

MINUTES OF HARRISONBURG PLANNING COMMISSION

July 8, 2020

The Harrisonburg Planning Commission held its regular meeting on Wednesday, July 8, 2020 at 6:00 p.m.

Members present by electronic, video communication: Mark Finks; Brent Finnegan Vice-Chair; Kathy Whitten; Sal Romero; and Gil Colman, Chair. Absent: Jim Orndoff. One vacant position.

Also present: Adam Fletcher, Director of Community Development; Thanh Dang, Assistant Director of Community Development; Alison Banks, Senior Planner; and Nyrma Soffel, Acting Office Manager.

Chair Colman called the meeting to order and said that there was a quorum with five of the six members present. This meeting will be held as an electronic meeting due to the emergency and disaster represented by the spread of COVID-19. This meeting will be conducted by the following electronic communication means: electronically through GoToMeeting and Granicus. The public had the opportunity to provide comments in advance via email and will have the opportunity to provide comments by phone at designated times during this meeting. Because calls are taken in the order that they are received, we ask that the public not call the comment line until the item you are interested in is being presented or discussed.

Chair Colman asked if there were any corrections, comments or a motion regarding the June 10, 2020 Planning Commission minutes.

Commissioner Finnegan moved to approve the June 10, 2020 Planning Commission meeting minutes.

Commissioner Finks seconded the motion.

The motion to approve the June 10, 2020 Planning Commission minutes passed (5-0).

New Business – Public Hearings

Agenda items 4.a. and 5.a. address requests from the same applicant, Stoneburner Land LLC, regarding the same property, 1821 South High Street. The Planning Commission agreed to discuss these items concurrently.

Consider a request from Stoneburner Land LLC for a special use permit to allow business and professional offices at 1821 South High Street.

Consider a request from Stoneburner Land LLC to preliminarily subdivide a +/- 6.4-acre parcel into three parcels at a site addressed as 1821 South High Street.

Chair Colman read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site 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 are located on and adjacent to the property:

Site: Building material sales and lumberyard, zoned M-1

North: Wholesale distributor of HVAC equipment, zoned M-1

East: Across South High Street, financial institution, zoned B-2

South: Across Erickson Avenue, automotive service and vehicle fuel station, zoned B-2

West: Undeveloped land, zoned B-2

The applicant is requesting to preliminarily subdivide a +/- 6.4-acre parcel into three lots. Proposed lot 1 would be +/-29,109 square feet, proposed lot 2 would be 1.1-acres, and the third lot would be the remainder of the parent tract at +/- 4.6 acres. The subject site is located on the northwest corner of the South High Street (Route 42) and Erickson Avenue intersection. The proposed +/- 4.6-acre parcel will continue operations as a building material sales and lumberyard and there are currently no plans for proposed Lot 2. Proposed Lot 1 is planned to be developed as a medical urgent care facility if the preliminary plat and special use permit to allow business and professional offices within the M-1, General Industrial District are approved.

For both requests, the applicant has included a conceptual layout showing how Lot 1 could be developed. During the engineered comprehensive site plan review, issues such as parking requirements, parking lot landscaping, setbacks, and stormwater management will be reviewed in detail.

Preliminary Plat and Variances Request

The subdivision of the property is required to be reviewed by Planning Commission because the parent tract is larger than five acres and the end result establishes parcels that are less than five acres in size. If the subdivision of the site met all requirements of the Subdivision Ordinance, Planning Commission approval is all that would be needed to allow them to perform an administrative final subdivision plat. However, because the applicants are requesting to deviate from sections of the Subdivision Ordinance, the request must be reviewed and approved by City Council, and thus a recommendation from staff and Planning Commission is necessary.

With regard to public water and sewer utilities, the proposed +/- 4.6-acre parcel has an existing water meter at the entrance off of South High Street. Sanitary sewer service is currently provided by a septic system in the rear of the property and provisions have been made by the City for a future public sanitary sewer connection when Erickson Avenue is widened and the public sanitary

sewer lines are extended as part of Phase IV of the Stone Spring Road-Erickson Avenue project. For proposed Lot 2, water is available at the shared parcel line with the pipe stem of the +/- 4.6-acre parcel and sanitary sewer service is available in South High Street. For proposed Lot 1, the owner has illustrated a 50-foot wide private utility easement so that water service may be reached from the existing public main on the +/- 4.6-acre parcel. Sanitary sewer service is available in South High Street.

The City's Subdivision Ordinance and Design & Construction Standards Manual require the applicant to dedicate right-of-way and construct street improvements at the time of subdivision. The Erickson Avenue frontage of the proposed parcels was completed with sidewalk and curb and gutter with the Stone Spring Road-Erickson Avenue Phase III project in 2013. The South High Street frontage of the proposed parcels has curb and gutter, but no sidewalks. The applicant is requesting three Subdivision Ordinance variances per Sections 10-2-61 (a), 10-2-66, and 10-2-67, which together require the property owner to construct the street improvements. If approved, the variances would allow the applicant not to construct required street improvements along the South High Street frontage prior to subdividing the properties. As indicated on the preliminary plat, however, as part of this subdivision, the applicant would dedicate 256 sq. ft. of right of way to accommodate future sidewalk construction when the properties are developed. Sidewalks would be constructed by future property owners at the time of development of each parcel; in other words, when Lot 1 develops, the property owner/developer would construct sidewalks along that parcel's street frontage. The applicant understands and acknowledges that when the last of the two new parcels develops, the owner/developer will be responsible for all remaining sidewalks and any necessary entrance improvements across the frontage of the +/- 4.6-acre parcel, which is already developed. The applicant's letter describes that "[b]oth Lot 1 and 2 will require significant excavation work and need to be incorporated into the overall grading of each lot to maximize the usable space for future tenants."

The applicant has agreed, as noted on sheet 2 of the preliminary plat, that: "[t]he three lots created by this subdivision shall share one entrance onto South High Street. No additional entrances onto South High Street will be permitted. Other entrances onto Erickson Avenue may be permitted with City approval." The applicant has also illustrated on the preliminary plat a "New 50' wide private shared access easement" for a shared entrance and driveway to serve the three proposed parcels. The applicant has been made aware that the subdivision will reduce the maximum sign allotment for the Stoneburner facilities and may require changes to existing signage. Additionally, addressing of each of the new parcels still needs to be worked out with staff.

Staff recommends approval of the preliminary plat and variances to not construct require street frontage improvements at the time of subdivision. The property owner/developer will be required to construct street frontage improvements when the parcels are developed as described above.

Special Use Permit Request

As previously stated, if the preliminary plat request is approved, Lot 1 is proposed to be developed as a medical urgent care facility and requires approval of a special use permit per Section 10-3-97(3) to allow business and professional offices within the M-1, General Industrial District. The subject site and surrounding parcels that have frontage on South High Street and Erickson Avenue are designated as Commercial in the Comprehensive Plan's Land Use Guide. In the general area

surrounding the subject property, there is a mix of financial institutions, automotive sales and services, and light industrial uses.

Staff believes that the proposed medical urgent care facility is consistent with good zoning practice and will have no more adverse effect on the health, safety, or comfort of persons living and working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area. However, rather than to apply the SUP for business and professional offices to the entire +/- 6.4-acre parcel, staff recommends conditions to limit the SUP to proposed Lot 1 and to make the SUP applicable only to a medical urgent care facility or a substantially similar use.

