is larger than five acres; therefore, it exceeds the requirements for administrative review as a minor subdivision and must be reviewed by Planning Commission. No variances are being requested with the proposed preliminary plat; therefore, no action will be required by City Council. Planning Commission's action on the request will be the final decision.

Currently, there is an engineered comprehensive site plan (ECSP) in review for the site. The ECSP shows that a hotel will occupy the 3.74 +/- acre parcel and that two restaurant uses will be situated on the 2.66 +/- acre lot. The ECSP indicates that the proposed parcels will be interconnected to one another with parking and travelways, as well as having access to the adjacent parcel to the west. Both parcels will have access to Evelyn Byrd Avenue and Burgess Road.

The new parcels will be served by an 8-inch City water main that is within the Evelyn Byrd Avenue public street right-of-way. As shown on the preliminary plat, the 8-inch main will loop through both lots; and a 20-foot public water easement will be centered on the main and all fire hydrants. An 8-inch public sanitary sewer line currently crosses Burgess Road onto the adjacent parcel to the west (tax map 79-F-4), where it then runs east through tax map 79-F-4 within a 20-foot public sanitary sewer easement, to the proposed 2.66 +/- acre lot. The applicant has illustrated on the preliminary plat that the existing 8-inch public sanitary sewer will be extended south, within a 20-foot public sanitary sewer easement, from the 2.66 +/- acre lot to serve the proposed 3.74 +/- acre lot. A 10-foot public general utility easement is proposed to be centered on the new interior property line.

With regard to stormwater management, the preliminary plat illustrates that the best management practice (BMP) area will be located on the 2.66 +/- acre parcel near Burgess Road and the entrance onto the site. The BMP area, which is planned as an underground facility, will be further reviewed as part of the ECSP review process.

Dedication of additional right-of-way is not needed, as both Evelyn Byrd Avenue and Burgess Road have sufficient right-of-way. Currently, there is no sidewalk along the property frontage with Evelyn Byrd Avenue; however, as shown on the ECSP, sidewalk will be installed with the development of the hotel as required by the City's Design and Construction Standards Manual.

The submitted preliminary plat meets all requirements of the Subdivision Ordinance, thus staff recommends Planning Commission approve the subdivision.

Chair Way asked if there were any questions for staff.

Commissioner Finnegan asked if there was any consideration for pedestrian access across Burgess Road to Harrisonburg Crossing Shopping Center.

Mr. Fletcher said that it would be a mid-block crossing, which is not typically promoted.

Ms. Banks said that there is a sidewalk along Burgess Road on both sides of the street and there is a signalized intersection at the entrance to Harrisonburg Crossings with crosswalks.

Chair Way stated that this is not a public hearing, however, he invited the applicant to speak to the request. He reminded speakers to state their name and address for the record.

Mr. Todd Rhea, with Clark and Bradshaw, P.C., stated that this is a simple preliminary plat approval. The reason we are here is due to some excess acreage. As the staff report noted, it does

meet all City requirements for subdivision approval. It is necessary for financing and site plan approval for the project. We would appreciate your support and approval this evening.

Chair Way asked if there was anyone else wishing to speak regarding this request. Hearing none, opened the matter for discussion.

Commissioner Finks moved to approve the preliminary plat subdivision, as requested.

Commissioner Whitten seconded the motion.

All members voted to approve the preliminary plat subdivision (7-0).

Special Use Permit – 785 Acorn Drive (Recreational and Leisure Time Activities in M-1)

Chair Way read the request and asked staff to review.

Ms. Banks said that The Comprehensive Plan designates this area as Industrial. These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. They include the major existing and future employment areas of the City.

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

- Site: Warehouse building, zoned M-1
- North: Virginia State Police Office, zoned M-1
- East: Across Acorn Drive, non-conforming single-family dwelling and industrial plant, zoned M-1
- South: Dog kennel/training facility and contractor warehouse/storage, zoned M-1
- West: Vacant land, zoned M-1

The applicant is requesting a special use permit per Section 10-3-97 (10) of the Zoning Ordinance (ZO) to allow recreational and leisure time activities within the M-1, General Industrial District at 785 Acorn Drive. If approved, Edge Effect Fitness, LLC, describes in their letter that they would create a training facility offering “affordable, inclusive fitness programs to those whose needs may not be met in a typical gym setting, would locate at the site.”

Edge Effect Fitness, LLC is described by the applicant as offering different programs to include Rock Steady Boxing, a worldwide therapeutic exercise program for people with Parkinson’s Disease. Currently, Rock Steady Boxing operates in partnership with Virginia Retirement Community (VMRC) at VMRC; however, they need additional room and the ability to offer a wider range of class times. Once established, Edge Effect Fitness hopes to offer ExRx, a medically referred personal training program; personal fitness training; and specialized group training. A majority of the daily training is described as one-on-one, with the potential of one to three larger group classes. At this time, hours of operation during the week are planned to begin no earlier than 6 a.m. and to be open no later than 8 p.m., with some Saturday scheduling. These hours of operation are not conditional, therefore if the SUP is approved, the hours of operation may change.

Situated on the property is an existing 6,000 square foot warehouse building, with a 12,000 square foot addition currently under construction. Edge Effect Fitness, LLC would be established within one of the new warehouse suites currently being built. The fitness area would consist of a large open space that will be equipped with boxing equipment, mats, barbells, kettlebells, resistance

bands, and similar apparatus. At this time, there are no plans to install equipment requiring skilled installation, but if the SUP is approved, such equipment could be installed in the future. Appropriate restroom and changing facilities will be provided. The applicant has been informed that they will need to work with the Building Inspections Division regarding Building Code requirements and necessary permits.

Currently, 16 parking spaces are required for the warehouse use on the site; 17 parking spaces are provided. Staff discussed with the applicant that parking for the fitness facility would be calculated on the total occupancy of the suite and based on Section 10-3-25(13) of the ZO, which would require off-street parking spaces calculated at 10 percent of the maximum occupancy of the fitness facility. If the SUP is approved, additional parking spaces are likely to be needed for the entire site and for all uses to meet the minimum off-street parking requirements. All required off-street parking spaces would need to be installed and clearly delineated prior to occupancy by Edge Effect Fitness. Four additional bicycle parking spaces would also be required per Section 10-3-25.1 of the ZO.

Staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Staff supports approval of the request with the following condition:

- The special use permit shall be applicable only for the use, or a substantially similar use, as requested in this application.

Chair Way asked if there any questions for staff.

Commissioner Finks said that there was a concern that since the SUP was for one of the units within the warehouse complex, in the future if there were more SUPs requested for that property, there would not be enough room on the site to meet parking requirements.

Ms. Banks said that if there were other requests for similar SUP in these suites, it could be that there would not be enough parking on the site. If that is the case, the applicant may not be able to utilize that SUP. They may enter into shared parking agreements with adjoining properties, if it were available to them. There is the possibility that if all the suites became a different type of use, other than a warehouse, that they could run out of space to provide parking.

Commissioner Finnegan asked that if the facility was primarily for people with Parkinson's and they have a partnership with VMRC, would those people be driving, or would there be a shuttle?

Ms. Banks said that she did not know.

Commissioner Finnegan said that if that was the case, the Planning Commission might be able to reduce the parking minimum requirements.

Ms. Banks said that the facility would be open to the public, not only from VMRC.

Commissioner Whitten said that there is a partnership that started at VMRC, in their wellness center, and they probably need more space.

Ms. Banks said that they need to expand and have different hours so that they may offer more services.

Commissioner Colman asked if the SUP is applicable only to this specific suite or to the whole property.

Ms. Banks said that the SUP is for this particular type of business or something similar to it on this site. If the applicant and the owner should want to occupy the entire twelve thousand square feet, then occupancy is going to be large and parking is based on the occupancy. We are not limiting the SUP to the particular suite.

Commissioner Romero asked if the activities of the business were going to occur in the evening as well as the day. If the program increases to the point that the capacity during the day is not available and evening hours are increased and the parking is towards the back of the building, will there be lighting available? This will be particularly important when Daylight Savings Time ends.

Ms. Banks said she does not know. The applicant has listed the hours as 6:00 a.m. to 8:00 p.m. That is subject to change. There is not a condition on operating hours. The Planning Commission has the ability to suggest conditions.

Commissioner Romero said that it would in the best interest of the clients to have a clear path to the facility.

Ms. Banks said that the applicant and the owner of the property are both here and can address those concerns during the public hearing.

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

Commissioner Colman asked if there are paved walkways to the suite, given the proposed use. I was not at the site visit, so I do not know what the terrain looks like.

Commissioner Finnegan answered that it is a gravel lot.

Ms. Banks looked at the site plan and said that there is currently a paved accessible area for parking. There is one existing accessible paved space that will be made available and an additional space will be made available.

Commissioner Colman said that there is not a paved walkway or path to the facility from the first handicapped spaces.

Ms. Banks responded that there is not.

Commissioner Colman said that given that the target demographic of the facility includes persons with Parkinson's, there should be a path that is safe for them to access the facility.

Chair Way opened the public hearing and invited the applicant to speak.

Fred Luddy, the owner of the property, stated that there are three high intensity lights on the side of the building. The Virginia State Police Office also has a light on their side. At night, the site is well lit. There is plenty of lighting on the property. There is one paved parking spot that was included with the site work. There is no paved access to the doors. There is crushed gravel. My future plan is to pave it, at some point. There is currently no funding for paving the lot. That is in my future plan to pave the space. The front area is paved, where my existing building is.

Chair Way asked if there were any further questions for the applicant. Hearing none he asked if there was anyone else who wished to speak to the request. Hearing none he closed the public hearing and opened the matter for discussion.

Commissioner Whitten moved to recommend approval of the special use permit request with the suggested condition.

Commissioner Ford-Byrd seconded the motion.

All members voted to recommend approval of the special use permit request with the suggested condition (7-0).

Chair Way said that the recommendation for approval will move forward to City Council on June 11, 2019.

Special Use Permit – 1451 Hillcrest Drive (Short-Term Rental)

Chair Way read the request and asked staff to review.

Ms. Dang said that as the next four items on the agenda are short-term rentals (STR), I would like to present several talking points regarding STRs that these applications have in common. There were five applications for STRs, but one on 1110 Royal Court has been withdrawn by the applicant.

In March 2019, City Council adopted the new STR regulations which are in Article DD of the Zoning Ordinance. A STR is defined as “[t]he provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” A STR is a 30-days or less rental of a space within a home in exchange for money.

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019 and which would provide individuals wishing to operate STRs time to apply of and potentially receive approval of a special use permit (SUP). Staff has begun looking at Airbnb.com and similar websites looking for STRs currently in operation in order to send notice letters informing operators of the requirement to apply for a STR SUP and have the permit approved by August 1, 2019 in order to begin operating on that date. After August 1, we will begin enforcement, issuing penalties associated with this particular use. SUP applications are received on a rolling basis for upcoming Planning Commission reviews and subsequent city Council meeting agendas for final determinations.

Once a SUP is approved, it is valid for an indefinite period of time. After approval by City Council, the operator has twelve months to start their operation or that SUP becomes void. In addition, if the operation were to cease for a continuous period of two years, then the SUP is automatically terminated. Someone could operate a STR for three months, then not operate for 24 months, after which the SUP would terminate. As we discussed at the site visits yesterday, the SUPs are not restricted to applicant. They are specific to the property. If the property were to change hands and be sold to someone else, the SUP, and any conditions that City Council included in the approval of the SUP, would continue to apply.

Section 10-3-126 of the ZO gives City Council the ability to place special conditions on SUPs. Staff has recommended a set of conditions that are specific to each STR SUP request. In cases where we have recommended denial, we still recommended conditions that would apply in the event the Planning Commission recommended approval and City Council approved the applications.

I will refer to “accommodation spaces” throughout the presentations. “Accommodation spaces” are any rooms that are offered for sleeping. This would include bedrooms with beds, living rooms with pull-out sofas, etc. If a room is being offered for sleep, it is considered an accommodation space. Accommodation spaces will be relevant to discussions regarding parking and limiting the number of accommodation spaces in the recommended conditions. Accommodation spaces would not include kitchen areas or living rooms in which people are not sleeping.

Section 10-3-25(28) of the ZO requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” City Council has the ability to make conditions to require additional parking spaces or to require less or no parking spaces. In certain residential neighborhoods, it may not be in line with the character of the neighborhood to require properties to mark their driveway with parking spaces, as it takes away from the residential appearance we want to preserve. In addition to potential parking spaces required for STRs, each dwelling has parking requirements depending on the type of dwelling that it is, such as single-family detached, duplex, and so forth.

Ms. Dang said that the first request is the request for approval of a STR operation at 1451 Hillcrest Drive located in the Northwestern section of the City near Easter Mennonite University campus. The Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

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

- Site: Single-family detached dwelling, zoned R-2
- North: Undeveloped lots, zoned R-2
- East: Nonconforming multi-family dwellings, zoned R-2
- South: Single-family detached dwelling, zoned R-2
- West: Undeveloped lots in Rockingham County property, zoned R-2

On March 26, 2019, City Council adopted new Zoning Ordinance regulations associated with short-term transient lodging commonly referred to as “Airbnbs,” which is associated with the webservice www.airbnb.com. Although known as Airbnbs, operators may use other services including but not limited to VRBO, HomeAway, and FlipKey to advertise their properties. These operations, unless previously approved by the City as a bed and breakfast, have been illegal in the City of Harrisonburg. A short-term rental (STR) is defined as “[t]he provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.”

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019 and which would provide individuals wishing to operate STRs time to apply for and potentially receive approval of a special use permit (SUP). SUP applications are received on

a rolling basis for upcoming Planning Commission reviews and subsequent City Council meeting agendas for final determination.

The applicants are requesting approval of a STR operation at 1451 Hillcrest Drive, which is located in the northwestern section of the City and less than one block from the Eastern Mennonite University campus. The applicants desire to rent for STR up to three accommodation spaces that could accommodate a total of six individuals. They describe that the property is their primary residence and that they plan to be present during the lodging period.

The building is currently described by staff as a single-family detached dwelling. However, during meetings with the applicant, staff became aware that the property has been used as a duplex (two dwelling units). The property is zoned R-2, Residential District and has approximately 14,800 square feet of lot area. A duplex is permitted by the Zoning Ordinance (ZO) to be located on this site so long as Building Code requirements are met. City records indicate that a building permit was applied for in 1984. The building permit was approved for the construction of a single-family dwelling with a basement apartment to be leased, which today the ZO defines as a duplex. The building permit further described that the single-family dwelling (hereafter referred to as the “first larger dwelling unit”) was to also contain a kitchenette in the basement for use by the owner. However, there are no City records that a Certificate of Occupancy (CO) had been issued for the building. Once the applicants became aware of this issue, they began working with the Building Official to take the necessary steps to obtain a CO for the building. If approved, staff recommends a condition that prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the property.

Assuming that the necessary building inspections occur, and a CO is issued for how the owner desires to use the property, the building would be a duplex. The first larger dwelling unit is accessible from the front, as well as from the basement level in the rear of the building. A second kitchen is located in the basement of the first dwelling, along with two rooms. The second smaller dwelling unit is accessible from the rear of the building.

The applicant desires to rent from the first dwelling unit the basement space, which includes two accommodation spaces for a STR. (“Accommodation spaces” is used here to mean any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Additionally, the applicant has explained to staff that they plan to continue renting the second dwelling unit to long-term tenants, however, as their future plans may change they have included in their application a request for approval to rent the accommodation space contained within the second dwelling for STR as well. In total, they are requesting permission to rent three accommodation spaces for STR; each accommodation space could accommodate two people for a total of six people.

Section 10-3-25(28) of the ZO requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” The applicant has submitted a map illustrating that three off-street parking spaces for STRs can be provided on their property.

It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site. In addition to the large driveway in the front of the property, on the side, and in the rear of the building, the building also has a two-car garage. Regardless, staff believes that if the request is approved, the applicant should be

provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces and offers this as a condition on the permit.

If the request is approved, staff recommends the following conditions:

1. Prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the building.
2. The site shall be the operator's primary residence.
3. An operator shall be present during the lodging period.
4. All STR accommodations shall be within the principal dwelling.
5. There shall be no more than three STR guest rooms or accommodation spaces.
6. The number of guests at one time shall be limited to six.
7. Prior to beginning operations, the operator shall have the guest rooms and accommodation spaces and means of egress inspected by city staff to confirm compliance with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code or as determined necessary by Building Code and Fire Officials.
8. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
9. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #2 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. This also means that if a CO is issued for the building for two dwelling units, and if the applicants live on the property in the arrangement that exists today, then the applicants could not rent the second smaller dwelling unit as a STR since that dwelling is not their primary residence. However, any long-term tenant they have in the second dwelling unit could rent the space as a STR so long as they meet the other conditions for the SUP. Alternatively, the applicants could rent a third bedroom in the first larger dwelling unit. Condition #3 protects the neighbors by ensuring that there is on-site accountability by the STR operators. Condition #4 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to PC and City Council (CC) with a new SUP request. Condition #5 limits the total number of guest rooms and accommodation spaces on the entire property to three. Condition #6 limits the total number of guests at one time to six. However, with Condition #7, which requires that prior to beginning operations that the guest rooms and accommodation spaces and means of egress are inspected by city staff to confirm compliance with the Building Code and Fire Code, the number of guests could be further limited if inspectors determine that six people could not be accommodated in the proposed spaces. While the SUP does not restrict the operator to using specific guest rooms or accommodation spaces within the dwellings (meaning that the STR operator could decide later to change which accommodation spaces are rented for the STR), Building Code and Fire Code requirements would be specific to the spaces. Condition #8 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create delineated parking spaces. Condition #9 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicants were to sell the property, then future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

The property is located close to Eastern Mennonite University and in an area of the neighborhood where there is likely more pedestrian and vehicular traffic than other sections of Hillcrest Drive further to the north. Guests of the STR would likely travel Parkway Drive or West Dogwood Drive to get to the STR. Both streets likely already receive non-resident traffic because of the activities associated with the university.

Given the nature of the request, location of the property within the neighborhood, and staff's suggested conditions, staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Staff recommends approval of the special use permit request with the suggested conditions.

Chair Way asked if there were any questions for staff.

Commissioner Finks asked if the second dwelling, where the applicant intends to have one accommodation space, is the applicant's main residence.

Ms. Dang said that the first dwelling unit is the main unit, the larger portion of the building. That is where the applicant and property owner lives. They are planning to have two short-term accommodation spaces in the first dwelling unit. They have a separate a separate dwelling unit, which they referred to as a basement apartment. That has one bedroom which they are requesting to use as a STR accommodation. If they do not live in the second dwelling unit, provided that the conditions presented here are recommended by the Planning Commission and approved by City Council, the operator and property owner could not operate the second dwelling unit as a STR. Their tenant could operate that space as a STR with the approval of the property owner. Alternatively, the property owner could operate three accommodation spaces within the first dwelling unit.

Commissioner Finks said that clarifies his understanding. It originally seemed that the three accommodation units and six guests contradicted each other. I did not understand how they could have six guests at one time if they remained within the dwelling. I understand now.

Commissioner Romero asked for clarification. Can they have up to three accommodations in the main house?

Ms. Dang said they could have three accommodations in the whole property. When these special use permits are granted they are for the property.

Chair Way asked if operator was defined in the ordinance.

Ms. Dang said that it is intended to mean the person who is operating the STR.

Chair Way asked could a tenant run the STR.

Ms. Dang said that a STR could be operated by an owner or a tenant.

Chair Way said that operator does not necessarily mean the owner.

Chair Way opened the public hearing and invited the applicant or their representative to speak to the request.

