

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**June 14, 2023**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, June 14, 2023, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Brent Finnegan, Chair; Vice Mayor Laura Dent; Dr. Donna Armstrong; Richard Baugh; and Valerie Washington. Adriel Byrd, Vice Chair arrived late. (Note: There remains one vacancy for the Planning Commission.)

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

Chair Finnegan called the meeting to order and said that there was a quorum with five members present with Vice Chair Byrd arriving at 6:02pm.

Chair Finnegan asked if there were any corrections, comments or a motion regarding the May 10, 2023, Planning Commission minutes.

Chair Finnegan said I do have one and it is not a correction I just wanted someone to double check on page 5 where it says parking expansion. I do not think I said that, but I did not have time to check.

Ms. Dang said we will check that. If I am not sure what you said, we will do a timestamp and ask if you could listen and help us decipher what that might have been.

Chair Finnegan said it does not sound like something I would have said.

Commissioner Baugh said somebody did say something like that, but I guess it was not you. I have recollection of this being said, but I do not recall you necessarily saying it.

Chair Finnegan said to let the record show that Vice Chair Byrd is with us.

Chair Finnegan asked if there were any corrections, comments or a motion regarding the May 10, 2023 Planning Commission minutes considering the caveat of the clarification on page 5.

Commissioner Baugh moved to approve the minutes.

Vice Mayor Dent seconded the motion.

All members voted in favor of approving the May 10, 2023, minutes.

**New Business – Public Hearings**

***Consider whether the proposed Homeless Services Center public facility site at 1111 N. Main St. is in substantial accord with the Comprehensive Plan***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said The Comprehensive Plan designates this area as Mixed Use and states:

“The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.”

All the sites adjacent to this property along North Main Street are zoned B-2, General Business District or M-1, General Industrial District. The B-2 district allows a mixture of commercial and service activities, including transient accommodations, which include homeless shelters. To the north, adjacent properties are zoned M-1, General Industrial District.

Given the site’s location along North Main Street providing a homeless shelter in this area creates the opportunity for transportation related Traditional Neighborhood Design (TND) principles to be implemented with using connected sidewalks and public transportation.

Finally, staff believes that providing a homeless shelter is another tool to work toward achieving Objective 6.3 within the Comprehensive Plan, which states:

“To support programs that prevent and address homelessness in the City.”

*Recommendation*

Staff finds the proposed homeless services center's general location, character, and extent thereof is in substantial accord with the Comprehensive Plan and recommends the Commission communicate the same findings to City Council.

Chair Finnegan asked if there were any questions for staff. Hearing none, he opened the public hearing. He asked if there was anyone in the room or on the phone wishing to speak to the request.

Vice Mayor Dent stated last night at City Council there was a delay of about 5 minutes. So, a couple of people who wanted to speak missed it. One was in the parking lot, and one was on the phone.

Chair Finnegan said 5 minutes is quite a delay. It used to be 30 seconds.

Mr. Fletcher said that he was unaware of the delay.

Vice Mayor Dent asked how would we know?

Chair Finnegan asked if there was a way to check on that?

Chair Finnegan then asked is this on TV or streaming on the internet?

Mr. Fletcher answered both.

Chair Finnegan said I was not aware of that.

Vice Mayor Dent said we were not either until we heard from people who had missed it.

Ms. Dang said you can give it another 20 seconds. I timed it for a minute.

Mr. Fletcher said earlier we were informed that the delay was originally about a minute, which is why we give a pause at this time. I left probably before the meeting was over and before that was discussed.

Chair Finnegan asked if there were any questions for this request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Baugh said having been involved in the decision to [unintelligible], I think it is a good idea. One of the things that did come up yesterday that came up is specially the proximity of existing services. That and the whole thing here about its...

Tyler Blanks, a zoning specialist with community development and phone operator interrupted the meeting and asked the Commission is it possible to turn their microphones up? He referred to a call he received and noted the person who called said the sound was not audible.

Chair Finnegan said we can try and talk into the microphone.