Staff recommends approving the special use permit with the following conditions:

1. The special use permit shall apply only to the area generally shown and described as Lot 1 on the preliminary plat titled Stoneburner Land LLC Subdivision dated June 24, 2020.
2. The special use permit shall be applicable only for the use, or a substantially similar use, as requested in this application.

Commissioner Finks asked for clarification regarding the variance and the development of sidewalks. Will building the sidewalks on both lots be dependent on development on either lot or at the same time?

Ms. Dang said that what staff is proposing is that the sidewalk be required along the frontage of the lot that is being developed. When Lot 1 is developed, a sidewalk will go there. If five or ten years later Lot 2 is developed, they would put sidewalks there. By the time the final lot is developed, they will have to complete any frontage improvements that would be necessary across the entrance of the residual third parcel.

Chair Colman said that when Ms. Dang described the building, she said it was 35,000 square feet. For the record, it is 3,500 square feet proposed for the health clinic.

Vice-Mayor Romero said that the SUP is for a potential urgent care facility. If I heard the suggested condition correctly, it was for that use or something similar. Could you explain what that means? What other sorts of business qualify as something similar?

Ms. Dang said that if the condition is approved, it would be restricted to a medical facility. Anything that is another business or professional office, such as engineering, would not be permitted. They would have to get a SUP for the specific use.

Vice-Mayor Romero asked if the applicant has a particular facility in mind.

Ms. Dang said that staff believes that the applicant has been in communication with someone who wants to locate on this property. You could ask the applicant when they are on the phone.

Chair Colman said that sometimes the agreements are conditional on rezoning or SUPs. There is a potential, but they are not necessarily committed until they are sure they can do it.

If they own the property along Erickson Avenue, is that associated with the same property? Their sign faces South High Street.

Ms. Dang said that their main store sign is along South High Street. They also have signage on the face of the building along Erickson Avenue. I do not know the total square footage. We told them that we need to work with them to calculate the signage allotment and to determine if they need to reduce any signage.

Chair Colman asked if the unused land that is owned by the applicant counts in the signage calculations.

Ms. Dang said that the sign calculation is based on the parcel size.

Chair Colman asked if they could put signage on the other property.

Ms. Dang said that they could not because the Stoneburner facility is not located on Lot 1. When the medical facility comes in, they can have their own sign, or they could work together on a comprehensive sign plan.

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

Andrew McAdams, Stoneburner Inc., 1821 South High Street, called to speak to the request. I represent Stoneburner Land, LLC, which is the owner of the parcels. I am available to answer questions.

Commissioner Finks asked for clarification regarding the term "unnecessary hardship" on the variance application.

Mr. McAdams said that the property is literally on top of a rock. When the R.E. Michel Company's building was constructed, they had to work for a month to level off land for the building. We had to blast in the 1970s when our building was erected. We are happy to comply with the long-term vision of the City to have easy access and have a business setting along South High Street, however we will have substantial rock to work through. "Unnecessary hardship" is the financial hardship that we would incur to deploy heavy excavation gear to get that eight feet for sidewalk right-of-way that we would have to level off. Lot 1 is not as substantial to do. The way the land is, we would cut three or four feet into a bank. Lot 2 is about eight feet almost to the curb and gutter. That is going to be an extreme amount of financial burden. We do not have any plans, right now, for Lot 2. We would hope to get another SUP and get a tenant in there to comply with the long-term vision. Part of the process is determining whether we invest in a retaining wall to maximize the land based on the tenant's need for space or if it would be a simple building where we could feather the dirt and take away usable land by feathering it with a gradable mobile slope and still get that eight feet for the sidewalk. If we have a tenant that would allow the owners to get the income from Lot 2, then it would justify the means to put in a more expensive retaining wall.

Chair Colman asked if there were any more questions for the applicant. Hearing none, he invited the public to speak to the request. There were no callers from the public, therefore he closed the public hearing and opened the matter for discussion.

Commissioner Finks said that he has one concern with the variance request. The applicant laid out his case very well regarding the issues that they would have. There is a serious grade that they would have to deal with if they were to install sidewalks. I agree that it probably would be a hardship. I always have concerns when we have lots like this where we are creating areas that have sidewalks that go nowhere. It looks like Lot 1 has the potential to be developed soon. It could be decades before Lot 2 is developed. There will be a gap between Food Lion and this potential health care facility. Someone might have to park at Food Lion and have several blocks of road without sidewalks; it makes it difficult to walk. That is my only concern, but it is not enough of a concern to say that the variance does not make sense. Obviously, there is a severe grade. I can see the issue if they are not planning to develop that lot.

Commissioner Finnegan said that he shares Commissioner Finks' concern. When you look at the sidewalks that are there on South High Street, there is a gap not only there, but further up the street. If it was not for the difficulty in creating the sidewalk at this particular site, I would not be inclined to support it. Given the difficulties with the rock and the grade, I do plan to vote in the affirmative.

Chair Colman said that this is not the first time that we have seen a situation like this. This is one of many that we have seen. Other times it appeared that it would be more doable than at this site. It is a substantial burden, and it is better accommodated during development. Then they know how much property you can develop and how much you cannot. I share the concern given the fact that it will be a medical facility, and in this area, people could potentially walk to it. I will still support it.

Commissioner Finks said that there will probably be no walking if there is no sidewalk.

Commissioner Finnegan said that there are three crosswalks at that intersection. It is set up for walking.

Commissioner Finks said sidewalk from that side of the street stops in front of the bank at Food Lion. There is sidewalk in front of the Food Lion parking lot and Arby's. There is another existing lot. Even if the sidewalk were to be installed on Lot 2, there is still a lot of property to traverse before you get to the sidewalk that starts on that side of South High Street. I do not think that a sidewalk on Lot 2 would make the difference. I do not want to see it be the tipping point that if that sidewalk does not get built that no other sidewalks would get filled in either.

Chair Colman said that he wonders how much foot traffic there is at that intersection. I have not seen many people walk through there. I have seen people walk up and down on South High Street, but farther down the street. I do not know how it is in this area.

Commissioner Finks said that between the grade and the street, there is not much space to walk. I can envision people walking from the apartment complex behind Food Lion to the gas station. As

it is now, if you are going to walk past the Stoneburner property, you are not going to have a lot of space between that grade and a car. I do not think that people attempt it right now.

Commissioner Whitten said that there are a lot more bicycles than walking.

Commissioner Finks moved to recommend approval of the preliminary plat and variances requested.

Commissioner Finnegan seconded the motion.

All members voted in favor of recommending approval of the preliminary plat and variances, as presented (5-0). The recommendation will move forward to City Council on August 11, 2020.

Commissioner Whitten moved to approve the SUP with conditions, as presented.

Commissioner Finnegan seconded the motion.

All members voted in favor of recommending approval of the SUP with conditions, as presented (5-0). The recommendation will move forward to City Council on August 11, 2020.

Consider amending the Zoning Ordinance by creating a new use called “homestay” and to amend regulations that apply to short-term rentals.

Chair Colman read the request and asked staff to review.

Ms. Dang said that On March 26, 2019, City Council adopted new Zoning Ordinance (ZO) 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 in the ZO 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.”

On July 23, 2019, City Council amended the STR regulations. The first amendment was to Section 10-3-13 Penalties, which included changing a reference to “Section 10-3-205” to “the Zoning Ordinance” so that the current section reads: “Operating a short-term rental in violation of the Zoning Ordinance.” The second amendment was to remove requirements for STR operators to annually register the use and to pay a registration fee as described in Section 10-3-204. (As noted above, staff and Planning Commission believes it is appropriate to reinstate this requirement, but, as noted herein, at a lesser cost.)