Eric Hostetter, the owner and applicant residing at 1451 Hillcrest Drive, came forward to speak to his request. I would like to address the issue that the apartment cannot be operated as a STR by the owner because the owner resides in the larger dwelling of the building. The apartment is directly below the principal dwelling. We can smell what is going on. We can hear what is going on. We are quite aware of any activity in the unit. If there were anything happening in that unit that would jeopardize or affect the community, we would be literally on top of it. I know that the intent is to ensure the operator could monitor the activities that may disturb the community. In this situation, we live in the same building and would be there during the rental. We do not live in the apartment. It is a semantics issue. I would suggest an exception so that we would be able to use the second dwelling for a one room STR.

Commissioner Whitten asked if there was more than one bedroom in the second dwelling.

Mr. Hostetter said that in the apartment there was only one bedroom. It would accommodate a maximum of two people. In the main dwelling, there would be two bedrooms for a maximum of four people. There could be a total of six in the building.

Commissioner Whitten said that the basement apartment is the additional dwelling that makes the property a duplex, correct?

Mr. Hostetter said yes.

Commissioner Ford-Byrd asked how the applicant feels about the conditions that are being suggested.

Mr. Hostetter said that he was sure that there was a certificate of occupancy for the apartment. The house was built for my mother and she has moved two times since then. The document appears to have been misplaced and the City does not have it either. I am willing to do what is required to obtain the certificate of occupancy. I agree with the fire codes, as well. It is good to have good access and safety. I want to make sure we meet all those requirements.

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

Commissioner Colman said that the conditions seem restrictive. The conditions seem to be consistent with each of the requests. Why were these conditions not integrated into the ordinance, if they are so critical that they are recommended so consistently?

Ms. Dang said that it depends on the use that is proposed and the location. There may be a STR that is proposed on a collector or arterial street that may elicit different recommendations and not have such restrictive conditions. There may be a STR request that is more closely aligned with a bed and breakfast. The requests that we happened to receive at this time a proposed in residential homes within residential neighborhoods.

Commissioner Whitten said that you are trying to protect the residential neighborhood which is also important.

Commissioner Colman said that some of the ordinance discussions were whether, or not to establish regulations within the ordinance for STR. The idea was that the SUP would allow for

neighbors to have an avenue to complain and for the City to be able to act based on those complaints. This seems preemptive, establishing many steps the applicant must take to operate the STR. We are probably becoming the most restrictive place in Virginia to have a STR. It appears that way to me. These conditions seem to be beyond what we had intended.

Commissioner Finks agreed with Commissioner Colman. I worry about some of these conditions, considering that we have not received much feedback from the neighbors. We may still get feedback from the neighbors. We did not see issues in the neighborhood to justify establishing restrictions to mitigate problems that may never exist. I am not a fan of condition number three. I understand the intent and the reasoning. I think that is going to be very limiting for most people. I do not know that being in town is a guarantee of accountability. You can be just as accountable by phone from somewhere else. I do not understand the thought process that you are accountable if you are in town, but do not have to be on the property. If they are not in their primary residence, where else would they be?

Commissioner Finnegan said that the Planning Commission recommended four to three, I believe, for the other by-right option.

Commissioner Finks said that it was not by-right, but it gave some flexibility. It was still a SUP.

Commissioner Finnegan said that he likes condition number two. "The site shall be the operator's primary residence." I believe that has to be there, otherwise speculators may come in and buy housing stock for STRs. I think that condition two does what condition three is supposed to do. Maybe condition three takes a step further to protect the neighbors.

Chair Way said that in this particular case three is there because the operator volunteered that.

Ms. Dang said that the applicant happened to volunteer that, but staff also recommends that it should be conditioned because it is in a residential neighborhood and we want that onsite accountability for the operator to be there when the lodgers are there. We did not want them to leave town and rent the whole dwelling unit or spaces without their presence.

Commissioner Finks said that the fact that it is a SUP takes care of the accountability. If there are a lot of issues and they are not being accountable, then we review the SUP and revoke it.

Commissioner Romero said that number nine addresses the ability of the Planning Commission or City Council to further condition or revoke the SUP. What are the criteria for the monitoring? What are too many issues? How do we determine when it hits a trigger point that allows us to revoke a SUP? I think there is a lot subjectivity. It is not very clear to me how we would have the ability to revoke it. I do not think we would be able to revoke it in a way that is objective if we do not have criteria or guidelines.

Ms. Dang agreed that it can be subjective based on complaints received and whether the Planning Commission or City Council believes that those complaints are warranted and that the SUP should be recalled.

Chair Way said that this nuisance clause is a typical condition we apply. There is precedence for that language.

Mr. Fletcher said that there is precedence for this exact language in many instances, but I see the conditions and the request for further review as being no different from what we have experienced in the past. In the fifteen years that I have been here, when any of you or City Council receive

emails and phone calls, you call us and tell us that you are receiving concerns and ask us to investigate. We investigate and report back to you. Then you determine whether or not it should be called back for further review.

Commissioner Romero asked if we would have the capacity to do that. The number of requests is going to increase over time and if we begin to have concerns across the City, do we have the capacity at this time to manage the complaints?

Mr. Fletcher said that we do. This is brand new. We have four applications this month. We have a number of applications next month. Part of the precedence that is being set is based on your recommendations and the conditions you are establishing. We do not repeat everything we talked about before. We had versions where a lot of these conditions were included but because it became a SUP they were removed. A SUP is considered on a case by case basis. Remember to look at it on a case by case basis. There are many locations where an application could come in and the applicant states that they will not live on the property, that it is an investment property, and that it is essentially a bed and breakfast. It could be appropriate.

Commissioner Finks said that condition number two is the most important. I worry that some of these conditions are getting into territory that is new to us. I do not know how City staff is going to investigate if an operator was present when a complaint was lodged. I do not know how you enforce it.

Mr. Fletcher said that in their applications, the applicants have stated what their operations are. When staff reads what the application request is, they agree with the conditions the applicant proposed. The applicant said that it is their primary residence and that they “plan to operate rentals only during times when we are present and able to properly manage our overnight guests.” We recommended the stated condition.

Commissioner Finnegan said that they put that condition on themselves. I did want to point out that in the application that was withdrawn, the applicant mentioned that “short term rental sites such as HomeAway and VRBO do not allow their owner contracts for an owner-occupied residence. Airbnb does since they started as an ‘air bed in the living room’ concept.” I have not been able to verify that, but it was in their letter. That is something we should take into consideration.

Commissioner Whitten said that she has stayed in a VRBO where the owners were present.

Mr. Fletcher said that the recommendation stating that the second dwelling unit must be operator occupied reflects our concern regarding long term rentals. Staff is concerned that we may start chipping away at units that could be on the long-term market, that people can rent as their primary residence. That is why we made that recommendation. If efficiency and one-bedroom apartments become STRs, they become rentals that people cannot live in long-term. People cannot make long-term commitments in the community and have a place to live, work and pay rent.

Commissioner Finnegan said that he shares the concern with removing units from permanent living spaces for people in the City. It is a huge concern.

Commissioner Colman said that it could be conditioned differently because we can put a condition that it be limited to a certain number of days. We did not put it in the ordinance, but we could condition it in this case. We could say that the apartment within the same house on the same property could be used as a STR for 50 days of the year, or something similar. In a community

like Park View where rentals often are to students who will not be there in the summer, they could use it as a STR. Giving them some flexibility on that would be good, when the second unit is within the same house.

Commissioner Finks said that since the applicant has agreed to these conditions, as far as I could tell, the applicant did not have any direct issues with them.

Chair Way asked if we should not address an exception for that second unit.

Commissioner Whitten said that the applicant did not agree with the second condition and asked for an exception.

Chair Way suggested that the Planning Commission settle the issue of whether or not, the second unit must be a primary residence.

Mr. Russ asked if the second unit is truly a unit without a certificate of occupancy. Is the property only one dwelling unit at this time?

Ms. Dang said that right now it is one dwelling unit.

Mr. Russ asked if they could have the certificate of occupancy issued for one unit and keep the house as one house and no longer call the basement an apartment.

Mr. Fletcher said that it has been constructed as a second dwelling unit. We just have the technical issue with the certificate of occupancy missing.

Ms. Dang said that there is no access from within the other unit.

Mr. Fletcher said that if they did not wish to have a duplex dwelling, it would conflict with how we interpret other spaces because it is designed as a separate dwelling unit.

Commissioner Colman asked what that means in terms of long-term rentals.

Mr. Fletcher said that he would have to ask the Building Official if it can be classified as one unit.

Commissioner Colman said that due to occupancy they could not have another unrelated person living there.

Mr. Fletcher they can have two unrelated persons.

Ms. Banks said the kitchen would need to be removed.

Mr. Fletcher said that the staff report lays out options. If you wish to remove certain ones, you can make a motion to remove the ones you do not like or add ones you want.

Commissioner Colman said that it is important, for the record to, establish what issues we are discussing as more people are going to come later with similar concerns.

Commissioner Whitten said that they should understand what the concerns are.

Chair Way asked for suggestions or alternative language that might capture the opportunities that the applicant has requested.

Commissioner Colman said that he would like to change the conditions to reflect a period of time during which the second unit can be used as a STR. I would remove condition number two: "The site shall be the operator's primary residence."

Chair Way asked where the time-bound condition would be added.

Commissioner Whitten suggested removing “All STR accommodations shall be within the principal dwelling.” Is that the one?

Commissioner Colman said that he would remove number two “The site shall be the operator’s primary residence.” No, number three, “An operator shall be present during the lodging period.”

Chair Way suggested amending number four to say “All STR accommodation shall be within the principal *building*.”

Mr. Fletcher said that the principal building is the structure. What you are trying to say is that any second dwelling unit that is constructed on the site has the provisions to allow for whatever number of days that you want to provide.

Commissioner Colman asked what would be proposed as the number of days for the second dwelling unit.

Mr. Fletcher said that the Planning Commission could give staff the intent of the condition and staff would ensure that it is written in such a way that it would meet the intent before going to City Council.

Commissioner Finks asked if they are thinking of a number of days during which the operator has to be present.

Commissioner Colman said that they want to limit the number of days that the second dwelling unit can be used as a STR.

Ms. Dang asked if it meets the intent to say, “Any second dwelling provided on the site may be operated as a STR for no more than X number of days per year.” If it meets the intent, staff can work to ensure that the language reflects the intent.

Chair Way said no because it would suggest that a second building may be constructed.

Ms. Dang said that it would be a dwelling unit. That second dwelling unit that exists.

Mr. Fletcher suggested “Any second dwelling unit *within the principal structure*.”

Commissioner Finks asked if that would conflict with condition number three.

Commission Whitten said that it does not.

Ms. Dang said that they could clarify number three as “An operator shall be present *on the property* during the lodging period.”

Commissioner Colman said he liked adding “on the property.”

Chair Way said that in this case it would be in the *principal structure* if we are using the language suggested for number four. We should have consistent language throughout.

Mr. Fletcher suggested keeping condition three as is saying, “An operator shall be present during *any* lodging periods.” That would cover both.

Chair Way agreed.

Commission Colman said that the number of days is still undecided.

Chair Way said that, for the record, it should be noted that a lot of this discussion is due to the peculiarities of this particular building. I want to be careful to not open ourselves up to all sorts of precedents here.

Commissioner Whitten said that there would be no precedence because it is a SUP, which are all going to be different.

Commissioner Finnegan said that there are four SUPs for STR on the agenda. Two were recommended for approval by staff and two were recommended for denial.

Mr. Fletcher said that there is a correction for number four which states "All STR accommodations shall be within the principal dwelling." It should be "principal structure".

Commissioner Colman asked if the Planning Commission was going to recommend a number of days or leave it up to City Council to decide the number of days.

Mr. Fletcher said that the Planning Commission has to establish a number of days if that is a condition that is recommended because City Council may not want any. You have to give them a recommendation.

Commissioner Whitten said that the concern is to allow for the second dwelling to be rented during the school year.

Commissioner Colman said that the issue goes back to protecting available housing stock. I want to maintain that but also keep the flexibility for the STR.

Commissioner Finks suggested "no more than 90 days." It is not days, it is nights. It is two days, essentially.

Commissioner Finnegan said that one stay would span two days.

Commissioner Colman said that the period of 90 is a bracket.

Ms. Banks suggested clarifying by specifying nights.

Commissioner Colman said that they would be allowed to rent for 90 days.

Ms. Banks asked if the intent is for 90 consecutive dates.

Commissioner Colman said yes, consecutive days. You do not want consecutive days? We were thinking the STR would occur during the summer.

Mr. Fletcher said that if you specify consecutive days, then it is not a STR.

Commissioner Colman said that it would be STR within that period of time.

Commissioner Whitten said that the 90-day period would be broken up into STR, but no more than 90 days.

Mr. Fletcher said that it would be within a 90-day period. You are assuming that they will rent the primary area to a student.

Commissioner Finks said that it might create problems that we do not want because they will rent that space to someone for three months.

Commissioner Whitten said that the intent is that the dwelling would be available for STR during that period of three months.

Commissioner Colman said that it could be during a different time, like during Christmas break. We should restrict to a number of days rather than a period of time.

Commissioner Whitten agreed. How many days?

Commissioner Colman clarified that it would be nights.

Commissioner Whitten said that she was unsure because there might be people who try to get around the restrictions.

Commissioner Finks said that enforcement would be difficult. Who will count the nights?

Commissioner Whitten said that the count would come from the Commissioner of the Revenue's office, when they collect the taxes. That is where it gets counted.

Chair Way asked if there was any consensus on restricting the STR to a certain number of days or nights. I am seeing no's on my right.

Commissioner Ford-Byrd said that we entered into this trying to leave some decision-making to the homeowner. It seems like we are working backwards. I do not agree with setting a number of days.

Commissioner Whitten asked if it was understood why it was being discussed, which is to protect the property for people who need affordable housing. Maybe this property is not affordable. I do not know because you cannot tell people that they have to make it affordable.

Chair Way asked if they should not pursue restricting the number of days due to the lack of consensus.

Commissioner Colman asked if the recommendation is to prohibit the STR of the second dwelling.

Chair Way said, no. We want to permit the STR within the second dwelling.

Commissioner Finks asked what would be required to meet the Planning Commission's intent. Do we strike number three? What conditions do we set to make that possible?

Commissioner Whitten said that we dealt with that by saying *principal structure* to mean the house.

Chair Way asked that Ms. Dang read the revised condition to ensure they have captured their intent.

Ms. Dang said that for number three, it was last suggested that "[a]n operator shall be present during the lodging period."

Mr. Fletcher said it would be for *any lodging period for any unit*.

Ms. Dang read number three, "[a]n operator shall be present during any lodging period for any unit." Do you want it to say *dwelling* unit? The other one is number four, "[a]ll STR accommodations shall be within the principle structure." In addition, we need to correct an error in number seven. It should say "guest rooms and accommodation spaces *and means of egress*". It is reflected in the other staff reports but omitted in this one.

Chair Way asked if the changes constitute a reasonable compromise and take of the owner's interest.

Commissioner Finks said that he thinks it does.

Commissioner Whitten moved to recommend approval of the SUP with the suggested conditions as amended.

Commissioner Colman seconded the motion.

Chair Way called for a roll call vote on the motion.

Commissioner Zanetta Ford-Byrd: Aye

Commissioner Sal Romero: Aye

Commissioner Whitten: Aye

Commissioner Colman: Aye

Commissioner Finks: Aye

Commissioner Finnegan: Aye

Chair Way: Aye

The motion to recommend approval passed (7-0).

Chair Way said that the recommendation for approval of the SUP with the suggested conditions as amended will move forward to City Council on June 11, 2019. Amended conditions are as follows:

1. Prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the building.
2. The site shall be the operator's primary residence.
3. An operator shall be present on the site during the lodging period within any dwelling unit.
4. All STR accommodations shall be within the principal structure.
5. There shall be no more than three STR guest rooms or accommodation spaces.
6. The number of guests at one time shall be limited to six.
7. Prior to beginning operations, the operator shall have the guest rooms and accommodation spaces and means of egress inspected by city staff to confirm compliance with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code or as determined necessary by Building Code and Fire Officials.
8. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
9. If in the opinion of Planning Commission or City Council, the short-term rental 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.

Special Use Permit – 341 South Willow Street (Short-Term Rental)

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this area as Low Density Residential. 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.

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

Site: Single-family detached dwelling, zoned R-1

- North: Single-family detached dwelling, zoned R-1
- East: Across South Willow Street, Virginia National Guard Readiness Center, zoned R-2
- South: Single-family detached dwelling, zoned R-1
- West: Single-family detached dwelling, zoned R-1

On March 26, 2019, City Council adopted new Zoning Ordinance regulations associated with short-term transient lodging commonly referred to as “Airbnbs,” which is associated with the webservice www.airbnb.com. Although known as Airbnbs, operators may use other services including but not limited to VRBO, HomeAway, and FlipKey to advertise their properties. These operations, unless previously approved by the City as a bed and breakfast, have been illegal in the City of Harrisonburg. A short-term rental (STR) is defined as “[t]he provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.”

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019 and which would provide individuals wishing to operate STRs time to apply for and potentially receive approval of a special use permit (SUP). SUP applications are received on a rolling basis for upcoming Planning Commission reviews and subsequent City Council meeting agendas for final determination.

The applicants are requesting approval of a STR operation at 341 South Willow Street, which is located in the western section of the City. The property is across the street from the Virginia National Guard Readiness Center and James Madison University. This section of South Willow Street has green zone permit parking on the west side of the street. A parking pass is required for vehicles parking on the west side Monday through Friday, 8am-8pm. The east side of South Willow Street has no restricted parking.

The applicants desire to rent for STR two accommodation spaces in their home that could accommodate a total of five individuals. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) They describe that the property is their primary residence and that they plan to be present during the lodging period.

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent two accommodation spaces for STR, the property should provide two off-street parking spaces. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires one off-street parking space for the single-family detached dwelling per Section 10-3-25(7) of the ZO for a total of three required parking spaces for the dwelling and STR.

The property has a one car garage that can be counted for the single-family detached dwelling. The driveway to access the garage is not located on the subject property, but is on the neighbor’s property with permission granted by a private access easement. The applicant has explained to staff that they can only use the private access easement to access their garage; no parking of vehicles is allowed in the easement.

The applicants state in their letter that constructing new parking spaces on their property would be difficult due to the grade change between the street and their home. They plan to have STR guests park their vehicles either on the west side of Willow Street using their two green zone guest parking passes or on the east side of Willow Street where there is no restricted parking.

Given the large lots that exist in the neighborhood and that this property has approximately 80-feet of road frontage that could accommodate about four vehicles in front of it (it would be unlikely that STR guests would park in front of the homes of neighbors), staff is comfortable conditioning that minimum off-street parking for the STR would not be required.

If the request is approved, staff recommends the following conditions:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal dwelling.
4. There shall be no more than two STR guest rooms or accommodation spaces.
5. The number of guests at one time shall be limited to five.
6. Prior to beginning operations, the operator shall have the guest rooms and accommodation spaces and means of egress inspected by city staff to confirm compliance with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code or as determined necessary by Building Code and Fire Officials.
7. The STR has no minimum off-street parking requirements.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects the neighbors by ensuring that there is on-site accountability with operators being present during the lodging period. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to two. Condition #5 limits the total number of guests at one time to five. However, with Condition #6, which requires that prior to beginning operations that the guest rooms and accommodation spaces and means of egress are inspected by city staff to confirm compliance with the Building Code and Fire Code, the number of guests could be further limited if inspectors determine that five people could not be accommodated in the proposed spaces. While the SUP does not restrict the operator to using specific guest rooms or accommodation spaces within the dwelling (meaning that the STR operator could decide later to change which accommodation spaces are rented for a STR), Building Code and Fire Code requirements would be specific to the spaces. Condition #7 provides flexibility for the property owner to maintain the residential appearance of the property by not requiring them to create parking spaces. Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicants were to sell the property, then future property owners could operate a

STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

The property is located across the street from the Virginia National Guard Readiness Center and James Madison University (JMU) and connects directly to West Market Street (a major arterial). Especially during times of the year when JMU is in session, the on-street public parking on the east side of Willow Street is heavily used. It is clear that this section of this residential neighborhood experiences a great deal of pedestrian and vehicular traffic that is not generated from the residents of the street or their relatives and friends. Staff believes that from a traffic perspective, allowing a STR at this location would have very limited impact. Given the nature of the request, location of the property within the neighborhood, and staff's suggested conditions, staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Staff recommends approval of the special use permit request with the suggested conditions.