Commissioner Baugh said I was commenting on the location proximity to existing services. One of these days when I have a lot of time, I am going to see if I can find somebody that can tell me the legislative history on this. I think the rationale of this is simply that otherwise your public uses would essentially be of right uses and they would basically give the opportunity to the public to weigh in on it. I do not really know...I suspect this probably is not...I am probably overthinking it, but I could see for example the value of sometimes maybe putting things in land that came cheap that otherwise may not seem like a great location and give the opportunity to the public to weigh in on that. But in any case, it certainly seems to me to fit in with our planning and with that I will move approval in favor of the recommendation or however we want to term it that this is in conformity with the Comprehensive Plan.

Commissioner Armstrong seconded the motion.

Vice Chair Byrd said just for clarification, that means we are saying that the homeless service center is in substantial accord to the Comprehensive Plan?

Chair Finnegan answered yes that is the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Chair Finnegan	Aye

The motion to recommend approval of the request passed (6-0). The recommendation will move forward to City Council on July 11th, 2023.

***Consider a request from Lock-Minn Holdings, LLC for a special use permit to allow restaurants at 837, 841, 871, 887, 889, 891 Chicago Avenue***

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the Departments of Community Development and Police have been working with the property owner to rectify violations associated with 837, 841, 871, 887, 889, and 891 Chicago Avenue. The applicant has been working with staff and his tenants to remove inoperable vehicles from the undeveloped sections of the Rockingham Drive public street right-of-way and to ensure the individuals working at the automotive repair business do not store or repair vehicles outdoors without proper screening. The applicant is requesting a special use permit (SUP) per Section 10-3-97(1) of the Zoning Ordinance (ZO) to allow restaurants in the M-1, General Industrial District on a +/- 12,274 square foot property that consists of two parcels addressed as 837, 841, 871, 887, 889, and 891 Chicago Avenue and identified as tax map parcels 39-F-2 & 3. Rather than seeking the SUP to allow brick-and-mortar restaurants, the applicant specifically

seeks the SUP to allow for up to two food trucks on the two parcels. The food truck currently located in this general area (where its location has been either on the corner parcel or the adjacent B-2C-zoned parcel identified as 39-F-6) has been operating illegally. This is because restaurants, including food trucks, are only permitted to operate within the M-1, General Industrial District with an approved SUP. Food trucks are permitted by right within the B-1, Central Business District and the B-2, General Business District, where restaurants are permitted by right. (Note: Existing proffers on the adjacent B-2C-zoned property, among other things, prohibit food trucks on that parcel.)

### *Land Use*

The Comprehensive Plan designates the property as Mixed Use and states that:

“The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way. Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multifamily buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.”

An overarching goal of the Mixed Use designation is to combine commercial and residential uses in the same area. Taking this into consideration, in general, staff does not have concerns regarding the idea of allowing food trucks to appropriately locate and operate along the Chicago Avenue corridor. However, the small size of the subject properties combined with the number of existing uses, which are served by inadequate off-street parking (both in the number of spaces provided and with on and off-site maneuverability), and how those uses operate already causes concerns.

The current uses on the subject properties include two automobile repair facilities with bays on both levels of the property addressed at 891, 837, 889, and 887 Chicago Avenue. Then, on the property addressed at 841 Chicago Avenue, there is a tire shop with a service bay and storage space that is being used for a food truck that is illegally operating on the adjacent, B-2C-zoned

property. To be in conformance with the ZO with regard to off-street parking, with the uses currently operating, eight off-street parking spaces would need to be delineated. Staff has concerns about how the current operations function with the amount of off-street parking that is currently provided. If one or two food trucks operated on the properties, it would add another element of concern. Know that as of May 31, 2023, when staff visited the site, the off-street parking spaces delineated on the property did not meet the minimum parking space dimensional requirements of Section 10-3-25 (1) of the ZO and while some parking spaces might be widened or lengthened, staff is concerned that it would not leave enough space for the travel ways within the parking lot. It appears that the parking spaces on this site were delineated sometime between 2015 and 2017. While the property might be nonconforming to off-street parking regulations, because they are proposing to add a new use, the applicant has been advised that if they receive approval to allow one or two food trucks on the property, they must ensure that minimum off-street parking is met for all uses.