Since March 2019, City Council has approved 25 STRs, 24 of which were approved unanimously. A summary of the 33 applications received by the City is provided as an attachment. Note that seven applications listed were either withdrawn by the applicant prior to Planning Commission or

City Council meetings or were denied by City Council. One application remains tabled by City Council.

Last year, after reviewing many SUP applications for STRs, Planning Commission recommended that the STR regulations be reviewed and amendments be considered. Planning Commission held work sessions on October 29, 2019 and December 12, 2019 to develop a framework for regulating transient lodging that does not include hotels. Work session memorandums and minutes are included as attachments herein.

During the first work session, the following questions were used to initially guide discussions:

1. Should the City allow homestays and/or STRs?
2. Who is the STR operator and what are the requirements and responsibilities of the operator? What are the expectations of the operator?
3. How many nights per year can homestays and STRs be allowed to operate and how long are guests allowed to stay?
4. Where can homestays and STRs be allowed to operate, and how many guests and accommodation spaces should be allowed?
5. What are the parking requirements for homestays and STRs?
6. Depending on the responses above, should the City rename “short-term rentals” to “bed and breakfasts?”
7. Should the City require homestay operators to register?

Discussions during the second work session focused on question number 4.

Over the course of the two work sessions, Planning Commissioners reached consensus to recommend several amendments to the STR regulations including the addition of a new use to be termed “homestay.” Attached herein are the proposed amendments. Table 1 below summarizes the similarities and differences between a proposed new by right homestay use and the proposed amendments for the STR use by SUP.

Table 1. Summary of Proposed Zoning Ordinance Amendments to Add By Right Homestays Compared to Existing Short-Term Rentals (STRs)

Italicized text are proposed new or amended regulations.

<i>By Right Homestay</i> City Council approval would not be required for this use.	STR by SUP Anyone who wants to operate outside of what is permitted through a Homestay use may apply for a STR SUP. Below are minimum regulations for STRs. Remember that during review/approval, conditions can be placed upon a STR SUP that are more restrictive.
<i>Must be operator's primary residence.</i>	<i>Must be operator's primary residence.*</i>
<i>If the operator is not the property owner, then the operator must be present during the lodging period.</i>	<i>If the operator is not the property owner, then the operator must be present during the lodging period.*</i>
<i>Lodging periods limited to less than 30 consecutive nights.</i>	Lodging periods limited to less than 30 consecutive nights.
<i>May operate up to 90 nights per calendar year.</i>	No limit on number of nights that the STR can operate per year unless conditioned by SUP.
<i>Maximum of 4 guests.</i>	No maximum number of guests unless conditioned by SUP.
<i>Allowed in all zoning districts in which residential uses are allowed.</i>	Allowed in all zoning districts in which residential uses are allowed.
<i>Allowed in single-family detached, duplex, and townhomes.</i>	Allowed in single-family detached, duplex, townhomes, and multi-family units. Note that multi-family units will likely require physical renovations, which will necessitate proper Building and trade permits and associated inspections.
<i>No off-street parking requirements.</i>	One off-street parking space for each accommodation space, unless conditioned otherwise.
<i>Annual registration - \$25/year</i>	<i>Annual registration - \$25/year</i>

*Currently, there are no requirements for the STR to be the operator's primary residence or for the operator to be present unless conditions were placed on the SUP by City Council at the time of approval. Most STR SUPs were approved with these details as conditions.

The proposed “homestay” use would be defined in the ZO as follows:

Homestay: In a single-family detached, duplex, or townhouse dwelling unit, the provision of a guest room or accommodation space within the principal 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.

The “STR” definition is proposed to be amended as follows:

Short-term rental: The provision of a dwelling unit, a ~~bedroom~~ guest room 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.

Planning Commissioners discussed concerns that STRs and homestays are businesses operating in residential areas and recommended requirements to mitigate concerns. Planning Commission recommended that the dwelling be the operator’s primary residence. This would provide accountability for the activities taking place on the property and would help to prevent the City’s housing stock from being purchased by investors and then being reallocated from owner-occupied homeownership and long-term rentals to STRs. Additionally, Planning Commission recommended that for both homestays and STRs that if the operator is not the property owner, then the operator must be present during the lodging period. Both requirements described above have been approved as conditions in the majority of STR SUPs previously approved by City Council.

Differences between by right homestays and STRs by SUP include:

- 1) Homestays may operate only up to 90 nights per calendar year, whereas there is no limit of nights that the STR can operate per year unless conditioned as part of the SUP approval;
- 2) Homestays may have a maximum of four guests at one time, whereas there is no limit to the number of guests that a STR can have at one time unless conditioned as part of the SUP approval;
- 3) While both homestays and STRs can operate in all zoning districts in which residential uses are allowed, individuals within apartments/multi-family units cannot operate homestays and must apply for a STR SUP due to Building Code requirements; and
- 4) Homestays have no off-street parking requirements, whereas STRs are to provide one off-street parking space for each accommodation space unless conditioned otherwise by the SUP.

Regarding annual registration, Planning Commission recommended that both by right homestays and STR SUPs should have to submit the annual registration to operate. The annual registration is a way to monitor activities and to track how many homestays and STRs are operating throughout the City. STR SUPs that were previously approved would not become nonconforming to the requirement to annually register and therefore must register. Section 15-2-983 of the Code of Virginia allows localities to establish a registry and require all operators to register. This authority is a general power and not related to zoning and land use. The annual registration would be \$25 per year.

It should also be understood that Section 15.2-983 of the Code of Virginia exempts the following people from having to register with the City: persons “(i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.” It should be noted that while these individuals are exempt from the proposed annual registration, they are not exempt from following zoning regulations and are not exempt from receiving approval of a SUP, when necessary.

In addition to the Zoning Ordinance amendments, one amendment to Title 4 - Finance, Taxation, Procurement is necessary to occur for taxation purposes. The amendment would modify the definition of “hotel” and add “homestay” to the list of examples within Section 4-2-76.1(2). The proposed amendment is included within the attachments for reference. This amendment does not require action by Planning Commission, but it will be advertised for public hearing for action by City Council.

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

Chair Colman said that staff was able to take weeks of discussions into a very concise account. It is now very clear in the form of a spreadsheet that shows the Homestays and the STR SUPs. Thank you.

Commissioner Finnegan thanked staff for putting this together. There is no perfect way to regulate STRs, given our experiences with the SUPs. This table does a very good job of showing the differences and capturing the commonalities with the ones that have been approved and rejected and address those issues.

Commissioner Whitten asked why it was decided to not require off-street parking for the by right option and only one for the STR?

Ms. Dang said that since the operators would not come in to request any special permission with the by right option and because the use is limited to the four guests, we thought that it made sense to not require that they put any new parking spaces in. For the STR by SUP, we required one minimum parking space, but there is a section that allows staff and the Planning Commission to recommend and City Council to adopt additional parking requirements or modifications where we might not require additional parking. There is flexibility in requiring less or more depending on the specific request.

Commissioner Whitten said that she understands the SUP parking requirement flexibility. I would feel more comfortable knowing that there was at least one off-street space for the by right option. With four people, they are not all necessarily coming in one car. If there is going to be tension in a neighborhood, it is usually related to parking, trash or noise. If we could eliminate the parking part of that, or help to soften it a bit, it would be a good thing.