Chair Way asked if there were any questions for staff.

Commissioner Finnegan said, for clarification, that the red line on the PowerPoint slide is no parking and the other side has no restriction, but we do not know what will happen with those, in the future.

Ms. Dang said that is correct.

Commissioner Whitten said that the no parking zone is probably because the property is an armory. There is probably some Federal reason why they leave that.

Commissioner Finks said that they would have three parking passes.

Commissioner Romero asked what the community engagement process for these requests looks like.

Ms. Dang said that the process applies to all the rezoning and SUP applications received by the Planning Commission. We post the sign on the property, at all locations that touch a public street. In this case, they had one frontage or one property line that touches a public street, so we posted a sign there. Letters are sent to all property owners that are touching the property or directly across the street from them. A notice advertising the request is placed in the newspaper twice, and it is posted on the City webpage.

Mr. Fletcher added that the process repeats at City Council.

Chair Way asked if there were any further questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to his request.

Mr. Scott Asbell, 341 South Willow Street, came forward to answer any questions regarding his request.

Commissioner Finks asked if the applicant had any questions or comments regarding the suggested conditions.

Mr. Asbell said that he agreed with the suggestions.

Chair Way asked if there were any further comments regarding the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks asked if there was any feedback from neighbors regarding the application.

Ms. Banks said that staff received one phone call from a neighbor who had concerns related to tall grass and weeds, a vehicle on another property and other general concerns. She said that the property was probably already being used as a STR. The neighbor was not in favor of the request.

Commissioner Whitten said that the neighbor was not present and did not submit a letter.

Mr. Fletcher asked if the concerns were related to the applicant's property.

Ms. Banks said that the tall grass and weeds was related. I do not know if it was validated. We were out there yesterday.

Commissioner Whitten said the applicant should cut his grass.

Mr. Fletcher said that it could be that it was not a violation.

Commissioner Whitten said that if they have been using it as a STR, we have not had any law or enforcement process.

Mr. Fletcher said that he wanted to give context for the suggested conditions for the safety inspections. Was this discussed with the applicant or the Planning Commission about the concern that we observed on the Airbnb website?

Ms. Dang said that she told the applicant that the site would be inspected for egress, but we did not have a discussion about it, yet.

Mr. Fletcher said that staff has been able to observe in some STRs that there are not egress points. Those spaces cannot be used as bedrooms. It is an educational tool. There are people that did not know that they had to have an egress point for a bedroom. That someone has to be able to exit the room in the case of a fire or other emergency. There could be physical renovations that are required. They may have been renting rooms, in good faith, that they thought were safe, however our building specialists may say that they need to have a window that was big enough for someone to crawl out of if there is a fire. That is the context for the requirement. We have observed some safety issues that the applicants need to remedy. Any applicant might run into the situation where they have to make physical renovations in order to make them accommodation spaces.

Commissioner Finnegan asked if an emergency egress window is a particular type of window that can be pushed out.

Mr. Fletcher said that an emergency egress is a space that you can physically exit. You can break the window and get out.

Commissioner Colman said that in that case, the accommodation spaces that we are recommending right now and that City Council could approve will be subject to the inspection.

Ms. Dang said that if the condition is approved they will be subject to inspection.

Mr. Fletcher said that we did not talk about it during the last STR request. I wanted to help give some context.

Commissioner Colman said that if we are approving four accommodation spaces, or however many are here, they do not have to be validated as four. They could be reduced. When will that happen?

Mr. Fletcher said that it would be documented.

Commissioner Colman said that it would be documented after the approval, which means that they can make that change to comply with requirements. Since the approval of the SUP is for four spaces, but they could only have three because one of them does not have egress, for example. If the approval is for four they could have the ability to adjust it.

Ms. Dang said that whatever is the lesser number would regulate the number of people that could rent the space or if the accommodation space can be used. So, if the conditions say two accommodations spaces, but the building code and fire officials say that they can only have one accommodation space, then it would be only one until they make a change to the second area. They do not have to come back to amend the SUP if the building official determined that it had to be less.

Commissioner Whitten said that it has to meet the condition.

Commissioner Colman said that if the SUP is for four spaces but could not operate all of them based on the inspections, they still have the ability to make the changes without having to come back for an additional SUP.

Ms. Dang said that was correct.

Commissioner Finnegan said that he is strongly in favor of condition number two, requiring the operator's presence, and condition number seven, requiring no minimum off-street parking.

Commissioner Finnegan moved to recommend approval of the SUP with the suggested conditions.

Commissioner Colman seconded the motion.

All members voted in favor of recommending approval of the SUP with the suggested conditions (7-0).

Chair Way said that the recommendation for approval of the SUP with the suggested conditions will move forward to City Council on June 11, 2019.

Mr. Fletcher addressed Commissioner Finnegan. You said that you were very much in favor of number two. Based upon your past conversations, did you mean number one?

Commissioner Finnegan said yes. It was number two in the last request.

Commissioner Whitten said that this is very instructive to people in the public who want to use the STR opportunity. Neighbors are watching closely. Applicants need to step it up. If the grass needs to be cut or there are cars parked where they should not be, people are watching.

Special Use Permit – 636 Wyndham Woods Circle (Short-Term Rental)

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this area as Low Density Residential. 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.

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

- Site: Single-family detached dwelling, zoned R-1
- North: Thomas Harrison Middle School, zoned R-1
- East: Single-family detached dwelling, zoned R-1
- South: Single-family detached dwelling, zoned R-1
- West: Vacant parcel, zoned R-1

On March 26, 2019, City Council adopted new Zoning Ordinance regulations associated with short-term transient lodging commonly referred to as “Airbnbs,” which is associated with the webservice www.airbnb.com. Although known as Airbnbs, operators may use other services including but not limited to VRBO, HomeAway, and FlipKey to advertise their properties. These operations, unless previously approved by the City as a bed and breakfast, have been illegal in the City of Harrisonburg. A short-term rental (STR) is defined as “[t]he provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.”

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019 and which would provide individuals wishing to operate STRs time to apply for and potentially receive approval of a special use permit (SUP). SUP applications are received on a rolling basis for upcoming Planning Commission reviews and subsequent City Council meeting agendas for final determination.

The applicants are requesting approval of a STR operation at 636 Wyndham Woods Circle, which is located in the western section of the City. The neighborhood is adjacent to Heritage Oaks Golf Course and Thomas Harrisonburg Middle School. The applicants desire to rent for STR two accommodation spaces in their home that could accommodate a total of five individuals. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) They describe that the property is their primary residence and that they plan to be present during the lodging period.

Section 10-3-25(28) of the Zoning Ordinance (ZO) requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent two accommodation spaces for a STR, the property should provide two off-street parking spaces. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires one off-street parking space for the single-family detached home. The property has one large driveway in front of the home and a two-car garage. The three required off-street parking spaces can be provided on the property. Regardless, staff believes that if the request is approved, the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces and offers this as a condition on the permit.

Staff believes that STRs should not negatively impact a community or an individual's quality of life or to a neighborhood individual's often biggest investment: their home and property. Zoning regulations offer some certainty for home buyers and property owners. The zoning regulations adopted by City Council in March 2019 created the opportunity to allow STRs in the City while also providing city staff, Planning Commission, and residents of the neighborhood to share their thoughts. The regulations also allow City Council to establish conditions on the SUP.

The property is located deep within a neighborhood, approximately 1-mile from the nearest collector street (South High Street) and is unlikely to have pedestrian and vehicular traffic that is not from relatives or friends of the applicants or neighbors who live on Wyndham Woods Circle or their visitors. Staff believes that introducing a STR at this location could create neighborhood instability because STRs introduce high turnover of different people who are unknown to the neighbors and could change the character of the neighborhood with increased vehicle trips.

Given the location of the property within this residential area of the City, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval to City Council, staff recommends the following conditions be placed on the SUP:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal dwelling.
4. There shall be no more than two STR guest rooms or accommodation spaces.
5. The number of guests at one time shall be limited to five.
6. Prior to beginning operations, the operator shall have the guest rooms and accommodation spaces and means of egress inspected by city staff to confirm compliance with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code or as determined necessary by Building Code and Fire Officials.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 protects the neighbors by ensuring that there is on-site accountability with operators being present during the lodging period. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for a STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to two. Condition #5 limits the total number of guests at one time to five. However, with Condition #6, which requires that prior to beginning operations that the guest rooms and accommodation spaces and means of egress are inspected by city staff to confirm compliance with the Building Code and Fire Code, the number of guests could be further limited if inspectors determine that five people could not be accommodated in the proposed spaces. While the SUP

does not restrict the operator to using specific guest rooms or accommodation spaces within the dwelling (meaning that the STR operator could decide later to change which accommodation spaces are rented for a STR), Building Code and Fire Code requirements would be specific to the spaces. Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create delineated parking spaces. Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicants were to sell the property, then future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Lastly, the property is part of a homeowners association (HOA) that has its own private covenants that may place restrictions on the use of the properties. While the City, through its ZO, may allow certain uses, the private covenants may prohibit those uses. The property owner has been advised by staff to check with their HOA on whether a STR can operate on the property.

Chair Way asked if there were any questions for staff.

Commissioner Finks said that when we get into the discussion of how far a property is from an arterial street, how close to the arterial street would the property have to get for staff to think that it will not have an adverse effect on the neighborhood? I am looking at the yellow line that you have on the map.

Ms. Dang said that she would have to consider the specific request, the location and the type of neighborhood.

Commissioner Finks said that assuming it is a similar request, almost the exact same request, in the same neighborhood, where would the property have to be along the yellow line for us to think that it will not have an adverse effect on the neighborhood.

Mr. Fletcher said that we cannot answer that question. That is why it is a SUP. It is case by case.

Commissioner Whitten said that is it evaluated on a case by case basis.

Commissioner Finks said that if we are using the argument that it is based on how far the property is from the arterial street, what is the standard?

Mr. Fletcher said that we cannot say because we do not know. The request has not been made. If we are saying a discretion point, then we are saying that at any point in the future it would apply. That is why we have decided as a SUP, on a case by case basis.

Chair Way said that he has the same question. When we reviewed the first case, this measure of distance from the collector street, while I can see the logic, I am trying to work out the criteria that applies. Is it quantitative, half a mile, or qualitative, where the neighborhood begins or ends. You can see on the aerial photo; the road path takes a different shape elsewhere. I understand what staff is getting at here. I understand the logic of it being a case by case judgement, but I do also agree that it is an interesting argument.

Ms. Dang said that it may depend on how deep the neighborhood is and how many vehicles are travelling on the street in that neighborhood.

Chair Way said that is why it is more qualitative than simply distance. The reason we are asking is to understand how we are looking at things, how we are judging and how staff is looking at things.

Commissioner Colman said that, in a neighborhood like this, if that is the measure we are using, then most of those houses do not qualify. They would not be approved for a SUP for STR because of their locations. Their locations limit their use.

Commissioner Finks said that is what he was getting at. Making the decision tonight, how far into that neighborhood are we saying that a STR cannot be approved?

Chair Way said that referring back to conversations the Planning Commission had last year or so, we have been interested in neighborhood identification and mapping. This is another element of that discussion about where we should classify neighborhoods to exist, what their boundaries are. The other point may also be true, if we are saying that a property is closer to a collector street, we are more likely to approve and support them, then it gets into some of the other issues we have been discussing regarding the boundaries and edges of the neighborhoods being more susceptible to change. This would tend to reinforce that process, if you are saying that if it is closer to a street or closer to the edge of a neighborhood, then we are more likely to approve. That has a tendency to double down on that principle that we were anxious about. There are many things to think about there.

Chair Way asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Mr. Tracy Shaver and Mrs. Deborah Shaver, 636 Wyndham Woods Circle, came forward to speak to their request. Good evening Planning Commission members and City staff. Thank you for having us tonight. We are interested in having a STR. My wife and I have often thought about having a bed and breakfast. With the new ordinance within the City allowing for that possibility, we decided to apply and pursue it. We are excited about the possible opportunity.

I do want to address some of the staff concerns. The first concern is regarding our location. We are in the back end of Wyndham Woods off a major thoroughfare, about a mile off of Route 42, which is High Street. However, that does not stop people from coming into our neighborhood. They come to buy houses. They come for garage sales. Some end up lost in our neighborhood. They do come up for a variety of reasons. Family and friends do come, but there are often people who we do not know. The City is extending the mixed-use bike and pedestrian use path from Hillendale right through Wyndham Woods connecting to Thomas Harrison Middle School. That will bring a lot more traffic than a few additional cars.

The second point is regarding the HOA. We do not have an HOA in Wyndham Woods. We have covenants; however, we have reviewed the covenants and STRs are not addressed. We have even followed up with the first owner of Wyndham Woods and asked if there were any additional amendments or updates to those covenants. She expressed that there are none that specifically state STRs, rentals or things of this nature.

We have spoken with a number of our neighbors who do not have concerns. There was one neighbor who did express a concern. If there are issues or concerns, they would be addressed. We would ask the lodgers to leave. We do not necessarily have to do this, so if it becomes an issue, we would not continue. It becomes an issue whether it is for us or our neighbors. We want to be neighborly. We also have three children, so their safety or our safety is of utmost precedence. If at

any time, we felt that our safety or their safety was compromised, we would not do this. We would not want to affect our neighbors in a negative way.

Chair Way asked if there were any questions for the applicants.

Commissioner Finnegan asked if there was a problem with any of the eight conditions.

Mr. and Mrs. Shaver said that they agree with the conditions.

Commissioner Colman said that all the STR applications all seem to have the statement “[w]e will be present during the lodging period.” I do not know if that is a requirement of the ordinance that the owner be present.

Mr. and Mrs. Shaver said that it is their primary residence. It is our home. It is our house. We will be there. We will not go on vacation and rent out our house while we are gone. Our intent is to be there when we have someone there. We would not have lodgers on a regular basis. We have three children. We have very busy schedules. It would be mainly on the weekends, which is all we can manage at this point.

Commissioner Whitten said that you could understand the concern of your neighbors who may not necessarily be concerned with what you would do. The STR goes with the property. When you sell the house, the SUP goes with it. The new owners may not have the same consideration for the neighborhood that you do.

Mr. Shaver asked if it was possible to set a condition that when a house is sold whoever buys it has to reapply.

Commissioner Whitten said that the SUP is property specific. Is that a state code?

Mr. Russ said that it is not a state code, but it would not go to the various factors that we are supposed to be considering under the state code for zoning determinations.

Mrs. Shaver asked if there could be a contingency that if we were to sell, we would not want the SUP to be carried over, or something of that nature.

Chair Way said that you could withdraw the SUP.

Mr. Fletcher said that he has never experienced having someone withdraw a SUP. It is a good question.

Mrs. Shaver said that running an Airbnb is not for everyone. I do not think, depending on people’s circumstances, it is what they want to do or not do. I think the City has done a good job of drawing some guidelines and boundaries. It is not easy to open the door and say come on in. There are also many rules and regulations with Airbnb that hold hosts and guests accountable. You have to want to do this to make it worth your time, effort and cost. It is not in our nature to go through all the effort to then do a bad job. You get reviewed on Airbnb. If you get a bad review, no one is going to want to stay. The people who stay get reviewed. They have to provide their name, address and email. They have to sign an agreement that they agree to all your conditions. It would be very controlled. We like the idea, especially for our family, of having the control of who we can let in. There are age ranges, families, no drinking, no smoking, etc. You can set those limits. You can set those controls to keep things nice and calm.

Chair Way asked if there were any more questions for the applicants.

Commissioner Whitten said that HOAs have not caught up to this, yet. That may be changing.

Mr. Joe Carico, 604 Wyndham Woods Circle, came forward to speak regarding the request. This is scary. I am 63 years old. I have lived in Wyndham Woods for 16 years. I would like to speak on behalf of eight families. I apologize to Tracy for not speaking to you first. I live on the corner where the stop sign is. That is where the bus stops. In the last week, after I saw the sign, people have congregated. There are some neighbors who have some concerns. I am here to speak on behalf of eight. I am not here to say no.

Mr. Carico said that he would like Planning Commission to table the issue and have more discussions. You have educated me hear tonight because these Airbnbs are different. The one thing I learned is that you would like to preserve the neighborhoods. When we open Wyndham Woods, which is off the beaten path, you have to either be lost, going to a garage sale or know someone to come up there. That is the reason that I live there. I love JMU, but when there is a football game, I do not want any extra people in my neighborhood. I appreciate what you are doing. I would like for you and for us, as a neighborhood, to have more discussion because we do have covenants. On page four of the covenants, article four, section .041, the last sentence says: "Lots shall be used for single-family resident purposes only." This was written before Airbnbs and anything like that. I am here to talk to the Planning Commission to say that this particular property needs more time and more discussion before it would be approved.

Chair Way asked if there were any further comments regarding the request.

Mr. Panayotis Giannakaouros came forward. He said that he would agree with the previous speaker and with staff, but not for the same reasons. First let me address the previous two items, briefly, because they are pertinent to what we are talking about here. I would first like to thank Commissioner Colman for challenging the level of the discretion that staff is arrogating to themselves in overturning the lengthy deliberations that this body and that City Council had with respect to these regulations. On the second item, I would like to point out that the seemingly incidental matter of tall grass and weeds that came up is, Mr. Chair, contrary to what Commissioner Whitten thought, not funny, not a joke. It is just what City Council feared about going down the SUP path, that someone who simply does not like the person next to them could get their SUP pulled. This is not a wild possibility. We have documented that both residential and commercial tenancies have been terminated over this particular ordinance. It was a very real concern that council had, and it now has, in fact, come up. Throughout the process of developing this regulation, I expressed concerns and objections to a solution to which we finally did arrive. My primary concern was that our reasoning process fixated on appearances and residential character to which staff has doggedly clung and was distorting legitimate concerns and getting in the way of making good policy. If staff doubts where the voters stand, recall the hearing on the panhandling ordinance that happened just last City Council meeting.

Chair Way asked that the speaker keep his comments to this particular case.

Mr. Giannakaouros said that this is on this particular case. This is a public hearing. By state code, we have the right to give input.

Chair Way said that he must keep it on this case.

Mr. Giannakaouros said that if you do not understand what this has to do with this case, that may be your issue. You may want to ask the rest of the Planning Commission whether they know where this is going.

Chair Way said that we have a lot of people here who would like to contribute to this discussion.

Mr. Giannakaouros asked if he may continue.

Chair Way said yes.

Mr. Giannakaouros said that there are elements that we have not covered in our regulation that this application has raised. When we were making this regulation, one of the concerns raised was about the availability of affordable housing and using up housing stock. I question the reasoning there, specifically asking what the economic motive would be to use up the housing stock. This application has brought up one possibility. I do not know if it is this application or another application. A concern that I raised as the beginning of this process was that of more concern to us might not be STRs but three quarter houses, which would represent an expansion of the criminal legal system in our community. This is something that the community has deliberated very severely. In looking at this, I did not think it would directly touch on STRs but now I have seen a model that describes, on a website, why should you choose a private room rehab. All you need to know about luxury rehab centers...