Chair Colman said that the idea with the by right option is to allow the homeowners to be able to do that. They could be doing it on a regular basis, and it might become a nuisance, but if it is occasionally, it would be an additional burden to require the parking. In some areas, you might only have street parking. On one hand, I like to advocate for less pavement and less impervious areas and more green areas. If we require off-street parking from every homestay request, then it would go against some of the other values that we want to preserve in the City. There was some tension and discussion on that, but part of the reason was the unnecessary burden on the homeowners.

Commissioner Whitten said that Chair Colman is missing the point that we are putting the burden on the neighbors of those homeowners who are doing this as a business. It is an income producing opportunity. Should we really ask a neighborhood that does not have off-street parking, or very limited off-street parking, to absorb that inconvenience. It can be more than an inconvenience because it is 90 days out of the year, and it is going 90 days where the City is already full of other people because that is when you can capture that market. I live in a neighborhood where there is not enough parking at certain times of the year.

Chair Colman said that he does not dismiss the concern. I do not like it when a bunch of people park around my house, either. We have to compromise at some point, and this is where we arrived.

Commissioner Finnegan said that there is a psychology that goes along with parking if you live in a neighborhood where you expect on street parking and you expect to be able to park in front of your house. I can understand that. I have lived downtown, in five different apartments in my life. I never expected to find parking nearby. I do not know that you and I see eye to eye with on-street versus off-street parking, but I do think it is a valid concern, especially for people who have trouble walking or need a wheelchair or other access to their house.

Commissioner Finks said that he agrees with Commissioner Finnegan. We will not be allowing homestays in apartments. We are looking at townhouses, duplexes and houses. How many neighborhoods are we talking about that would be impacted if we required one off-street parking space that would not be able to have a homestay because they live on a street that does not have off-street parking? What areas do we have in town that do not have off-street parking? There are a lot of neighborhoods that do have off-street parking. There are places on Mason Street and some other places in Old Town that do not have off-street parking. How many households do we think that would impact? I realize that we cannot answer that right now, but if we were to consider that, it is something that I would want to know.

Commissioner Finnegan said that many of the townhouses that I am familiar with are associated with an HOA or have assigned parking. It would not be enforceable, but could the City put out guidelines regarding providing parking options for their guests? The point would be to help people understand and mitigate some of these concerns before they become a problem.

Ms. Dang said that HOAs in townhouse communities with self-regulate. We can certainly put together common concerns and suggestions to add to the FAQs for people to consider when they operate STRs or homestays.

Commissioner Finnegan said that when he had people to his house, it was common practice to park our cars somewhere else so that our guest could park in front of our house. It is common courtesy for the neighbors.

Commissioner Finks asked Commissioner Finnegan if what he is saying that although unenforceable, we suggest that if you have off-street parking or designated on-street parking that you make that available for your renters.

Commissioner Finnegan said that it would not hurt to have guidelines, suggestions, or best practices to hand out to people when they pay the fee for the homestay.

Chair Colman asked staff if there have been any complaints related to parking or noise related to the STR SUPs. That would be a gauge of how things are going with the STRs.

Ms. Dang said that staff cannot recall any complaints regarding the STRs that have been approved.

Chair Colman said it is the responsibility of the host to have the common courtesy of yielding their parking spaces to their guests and find parking elsewhere, without infringing on someone else's parking. We have talked about this and we are here to vote on it, but we can discuss it some more, if need be. I will leave it up to the rest of the Commission. If there is something more that we need to add or recommend, then we should bring it up now. Otherwise, we should move this forward. We are not all fully comfortable with it, but as with the previous request, we were uncomfortable with the sidewalk variance, but we compromised on it. That is how we move forward when we have conflicting opinions or different perspectives. Eventually, we reach a consensus and make a decision that we feel comfortable enough with it to move it forward.

Commissioner Finks thanked staff for all their hard work on the STRs. I would like to point out a clerical matter in attachment number 16, under Planning Commission recommendation, I believe that should be red instead of green.

Commissioner Finnegan said that these neighborhoods have been zoned so that there is little to no taxable economic activity. Some people may think that is a good thing. I do not think that it is sustainable. As tax revenues are going to be down for the next couple of years, we need to be thinking about what kind of activities we are willing to allow to bring in tax revenues for the City to maintain our services. That is another reason why I am supportive of this.

Commissioner Finks said that we also want to consider the citizens. There are going to be a lot of people who are having economic hardships, and this might be something that they need to rely on if they are unable to find work or are working less than they had previously. People need to be able to support themselves.

Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public hearing and invited the first caller to speak.

Panayotis Giannakouros, City resident, called to make the following comments. I want to commend the Planning Commission for finally considering this. I do want to recall that Mr. Finks,

a long time ago, modified a proposal that was sent forward to City Council to do something somewhat like this. In retrospect, that could have saved us so much unnecessary anguish. That said, glancing through this proposal, I believe, if I am not mistaken that by right use does not include auxiliary dwelling units. If I am correct on this, I would suggest to you that this is an oversight, that especially, under the current COVID conditions, needs to be reconsidered. We heard many poignant pieces of testimony from people with regards to why they needed this kind of accommodation. Now under the present conditions, it will be much harder for people to have guests in their own home, in close contact with them. If they did have an auxiliary dwelling unit, that would make it an ideal use for something like this. Again, if I am not mistaken and that is not allowed, I would urge you to consider amending this proposal to allow that. I would also suggest that the deliberation that you had about the length of time in the STRs that also, as was testified to by staff, there has not been complaints. I would suggest that you also increase that time limit, as well. With regard to how you are reasoning about this, how you are deliberating about this, there has been a pattern in how City Council has treated these STR applications and it is a shame that you did not get to have the joint meeting that had been requested so that you could discuss with Council what their reasoning was, but I will tell you, as somebody who sat through many of those hearings, that the common theme was that City Council, representing our City, had no taste for exclusionary practices. These exclusionary practices, as I tried to testify to you on numerous occasions, were rooted in segregation and race. On several occasions, the previous chair interfered with my first amendment rights to try to share these with you. I did share some of that reasoning with City Council and they were receptive. On an eighth occasion, the Director of Community Development intervened and prevented Mr. Finnegan from similarly abridging my first amendment rights. Under the current conditions, I would strongly recommend to you that the exclusionary practices that have been institutionalized, not only in our Department of Community Development, but in departments of community development statewide and in zoning in general are things that need to be directly confronted. Just as there are calls to defund the police, there are growing calls emerging in the state and elsewhere to defund departments of community development in the same spirit to weed out institutionalized inequities. Many of the things that we take for granted, it is just normal, are not normal. They are rooted in very pernicious, very negative elements of our history. Just as people are accustomed to taking confederate monuments on Monument Avenue in Richmond something that is just normal. Well, those taking things as just normal are very rapidly changing, just as is happening in Richmond. I hope that you will take this seriously and try to do the best job you can, starting with that new way of approaching our City and our communities by amending and improving and sending forward this proposal.

Chair Colman asked if there were any more callers. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan asked if the accessory dwelling units were included in the by right homestays.

Ms. Dang said that we do not allow accessory dwelling units as a defined use. In the R-1 district, you can have one dwelling unit per parcel. In R-2, depending on how you develop a duplex dwelling, somebody might consider that as an accessory dwelling unit, by design. We would consider that a duplex. In short, the answer is that Mr. Giannakouros is correct in that the by right ability would not allow a homestay to operate unless in a single-family home, a duplex dwelling

or a townhouse dwelling. Somebody could not have the accessory structure in the back rented out through the homestay. They could come in with a SUP request to ask if a bedroom that is set up outside, that is not a full dwelling, could operate as a STR. We are considering the by right homestay to only allow accommodation spaces to be rented out in the dwelling structure on the property.