Chair Way asked that Mr. Giannakaouros get to his point with this particular application that is in front of us right now or I am going to close the public hearing.

Mr. Giannakaouros said that his point is that he agrees with the previous speaker that we need to consider this more carefully. We should be considering that uses that we want are uses where a person is staying there voluntarily, not under a court order, not where there is an economic incentive to distort our housing stock. If you would have let me finish, I could have gone into greater detail. I will remind you, again, that this is not the first time that you have interfered with my ability to address this body.

Chair Way asked if anyone else would like to speak to the request. Hearing none, he invited the applicant to respond to the concerns.

Mr. and Mrs. Shaver said that he would like to correct the record. There are at least two neighbors, that we have heard of, who are not supportive. In regard to the covenants, I think Mr. Carico presented his interpretation. The covenants can be interpreted in different ways. The covenants are not always enforced in our neighborhood. You are not supposed to have trailers on the street, yet there are neighbors who have trailers on the street. You are not supposed to take down a certain size trees, yet we have neighbors that have taken down those trees. There are neighbors that paint their mailboxes, and that have satellite dishes. There are a number of rules in the covenants that are not enforced in our neighborhood. I had to call to get updated information on the updated covenants. The original covenants were not provided when we bought the house. I had to check around with the neighborhoods to find them because it was brought up. We want to do the right thing within the neighborhood. Before we spent the \$455 to apply, it would have been nice to know if it was completely out of the question or not. We would not have done this had we known that it was completely out of the question.

Chair Way asked if the applicant wanted to proceed or have more time to talk with the neighbors.

Mrs. Shaver said that there is a Wyndham Woods Facebook page. The same neighbor posted the public information and the Planning Commission meeting date and time on the Wyndham Woods Facebook page. I also commented on the post requesting that, if there were any questions, people reach out to Tracy or me. We would be happy to answer any questions that anyone might have. It is hard to get around to every single neighbor, but we have talked to a good handful of them, not just our direct neighbors down the street, but in the next neighborhood over, as well. We have tried

to answer any questions. I would also like to point out that when the bike path is extended, it will go right down Wyndham Drive.

Chair Way asked if the applicant would like to proceed.

Mrs. Shaver said that they would like to continue.

Chair Way closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that he does not want to set a precedent. We can discuss this, but I am not inclined to consider Airbnb's conditions because those terms of service may change. I do not want to consider the conditions of VRBO, HOAs or covenants. That is not our business, so I am inclined to not consider any of that in our deliberations.

Commissioner Colman said that he agreed, except that that HOAs still have authority over their neighborhoods.

Commissioner Finnegan said that there was a day care in Northfield Corridor. I voted against denial. It was approved by City Council, but it was denied by the HOA.

Commissioner Colman said that the SUPs for STRs are not subject to the conditions of Airbnb or any of those organizations. They are directly between the City and the property. They can manage it themselves. They do not have to have an organization managing them.

Commissioner Romero said that he wants to understand the process. What does the example that Commissioner Finnegan gave look like? City Council approved the day care, but then the HOA denied it. What would that look like here? What is that process? Are we involved with that?

Mr. Russ said that a neighboring property owner would have to go to court to privately enforce the covenants. If there an active HOA, the HOA might also enforce the covenants on its own.

Commissioner Whitten said that our decision does not supersede the HOA.

Commissioner Romero said that he understands that. I am trying to figure out how that plays out.

Commissioner Finks asked, from the City's viewpoint, is there a SUP on that property, then?

Ms. Dang said that it is for the twelve months until SUP expires due to inactivity.

Commissioner Colman said that it would expire within twelve months if they are not allowed to exercise their special use permit.

Commissioner Romero said that it does not make sense to him that they do not understand what the covenants are. Would we have access to understand what they look like? It seems like we are going through a process that they may not be able to use.

Mr. Fletcher said that private covenants are private. The City does not get involved. There are private covenants for many neighborhoods in the City. People buy properties where they do not know that they have private covenants. There are covenants that say the type of pets that you can keep, that you cannot hang out your laundry, or you cannot have certain vehicles. These are private restrictions and the City does not get involved in them.

Commissioner Ford-Byrd said that this is something new and that there will be more work to do as we receive more applications. The fact that in the conditions we state that the community does have the opportunity to voice concerns if the STR was not being operated well and becomes a

nuisance, makes me more confident about moving forward to allow the homeowner to give this a try. This is something new and others are definitely watching. I would like to see where it goes.

Commissioner Ford-Byrd moved to recommend approval of the SUP with the suggested conditions.

Commissioner Finnegan seconded the motion.

Chair Way said that it seems that one of the things that we are circling around, that we have some anxiety, is the precedent that this sets in the neighborhood that it could open up a whole bunch of SUPs in the area for STR. Can precedent work in two ways? Property owners point to this and say that of someone else can do this then we can, too. Can it also work the other way? Can we say that we already have STRs there, and if we approve more, then it will be a problem? Is there a tipping point where the precedent works in a negative way rather than a positive way? Does that happen? What is the typical outcome of this domino effect?

Ms. Dang said that it would be difficult. For staff, our professional opinion would remain the same. We would still have the concerns. I cannot speak for how you or other people in your seats would feel.

Chair Way said that what he is asking is what historically happens in this situation, once you open a door into a neighborhood.

Mr. Fletcher said that he cannot remember staff ever writing a staff report that recommends denial of a SUP because there is already a recreation or leisure time use activity at this particular site, for example.

Chair Way asked whether they do the other way around. Do you ever recommend approval because there are already approved SUPs in the neighborhood?

Mr. Fletcher answered yes.

Commissioner Colman said, for the benefit of the neighbors in this case, that there is another opportunity for you to speak up before City Council to recommend denial of the request. It is part of the process. The same would happen even if it is approved, if it becomes a nuisance or the neighborhood is completely opposed to it, you have an opportunity to speak up there with valid reasons. This is not the end. None of these situations are the end of the road. We make a recommendation here and to see what happens.

Mr. Fletcher said that he wanted to clarify his answer. I am not sure that I understood your question. You asked if we have recommended in favor of a SUP because of one that had previously been approved. I cannot recall of a time that staff changed its professional opinion where we recommended denial where one was approved by City Council then five properties down the road, staff recommended approval based on the prior approval. I do not recall that example. We have recommended approval of SUP that got approved. Five years later, a very similar operation came along, such as recreational uses in M-1, like fitness facilities similar to the one we heard tonight. That is probably the third in the past ten years that we have had in that neighborhood, in that vicinity of Acorn Drive and Mt. Clinton Pike, Red Oak Street. All those that are very similar recreational and leisure time uses. I cannot recall, not saying that we have not, a time that we recommended denial, City Council or Planning Commission said yes and then we changed our point of view. Does that help?

Chair Way said that he is trying to explore what potentially can happen once we start opening the door to these SUP, how inevitable it makes the future.

Commissioner Colman asked if he is concerned that if we approve this SUP, then the next neighbor would apply, and we would feel that we have to approve that one, too? At what point do we say there are too many?

Commissioner Finnegan asked that if all the neighbors in that neighborhood decided to apply, on what grounds would we say no.

Commissioner Whitten said that we have one neighbor here that says that he is representing eight other people. That is nine houses out of a not very large number of houses. If that many people do not want this, and staff is saying that they do not think that this is not an appropriate place for this to happen, then what are we doing?

Chair Way said that we have a motion and a second to recommend approval of the SUP, with the suggested conditions.

Chair Way called for a roll call vote on the motion.

Commissioner Finks: Aye

Commissioner Finnegan: No

Commissioner Ford-Byrd: Aye

Commissioner Romero: No

Commissioner Whitten: No

Commissioner Colman: Aye

Chair Way: No

The motion to recommend approval failed (4-3).

Mr. Fletcher clarified that the motion died. A motion of action is required.

Commissioner Whitten moved to recommend denial of the SUP.

Commissioner Finnegan seconded the motion, adding that his primary concern is how far back in the neighborhood the property is located and the distance from the collector street.

Commissioner Colman said that his vote is related to the neighbors' concern, not to the distance.

The motion to recommend denial was approved (5-2), with Commissioner Finks and Commissioner Ford-Byrd voting against.

Chair Way said that the recommendation for denial will move forward to City Council on July 9, 2019.

Special Use Permit – 981 Summit Avenue (Short-Term Rental)

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this area as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions

dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

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

- Site: Single-family detached dwelling, zoned R-2
- North: Single-family detached dwelling, zoned R-2
- East: Single-family detached dwelling, zoned R-2
- South: Single-family detached dwelling and city-owned water tower, zoned R-2
- West: Agricultural uses located in Rockingham County, zoned A-2

On March 26, 2019, City Council adopted new Zoning Ordinance regulations associated with short-term transient lodging commonly referred to as “Airbnbs,” which is associated with the webservice www.airbnb.com. Although known as Airbnbs, operators may use other services including but not limited to VRBO, HomeAway, and FlipKey to advertise their properties. These operations, unless previously approved by the City as a bed and breakfast, have been illegal in the City of Harrisonburg. A short-term rental (STR) is defined as “[t]he provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.”

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019 and which would provide individuals wishing to operate STRs time to apply for and potentially receive approval of a special use permit (SUP). SUP applications are received on a rolling basis for upcoming Planning Commission reviews and subsequent City Council meeting agendas for final determination.

The applicant is requesting approval of a STR operation at 981 Summit Avenue, which is located in the northwestern section of the City. The applicant describes in his letter that he and his wife desire to rent for STR one space that could accommodate a total of four individuals. They describe that the property is their primary residence and that they plan to be present during the lodging period.

The building is currently described by staff as a single-family detached dwelling. However, during meetings with the applicant, staff became aware that the property has been used as a duplex, which has two dwelling units. The property is zoned R-2, Residential District and has approximately 21,000 square feet of lot area. A duplex is permitted by the Zoning Ordinance (ZO) to be located on this site so long as Building Code requirements are met. City records indicate that a building permit was applied for in 1996. The building permit was approved for the construction of a two-story dwelling with a basement apartment. Today, this type of building would be defined by the ZO as a duplex. However, there are no City records that a Certificate of Occupancy (CO) had been issued for the building. Once the applicants became aware of this issue, they began working with the Building Official to take the necessary steps to obtain a CO for the building for two dwelling units. If approved, staff recommends a condition that prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the property.

Assuming that the necessary building inspections occur, and a CO is issued for how the owner desires to use the property, the building would be a duplex. The first larger dwelling unit makes up the majority of the structure and includes the space that the applicant plans to use as a STR. While the applicant's letter describes the STR space as an "efficiency apartment," staff considers this space as part of the first larger dwelling unit. The second smaller dwelling unit is described in the 1996 building permit as the "basement apartment."

The applicant lives in the first dwelling unit with his family; his parents, who own the property, live in the second dwelling unit. The applicant desires to rent from the first dwelling unit a space on the second floor, which includes one accommodation space for a STR. ("Accommodation space" is used here to mean any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.)

Section 10-3-25(28) of the ZO requires STRs to "provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit." The applicant has described in their letter that they are able to provide two parking spaces on their property for the STR. However, since they only have one accommodation space, the ZO would only require that they provide one off-street parking space for the STR.

It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site in the existing driveway areas and within the two-car garage. Regardless, staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces and offers this as a condition on the permit, if approved.

Staff believes that STRs should not negatively impact a community or an individual's quality of life or to a neighborhood individual's often biggest investment: their home and property. Zoning regulations offer some certainty for home buyers and property owners. The zoning regulations adopted by City Council in March 2019 created the opportunity to allow STRs in the City while also providing city staff, Planning Commission, and residents of the neighborhood to share their thoughts. The regulations also allow City Council to establish conditions on the SUP.

The property is located deep within a neighborhood, at the end of dead end street that is approximately 0.3-miles long (from Greystone Street) and approximately 0.8-miles from the nearest collector streets (Chicago Avenue and Mt. Clinton Pike), and is unlikely to have pedestrian and vehicular traffic that is not from relatives or friends or neighbors who live on Summit Avenue or their visitors. Staff believes that introducing a STR at this location could create neighborhood instability because STRs introduce high turnover of different people who are unknown to the neighbors and could change the character of the neighborhood with increased vehicle trips.

Given the location of the property within this residential area of the City, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

However, if the request is approved, staff recommends the following conditions:

1. Prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the building.
2. The site shall be the operator's primary residence.

3. An operator shall be present during the lodging period.
4. All STR accommodations shall be within the principal structure.
5. There shall be no more than one STR guest room or accommodation space.
6. The number of guests at one time shall be limited to four.
7. Prior to beginning operations, the operator shall have the guest rooms and accommodation spaces and means of egress inspected by city staff to confirm compliance with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code or as determined necessary by Building Code and Fire Officials.
8. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
9. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #2 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. This also means that if a CO is issued for the building for two dwelling units, then between the two dwelling units only one accommodation space may be rented as a STR at a time so long as they meet the other conditions of the SUP. Condition #3 protects the neighbors by ensuring that there is on-site accountability by the STR operators. Condition #4 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to surrounding properties. If the applicant later wishes to create living spaces within an accessory building for a STR, they must return to PC and City Council (CC) with a new SUP request. Condition #5 limits the total number of guest rooms and accommodation spaces on the entire property to one. Condition #6 limits the total number of guests at one time to four. However, with Condition #7, which requires that prior to beginning operations that the guest rooms and accommodation spaces and means of egress are inspected by city staff to confirm compliance with the Building Code and Fire Code, the number of guests could be further limited if inspectors determine that four people could not be accommodated in the proposed spaces. While the SUP does not restrict the operator to using specific guest rooms or accommodation spaces within the dwellings (meaning that the STR operator could decide later to change which accommodation spaces are rented for the STR), Building Code and Fire Code requirements would be specific to the spaces. Condition #8 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create delineated parking spaces. Condition #9 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicants were to sell the property, then future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Mr. Fletcher noted a mistake on the aerial graphic. The star identifying the subject property is misplaced and should be further to the left.

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

Mr. Michael Stoltzfus, 981 Summit Avenue, came forward to speak to the request. The property is owned by my father Glen Stoltzfus. I would like to start by reading a letter that I prepared to give to our neighbors, although I never had to give the letter to them. I went to their doors and had a personal conversation with each of our neighbors to the north, to the east and several houses to the south on both sides of the street. They were all supportive. They did not have any problems with my request. I specifically mentioned traffic and parking. They did not have problems with either of those specific issues. I thought it might be helpful to read a portion of the letter I wrote for our neighbors in case they want to read it.

My wife Jen, my two sons Adam and Luke, and I moved in to 981 Summit Avenue in May 2018. This house was built by my father Glen in 1997. He and my mother Malinda have lived here since, until our family moved in last May. (They are now living in the apartment in the basement.)

Jen and I have lived in the Park View neighborhood all but 3 of the past 27 years (including EMU campus, Shank Dr, College Ave, Greystone St, and Summit Ave). We love this neighborhood - the quiet family atmosphere, friendly neighbors, and gorgeous views. It has been our family's hope and plan for some time to make the move back to Summit Ave (Jen and I lived in the basement apartment at 981 Summit Ave during our first year of marriage).

It has also been our dream to provide guest accommodations in our beautiful neighborhood, with its restful atmosphere and scenic views of both the city and county. I have closely watched and participated in the city's efforts to establish short term rental guidelines to protect neighborhoods. I advocated for the requirement to acquire a special use permit, and urged the city to also require short term rentals to be owner-occupied and provide off-street parking. I felt this was important to protect the integrity of neighborhoods and to limit the impact of investment properties being turned into short term rentals at the expense of affordable housing options. I share some city residents' concerns about traffic, noise, and parking. I decided to wait until the city had an ordinance allowing short term rentals in place before opening our home to guests, since it has been illegal to do so in the city until now. I want to share our beautiful city with guests who desire something different than a hotel experience, and to help them experience my favorite events, natural areas, historic treasures, restaurants, and other amenities in our city.

There are several STRs that are currently operating on Summit Avenue, that have been operating for some time. I know that at least one of them is in the process of applying for a SUP. We have a lot of non-resident traffic on our street because of its location and scenic views. I do not think that one, two or even three STRs on our street would adversely affect the current nature of our neighborhood because of our location. It is an attractive place to drive, park and watch the sunset. I do not share city staff's view that the distance from a feeder street would have a negative impact on our current neighborhood atmosphere. I am open to any questions you may have.

Commissioner Finks asked if the applicant had any concerns regarding the conditions suggested by the City.

Mr. Stoltzfus said that he did not. The fact that all four of the current applicants stated specifically that we would be present during the rentals is possibly due to language on the City website. Where it talks about applying for a SUP, it says that the letter should describe who would operate the STR, if the location is the primarily residence of the operator, if the operator would be present

during the lodging period, etc. That is why I included it. I thought it was a requirement. I am glad to have that be part of the conditions. I would not feel comfortable renting out that space to someone while I am not present, while we are on vacation.

Ms. Dang said that she would look at the verbiage to ensure that it is not misleading. The intent of the verbiage is to have applicants address whether they plan to be there or not, so that we would not have to ask them during the review process. We wanted to have all the information up front as staff is reviewing. I will double check to make sure that it is not misleading by implying that it is required that operators are required to be there. I do not think it is because in the next round of STR applications, there is someone who is applying who does not plan to live there. In addition, the applicant for Royal Court, who has withdrawn their application, did not plan to live there.

Chair Way asked if there were any further comments regarding the request.

Mike Goertzen, 990 Summit Avenue, came forward to speak in support of the application. I live far enough south of Mr. Stoltzfus that I was not privy to his letter. I am aware that there are a number of STR units operating on the street already. There is quite a bit of vehicular traffic due to the view, and there is a very large volume of pedestrian and bicycle traffic through that space because of the views. It does not change that much. It is a misunderstood area. It is a quiet street late at night. It is a popular place for those who do not wish good intent on the community to visit, at times. Since we have slightly increased the traffic on that street, my wife and I, who border on a number of vacant lots that would be a popular place for the less well-intended people, have seen a distinct decrease in that traffic because there is more activity on the street. I want to speak in strong support of Mr. Stoltzfus' application.

Mr. Giannakaouros came forward to speak in support of the applicant. I would like to suggest that the principle that people who are different or unknown in the neighborhood would be a disqualifying principle is not something that is held by our elected representatives. I would hope that this body and staff would stop testing them on this question.

Chair Way asked if there were any further comments regarding the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that when we were doing research on STR, one of the things that came up and that I got from staff, last year, was an application for a bed and breakfast from 2013 on Summit Avenue. It was a letter to Dave Miller that was signed by a number of neighbors saying that they were not in favor of a bed and breakfast. A bed and breakfast and Airbnb in some ways are apples and oranges, however, it was signed by Glen Stoltzfus. Things may have changed, between now and then. It sounds like they have. It sounds like there may be a number of other applicants from this street coming up next month. There is at least one more on this street next month. It is something to keep in mind. If one or two or three is not a problem, is four or five or six or seven a problem?

Ms. Dang said that while she cannot speak to the 2013 application, specifically, keep in mind that it may have been proposed differently or the conditions were considered differently. A new STR on the street might propose something that they are operating differently. They are not all the same.

Mr. Fletcher asked if it was the same application that, at that time, staff supported before they withdrew it. Which application was he referring to?

Ms. Banks answered that it was Mr. Miller's that they were speaking of; the one staff supported was 15 to 20 years ago.

Mr. Fletcher said that was a similar application on an adjacent property. It was a long time ago, 2006 maybe? Staff supported that.

Commissioner Finnegan asked if we are taking into consideration whether a property has been a whole home rental for a long period of time. Is that a consideration? Or are we going to treat it as a clean slate, starting from scratch?

Commissioner Finks said that he would like to think that we are starting from scratch. While the law did say that this was not something that was allowed in the City, it was ambiguous. We had not directed, or City Council had not directed, staff to enforce it or make it more well-known, so that people who might have moved to the City from the County or some other area where it was allowed and who may not have considered that it might not be allowed. We were not going out of our way to inform them. In other situations where we are considering SUPs, past usage is relevant. In this area, I would like that we not take it into consideration.

Commissioner Whitten said that is what the grace period is about.

Commissioner Finks said that everyone who is coming before this body is trying to do right.

Commissioner Ford-Byrd said that in the spirit of transparency, I would not mind the applicant letting us know if they had been operating before hand and how things went.

Commissioner Finks made a motion to recommend approval of the SUP with the suggested conditions.

Commissioner Ford-Byrd seconded the motion.

The motion to recommend approval passed (5-2), with Commissioner Whitten and Chair Way voting against the motion.

Commissioner Whitten said that she still has concerns regarding the stability of the neighborhood.

Chair Way said that he voted no due to the reasons discussed.

Chair Way said that the recommendation for approval will move forward to City Council on June 11, 2019.

Chair Way called for a five-minute recess at 9:39 p.m.

The Planning Commission reconvened at 9:46 p.m.

Rezoning – 1385 Wine Drive (R-3D to B-2C)

Chair Way read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area as Limited Commercial. These areas are suitable for commercial and professional office development but in a less intensive approach than the Commercial designation. These areas need careful controls to ensure compatibility with adjacent land uses. The maintenance of functional and aesthetic integrity should be emphasized in review of applications for development and redevelopment and should address such matters as: control of access; landscaping and buffering; parking; setback; signage; and building mass, height, and orientation. Efforts should be made to maintain the intent as described.

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

- Site: Undeveloped parcel, zoned R-3C
- North: Harrisonburg Community Health Center property, zoned B-2C; and an undeveloped parcel, zoned R-3C
- East: Across Port Republic Road, single-family dwellings, zoned R-1; duplexes within Rockingham County, zoned R3
- South: Aspen Heights student housing complex within Rockingham County, zoned R5
- West: Undeveloped parcel, zoned B-2C

Prior to 2007, this parcel was part of a larger 16.51-acre tract known as Ashby Meadows. In May 2007, City Council approved to rezone a 6.96 +/- acre area closest to Port Republic Road (which includes the subject property identified as tax map number 88-I-8) from R-1, Single-Family Residential District to R-3C, Multiple Dwelling Residential District Conditional.

The approved and current regulating proffers (from the May 2007 rezoning and written verbatim) include:

1. All buildings would be used only for medical offices and professional offices.
2. Screening between residential R-1 and proposed medical or professional office R-3.
 - a. Screening on east and west side as shown on preliminary site plan would be evergreen such as Leyland Cypress or equal.
 - b. Screening in middle section between R-1 and proposed R-3 would be 6' vinyl fence similar to attached picture.
3. All buildings would be one story, all brick and of colonial design similar to attached pictures. Design would have to be approved by Architectural Control Committee.
4. Islands would be landscaped by Developer and maintained by adjoining property owner. This will be a deed requirement.

Three subdivisions took place in 2008, which divided the original 16.51-acre tract into 29 parcels for single-family dwellings and the remaining 6.96 +/- acres into four parcels zoned R-3C. In 2010, the parcel identified as tax map number 88-G-7 was rezoned from R-3C to B-2C; this is where the Harrisonburg Community Health Center is located today. In January 2017, the parcel identified as 88-H-8 was approved for a rezoning to amend the May 2007 proffers and to allow two story buildings. Also, in January 2017, the parcel identified as 88-I-7 was rezoned from R-3C to B-2C to allow for personal service establishments, governmental, business and professional offices, educational uses, and accessory buildings and uses customarily incidental to the previous uses. At the time, there were plans for a professional salon academy for educating students in cosmetology and hairstyling services to locate on that property. Although City staff and Planning Commission recommended to deny the rezoning of 88-I-7, it was approved by City Council with a 4-1 vote. The salon academy use was never established at the site and the property remains an undeveloped B-2C parcel. Therefore, the subject property of this request is the only remaining parcel that contains the original proffers from the May 2007 rezoning.

Regarding the current request, the applicant desires to “bring the subject parcel into alignment with the permitted uses on the two previously rezoned parcels,” (tax map parcels 88-G-7 and 88-I-7, which were both conditionally rezoned to the B-2 district), by rezoning the site from R-3C, Multiple Dwelling Residential District Conditional to B-2C, General Business District Conditional.

The applicant has proffered the following (written verbatim):

1. The use of the property shall be limited to the following uses permitted by right under City Ordinance Section 10-3-90:
 - (1) Mercantile establishments which promote the show, sale and rental of goods, personal service establishments, restaurants (excluding freestanding fast food restaurants, fast food restaurants with drive-through windows, and coffee/donut shops with or without drive-through windows), and other shops and stores customary to shopping centers and convenience outlets (excluding convenience stores).
 - (2) Governmental, business and professional offices and financial institutions.
 - (3) Theaters, community rooms, museums, galleries and other places of assembly for the purpose of entertainment or education. In addition, customary recreation and leisure-time activities which are compatible with surrounding uses are permitted.
 - (4) Religious, educational, benevolent institutional uses which do not provide housing facilities.
 - (5) Pet shop or pet grooming establishments and animal hospitals (excluding kennels for boarding).
 - (6) Accessory building and uses customarily incidental to any of the above listed uses.
 - (7) Public uses.
 - (8) Small cell facilities, concealed wireless telecommunications facilities, industrial microcells, distributed antenna systems, and macrocells. Telecommunications towers are permitted only by special use permit. Wireless communications facilities would be subject to the regulations contained in Article CC of the City zoning ordinance (or any similar future regulatory article or section).
2. Special use permits shall only be permitted as approved by City Council.
3. Building would be limited to two (2) above ground stories (basements would be allowed)
4. The site shall be limited to one freestanding sign, not taller than 12-feet in height and shall not exceed 80 square feet in area. The square footage limitations shall not affect any building mounted signage permitted by ordinance. There shall be no LED or scrolling message center/board signs on the property (including building or wall mounted).

5. All exterior lighting on the property will be designed to be directed to minimize directional impact to the residential neighborhood lying to the west of the property along Wine Drive, consistent with on-site safety illumination needs.
6. Vehicular ingress and egress to the property shall be limited to Wine Drive. A single vehicular entrance shall be shared with the adjacent parcel Tax Map 88-I-7. No vehicular access to or from the subject site shall be permitted to Port Republic Road.
7. No less than one (1) large deciduous tree shall be planted and maintained for every forty (40) linear feet of parcel public street frontage where trees are not required by parking lot landscaping regulations (Section 10-3-30.1(1) of the Zoning Ordinance). Trees shall be planted within 10-feet of public street rights-of-way. At the time of planting, tree sizes shall meet the requirements as defined in Section 10-3-24 of the Zoning Ordinance. Tree locations within 10-feet of public street right-of-way are at the discretion of the property owner/developer.

Below is a summary of differences between the May 2007 and the new proffers offered by the applicant:

- The 2007 proffers limit the uses to only medical and professional offices. With the requested rezoning, the B-2 zoning district has a wider range of permitted uses. The applicant has limited, within proffer #1, the uses that would be allowed by right on the property. The more intensive uses such as vehicle fuel stations, public and private parking lots, plant nurseries and greenhouses, vehicle sales, repair of vehicle, hotels and motels, warehousing, radio and television studios have been proffered out. The applicant has also excluded several types of restaurants and convenience stores that would typically generate high volumes of vehicular traffic to and from the property. All uses allowed by special use permit within the B-2 district must be approved by City Council.
- Proffer #2 from the 2007 rezoning addresses screening between the undeveloped R-1 parcels and the R-3C parcels. With the current rezoning request, the subject parcel is not directly abutting any R-1 zoned property, and therefore this proffer has been removed.
- Section 10-3-30.1(1) of the Zoning Ordinance (ZO) states that trees are only required to separate parking lots from public street right-of-way; therefore, where a parking lot is not adjacent to a public street, no trees are required. With the requested rezoning, through proposed proffer #7 the applicant has proffered the planting of trees along public street right-of-way when not required by the City's parking lot landscape regulations.
- The 2007 proffers limit buildings on this parcel to one story. The proposed proffer #3 would allow a two story building. (It should be noted that the 2017 proffer amendment for tax map parcel 88-H-8 and the 2017 B-2C rezoning of tax map parcel 88-I-7 both allow for two story buildings.)
- In the R-3, Multiple Dwelling Residential District, signs are restricted to a maximum height of six feet with a maximum sign area of 24-square feet. In the B-2, General Business District, freestanding signs are permitted to be a maximum of 35-feet in height

and one sign is permitted along each public street frontage. Sign face area is limited to one square foot per one lineal foot of site frontage parallel to the principal street, not to exceed 240-square feet. The subject property has two public street frontages, allowing for two freestanding signs, and has lineal site frontage of approximately 165-feet; thus, a freestanding sign up to 165 square feet, or two freestanding signs totaling 165-square feet, could be permitted. The proposed proffer #4, reduces the number of allowed freestanding signs to one, the allowable sign height to 12-feet, with a maximum freestanding sign area of 80 square feet.

- Proposed proffer #5 is a new proffer that addresses exterior lighting and any impact to the R-1 neighborhood along Wine Drive.
- Proposed proffer #6 is a new proffer that describes that access to the site will only be from Wine Drive through the shared entrance with tax map 88-I-7. No access into or from the property will be allowed on Port Republic Road.

As part of the 2018 Comprehensive Plan Update, this corridor was reviewed to great extent, and after reviewing comments and proper vetting with the community the Land Use Guide changed this area from a Professional designation to a Limited Commercial designation. As previously stated, areas designated Limited Commercial are suitable for commercial and professional office development but in a less intensive approach than the Commercial designation. These areas need careful controls to ensure compatibility with adjacent land uses. The maintenance of functional and aesthetic integrity should be emphasized in review of applications for development and redevelopment and should address such matters as: control of access; landscaping and buffering; parking; setback; signage; and building mass, height, and orientation. Efforts should be made to maintain the intent as described.

The proposed rezoning is supported by the Comprehensive Plan. Staff believes that the submitted proffers limits the more intensive uses allowed within the B-2 zoning district; creates additional landscaping where not required by City ordinance; controls access to and from Port Republic Road; reduces allowable signs and signage; and limits building height, help to ensure compatibility with the adjacent land uses while meeting the intent of the Limited Commercial designation.

Staff recommends approving the rezoning from R-3C, Multiple Dwelling Residential District Conditional to B-2C, General Business District Conditional.

Chair Way asked they were any questions for staff.

Commissioner Colman asked if there were any water or sewer easements that may affect the proffer of the large, deciduous trees within ten feet.

Ms. Banks said that the proffers have been written the same way as the landscaping regulations that gives flexibility to locate the trees anywhere within the ten foot area in the case of an easement.

Chair Way opened the public hearing and invited the applicant to speak to the request.

Todd Rhea, attorney with Clark & Bradshaw, located at 92 North Liberty Street, came forward representing the applicant. This was a carefully considered request. We had a very positive experience working with staff, knowing the sensitivity of having a residential neighborhood behind the four-lot commercial and professional subdivision along Port Republic Road. Cognizant of the new limited commercial designation under your land use guide maps and talking collaboratively about what were uses that should be proffered out in limited commercially zoned property, and

with the realization that, when this project started in 2007, Port Republic Road did not look like it does today, with Stone Port and Aspen Heights immediately to the east of the property. Finally, with the review and approval by City Council of the other three parcels in that development to B-2C or to expanded uses, we felt that this request was tailored to be consistent with those approvals. When the Community Health Center built their facility about five years ago, they planted trees along the Port Republic Road frontage and our proffer was designed to be consistent with the appearance of the subdivision. I am happy to answer any questions and look forward to a recommendation for approval.

Chair Way asked if there any further comments regarding the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks said that, when we were on the site, we noticed that the other B-2C property, where the salon was planned, directly behind this. I believe we denied that, but it was then approved by City Council. Nothing has been developed there, as we have seen in the picture. It is still a field. I appreciate all the work put into the proffers. I would like to see more proffers like number seven, regarding deciduous trees. It is a very important thing. The tree canopy is such an important thing to a city's health, as far as keeping the temperatures down on the pavement and general esthetics. I appreciate it when people take the time to include this sort of proffer. I understand that it was offered to keep in line with the adjacent properties. In general, I always appreciate when I see something like that proffered, to take into consideration putting in trees and adding to our tree canopy for a healthy city.

Commissioner Finnegan said that it is particularly important because many trees have been removed from that side of town, over the last year.

Commissioner Finks said that this rezoning would bring it in line with the Comprehensive Plan, so it makes sense.

Commissioner Colman said that his question regarding the trees was not about opposing trees. On the contrary, it was about where the trees could be located. It is a great thing to have trees planted and I support that wholeheartedly.

Commissioner Whitten moved to recommend approval of the rezoning request.

Commissioner Finnegan seconded the motion.

Chair Way said that he agrees with everything that Commissioner Finks said. It is very important.

All members voted in favor of recommending approval of the rezoning request (7-0).

Chair Way said that the recommendation for approval will move forward to City Council on June 11, 2019.

Rezoning – 706, 710, and 714 Greenbriar Drive (R-1 to R-3C)

Chair Way read the request and asked staff to review.

Ms. Banks said that Greenbriar Drive was annexed into the City of Harrisonburg from Rockingham County in 1983. Greenbriar Drive was part of a master planned community and the zoning in the County at that time was R-5, Planned Residential District. The intent of the R-5 zoning in the County was “to permit greater flexibility and consequently, more creative and imaginative designs.” The district served “to create residential environments with a diversity of housing types, amenities, and services; more usable tracts of open space for recreation, conservation;

preservation of the natural landscape features and amenities; and to attain more efficient development by grouping buildings, thereby resulting in smaller networks of streets and utilities.” In 1983, the R-5 County zoning most closely resembled the City of Harrisonburg’s R-4, Planned Unit Residential District. Therefore, when the area was annexed into the City, it was designated as R-4.

At the time of annexation, the master planned community was comprised of 35 +/- acres and included parcels along Port Republic Road, Forest Hill Drive, Greenbriar Drive, and Devon Lane. The master plan for the development consisted of single-family detached dwellings, townhomes, multi-family dwelling units, a commercial component, and open area. The City’s R-4 zoning designation allows for single-family detached dwellings, duplexes, multi-family dwelling units, and townhouses with occupancy by a family or not more than four persons per unit.

On June 10, 1986, the City of Harrisonburg’s City Council reviewed an eight-parcel subdivision request for the Greenbriar Drive area. During the discussion the developer was asked about the possibility of changing the zoning from the R-4 designation to R-1. At that time, the developer declined the idea to rezone to R-1 and instead submitted a letter stating that he would deed restrict the properties to single-family [detached dwellings]. Deed restrictions are private agreements between property owners and the City has no authority to enforce them. Conflicts must be handled privately between property owners or through the court system.

In September 2000, residents of Greenbriar Drive submitted to Planning Commission a petition to rezone the properties along Greenbriar Drive from R-4 to R-1. The signed petition to rezone consisted of sixty-one percent of the property owners along Greenbriar Drive (excluding the six townhomes at the end of the street, which were not part of the rezoning request). The letter submitted with the petition to rezone noted that *“this change in status from R-4 to R-1 fits within the same comprehensive plan that is now in effect for these properties.”* (The 1998 Comprehensive Plan Land Use Guide in effect at the time, designated Greenbriar Drive as Low Density Residential.) In addition, the Forest Hills Neighborhood, which is zoned R-1 and directly abuts Greenbriar Drive submitted a support petition with twelve signatures from eight properties along Oak Hill Drive. In October 2000, staff supported the approval of, and Planning Commission recommended approval of the rezoning request for Greenbriar Drive from R-4, Planned Unit Residential District to R-1, Single Family Residential District. City Council unanimously approved the rezoning in November 2000.

Prior to rezoning the properties along Greenbriar Drive to the R-1 district, two single-family dwellings were legally occupied by four unrelated persons – 706 and 973 Greenbriar Drive. Additionally, 942 Greenbriar Drive had previously legally converted to a duplex with four unrelated persons residing in each unit. These dwellings continue to be occupied as such and are nonconforming. Nonconforming uses are defined in Section 10-3-24 of the Zoning Ordinance as “[a]ny lawful use existing at the time of the enactment or subsequent amendment of the Zoning Ordinance which does not conform to the current zoning regulations prescribed in the district in which it is situated.” Prior legally existing uses may continue so long as the then existing or more restricted use is not discontinued for more than two years. Therefore, when the zoning was changed from R-4 to R-1, the duplex and two single-family detached dwellings became nonconforming uses within the R-1 District.

The current Comprehensive Plan designates this area as Low Density Residential. 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.

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

- Site: Single-family dwellings, zoned R-1
- North: Across University Boulevard and Oak Hill Drive, single-family dwellings, zoned R-1
- East: Single-family dwellings, zoned R-1
- South: Across Greenbriar Drive, townhomes, zoned R-4 and single-family dwellings, zoned R-1
- West: Across Forest Hill Road, a hotel, zoned B-2

The applicants are requesting to rezone three parcels totaling 1.06 +/- acres from R-1, Single-Family Residential District to R-3C, Medium Density Residential District Conditional. The properties are located along the northeastern side of Greenbriar Drive at the intersection of Greenbriar Drive and Forest Hill Road. Each parcel contains a single-family detached dwelling. The applicants' letter describes the use of each dwelling and states that:

- “706 Greenbriar Drive is currently a nonowner-occupied residence by not more than four unrelated adults. [Note: This is a nonconforming use as described above.]
- 710 Greenbriar Drive is currently a nonowner-occupied residence by a family of five - parents and three college children [Note: This unit would also allow rental of space for occupancy by not more than one (1) unrelated tenant.]
- 714 Greenbriar Drive is owner-occupied residence with rental of space for occupancy by two unrelated tenants.”

If approved the applicants desire to rent each dwelling to four unrelated individuals. This would be an increase in occupancy for 710 and 714 Greenbriar Drive and would bring 706 Greenbriar Drive into conformance with zoning regulations.

With the requested rezoning the applicants have submitted the following proffers, written verbatim:

Prohibited Uses:

- Duplex dwelling units with limitations as required by area and dimensional regulations.
- Attached townhouses of not more than eight (8) units.
- Hospitals, convalescent or nursing homes, funeral homes, medical offices and professional offices as defined by article F.
- Child day care.
- Adult day care.
- Cemeteries.
- Small cell facilities. Wireless telecommunications facilities are further regulated by Article CC.
- Community buildings for associated townhouse and multiple-family developments.

Uses Permitted by Special Use Permit:

- Special use permits shall be permitted as approved by the City Council.

Screening/Buffer

- A fence that is a minimum of 4 feet tall shall be installed and maintained along the northeast property line adjacent to Oak Hill (See Appendix A). The fence shall be installed within 120 days of rezoning approval. (706 and 710 Greenbriar Drive only)
- A fence that is a minimum of 4 feet tall OR trees that are 4-feet in height at planting and spaced 2-feet apart shall be installed and maintained along the northeast property line adjacent to Oak Hill (See Appendix A). The fence or trees shall be installed within 120 days of rezoning approval. (714 Greenbriar Drive only)
- There will be no entrances for vehicular access permitted from Oak Hill Drive onto the subject property.

Easement Path for Forest Hills Drive (706 Greenbriar Drive only)

- Easement dedication, from tax map parcel 12-I-1, to extend 30-feet to the east of the double yellow painted centerline on forest Hills Road, shall be dedicated for a future shared use path. As depicted on Appendix B (green line)
- In addition, a 15-foot temporary construction easement, as measured from east of the new right-of-way line, shall be dedicated for future shared use path construction. As depicted on Appendix B (red line).
- Such dedications shall be completed and recorded within 90 days of approval.