Commissioner Finnegan said that we have approved a couple. There is some debate. I know I voted for some and against some accessory dwelling unit type situations. One of my core concerns is taking housing stock for local residents out of circulation in order to turn it into a full-time hotel room. That is a concern of mine. We need to be careful not to be turning livable full-time housing units into something that the landlord could make a lot more money off of through Airbnb.

Chair Colman said that in moving this forward to City Council there is another opportunity to convey that to City Council and they can amend those conditions. Our discussions have been thorough, and we arrived at this point. I think there are some limitations when it comes down to zoning. In the R-1 district only one dwelling is allowed, so having another dwelling would be in violation of zoning rules. That would be a bigger issue and would need to be addressed differently.

Commissioner Finnegan moved to recommend approval of the Zoning Ordinance amendments as presented.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the Zoning Ordinance amendments, as presented (5-0). The recommendation will move forward to City Council on August 11, 2020.

New Business – Other Items

None.

Unfinished Business

Consider a request from Richard L. And Betty L. Sampson with representatives Edilza M. Alfaro Díaz and Carlos Madrid to rezone seven parcels addressed as 143, 145, 149, and 153 Charles Street and five parcels with no street address that have frontage along Clinton Street.

Ms. Banks said that Planning Commission tabled the above referenced rezoning request during the June 10, 2020 regular meeting. Staff recommended in favor of the rezoning request. The Comprehensive Plan's Land Use designation of Commercial along the Charles Street area supported this rezoning request. The proffers that were offered by the applicant as part of the request addressed concerns regarding the use and redevelopment of the site along the Clinton Street area which is a neighborhood residential land use designation. Planning Commissioners recommended that the applicant reach out to the neighbors along Clinton Street and Charles Street to inform them of the request and to solicit feedback. Additionally, Planning Commissioners suggested that the applicant consider concerns raised by Planning Commission during the June 10, 2020 meeting.

Since the June 10th meeting, the applicant delivered notices to all homes on Charles and Clinton Streets inviting neighbors to an informal gathering on the property on June 21st to discuss the requested rezoning and to answer questions and concerns. As well, the applicant went door-to-door talking with those residents that were home. The applicant informed staff that many neighbors stated, *“they are happy to know the building is switching ownership since the present owner has refused to work with them in changing the face of the street.”*

Chair Colman asked if there any changes to the proffers and asked to see them again.

Ms. Banks said that there were no changes to the proffers and displayed the proffers on the screen.

Commissioner Finnegan commended the applicant for meeting with the neighbors. Has staff received any feedback about this request.

Ms. Banks said that staff has not received any comments, emails or phone calls.

Vice-Mayor Romero said that he was glad to see that the applicant was able to reach out to the neighbors. I am concerned that the meeting took place on Father’s Day. That was not a good day to get people together. I believe only two neighbors came to that meeting. I happened to be in the neighborhood, last week, and had the opportunity to talk with Mr. Hernandez who sent an email to us. He lives right across from that property. He said that the meeting was a good one. That the applicants were willing to share their plans. They did feel that there were some things that were not very clear. I did encourage him to reach out to the applicants to get any clarification. Mr. Hernandez is in support of the project. He is thankful that the applicant reached out to the neighbors.

Commissioner Finks asked for clarification. Are you saying that only two neighbors came to the meeting on June 21?

Vice-Mayor Romero said that is what he heard from Mr. Hernandez. Only he and his neighbor to the right came to the meeting.

Commissioner Finks asked what the sheet of names were that was attached to the packet. I was led to believe that these were all the people that came to that meeting.

Ms. Banks said that there was the meeting, inviting everyone there. When there was a low turnout, the applicant went out into the neighborhood and knocked on doors to speak to individual homeowners and residents of the area. That is where a lot of the information went out.

Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public meeting and invited the applicant or applicant’s representative to speak.

Carlos Madrid, Harrisonburg resident representing the applicant, called to speak to the request. I would like to mention that after the petition was tabled, we did our due diligence and invited the neighborhood over to the building to give them a better idea, on site, of what the rezoning was

about. Two couples showed up. It was Father's Day, which we had not realized, and there was a lot of rain. We then went door to door, keeping our distance, to talk to the people in the neighborhood and get their opinions. They all were supportive of the buyer and the proffers. The clean up of Clinton Street is going to be a huge impact. The two couples that showed up are directly affected with the look of the property with all the trash that faces their homes. We gathered their addresses and they were kind enough to support us with the proffers. We presented to them what we presented to you, last time. That is building a six-foot fence as proposed by staff. The buyer is offering to build it up to ten feet. They were pleased to have a green area and trees and instead of having the ugly trailers. The signatures and names were written by them to show that they are okay with what is planned to happen there. That is what was missing, as far as I heard from you the last time. We covered all the points, so the checklist is complete for the rezoning to happen.

Commissioner Finks asked if there was a discussion regarding limiting the times of operation. Did you have any discussions internally or with the neighbors about limiting the times of operation?

Mr. Madrid said that the neighbor across the street brought that up at the meeting. We explained that normally those events run from 3:00 p.m. to 9:00 p.m. It was asked and it was addressed.

Commissioner Finks said that while the applicant may plan to have events during a limited time, the proffers will stay in place no matter what business owner runs that place. The fact that there is no proffer that dictates that any future uses not allow something to go later, then there is nothing to stop that from happening, if that becomes an issue in the future with the neighbor.

Mr. Madrid asked if that was comment or a question.

Commissioner Finks explained that it is a response. You state that the applicant plans to have the events during a certain time, but if there is no proffer that they will only happen during a certain time, then there is nothing saying that you could not do it later or earlier than that. It could affect the neighbors. I am just clarifying.

Mr. Madrid said that they will explain, in detail, what will happen to the building. The building will be soundproofed, so the events do not affect the outside world. They asked and it was addressed. One of the things that was mentioned is that there is a possibility that there will be an afternoon where there is going to be photo shooting. There is also the possibility of having inflatables, but those services are provided during the day, not at night. Normally, events like that run until five or six in the afternoon. That would occur on any given Saturday or a Sunday upon request. It is not something that will happen regularly. There had been mention of a giving back to the community event for the neighborhood, so that they may be given part of what the business can produce. Those will be done in the form of end of the school year or back to school events. Those things were considered and mentioned, as well as giving a percentage discount for the first three events for every family represented in every household.

Commissioner Finks said that we have a good understanding of the intended use of the space. The concern that we discussed last time is that as the proffers stand now, you could rent out the facilities to fraternities and sororities late at night. Even if that is not the intended use now, there is still the

opportunity that something like that could be allowed based on what is presented to us right now. As there are no changes from the applicant, I do not know if that issue has been addressed.

Commissioner Finnegan commended Mr. Madrid for going out and speaking to the neighbors. Hopefully, that will continue if this gets approved and the business moves forward.

Chair Colman said that since there are no changes to the proffers, there is nothing that says that something else could not occur there. That is the main concern of the Planning Commission for you and the applicant to understand.

Mr. Madrid asked if the Planning Commission is suggesting a proffer.

Chair Colman said that he is not suggesting a proffer. I am suggesting that our concerns be addressed in some conditions that you might impose on the property, which could be in the form of a proffer, but it is up to you to decide how that is presented.