Note: Each property owner has submitted separate proffer letters.

As previously stated, the Comprehensive Plan designates this area as Low Density Residential. These are areas that consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around four dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. In this particular situation, the existing neighborhoods are zoned R-1, which allows for only single-family detached dwellings and has limits on occupancy.

This designation extends not only along Greenbriar Drive, but into the Forest Hills Neighborhood, which is directly adjacent to Greenbriar Drive. The properties along Greenbriar Drive are located along one boundary of a larger neighborhood area, including the Forest Hills Neighborhood, and which are all currently zoned R-1 and designated in the Land Use Guide as Low Density Residential.

Staff does not believe that the proposed higher occupancy is compatible with the adjacent residential neighborhood along Greenbriar Drive and the Forest Hills Neighborhood. Moreover, the request for higher occupancy is not supported by the Comprehensive Plan, which designates this area as Low Density Residential. To consider rezoning the subject properties to R-3C because they are located in close proximity to other properties that are nonconforming with higher occupancy and/or that are zoned and have higher occupancy, would set a precedent to allow other property owners along Greenbriar Drive to request the same rezoning for the same reasons.

Staff recommends denying the requested rezoning from R-1, Single-Family Residential District to R-3C, Medium Density Residential District Conditional.

Chair Way asked if there any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Sam Vargas and Julian Peña, co-owners of 714 Greenbriar Drive came forward in support of their request.

Mr. Vargas thanked Ms. Banks for her help throughout the process. I never expected this early so in my career, but thankfully Ms. Banks gave a lot of guidance and insight into the neighborhood. There are four primary streets that are near Greenbriar Drive: Port Republic Road is not far away; Village Lane which is zoned R-4; Forest Hill Road which contains other townhomes; and, University Boulevard which leads to JMU. Behind the property there is Oak Hill Drive and the Ridgewood communities.

Mr. Vargas said that staff mentioned many of the neighborhoods and many of the roads but failed to mention a key street that is a major component of our argument. That is the Village Lane street. There are 50 townhomes on that street that empty out into Greenbriar Drive. All that traffic goes through Greenbriar Drive to get to the major roads, which are Forest Hill Road, Port Republic Road and University Boulevard. We bear the majority of that traffic, as opposed to the rest of Greenbriar Drive and Oak Hill Drive. Most of those townhomes have four or five unrelated adults.

Mr. Peña distributed a printed PowerPoint in support of the request.

Mr. Vargas said that the aerial view shows that Village Lane immediately pours out into our home. We gauged the neighborhood and took a survey of where our home was located relative to everybody else. Each of the homes has a parallel home to them that has an R-1 designation. In our case, we have R-4, but also Village Lane that immediately pours out into our driveway. There have been many times that vehicles speed past the stop sign. That is why 706 Greenbriar Drive was in support of the easement path. Not only do our homes bear the burden of scooters getting placed on our lawns, but also the hotel, and given specific events, there is a lot of capacity and foot traffic that our home, specifically, get. As you get further into the neighborhood from our home, you can see less of that and cars have more space, while ours is a very concentrated area. We went through our letter and tried to address a lot of the neighborhood concerns. Did everybody have a chance to read our letter? That is a key factor that we tried to take from the neighborhood. We would not be here today if the neighborhood did not feel that we had a precedent to go through this. We also distributed a petition and gauged the rest of the neighborhood to have them understand our viewpoint. From what we saw, 55 percent of Greenbriar ended up supporting our request. They did understand that we are bearing a big burden at the beginning of the street. Since 2000, there has been a dramatic shift in the demographic of Greenbriar and how people have been using Greenbriar. The previous owners of our home bought their home and were illegally renting it to five unrelated adults. That went unchecked for several years. There is a very mixed-use on Greenbriar Drive. We provided some statistics here. Ten of the twenty-five (40 percent) Greenbriar Drive homes are occupied by unrelated adults. In the first quadrant alone, using Village Lane as a key determinant where we see the first quadrant of Greenbriar Drive, you can see that 78 percent are already occupied by four unrelated adults. The first home 706 Greenbriar Drive has been occupied by unrelated adult for the past twenty years. We believe that our homes are not representative of the very restrictive R-1 zoning. We also gauged the neighbors. We do not want to disturb the neighborhood. We spoke to the neighbors directly in front of us. They supported us.

Our direct neighbor to the right said that they do not have an opinion. They said that do not have any strong feeling either way. We do understand that there is some opposition down the street, but from our proffer statements, we believe that we are not only making our homes very isolated and very protected, but it will not interfere with the rest of the neighborhood. What we are recommending is a three percent change in the entire neighborhood. It will not be detrimental or change the sanctity of the neighborhood. It will not be changing the R-1 that the Ridgewood community and the Oak Hill community want.

Mr. Peña asked that the Planning Commission weigh the opinion of the neighbors closer to the properties in question. Consider that when you are thinking of the opposition from the neighbors from the far away neighborhood. What this comes down to buffered zoning. I believe that we have become victim to buffered zoning. We bear the burden of having the most restrictive zoning that you can get in Harrisonburg, but also dead in the middle of a high density and medium density residential neighborhood surrounded by townhouses. I do not think that is fair and we would like that instead of having the homeowners bear the burden of the buffer, we would like for there to be a more natural buffer, such as the vegetation, the fence and Village Lane which is a very clear divider. There is also elevation of the land from the beginning to the end of Greenbriar Drive. Staff mentioned that this is not supported by our Comprehensive Plan, but the Comprehensive Plan is a big document, over 200 pages with sixteen sections. One of those sections is the Land Use Guide. This rezoning might not be aligned with the Land Use Guide, but it is our opinion that it does align with the overall Comprehensive Plan which calls for an increase of mixed-use housing. There are almost no options in Harrisonburg for a single-family home for young professionals. Young professionals are forced to live downtown in one or two-bedroom apartments. We would like to provide that opportunity to young professionals who would like to live close to the City. Staff said that the neighborhood would not be able to support the increase in occupancy, however that there are thirteen adults living in these three houses now. After the rezoning, there will be twelve, which is a decrease in occupancy. Could you elaborate on that?

Ms. Banks said that she does not think we ever said that we did not support that.

Mr. Peña read from the staff report:

Staff does not believe that the proposed higher occupancy is compatible with the adjacent residential neighborhood along Greenbriar Drive and the Forest Hills Neighborhood.

Ms. Banks said that staff does not feel that a higher occupancy of four unrelated individuals in each is compatible with the existing neighborhood. In the particular case of 710 Greenbriar drive, I believe that is occupied by a family. There is a difference between a family component and unrelated individuals.

Chair Way said that the point is that if one of these houses is sold, it could become an R-1 single family home again. I want to be clear about what we are talking about here. There is current use and there is how that is currently zoned.

Mr. Vargas said that in conclusion something that they have seen in analyzing the City of Harrisonburg is that we have not seen anywhere where there have been two different zoning extremes in that type of proximity. When people talk about affecting their homes, given that a home is one of your most valuable assets, we are the ones bearing the entire burden and we are limited in what we can do. That is why we want to have this house for those who can conform that is in that R-3 or R-4 type of neighborhood. We saw another hearing with Lucy Drive and that did

get staff's recommendation. That would have changed the entire neighborhood because it was a student housing complex. In the scenario, we are not going to be increasing to duplexes. We want to keep the homes, as is. We simply want to be able to have four unrelated adults.

Mr. Peña said that an issue that was brought up during the Lucy Drive hearing and gets brought up frequently is the concept of precedent. Even tonight it has been brought up; it was stated that staff believes in the best practice that occupancy should increase the closer you are to busy roads. What we are proposing here aligns with that. Staff said that rezoning our three homes would set a precedent for the rest of Greenbriar, but they do not have the argument that they are right next to a busy street. That precedent has already been set by staff. They also do not have the argument that they are across the street from a polar opposite zoning, with also is not best practice. They also do not have the fact that Village Lane is there as a divider. If any of the other homeowners on Greenbriar Drive were to say that we got rezoned, the Planning Commission and City Council can say that they do not meet the same criteria that we have met. Best practice is higher occupancy close to busy road, they are not close to busy roads. They are in a low-density residential neighborhood.

Chair Way asked if there was anyone else who would like to speak to the request and asked that speakers keep their comments on point.

Mr. Howard Cohen, 709 Oak Hill Drive, came forward to speak in opposition to the request. Let's be clear, when we talk about young professionals, a lot of people in these houses are students. I want to play something that I recorded from my front porch. I live across the street. I bought the house for quiet enjoyment.

Mr. Cohen played a recording of loud voices and yelling.

Mr. Cohen said that the sound was a drunken brawl. I had to call the police on several occasions. We are not talking about young professionals. We are talking about students. I asked one question- If you had a son with a heart condition, that had to put up with this, many nights and could not sleep, and it went on to all hours of the night, would you vote for rezoning?

Mr. Eugene Leffel, 1107 Ridgewood Road, came forward to speak in opposition to the request. I enjoyed the comments earlier about the original plan for R-1 in that established neighborhood. That neighborhood has been there for a very long time. It is single-family, residential. While we know that students are coming, and that they are coming in droves, we have a buffer. That is a quiet neighborhood. The people who live in that neighborhood bought those areas for that very reason. Several years ago, we petitioned City Council to take a rezoning that they had off Ridgewood Road from R-4 back to R-1. It was approved for that very same reason. I would ask you to try to respect the integrity of the neighborhood and oppose this rezoning.

Mr. Jeff and Mrs. Sarah Domingus, 904 Oak Hill Drive, came forward to speak in opposition to the request. Mr. Dominguez said that they are sensitive to the balance that being in a university town brings. We moved here two years ago from North Carolina. The university was a good draw for us. We wanted to be a part of that and all the positive that comes from that, but there has to be that delicate balance. One of the things that we started with was finding good family housing in the City. We wanted to live in the City. I like the public schools and diversity. I am family physician at the Community Health Center that you were talking about earlier. We were very drawn to all the positives about being in this community. It was very difficult to find a house, for a family, in the city that met those requirements. We were close to buying a house in the County,

getting ready to make an offer, but we knew it was not the right move. My wife persuaded me to completely renovate our house from top to bottom. We are happy where we ended up.

Mrs. Domingus said that she is a public-school teacher, but she stays home now. We have four kids and another on the way. For us, it was important to be in the City public schools. As a public-school teacher, I understand the importance of, not only having diversity culturally, but also in demographics. That is a way that we could support the schools and be involved in the schools. Our kids are having a great experience at Stone Spring Elementary School. We want to support the college, but we also want to support young families that are here all year long and have these communities. Oak Hill community and Forest Hill community are a tight knit community. We do many neighborhood things. When we first moved in, I said that I felt that I was in a Hollywood 50s movie because that is the way it is. People look out for each other. It is a unique thing that these neighborhoods that still exist in Harrisonburg. We have not had a flight to the suburbs. You still have these communities. Not just ours, but for these other neighborhoods, as well.

Mr. Donald Simon, 963 Greenbriar Drive, came forward to speak in opposition to the request. About 30 years ago, the Greenbriar Drive area was rezoned into single-family residences. In the approvals, it was recommended that we watch out for what is happening right now. It was rezoned so that there was more chance for single-family homes in the Harrisonburg area. It was warned that this would happen. Please be careful to not let it revert back. What I see now is the potential for serial rezoning and that is what I am concerned with for Greenbriar Drive. I think the key problems were presented by the residents of the housing are partly rather false. By putting students and other people in those three homes add to a parking problem. The beginning of Greenbriar Drive has gotten very full of cars and it is a bit scary to come in when the students are in town. Village Lane which was indicated as a housing development for students, therefore Greenbriar Drive might not worry about a few more. There is a 40-foot vertical separation that takes care of building separation as far as Greenbriar residences and Village Lane residences. I am opposed to the application.

Mrs. Roann Nieto, 815 Greenbriar Drive, came forward in opposition to the request. I admire that there are young people who want to be in the business of generating from their properties. We have been hearing low-density or moderate density, but I think that the two gentlemen forgot to mention that it is not low-density because on party nights there are more than 50 people on that one little property. Along Village Lane, starting on Tuesday night there was a party or loud music blasting. That was Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday. Monday night is the only night that it is not as loud. It makes you wonder if they are really studying or just partying. It is a nice family lane, family drive. We have young children and we do not want them to be exposed to all this partying and think that college life is party life. I know that this is an investment property. Maybe with all that money you have you would like to sell your property and buy another property, please.

Ms. Banks said that before you move on to the next public comment, I placed an additional letter that I received this afternoon in front of everyone from the family that lives at 815 Greenbriar Drive. It is in opposition to the rezoning. I have also received phone calls. Although they are not in attendance, the hotel across the street called in. They have concerns with parking because people park in their parking lot and walk to the properties.

Mrs. Sherry Leffel, 1107 Ridgewood Road, came forward in opposition to the request. In front of the townhouses and those three houses there are cars. If a fire truck has to come, it would have a hard time getting up that street. It happened several years ago, when we had the little riot.

Mr. Greg Bellamy, 816 Greenbriar Drive, came forward in opposition to the request. Thank you for your dedication. I am strongly opposed to this rezoning. My family moved thirteen years ago. We like the street because it is close to our business. We like that we have families next to us. If the applicants are wanting to compare and include statistics on Village Lane, I definitely do not want that on Greenbriar Drive, where my family is and what is my biggest investment. I want to protect it. As far as fences go, Mr. Edsell at the end of the cul-de-sac had a fence to separate from the townhomes behind him, but that got broken down by the college students coming down to 714 Greenbriar, last year. Probably about 500 kids went into that house, through that house, into the back yard. There is a water line that broke. It was the house beside me. That is the reason I remember the date. I cannot believe how many people walked through Mr. Edsell's property, who is deceased, to go there. These guys were the owners then, and they have not been good neighbors, since they have owned the home. Therefore, I am opposed to this.

Chair Way invited the applicants to respond.

Mr. Vargas said that he wanted to gauge the entire neighborhood. This is why I have a map of some of the homes, indicated their location relative to where we are. The Ridgewood community is more than a thousand feet away from us. They are completely isolated. They do not share the entrance as us. They go through Oak Hill Drive, which does not have a stop sign, so they have a straight pass through. 816 was mentioned. I think the closest one was 963 Greenbriar Drive, which is uphill. The closest one that is a non-conforming use that is being renting out is their neighbor. They are also around 300 feet away from us, all the way down at the end of the street. I wanted to point out that it is mildly inappropriate for somebody to tell us to sell our house. We bought this because we wanted to be residents of Harrisonburg. We noticed the impacts of our home based on where we are and the traffic that we get. The scooters that we get we get in our lawn. It is not conforming with that R-1 neighborhood. That is why we are requesting a rezoning to R-3 to appeal to the people who are going to be attracted. If the people who would be attracted to be in our homes would be those who do not mind that foot traffic or are trying to use scooters to get to different areas. Our homes have sufficient parking. We have a two-car garage. Our driveway can accommodate five cars, if needed. We can extend the driveway, if we need to because there is additional space toward to the back of the property. If you look at all the other home, 706 and 710 have plenty of parking. I do not think that there has ever been an issue for anyone in those three homes ever parking in the hotel.

Mr. Peña said that he does not want any random cars parking in front of their houses either. That is a gold zone and each of these single-family homes gets two stickers. If you ever see a car parked there that does not have a gold sticker, please feel free to call the towing company and get them towed. They are not anyone that we know. Those are the people across the street parking in front of house. We do not want that either. If we were to sell our house, I do not think that you would see a single family interested in buying it. If the people whose homes are a mile out are complaining about Village Lane, imagine being directly across from them. These homes are not fit for single-family living. They are not.

Commissioner Whitten said were we not just talking about young professionals living there?

Mr. Vargas said that they face an economic impact. I know that 710 has previously tried to sell their home and were unable to do so. 706 was bought under the assumption that they were going to be under a non-conforming use. 710 had the same issue. It is already a mixed-use neighborhood. Any buyer who is going to be buying in Greenbriar already understands that.

Chair Way closed the public hearing and opened the matter for discussion.

Commissioner Whitten said that their explanation has been extensive and accurate.

Commissioner Finnegan said that he sees many signatures on the petition in support of the rezoning. Were those mostly tenants?

Mr. Vargas said that they were from both homeowners and tenants. Anyone who would be living in the area should have a right to say how they feel about the neighborhood. Both owners and tenants were captured in this, especially those on Greenbriar Drive.

Commissioner Finnegan said that this is the first time that I can remember, in my tenure on the Planning Commission since October of 2016, that I have seen tenants sign petitions like this. I will also say that it is the first time, in a Planning Commission hearing, that I have heard someone tell someone to sell a property and go buy another property.

Commissioner Whitten said that reflected a degree of frustration.

Commissioner Finnegan said that it reflects lots of things.

Chair Way said that the notion of neighborhoods, neighborhood integrity, and the particular problems of places on the edges and the margins of the neighborhoods comes up frequently. This is a classic example of that. Another issue we are wrangling with here is whether one accepts that edge case scenario and the different situations with zoning and buffer marginal areas, or you try to maintain the integrity of the neighborhood by trying to keep the entirety of the neighborhood in this similar condition and be extra sensitive to those marginal areas. This is a classic case of wrangling with that. There is strong neighborhood concern in this particular neighborhood. Through all the cases of this sort that I have seen over the years, I am more and more intent on looking out for not only single-family home neighborhoods in Harrisonburg, but also for standing as firm as we can on those marginal cases. I think that is very important. What it does is allow the people to not be dinged for spot zoning, once you start having that domino effect, when you look at those marginal cases. I can see that there is a rational, a deep rational, a logic for making this particular set of properties a little bit denser. In the interests of the broader community, I am particularly hesitant.

Commissioner Whitten said that there are restrictive covenants placed on those properties and I understand that we do not enforce that. I wonder if the neighbors have considered enforcing those because it seems like, from the testimony, that perhaps one of those address had more people than it was supposed to anyway. I think that would take them back to the lowest zoning density. Would it not? I do not remember what that would be, whether it was four or two.

Ms. Banks said that if they were enforcing their covenants it would not come back to us.

Commissioner Whitten said that it would go to the court system.

Ms. Banks said that their covenants say that they would be used as single-family homes. One of them was converted to a duplex, so that one clearly is violating a covenant. I do not know if those covenants described a single-family house as meaning that a single family would live there.

Commissioner Whitten said that it would be for the lawyers to figure out.

Mr. Fletcher said that we need to be careful when we say that it violated a covenant when we do not know what the covenant might have been. It was converted to a duplex when it was an R-4. It is legal. It is non-conforming, but still legal. Regarding the comments about whether or not there were higher occupancies within them, we do know that there are some higher occupancy non-conformities that exist there. We had some investigations, made based on information we learned a couple of months ago, where we looked into some of these.

Commissioner Colman asked if those were just non-conforming.

Mr. Fletcher said that they were not conforming. Were there any violations noted?

Ms. Banks said that the investigations that we performed were the townhomes across the street. They are occupied by four unrelated individuals and they are zoned R-4.

Commissioner Whitten said that her point is that there is a process that is outside of the Planning Commission.

Commissioner Colman asked if these units, the three properties as they are occupied right now, are non-conforming.

Ms. Banks responded that 706 Greenbriar Drive is occupied by four tenants. It did so legally when it was still zoned R-4.

Commissioner Whitten said that if scooters are parking on a lawn of a private home, the occupant can have those removed. You do not have to have those there. Do not talk to me about scooters. We are all tired of scooters. There is a process for that. There is also a process for noise and if your noise complaints are not being address, I would be interested to know about that. I think that City Council would be interested to know, as well. That is a recourse that you have to get your noise complaints addressed. I would encourage you to not put up with it.