Mr. Madrid asked if there is not an approval today, would that be a condition to present.

Chair Colman said that the Planning Commission cannot change the proffers. Depending on how we vote, the applicant can make changes to the proffer and discuss with staff how to move forward. It could go to City Council. You might not need to return here. You have heard our concerns and it is important that those are addressed.

Mr. Madrid said that you are saying that we, as a business, need to have a way to control whether there is a potential of renting the building to a specific group that would come and hold their own event, in the future.

Chair Colman said that it is not about specific groups or trying to keep somebody in or out. It is more about the hours of operation, noise levels and light and how that impacts neighborhoods. That is our concern here. That is something we feel should be addressed. It has not been addressed. I know you have talked with the neighbors. If somebody else were to buy the property, the rezoning remains, so the next person could use it for something else completely but having a whole different attitude than you or your client. I am very supportive of what you are doing. I like the idea of cleaning this place up and having something nice. At the same time, we are concerned about the future. This is your opportunity to present those conditions. The hours of operation are an option. We cannot recommend proffers, but you can state it in a way that meets the Commission's concerns.

Mr. Madrid said that he now understands what is being said. We have been talking all along about how these events happen from 3:00 to 9:00 p.m. normally. Those are the basis of this business. I think that we can commit to that. That will not be a problem. Events can happen from 10:00 a.m., if it is a luncheon. If it is an evening event, the arrangements may be from 2:00 p.m. and the event ends at 7:00 or 8:00 p.m. Some people stay behind to do the dismantling. That is something that we have been mentioning all along. We can agree to that. We can say 10:00 a.m. to 9:00 p.m.

Ms. Banks reminded the Planning Commission that this is a rezoning request to B-2. We are focused on the events center. There is no proffering out any other B-2 uses. When staff worked with the applicant, we discussed what proffers are going to help protect this neighborhood from B-2 uses in general. For example, the traffic in and out of Clinton Street, the signage, the fencing, the buffering and so forth. Yes, this proffer is fine, and we can work with them on this, but if approved it is a rezoning to B-2. You could get a convenience store built there. You could get a hotel. You could get a hotel built there now. You could have a gas station. This would limit the hours to the event center, yes, but if a hotel went in, you could have hours of operations and gatherings at the hotel for different things. I just wanted to remind everyone that it is a rezoning to B-2. There are a lot of B-2 uses that can go in, but we seem to be really focused on the event center. We will work with this applicant on hours of operation for this use.

Mr. Madrid said you are the head of this here and I am here following you. I am assuming that you are aware of the four corners of this building, meaning this conversation. Ms. Banks is right on point. By approving this rezoning, I believe that we can work on those hours of operation because the B-2 allows for many businesses to happen there. The event planning is one of them. We can work around with the hours of operation. I appreciate Ms. Banks for bringing everybody to the point.

Chair Colman said that I feel supportive. I would like to support this business. I think that some of the other commissioners are in favor. We will vote in a minute. Are there any other questions for Mr. Madrid? Hearing none, he asked if there is anyone else wishing to speak to the request.

Brenda Hernandez, 147 Clinton Street, called regarding the request. I was able to attend the meeting. I do support the rezoning. There are some concerns that we explained to the applicant. One was that this area is a quiet, family neighborhood. It is very peaceful. The noise is something that really concerns us. One of the things that the applicant mentioned was that they would be soundproofing the building and putting some evergreen trees that would be better for a sound barrier. The other concern that I have, and that I share with both of our neighbors, is that we want to have complete separation between Clinton Street and Charles Street. One of the things that I did voice during our meeting was that I am concerned about the undeveloped Albert Street. I read the proffer and it states that it would only block Clinton Street, but it has no mention of Albert Street. One of the things that they mentioned was that they would completely block with the fence all of Clinton Street and Albert Street. That will help avoid excessive traffic. We have a lot of kids playing in the street. Almost everyone on the street has children. They are free to be outside. More traffic would be a danger. If there is any passageway allowed, then that would be a concern. They did state that they would be able to completely close out all their property including the undeveloped Albert Street. I did ask if the proffers were going to be revised and resubmitted with the things that they mentioned that were not stated in the proffers. They said that it was not necessary. I do trust that they are going to keep their word. There is a small concern still because the proffers were not revised and resubmitted. The other concern was for the fence. On the proffer it states that will only have a six-foot tall fence. If they place it exactly where they mention that they are going to set it up, there is a big dip, a down slope, which would make it a four-foot tall fence. Then there would be no privacy or separation between Clinton Street and Charles Street. I was told that there was going to be a seven-foot fence. Since they stated that they will address our concerns, I would like to support it, but there is that one thing that I would like to request again to

the applicant if they could resubmit revised proffers. It would give us peace of mind. I would encourage the applicant to include in the proffer certain limitation. God forbid a hotel actually comes and ends up across from us. At that point there would be no privacy or separation between the business and our lovely community.

Commissioner Finks said that there were two things mentioned that I would like staff to address; the height of the fence and the idea of a hotel going into a B-2 district, considering that it is currently M-1 and what would be available by right in an M-1 district.

Ms. Banks said that a hotel can be constructed on this property today, by right, in the M-1 zoning; no fence proffer, no entrance proffer, no signage proffer. It can have entrances and exits to Clinton Street. There can be signs on both streets if they want to. It is a by right use. When we worked with the applicant on the request for a B-2 zoning classification, we were trying to protect that Clinton Street neighborhood. There are a lot of uses that can go there right now that are rather intense and without any proffers. A fence can, by right, be six feet tall. There is a SUP process for going over six feet in residential districts. In the B-2 district when a fence is used for safety and security purposes of the business, it can be taller than 6-feet. I do not think that this meets that; that is why we went with six feet.

Chair Colman said that he does not believe that they will be able to close Albert Street because it is City property.

Ms. Banks said that if they wanted to close Albert Street, they would have to petition the City to close and purchase it. They have the right to put a fence along the side of their property that runs parallel to Albert Street.

Chair Colman said that they could not close access to it.

Ms. Banks said that it is not their property. They could not build across it.

Chair Colman said that the applicant or applicant's representative has agreed to work with staff to address the time of operation.

Ms. Hernandez said that when they signed the document, they were confirming their presence at the meeting, not an agreement with the existing proffers.

Chair Colman asked how many people were at the meeting?

Ms. Hernandez said that it was my husband, myself, and our next-door neighbors on the right. In total, we were four people in two households.

Chair Colman said that your signature, then, did not mean that you agree with the request, but to acknowledge that you had been at the meeting.

Ms. Hernandez said that is correct.

Chair Colman asked if there were any more callers.

Brenda Alfaro, daughter of the applicant, called to speak to the request and answer questions. We were under the impression that hours of operation had to follow the Harrisonburg policy and abide by the permit requirements. We did not believe that we had to offer hours of operation as proffers. We are willing to follow any regulations that the City of Harrisonburg has for hours of operation.

Chair Colman asked if Ms. Alfaro is referring to the noise ordinance.

Ms. Alfaro said yes.

Chair Colman said that the applicant is coming to us, asking for a rezoning, and now we are discussing the noise. If we recommend in favor of the rezoning and City Council approves it, this is what is going to rule your property. We will recommend the rezoning if we agree with the conditions that you have on it. That is why we are expressing our concerns. This meeting is to express the concerns of the Planning Commission on behalf of the City and ask how you will address it. If it was something that was addressed directly by City codes, then there would be no need for us to be questioning those things.