Commissioner Colman said that one of his concerns is, as the applicant discussed, the value of their homes if it is impacted by Village Lane and the townhomes across the street. They are in a bind there, if they wanted to sell their house, disregarding any calls for it. Any benefits that you could have from your property is that by removing from R-1 and including the current use then that moves that line further back to the next group of homes. That is my concern. It just continues along that slippery slope. Clearly it would be warranted. As you move back, then the next group of houses is going to be exposed to the same thing. It continues until it overtakes the whole neighborhood. It is a beautiful neighborhood. It is a great neighborhood and I would hate to see it go in a different direction than what it is, a single-family home neighborhood.

Commissioner Finnegan said that it is eleven o'clock. A lot of the people here are in for the long haul on this issue. I can tell that you care deeply about it. It looks like most of the people who signed the petition in support, about 40 signatures, may not be in town. They might be students themselves. They are not here now. What I am pointing out is that it is late and there are a lot of people who appear to support this but did not have the time to show up and speak in favor of the request.

Chair Way said that there was a lot of thought in letters, as well, but they were all in opposition. They included people on Greenbriar Drive, as well, not just the surrounding neighborhood.

Commissioner Whitten moved to recommend denial of the rezoning request.

Commissioner Finks seconded the motion.

Chair Way called for a roll call vote on the motion.

Commissioner Colman: Aye

Commissioner Finks: Aye

Commissioner Finnegan: No

Commissioner Ford-Byrd: Aye

Commissioner Romero: Aye

Commissioner Whitten: Aye

Chair Way: Aye

The motion to recommend denial passed (6-1).

Commissioner Finnegan said that he heard all the evidence and believes that there is a case to be made both ways. The reason that I voted no was because what they were saying about their properties not going into the neighborhood itself. There is a turn-off for Village Lane. I strongly disagree with one of the letters that said that there is no shortage of housing R-3C in the City. I believe that we need denser neighborhoods, where possible. I do not mean that anywhere. We are going to be voting on something later that could directly affect the neighborhood that I live in and I want to make sure that we are increasing density where possible and where appropriate.

Chair Way said that the recommendation for denial will move forward to City Council on June 11, 2019.

Zoning Ordinance Amendment – To Establish and Add a New Zoning District to the Zoning Ordinance titled R-8 Small Lot Residential District, To Amend Off-Street Parking Regulations for Dwelling Units, and To Add a Definition to the Zoning Ordinance to define a building “Story”

Chair Way read the request and asked staff to review.

Ms. Dang said that in early 2017, the applicant, Richard Blackwell, discussed with staff ideas to amend the Zoning Ordinance (ZO) to allow for the development of single-family detached neighborhoods that would allow for higher density development on smaller lot sizes than what the ZO currently allows. On May 16, 2017, the applicant requested for staff to review conceptual amendments to the ZO that would have added single-family detached and duplex dwellings as a by right use in the R-5, High Density Residential District. On July 7, 2017 an application was formally submitted to make such amendments. However, given the complexity of the proposed amendments, the applicant accepted staff’s suggestion to present the proposed amendments to Planning Commission (PC) for feedback on August 9, 2017 under Other Matters rather than moving forward with an official advertised request to amend the ZO. An extract of minutes from that meeting are enclosed within the packet.

On November 8, 2017, staff presented to PC information to better understand how the ZO’s existing districts control dwelling unit density. An extract of minutes from that meeting are also enclosed within the packet.

Since that time, the applicant worked closely with staff to create the ZO amendment that is presented herein, which proposes a new zoning district titled R-8 Small Lot Residential District. A great deal of discussion revolved around concerns the Fire Department had about how close dwellings could be located to one another and how we could work together to help prevent creating fire and life safety issues that evolve over time and that are permitted to occur by zoning and building codes.

The City's zoning structure has eleven zoning classifications that allow residential uses (R-1, R-2, R-3 (Multiple), R-3 (Medium), R-4, R-5, R-6, R-7, MX-U, U-R, and B-1). Included at the end of this report is a "Summary of Area and Dimensional Regulations for All Zoning Districts" which, among other things, summarizes residential zoning density per dwelling unit. It is important to note zoning density refers to the intensity of residential land use. For example, if a 10-acre subdivision contains 40 single-family detached houses, the zoning density is expressed as four dwelling units per acre. This is different from population density, which is expressed as the number of people per acre or people per square mile.

It should also be noted that the R-6 (Low Density Mixed Residential Planned Community), R-7 (Medium Density Mixed Residential Planned Community), and MX-U (Mixed Use Planned Community) districts are different from the other districts in the City because applicants who request a rezoning to one of those districts must develop a regulatory master plan for their development and must have certain acreages of property to even apply for those districts. Properties that are part of the master plan essentially have their own zoning regulations based on the master plan that is approved by City Council as part of the rezoning request.

The applicant, Richard Blackwell, states in his letter that "[i]n an effort to provide an affordable dwelling to a greater range of owner occupied and first-time homebuyers," he is proposing to amend the Zoning Ordinance (ZO) to add a new zoning district titled R-8 Small Lot Residential District.

Given the significance of a proposed new zoning district, this report is separated into the following sections addressing the proposed R-8 district regulations and then the other proposed ZO amendments accompanying the larger amendment:

- Uses Permitted By Right and Uses Permitted by Special Use Permit,
- Residential Occupancy Regulations,
- By Right Minimum Lot Size and Minimum Lot Dimensions,
- By Right Minimum Setbacks,
- Special Use Permit to Allow Reduced Required Side Yard Setbacks to Zero,
- Amendments to Section 10-3-110(f) Which Allows Reduced Side Yard Setbacks for Lots of Record Less than 60-feet,
- Off-Street Vehicular Parking Regulations,
- Other Regulations,
- Street Intersection Spacing/Block Lengths, and
- Additional Considerations.

Uses Permitted By Right and Uses Permitted by Special Use Permit:

As described in the proposed Section 10-3-59.2 – Purpose of district, the R-8 district "is intended for medium- to high-density residential together with certain governmental, educational, religious,

recreational, and utility uses subject to the restrictions and requirements necessary to ensure compatibility with residential surroundings.”

The by right residential uses include single-family detached dwellings and duplex dwellings. Attached townhouses of not more than eight units would be allowed with an approved special use permit. Home occupations would be allowed by right as an accessory use to residential uses, and major family day homes and short-term rentals could be allowed with an approved special use permit.

The by right non-residential uses would include churches and other places of worship, public schools or private schools having a function substantially the same as a public school, public uses, parks, and small cell facilities. Additional non-residential uses that could be allowed with an approved special use permit include community buildings, child day care, adult day care, concealed wireless telecommunications facilities, industrial microcells, distributed antenna systems, and macrocells, and public uses deviating from the requirements of the ZO.

Similar to other existing zoning districts, the proposed R-8 district would allow by approved special use permit walls and fences greater than 6-feet in height and to allow for the reduction of required parking spaces under the same parameters as specified in the existing districts.

Residential Occupancy Regulations

Modeled after the R-1 and R-2 district regulations, the R-8 district proposes the following occupancy regulations:

- Owner-occupied single-family dwellings, which may include rental of space for occupancy by not more than two (2) persons, providing such rental space does not include new kitchen facilities.
- Nonowner-occupied single-family dwellings, which may include rental of space for occupancy by not more than one (1) person, providing such rental space does not include new kitchen facilities.

In other words, if the dwelling is owner occupied an individual or family owning and living on the property may rent space to two additional boarders (i.e. two individual tenants). If the dwelling is nonowner occupied, then the dwelling may be rented to a family (or individual) plus one unrelated boarder.

Staff supports the proposed occupancy regulations since it places a limit on the number of unrelated individuals that a dwelling could be rented to and makes it less desirable for a property investor to buy dwellings in the R-8 district to rent to non-families or to more than two unrelated individuals.

To compare occupancy restrictions within the different districts in the City, a “Summary of Occupancy Regulations for all Zoning Districts” is included within the packet.

By Right Minimum Lot Size and Minimum Lot Dimensions:

The R-8 district proposes to allow single-family detached dwellings on lots that are a minimum of 2,800 square feet, which is equivalent to a zoning density of 15 dwelling units per acre. For duplexes, each unit of a duplex structure could be constructed on lots that are a minimum of 1,800 square feet, which is equivalent to a zoning density of 24 dwelling units per acre. With an approved special use permit, townhomes may be constructed on the same size lots as a duplex.

Staff believes that the R-8 district will help provide alternatives to the types of housing that can be constructed in areas where higher density is possible rather than meeting that demand with townhomes and multi-family (apartment) dwellings. The R-8 district could also be one tool to hopefully produce more affordable or lower cost housing stock.

By Right Minimum Setbacks:

The R-8 district would allow a 10-foot minimum front yard setback for all allowed uses and would require a minimum rear yard setback of 15-foot for single-family detached and duplex dwellings, 20-feet for townhomes, and 25-feet for other uses. There was consideration by the applicant to allow the front yard setback to be reduced to 5-feet, but staff recommended that the applicant make the front yard setback a minimum of 10-feet because the City's Subdivision Ordinance requires a 10-foot public utility easement be dedicated along the frontage of all newly subdivided lots and because buildings cannot be located overtop the easement. To compare R-8's setbacks with other zoning districts, refer to the "Summary of Area and Dimensional Regulations for All Zoning Districts" document included in the packet.

With regard to side yard setbacks, the R-8 district would have a different approach than all other zoning districts. The by right side yard setbacks would differ depending on whether the structure is a one- and two-story building or a three-story building.

The applicant originally proposed a 5-foot minimum side yard setback. However, staff was concerned about radiant heat and fire spread along with the angle of ladder placement for fire and rescue personnel between buildings. In most zoning districts, buildings are separated from each other by 20 feet because there is a 10 foot side yard setback required for both dwellings. If the side yard setback was 5 feet rather than 10, the distance between buildings would have been 10 feet, which not only increases the risk of fire spreading between buildings, but it also reduces the working area for the Fire Department to protect exposures of a building in the event of a fire.

As noted above, staff was also concerned that a 5-foot minimum side yard setback would not be adequate for the Fire Department to place ladders to reach a third story window if there were fences on the property line or other obstructions such as HVAC units or shrubs in the side yard. Where a ladder angle of 70-degrees is ideal, an average 3-story building would require the base of the ladder to be placed at a distance of about 9-feet from the building. After many months of discussion and research by the applicant and staff, the proposed R-8 district includes an approach that allows single-family detached and duplex dwellings by right to have a minimum side yard setback of 7-foot for one- and two-story buildings, and a minimum 10-foot side yard setback for three-story buildings. While a ladder is usually not necessary to reach a window located on the first floor of a building, the 7-foot minimum side yard setback takes into consideration that Section 10-3-110(a) of the ZO allows for architectural treatments and functional elements, including, but not limited to chimneys, moldings, rain gutters, downspouts, roof eaves, buttresses and bay windows to project 2-feet 8-inches into the required yard setback, which could increase the potential for fire spread between buildings.

The proposed side yard setback approach regarding the number of stories for buildings created the need to add a new definition to Section 10-3-24 of the ZO. While the term "story" is used in multiple places within the ZO, there exists no definition. Staff believed it was necessary to define a story and has worked with the applicant to propose the following:

Story: Excluding basements, a portion of a building for living between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, the space between the floor and the ceiling next above it.

This definition will help address concerns the Fire Department had about the potential for future conversions of attic space that was originally designed to be used as storage areas but then was converted into living spaces. For example, if a home within the R-8 district was approved by the City to be constructed as a two-story single-family detached building and there was an attic designed only for storage above the second story, and then the building was constructed at the minimum 7-foot side yard setback, if homeowners desired to convert the attic into a third story to add additional living space, the building permit to modify the third story would not be approved because a three-story single-family detached building would require a 10-foot minimum side yard setback. To allow the homeowner's wishes, however, the R-8 district would include a special use permit provision to allow reduced required side yard setbacks, which is described in more detail in the next section.

Special Use Permit to Allow Reduced Required Side Yard Setbacks to Zero:

As mentioned in the previous section, the applicant originally proposed a 5-foot minimum side yard setback. It should be understood that the 2012 Virginia Residential Code applies to single-family detached, duplex, and townhome construction, where in Section R302 Fire-Resistant Construction it states that when there is no sprinkler system and no fire-resistance rated walls, buildings may be constructed 5-feet from the property line. However, as previously discussed, this distance concerned staff due to the increased risk of fire spread between buildings and due to ladder angles.

In response to the desire to have smaller side yard setbacks while also respecting the concerns of fire and rescue personnel, the R-8 district will have a special use permit option to allow setbacks to be up to zero feet under the parameters outlined below:

- Reduced required side yard setbacks to zero (0) feet where such buildings are single-family detached or duplex dwellings when National Fire Protection Association (NFPA) 13, 13R, or 13D fire sprinkler systems are installed in such buildings or exterior wall(s) adjacent to reduced side yard setback is constructed without openings and has a minimum 1-hour fire resistance rating in accordance with testing standards described in the Virginia Residential Code.

This would allow property owners and developers to request approval of a special use permit to allow reduced side yard setbacks up to zero feet by agreeing to install sprinkler systems within each dwelling, or to install 1-hour fire resistance rated exterior walls with no openings (including, but not limited to windows) adjacent to the side yard setback that is less than the by right minimum requirements.

Included within the packet is a document titled "Proposed Amendments to City Code Title 7 – Water and Sewer related to fire suppression systems." This is included for informational purposes and does not require action by Planning Commission. The proposed amendments to Section 7-4-22 (10) and (11) addresses the cost to the applicant to install water meters solely for the purpose of fire sprinkler systems (also referred to as fire suppression systems). If applicants chose to install fire sprinkler systems in single-family detached, duplex, or townhouse dwellings, then two water meters would be required; one water meter for domestic water service and a second water meter

for the fire sprinkler system. The proposed amendments to Title 7 will be presented to City Council on the same date the proposed R-8 district is presented.

Amendments to Section 10-3-110(f) Which Allows Reduced Side Yard Setbacks for Lots of Record Less than 60-feet in Width:

Section 10-3-110(f) of the ZO currently allows reduced side yard setbacks for lots of record that are less than 60 feet in width. To prevent inconsistencies in applying the ZO, the following amendment is necessary:

- (f) Except in the R-8 Small Lot Residential District, ~~W~~where a lot of record is less than sixty (60) feet in width as measured at the point of required front setback, each required side setback for internal lot lines may be reduced to not less than five (5) feet unless otherwise superseded by building regulations.

A lot of record is defined by Section 10-3-24 of the ZO as:

Lot of Record: A lot which has been recorded in the office of the clerk of the circuit court.

In other words, these are lots that were previously created by an approved subdivision and already exist. Section 10-3-110(f) provides a relief mechanism for lots of record that are less than 60-feet within those districts, allowing them to have a minimum 5-foot side yard setback instead of the required 10-foot creating more buildable area. The amendment to Section 10-3-110(f) is to clarify that properties zoned R-8 are not afforded the reduced setback flexibility provided to other zoning districts.

Off-Street Vehicular Parking Regulations

Minimum off-street parking requirements are intended to protect adjacent properties and neighborhoods from spillover problems (drivers parking where they should not). However, minimum off-street parking requirements that are too high can harm communities for reasons including, but not limited to, undermining the community's goals to reduce car dependence and increasing walking, biking, and public transit (because people are encouraged to drive), wasting developable land, reducing the potential for other uses or amenities to be included with the development, and increasing the cost of new housing.

While working with the applicant on the proposed regulations, staff saw an opportunity to amend Section 10-3-25(7) of the ZO so that property owners in zoning districts where occupancy is restricted to less than four unrelated people in a dwelling are not required to provide the same number of parking spaces as those in a zoning district where occupancy regulations allow four unrelated people in a dwelling. To achieve this, the following changes are proposed:

- Amending the minimum off-street parking spaces for townhomes and multifamily units constructed within the R-6, R-7, R-8, and MX-U districts by eliminating the approach that requires parking spaces based upon the number of bedrooms and replacing the regulation so that townhomes and multi-family units are required to provide a minimum of one parking space for each dwelling unit. These districts have higher restrictions on occupancy.
- Clarifying that townhouse and multifamily units within the R-3, R-4, and R-5 districts would maintain the current approach, which is based upon the number of bedrooms.

- Allowing townhouses and multi-family units within R-3, R-4, and R-5 districts, where occupancy has been restricted on a conditionally zoned property to only provide one space for each dwelling unit or as may be conditioned by the property owner at the time of rezoning.

Additionally, staff proposes to change regulations for duplexes in all zoning districts from requiring two off-street parking spaces per duplex unit to requiring only one off-street parking space for each duplex dwelling unit. (Note: Each duplex structure is made up of two dwelling units.) This would require duplex dwelling units to provide the same number of off-street parking spaces as single-family detached homes.

The proposed amendment would have the following impacts to each zoning district with residential uses:

R-1	No impact.
R-2	Reduces the parking requirements for new and existing duplex units. Any existing duplex that is nonconforming to off-street parking requirements could become conforming to such regulation.
R-3s	No impact.
R-4	No impact.
R-5	No impact.
R-6	No impact. Amendments to the R-6 off-street parking requirements, approved in December 2019, created the ability for individual master plans to regulate off-street parking, which could be more or less restrictive than required by the Zoning Ordinance.
R-7	Reduces the parking requirements for new and existing duplex units. There should be no duplex units that are nonconforming to minimum off-street parking requirements in the R-7 district. Amendments to the R-6 off-street parking requirements, approved in December 2019, created the ability for individual master plans to regulate off-street parking, which could be more or less restrictive than required by the Zoning Ordinance.
MX-U	No impact since no properties are zoned this district.
U-R	Reduces the parking requirements for new and existing duplex units. Any existing duplex that is non-conforming to off-street parking requirements could become conforming to such regulation.
B-1	No impact.

Other Regulations:

There are miscellaneous regulations that would be included in the R-8 district under the Other Regulations section, which would be associated with attached and detached private radio and television antennas, referencing that uses must comply with the off-street parking requirements of Article G, and matters associated with private refuse collection and screening requirements. All of

these matters are consistent with subsections found in the Other Regulations sections of a few other districts.

The other miscellaneous regulation in this section would require that all dwelling units must be located on an individual parcel. In other words, duplex units would only be allowed to be side by side units—no duplex structure could exist with an upstairs unit and a downstairs unit because both units would be on the same parcel. The intent of this regulation is to increase the potential opportunity for home ownership by individuals and families within the City.

Street Intersection Spacing/Block Lengths:

As seen in Table 2 of the document titled “Summary of Area and Dimensional Regulations for All Zoning Districts” except for the B-1 district and districts that require a master plan, the minimum required lot depth for all other zoning districts is 100-feet. Generally, when two lots are oriented back-to-back and each faces parallel streets, depending on the specific lot dimensions, this creates about 200-feet of distance between the two streets where they intersect with a perpendicular street. The R-8 district proposes to allow single-family detached and duplex dwelling units the ability to have minimum lot depths of 60-feet and for townhomes to have lot depths of 80-feet. During review of the proposed ZO amendments, staff raised concerns about street intersection spacing and block lengths. While intersection spacing of 120-feet on a local residential street could function, staff has concerns related to traffic safety and operations if 120-foot distances between intersections on higher volume and higher speed collector or arterial streets were allowed.

The Department of Public Works is in the process of developing access management standards that will be applicable to all development proposals to address intersection spacing, safety, and operational concerns. Until the access management standards are adopted into the City’s Design and Construction Standards Manual, staff is comfortable with reviewing rezoning requests on a case by case basis to the R-8 district and providing feedback on any traffic safety and operational concerns observed in the absence of standards.

Additional Considerations:

A publication of the American Planning Association titled *Quicknotes: Small-Lot Subdivision Design* states:

“In communities where detached-single-family homes on large lots are the predominate form of residential development, allowing for small-lot development provides an alternative to this form of development that serves several purposes. Small-lot development increases overall housing density and promotes context-sensitive infill development or redevelopment in areas where land is underutilized. This can help increase overall housing production, which is a component of addressing housing affordability concerns. Additionally, small-lot development provides additional diversity in housing stock, which creates options for home buyers and may be particularly attractive to first-time home owners or seniors looking for less space or lower price points.”

Given more flexibility with lot sizes, the R-8 district could also provide developers with the opportunity to mix dwelling types and to provide a variety of housing sizes and lot sizes within the same neighborhood, which could create opportunities for housing people in varying ranges of income levels in the same neighborhood.

Staff believes that the proposed R-8 district regulations is supported by the Comprehensive Plan's Goal 4, Objective 4.2, 4.3, Goal 5, Objective 5.2, Goal 6, and Objective 6.2. While strategies are meant to describe only *possible* approaches and methods for attaining objectives, they are listed below as additional support:

Goal 4. To improve the quality of land use and development patterns.

Objective 4.2 To encourage areas with a mix of uses (residential and nonresidential) and areas with different housing types and lot sizes in locations identified in the Land Use Guide.

Strategy 4.2.2 To develop a zoning approach to provide incentives for the development of residential neighborhoods with a mix of housing types and lot sizes as identified in the Land Use Guide. Amendments of the Zoning Ordinance could encourage innovative residential building types and allow creative subdivision design solutions that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and protection of historic and environmental resources.

Objective 4.3 To adopt to new trends and demands while ensuring that new development and redevelopment of residential, commercial, and industrial properties will be compatible with adjacent existing uses and with planned land uses of surrounding parcels.

Strategy 4.3.4 To review and amend the Zoning Ordinance to permit small lot and innovative forms of single-family detached and duplex residential development as appropriate.

Goal 5. To strengthen existing neighborhoods and promote the development of new neighborhoods that are quiet, safe, beautiful, walkable, enhance social interaction, and offer a balanced range of housing choices.

Objective 5.2 To develop approaches to increase the percentage of single-family detached and duplex housing units

Strategy 5.2.1 To review and amend the Zoning Ordinance to increase opportunities for single-family detached and duplex residential development that are affordable to households in a range of incomes.

Strategy 5.2.2 To review and amend the Zoning Ordinance to permit small lot and innovative forms of single-family detached and duplex residential development as appropriate. Repeated in Chapter 6, Land Use and Development Quality as Strategy 4.3.3.

Goal 6. To meet the current and future needs of residents for affordable housing.

Objective 6.1 To promote affordable housing options, including affordable rental properties and affordable homes for ownership.

Strategy 6.1.5 To encourage the development and construction of a variety of housing types provided at a range of densities, types (single-family detached, duplex, townhome, and multi-family), and costs.

Staff believes also the associated amendments to the off-street parking regulations are supported by:

Objective 4.4. To provide off-street parking to adequately meet demand and provide access to key destinations, businesses, and services, without creating oversupply that increases the costs for development, and impacts the community character, natural environment, and economic vitality.

At this time, there is no proposal for the City to proactively rezone parcels to R-8, although that could be considered during the comprehensive review and update of the Subdivision and Zoning Ordinances project that is expected to begin in late summer 2019. Property owners and developers wishing to take advantage of the R-8 district regulations will be required to apply for a rezoning. This is similar to how properties have become zoned R-5, R-6, and R-7. Unlike the R-6 and R-7 districts, the R-5 and the proposed R-8 district do not require master plans.

For the reasons stated above, staff recommends approval of the proposed amendments to the Zoning Ordinance.

Chair Way asked whether there were any questions for staff.

Chair Way asked whether there were any land use categories or land use guide that names suitable locations for R-8 zoning.

Ms. Dang said that it could be the medium and high-density areas.

Commissioner Finnegan asked if it would be the areas zoned R-2.

Chair Way said that he is talking about land use guides, for people making rezoning requests.

Mr. Fletcher said that in reference to the question if a lot those areas are zoned R-2. The answer is no. Most of those areas are designated neighborhood residential.

Ms. Dang said that this would be a new tool. If we needed to, we might consider looking at the land use guide to see if there are other places where something like this might be appropriate. In our low density mixed-residential, for example, the dwelling unit density is six or seven. Perhaps some of those areas could be higher density, but we have that recommended density at this time; but we did not specify the types of houses.

Commissioner Colman said that if we want to encourage in-fill areas, then we need to be careful, if we establish it on the land use map, not to spot zone areas. In some ways, I would like to see more of this, where we can use property more efficiently, in other areas such as R-1 and R-2 that have large lots. If we want to do something like this, would we be spot zoning compared to having another mechanism to have something similar on R-1 and R-2? You would be increasing density by changing the zoning. Would that be considered spot zoning?

Mr. Fletcher said that there is not anything in the state code that says that spot zoning is illegal. Is that correct?

Mr. Russ said that the term gets used in different ways. It depends on how you are using it.

Mr. Fletcher said that he does not know that the R-8 density would be an argument for spot zoning. Spot zoning is when you have a lot of land that is zoned one way, and there are many uses that are the same kinds of uses, but then you take a zoning in the middle that allows for a restaurant, for

example. It is a very different use. That term gets thrown around. Mr. Russ is correct; the term gets used many different ways.

Ms. Dang asked if there was another element to spot zoning where special preferences are granted to a property owner's request that is not in line with other requests.

Commissioner Finks said that is how he has understood it.

Mr. Russ said that if you look at the zoning map, if you have one property in an R-3 neighborhood that rezoned to R-8, it might look like an island; but we cannot erase all the zoning and start over.

Commissioner Colman said that we have had that issue come up when we were hearing requests to rezone to R-3 off Virginia Avenue. We did not want to do that because it was more like a spot zoning. We did not want to increase the density there. I like the idea, but I would like to apply this on in field areas. Can we do this without spot zoning?

Mr. Fletcher said that if you look at the zoning map for R-6 and R-7 districts in the City. You can recognize them because they are in such a different color from the other residential categories. Someone might look at that and say that it is spot zoning, but it is not. It is still a residential use.

Commissioner Finnegan said that where it might make sense in an R-2 like the one I live in. The lot that I live on, which is non-conforming, is a corner lot. The lot behind it was subdivided off in the 60s and is a very small lot. I could see corner lots in an R-2 neighborhood zoned as R-8 because of the access. If all the other lots were R-8, the only access would be from the alley.

Chair Way said that he likes that this district does to facilitate more alleys, because you do not have to have so much depth to your lot. I am very skeptical about the notion of having to maintain long distances between streets. In fact, I would think that to maintain safety you would want to break up some blocks and have multiple intersections that force people to slow down. If all the streets become long arterial streets, then people speed up and move around. There are alternative theories to suggest that breaking up blocks is better for safety. Was this R-8 ever considered as a pilot for form-based coding at all?

Ms. Dang said that we did not talk about that.

Commissioner Colman said that he thinks it is a great proposal.

Commissioner Finks said that the minutes regarding the last discussion the Planning Commission had about the R-8 district showed that Commissioner Colman had a concern. You would have preferred to see us treat this as a SUP rather than zoning.

Commissioner Colman said that he would like to extend this as a SUP in other zones. That is what led to my question about spot zoning. If we can do it through the R-8 zone, then we do not have to use SUP for this purpose. Otherwise, we have to come up with other avenues, which could be a SUP. I am in favor of this proposal. If we can apply it throughout other residential zoning, then that satisfies my concerns.

Chair Way opened the public hearing and invited the applicant to speak to the request.

Dick Blackwell, 70 Peyton Randolph Court, came forward to speak to the request. I have been to many Planning Commission and City Council meetings throughout the last year. We have talked a lot about affordable housing. Affordable is relative. What is affordable to you now, was not affordable fifteen years ago. What can we do to help some people own their own homes, whether it is a townhome, duplex, or single-family detached? The regulations are not going away. When I

started doing this 30 years ago, we did not have to make sidewalks on both sides of the street. We did not require base course, where there is stone, then a base course and then a surface mix. We did not have a base. We keep adding things that we think that we need. It increases the cost. The cost of the land has gone up. The cost of building materials has gone up. The cost of labor has gone up. Is there any way that we can control this, at least temporarily and help some people afford a house? The only way I can see to do it is to have more lots in an acre. This would do it. We talked about fifteen single-family lots, but then you need roads and stormwater facilities. It is still higher density with eleven single-family detached lots in an acre compared to three. A developer is not going to develop if he is going to lose money. They need to receive some income. This proposal is a way to bring down the cost of the lots. I am concerned with what you have been talking about, where someone has a five-acre property and they want to be zoned R-8, but they are surrounded by R-1. You will have 50 people coming in hear complaining. I do not know how you are going to handle that. There is no easy way to do it. We have talked about it for two years and this seems to be the best way. You do not find many single-family detached homes smaller than 22 feet wide. They will have to be longer to get the square footage. I have seen some very nice models that are 26 feet wide. With the compromise that the fire department has worked out with us, it should work. A 26-foot wide house with two seven-foot side setbacks is about a forty-one-foot-wide lot. That is nineteen feet less than we are currently allowed in the City. If we have a row of one hundred feet, you can build one or two more lots. Do you have any questions?

Commissioner Colman thanked Mr. Blackwell, staff and the Fire Department for their work on the proposal. I think that this is a great step for the City towards more affordable housing for low-income families or a starter home. This is a great opportunity.

Mr. Blackwell said that the ratio of non-owner-occupied properties to owner-occupied properties in the City is going in the wrong direction. This could help a little bit. The downside could be the perception, or the R-8 designation might scare people. If you think of R-1 as single-family, and R-2 and R-3 increase in density, then R-8 might sound like the biggest one we have. Once people realize that we are still talking about single-family detached homes in their neighborhood, they will understand. We should probably place an article in the newspaper explaining what it means.

Commissioner Whitten said that it will require some education.

Jeremy Litwiller, 1720 College Avenue, came forward in support of the zoning ordinance amendment. I sit through a lot of meetings as a real estate broker about affordable housing. We need more of it. We do not have enough of it. It is all a lot of talk. We do not have any answers. No one is coming up with proposals that fix it or try to fix it. I think this helps. It is interesting that the room is empty. Everybody is so concerned about affordable housing, but nobody is here to talk about it. I think it is crucial that you stayed put tonight to talk this through. I thank Mr. Blackwell, staff and the Fire Department who put the time in to do this. I am a big supporter of it as a local real estate agent and citizen.

Chair Way closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that he got together with Ritchie Vaughan and Ms. Dang and we talked about some of these issues. I initially started that conversation saying that the accessory dwelling unit was what I was most interested in. Ms. Vaughan pointed out that it would just increase the cost, the price of that property, whereas this breaks up the property and allows individual ownership. Hats off for working with the Fire Department. It is not easy. I am impressed with the way that went.

Commissioner Colman said that as someone concerned with affordable housing, as some of you know, I work with Habitat for Humanity trying to meet those needs. I see this as a great opportunity, a great ordinance for our City to have.

Commissioner Colman moved to recommend approval of the zoning ordinance amendment.

Commissioner Finnegan seconded the motion.

All members voted in favor of recommending approval of the zoning ordinance amendment.

Chair Way said that the recommendation for approval will move forward to City Council on June 11, 2019.

Zoning Ordinance Amendment – Off-Street Parking Regulation to Allow Community Centers Associated with Housing Developments to Have No Minimum Off-Street Parking Requirements

Chair Way read the request and asked staff to review.

Ms. Banks said that Article G of the Zoning Ordinance – Off-Street Vehicle and Bicycle Parking, Section 10-3-25 (14) addresses minimum off-street parking requirements for community centers, libraries, museums, and similar uses. This subsection reads as follows:

“Community centers, libraries, museums and similar facilities not dependent on public assembly or seating: One (1) parking space for each two hundred and fifty (250) square feet of gross floor area.”

When calculating minimum off-street parking requirements for community centers, libraries, museums and similar facilities, staff takes the gross floor area of the entire building (restrooms, foyers, hallways, etc.) and divides by 250 square feet. All totals are rounded up to the nearest whole number. This number is the total number of off-street parking spaces that are required for the use.

Staff proposes to amend Section 10-3-25 (14) with the following language (new text is underlined):

Community centers not associated with a housing development, libraries, museums and similar facilities not dependent on public assembly or seating: One (1) parking space for each two hundred and fifty (250) square feet of gross floor area. Community centers associated with housing developments, where the use of such space is primarily for the use of residents of the housing development, have no minimum off-street parking requirements.

Community centers within housing developments can provide many different amenities for the residents of the community it serves; including, but not limited to, open space for classes or gathering, exercise rooms, computer areas, laundry facilities, office space, and game rooms. Currently, when a housing development (townhouse, apartment, duplex, or single-family detached development) has an associated community center they are required to provide off-street parking for the associated center based on one parking space for every 250 square feet of gross floor area of the structure. Off-street parking requirements are calculated the same for a community center contained within the same building as residential dwellings and for a community center within a separate structure.

When housing developments are constructed, the parking requirements for dwelling units, Section 10-3-25(7) of the ZO, must be met for each individual dwelling unit on site; and therefore, would meet the parking needs for the residents of the community. The residents are the same individuals who will primarily use the housing development’s community center.

Having to provide additional parking for an area to be utilized by the residents, whom already have parking, creates excessive parking, reduces available green space for residents, increases stormwater runoff, and increases the cost of development.

Staff believes that the proposed amendment to Section 10-3-25(14) of the off-street parking requirements is supported by Objective 4.4 of the Comprehensive Plan: “To provide off-street parking to adequately meet demand and provide access to key destinations, businesses, and services, without creating oversupply that increases the costs for development, and impacts the community character, natural environment, and economic vitality.”

Staff recommends in favor of the Zoning Ordinance amendment as presented.

Chair Way asked if there were any questions for staff.

Commissioner Colman said that he is in support of reducing parking in this manner. Does it include any consideration for handicap parking? I do not know if it is need, but I was wondering if it was considered.

Ms. Banks said that we had many conversations regarding accessible parking. As it is now with these facilities, there is no guarantee that accessible parking would be placed in front of the facility. In most cases, if it a separate building or in an apartment complex, all the parking is added in together and dispersed on property. There was no ability to say that an accessible space should be in that location. Having said that, staff has discussed this, and it is something that we will look at when comprehensive site plans are in review for larger housing developments that may have these community centers. We will look at where they have placed the accessible parking spaces and make suggestions, if needed.

Mr. Fletcher said that we had a lot of conversations about this with the Building Official. The amount of handicap parking is based on the amount of parking that is provided. If you provide one parking space, you have to provide one handicap space. It is one for spaces up to 25, then it goes two up to 50, and so on. It is not until you get to 100 that the percentage decreases. In early versions of this, we tried to establish handicap parking at the facility, but were unable to effectively do so.

Ms. Banks said that the problem was that you would not get an additional handicap parking space for the facility.

Mr. Fletcher said that the requirement is not location specific. There has to be an accessible way to get to the facility. That is why you might see gravel parking lots with a paved path to the handicap space.

Commissioner Whitten said that it seems that if you are providing that service, a community center, then you would want to have it be accessible.

Mr. Fletcher said that it has to be the most direct path, which is up to interpretation. For the most part, designers are trying to provide the accessibility.

Chair Way asked if there any more questions for staff. Hearing none, he opened the public hearing and asked if there was anyone wanting to speak. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that he is in favor of reducing mandatory parking in the City wherever possible. This seems like a good place to start.

Commissioner Finnegan moved to recommend approval of the zoning ordinance amendment.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the zoning ordinance amendment.

Chair Way said that the recommendation for approval will move forward to City Council on June 11, 2019.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Proactive Code Enforcement

For the month of April 2019, the proactive code enforcement program inspected the South Main section of the City. Violations were related to signage, exclusively. The proactive zoning program for May 2019 will be directed toward the Purcell Park section of the City.

Board of Zoning Appeals Report

Ms. Banks said there were two cases. There was a variance request along Chicago Avenue and Grant Street where there is an existing laundromat on a triangular shaped parcel. The applicant wanted to add an addition that would encroach on the setbacks. He asked for a 20-foot variance off Grant Street so that it would sit ten feet to the property line with Grant Street and a seven-and-a-half-foot variance off of Chicago Avenue so that he would be within 22 feet.

Commissioner Colman said that it was denied on the basis that the property is being utilized, therefore there is no hardship. In addition, I felt that they could expand the building within the setbacks. It would not be in the manner they wanted, but it could be done.

Ms. Banks said that the second case was an appeal to an administrative decision regarding a property on South High Street that was four units and fourteen bedrooms. Our building code records show that it had three units. It was a duplex when it was constructed. In 1975, a property zoned R-2 and a corner lot could have up to three units. The owner applied for and received a building permit to add an additional unit. Somehow it became four units. It has been four units for quite some time, occupied by four individuals in each unit. There was a complaint and staff cited the property for having the four units, showing that we only had building permits for three units, which was allowed in R-2 at the time. The applicant appealed our decision. The appeal was denied, and the applicant will have to return it back to a duplex.

Commissioner Colman said that it means that they lose one of the legally grandfather units that they had. Due to the violation they lost they more than they would have if they had not had the additional unit.

Rockingham County Planning Commission Liaison Report

Chair Way reported for the Rockingham County Planning Commission. There were a number of rezonings, all approved. Most of those were on the east side of town. There were some ordinance amendments, as well. They were related to digital files and some procedural administrative things. There were some interesting materials shared. One digitized document was a map of all current

and proposed construction going on in the Urban Development Area plan towards Stone Spring Road. It was a useful encapsulation of the growth that has been going on out there. What I will do is turn it into a PDF of that map and circulate it around.

Commissioner Finks asked if they were talking about developing a master plan.

Commissioner Colman said that he and Ms. Dang were on the committee with the County. The area has been master planned, part of what we were involved with, as a general use guide. Now it is being populated. It is a planned growth area from the bypass all the way to Cross Keys Road.

Ms. Dang said that it is definitely past Massannetta Springs.

City Council Report

Commissioner Romero said that there was nothing to report.

Other Matters

Chair Way asked that members sign up for the next few months as Liaison of the County Planning Commission. What are we expecting for next month.

Ms. Dang said that there are sixteen items on the agenda. There are eleven STR SUPs. There is a zoning ordinance amendment. Staff is going to propose removing the annual registration requirements. We have a rezoning on Carpenter Lane, a SUP on North Liberty Street for processing, and a rezoning as well as a 2232 public hearing for the new high school site.

Commissioner Finnegan said that if it took us this long to get through eleven items, how long is it going to take us to get through sixteen? Do we need to meet twice a month? Is there a trigger point that will determine when we need to meet more often? It is either meet more than once or be here until two in the morning.

Mr. Fletcher said that you could start at 6:00 p.m. if you want.

Commissioner Colman said that he was thinking 6:00 or 6:30 p.m.

Commissioner Whitten said that we used to meet twice a month.

Mr. Fletcher said that it ebbs and flows, especially with STR. It will likely spike, then drop off, depending on the precedents you set.

Commissioner Whitten said that we could do a STR only meeting and everything else at the second meeting.

Ms. Dang asked if everyone would like to start at 6:00 p.m.

Commissioner Finnegan said that meeting at 6:00 p.m. is the only way to not be here until 2:00 a.m.

Chair Way said that his hope is that STR will be quicker next time. I think 6:00 p.m. would work.

Commissioner Romero said that it depends on how many people come in.

Commissioner Whitten said that she has a concern about working to this hour after having a full day already. You are not at your best to make decisions. I know that I am not.

Commissioner Colman said he would like to cap at 11:30 p.m.

Chair Way asked if there was a consensus for meeting at 6:00 p.m. All members agreed.

Chair Way thanked everyone for their hard work.

Adjournment

The meeting was adjourned at 12:12 p.m.

DRAFT