Ms. Alfaro said that we understand that Clinton Street is a residential neighborhood. We do not want to affect the peacefulness of the neighborhood. We want to ensure the safety and security of that neighborhood while putting our business in as well.

Commissioner Finnegan said that something is getting lost in the conversation. Let us have a conversation about what will happen if you end up doing your business, exactly as you plan, and then you sell it to someone else. That is the conversation that we are trying to have. What happens when you are no longer operating that business and have sold that property to some other property owner.

Ms. Alfaro said that this is going to be a family owned business. We do hope that it will pass down generations. We have not thought so far ahead into the future selling of the property because we do plan for it to stay as a family owned business. I am sure that my mother would work to ensure the separation of Clinton Street and their safety; making sure that the future buyer would be willing to work as we did.

Chair Colman said that we are supportive of what you want to do. We feel that there is some misunderstanding here about what we are talking about. When you talk about assurances, how are those assurances going to be upheld, other than your word. We like that, but that is why we have proffers. They are something that we put in place to ensure it continues. There are some concerns of the Planning Commission that had been expressed in the previous meeting and in this meeting. I ask the Planning Commission if those concerns are being addressed. It does not appear to be the case.

Ms. Alfaro said that any recommended proffers that you would like to see, we are willing to consider those and put those in place. We will work with your concerns and the safety of Clinton Street.

Chair Colman advised Ms. Alfaro to work with staff. We do not want the proffers to be limiting or crippling to your business. We want something that is going to protect the neighborhood but is also going to allow your business to grow and thrive. Talk with staff. The idea is not to make it too restrictive, but enough to address the concerns of the neighbors.

Ms. Alfaro said that we understand that the main concern is the safety of the neighbors and making sure that we maintain a balance in that neighborhood. Not many people showed up to the meeting. We did not realize that it was Father's Day that weekend. In our culture, we celebrate it a different day. We missed the ball on that one. We would like to note that although not many people showed up, we decided that we would go door to door and discuss with the neighbors if they had any questions or concerns about the business as it is being put in place. We answered any questions that they had and made sure that they understood. I hope you are willing to see that we are behind the neighborhood and willing to protect the neighborhood to make sure that it stays nice for all the children and the families that are there.

Chair Colman thanked Ms. Alfaro for reaching out to the neighborhood.

Ms. Alfaro said that we live in a very quiet, family neighborhood, as well. We understand all the concerns that they had. We understand that maintaining the neighborhood is important not only for the families, but also for the property value and the image of the neighborhood.

Commissioner Finks said that he hears Ms. Alfaro's point and believes that they have the best intentions to protect the neighborhood and not be encroaching on the neighborhood. The concern comes from the discussion from the last meeting and the discussion with the neighborhood residents that nothing changed with the proposal. You heard our concerns. You heard the residents' concerns. You agree that there are concerns, but then nothing changed in the proposal to address those concerns. It is great that you are hearing these concerns and that you agree with them and want to do your best. I think that is commendable. The fact that nothing fundamentally changed about the proposal from what you brought to the table last month. You brought back the same proposal. Concerns that we brought up, were brought up by the neighbors, and nothing was changed. That is where my concern is. I do believe that you will do your best, but when we are dealing with zoning and property, someone's word does not come into play. It needs to be in writing. It needs to be something concrete that is regulated.

Ms. Alfaro asked what exactly is the proposal that you would like us to consider.

Commissioner Finks said that, specifically, it was hours of operation. That is what we have been talking about is the hours of operation of this business in relation to its proximity to a residential area. That is something that we have seen with other rezonings on other commercial B-1 and B-2 properties in the City. There might be a proffer or condition put forward to limit the hours of operation for the business, such as it stops at 11:00 p.m. or 9:00 p.m. every night. I had assumed that if there was going to be any change, that it would be somewhere in that direction, specifically about hours of operation in any business going forward.

Ms. Alfaro said that it would be a proffer concerning time. We would be willing to add a proffer of time. We assumed that it was something that we would have to do with the City after this process, regarding the City noise and hour requirements. We did not know that we had to proffer it. We will be willing to add it.

Chair Colman suggested that the applicant work with staff on additional proffers or amending the proffers.

Commissioner Whitten said that one caller was told that they would close off Albert Street. We know that cannot happen. She seemed to think there would be a taller fence, which also cannot happen, unless they get a SUP. There seem to be a lot of misunderstanding about some of these details. While I appreciate what Ms. Banks added about what is allowed in B-2, if the zoning changes to B-2, I think that some of things are going to have to be resolved before I feel comfortable voting.

Ms. Alfaro said that they wanted to put in a bigger fence than what was proffered, but it was said that we can only put in the six feet that was proffered. The applicant wants to enclose all of the property for security reasons for us. She wants to put a taller fence. We also want to address the dip that exists so that the fence is equally high all around. Once the fence is in place, you would not be able to see to the other side. If we have to get a permit for the raised fence, then that is something that we want to do. We are not putting the fence in because it is a requirement. We are putting the fence because we want it to be completely secure from all around access.

Chair Colman said that was stated by staff. A SUP is required for that fence to be higher than six feet. We do not have a SUP permit request here. That cannot be a proffer.

Ms. Banks said unless the fence is for the safety and security of the property. We would have to make that interpretation.

Chair Colman said that a fence could be installed without a SUP if staff interprets it as a security fence. That is not in our hands.

Commissioner Whitten said that the caller said that she signed the form, not as an agreement, but as a courtesy. It was not that she was agreeing with what they planned.

Ms. Alfaro said that, yes, it was for the attendance. We also answered their questions and concerns. They also understood that if they did have any concerns, they could call during the Planning Commission meeting.

Chair Colman asked if there were any more callers. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Finks said that it seems that there is a potential for people in the neighborhood not being heard for this rezoning. I am not sure that we have an accurate picture of what those concerns might be. The applicant did their due diligence in reaching out to the neighborhood. I have some concerns with some of the comments that the first neighbor said that did not sound quite right.

There were a couple points of confusion. I do not feel that we have a clear picture that everyone is on the same page with what is happening. I do not know that I have a clear consideration that any action was taken by the applicant on what we talked about at the last meeting. The only concern that was heard was that the neighbors needed to be talked to and that is what happened. Perhaps we were not clear with our concerns and how we would like to see them addressed.

Chair Colman was notified that there was another caller. He reopened the public hearing and invited the caller to speak.

Gerardo Hernandez, 147 Clinton Street, called regarding the request. I am in favor of the rezoning. I have a suggestion since the height of the fence is in question. The existing topography is kind of low. That was concern of it being low relative to where we are. If getting a SUP for a taller fence is complicated, can the grade be raised? The six-foot fence would provide privacy if the grade was raised.

Chair Colman said that it would be interesting to see where the property line is. What I see on Google Earth is that the property line is along where the trailers are currently. I cannot tell if it is low or high. It seems that they are interested in a taller fence. They can discuss that with staff. If they are concerned about their own security, that might be something that they can do without a SUP.

Mr. Hernandez said that it was simply a suggestion. We would like to see the rezoning move forward.

Chair Colman asked if there were any other callers. There were none, so he closed the public hearing and reopened the matter for discussion.

Chair Colman said that there is more expense and work to raising the grade, however it is an option.

Commissioner Whitten said that they might not need a SUP if they are concerned and they want to secure their property with a fence.

Chair Colman said that the applicant's representative has agreed to discuss revising the proffers to address some of the concerns, specifically the hours of operation.

Commissioner Finnegan said that he wants to support this. In terms of running the business, it sounds like they have done the right thing. What we are focused on here is the zoning. To Ms. Banks' point, I am sure that people in the neighborhood would not want an M-1 industry to move into that neighborhood, which it could, by right. The same for B-2. If the applicant wanted to amend the request, can proffers be added between when we vote on it and when City Council votes on it?

Ms. Banks said yes. They can amend proffers. They can add proffers. Then it would be City Council's decision if they want to send it back to the Planning Commission.

Chair Colman said that we can move the recommendation forward to City Council under the understanding that the proffers would be adjusted or amended to address our concerns. That is my understanding. I want to make sure that is on the record.

Commissioner Finnegan said that regardless of how I vote on this, my concerns are regarding restrictions on noise and time of day. It has nothing to do with the business that they are trying to start there.

Commissioner Whitten said I agree.

Vice Mayor Romero asked if the times the applicant proffers, which could be 9:00 p.m. or 11:00 p.m., would those times make a difference in the way the Planning Commission votes? There might be things that change between here and the City Council meeting. I want to make sure that I understand, given the times that are provided, that this Commission would be in support of it. It is hard because we do not know what we would have done given the actual times that were provided. What if they propose 10:00 p.m.? Is there some guidance for City Council that the Planning Commission can provide regarding the time?

Commissioner Finks said that it is up to the applicant to provide the proffers and then we can vote on the rezoning or not. I do not have suggestions on it. I would consider whether it is reasonable. It will be up to the applicant, working with staff, to decide what reasonable looks like. I just do not want to see it open ended.

Commissioner Finnegan said that he agrees with Commissioner Finks.

Chair Colman said that times could vary depending on whether it is during the week or the weekend. We also need to make sure that the proffers align with the noise ordinance. Is staff able to provide some suggestions for us to discuss regarding hours of operation? We are not establishing proffers. We are simply saying what we feel comfortable with.

Ms. Banks said that the Noise Ordinance, Code Section 15.3.3, spells out the decibel levels. There is the daytime between 7:00 a.m. and 10:00 p.m. There is the nighttime, which is from 10:00 p.m. to 7:00 a.m. the next morning. The Noise Ordinance spells out that there is a limit of 65 decibels during the day and 55 decibels during the night. Then it speaks more specifically to sound producing and sound reproducing devices. Are you thinking that we should address the hours of operations along the lines of the Noise Ordinance?

Chair Colman said that is what I am suggesting. Do other commissioners find that reasonable?

Commissioner Finks said that I do not think that it is part of the Planning Commission's purview to suggest specific things about proffers. We can state our concerns. They can address those in the proffers.

Commissioner Finks made a motion to recommend approval with the understanding that the hours of operations will be addressed before it comes before City Council.

Commissioner Finnegan seconded the motion.

Chair Colman said that he does not believe that can be added to the motion. I think we can comment on our motion, but I do not think that we can add to it.

Mr. Fletcher said that he needs to better understand what your motion was. It is either approve or deny. You cannot add conditions because it is a rezoning. It is up or down.

Commissioner Finks made a motion to recommend approval. I would like to see the hours of operation addressed.

Commissioner Finnegan seconded the motion. I hope they address the noise and hours of operation.

All members voted in favor of recommending approval of the SUP with conditions, as presented (5-0). The recommendation will move forward to City Council on August 11, 2020.

Chair Colman said that he joins Commissioners Finks and Finnegan in the concerns regarding hours of operation.

Public Comment

Bucky Berry, Harrisonburg resident, called to make the following comments. I am little concerned. I am not understanding City Council will take up painting Black Lives Matter on one of our local streets here in the City. I am not a racist. Do not get me wrong. With the COVID-19, the economy the way it is, taxpayers paying for that. It bothers me a little bit. Signs are being put up all over town. I know one of them is on City right of way. My understanding is there was not supposed to be any signs on City right of way. I have seen some on Meadowlark out by the curb. I have called the City. They have not done anything about it. Anybody else will put signs up, something is done about it. They are selling the signs for \$8.50 apiece. I know it is a fundraiser. I do not like these signs being put out and nothing being done about it. Anybody else who would put signs up along City right of way, they would be taken down. Even campaign signs have been taken down and other signs. Painting this in the road will cost taxpayers money. I think we need to think long and hard before we do that. Hopefully the Planning Commission can take it up to City Council and table it until it is resolved. We had to stop construction on the schools. If we have got money to paint stuff on the street, I do not get it here. I think costing taxpayers money bothers me a little bit. Hopefully the Planning Commission can work on this and table City Council until they get a public hearing on it to see what the citizens want. Thank you for your time. Have a good night.

Report of the Secretary & Committees

Proactive Code Enforcement

Ms. Dang said that the proactive code enforcement remains temporarily suspended pending the hiring of a Zoning Technician. In addition, we may not be able to continue the program for the duration of the COVID-19 public health emergency. Proactive code enforcement requires two

people who would be in a car together, which does not allow for safe distancing. We will resume when we are able to do so.

Rockingham County Planning Commission Liaison Report

There was no July County Planning Commission meeting.

Board of Zoning Appeals Report

None.

City Council Report

None.

Other Matters

Comprehensive Housing Assessment and Market Study

Ms. Dang said that the contract for the Comprehensive Assessment Housing and Market Study has been awarded to Mullin & Lonergan Associates along with subconsultants Fourth Economy Consulting and EPR. Mullin & Lonergan Associates has previous experience in Harrisonburg when they worked on the 2012 City Analysis of Impediments to Fair Housing Choice, the 2016 Assessment of Fair Housing, and the 2017-2021 Consolidated Plan and 2017 Annual Action Plan for CDBG. Adam Fletcher will serve as the City's project manager and will be supported by City staff.

We had the project kick-off meeting today, during which the project schedule and major milestones were laid out. A lot of work will take place between now and January 31, when the project is anticipated to be completed. Over the next seven months, the stakeholder engagement plan will be developed. This will include stakeholder meetings or interviews. A draft report will be prepared and presented at a public meeting and the final report and presentation will be given to City Council in January. The format of the public meetings is to be determined given the current COVID-19 pandemic.

Impartial data collection is important for this study. Our goal is to receive objective and data driven recommendations for issues revealed in the study.

Zoning and Subdivision Ordinance

Ms. Dang said that the Zoning and Subdivision Ordinance contract was awarded to Kendig Keast Collaborative along with subconsultants White and Smith, LLC. Kendig Keast is based out of Sugar Land, Texas and have experience working on ordinances across the country.

The project is planned to take eighteen months and is anticipated to include:

- The creation of an Ordinance Advisory Committee;

- Stakeholder meetings, to include eight 50-minute meetings with groups of eight to fifteen participants over two and a half days;
- Meetings with a staff technical team made up of representatives from different City departments;
- A public open house meeting; and
- Other opportunities for the public to provide comments.

Again, the format of the public meetings will be determined given the current COVID-19 pandemic.

We will be holding a project kick-off meeting in the next few weeks with a team of City staff including myself as the City's project manager, Adam Fletcher, Wesley Russ, and Rachel Drescher. When more details are available regarding the project schedule and how Planning Commissioners will plug in and be involved in the project, we will share this information with you and invite you to participate.

The meeting adjourned at 9:15 p.m.

Gil Colman, Chair

Nyrma Soffel, Secretary