#### *Transportation and Traffic*

When reviewing the site, staff noticed that one of their delineated off-street parking spaces is located within the southernmost entrance along Chicago Avenue. Staff informed the applicant they would need to add a parking block or post and chain to better control how traffic maneuvers on and off the site from Chicago Avenue.

#### *Public Water and Sanitary Sewer*

Generally, staff does not have concerns with water and sanitary sewer service if food trucks operate from the site. The water may be obtained by an approved water connection to the property owner's metered public water service. The sanitary sewer shall be disposed of through an on-site dumping station as defined by the Virginia Department of Health and approved by the City or hauled to the Harrisonburg Rockingham Regional Sewer Authority.

#### *Recommendation*

As noted above, given the small size of the subject properties combined with the number of existing uses, which are served by inadequate off-street parking (both in the number and size of spaces provided as well as the on and off-site maneuverability), staff has reservations about approving a SUP to allow for food trucks. Staff recommends denying the SUP request.

If there is a desire to recommend approval of the SUP request, staff recommends imposing the following conditions:

1. If the existing parking lot layout is maintained, the property owner shall install a parking block, post and chain, or other feature acceptable to the City between the parking stall and the entrance along Chicago Avenue within 6 months of approval.
2. Brick-and-mortar restaurants are prohibited.
3. Only one food truck is permitted among tax map parcels 39-F-2 and 3.

With regard to condition #3, the applicant has requested approval for two food trucks. If individuals want to allow food trucks, staff is recommending allowing only one food truck. In other words, if a food truck locates on tax map parcel 39-F-2, then a food truck cannot locate on tax map parcel 39-F-3.

Chair Finnegan asked if there were any questions for staff.

Commissioner Armstrong asked I do not exactly know how to ask this, I was just checking the next application and since it is an application to make legal their current parking uses is that...

Mr. Fletcher said it is a different site.

Chair Finnegan said it is right adjacent.

Commissioner Armstrong said yeah it is right adjacent. When I went and visited, the food truck was right there, adjacent, it is very proximate. Is that going to impact this at all? If that is approved, if that parking area with whatever conditions is approved, will that alleviate any of this? I know, they are separate.

Ms. Dang said I guess there is a couple of...

Ms. Rupkey said if say this one is denied and you end up approving the other one, a restaurant would be allowed by right on that one so they could keep the food truck on that lot.

Ms. Dang said that is correct. The proffers for the other application that we have not presented yet, would allow the food truck to be there. It would also allow for customers to park but the operations as they are currently occurring today, could not occur with the current zoning or with the proposed rezoning.

Mr. Fletcher said I am wondering, to get back to your question Commissioner Armstrong, you were asking if it gets rezoned then they can use it for parking would that help the situation...

Commissioner Armstrong said on this application, with one of the trucks staying, it is one alternative you give.

Mr. Fletcher said I think, and correct me staff if I go off base here, but I think some of the concern that we had... it is very difficult to separate everything that is going on out there and in some respects if the rezoning were approved in the next application or if City Council were to approve it next month, really what we have been witnessing out there today is what would end up happening, right? Because they are in violation of two things currently. They are in violation of the food truck being located there and then they are also in violation of the adjacent property which is the next application in using that space as it has been used. What they are trying to rectify is both of the situations and if they were to be rectified from a technical standpoint, there is still a considerable amount of activity and maneuverability and just concern about how that space functions. So, would it correct the situation? Technically by code, yes. Does it alleviate staffs concerns? My guess is, I do not think so because of just the enormity of the confusion of how that space operates.

Ms. Dang said thank you for recalling our discussions about drivers entering and exiting the site and the space between the building and the back of curb essentially. The parking spaces that are

delineated out there are narrow and as Meg pointed out in her report the parking spaces that are delineated out there do not meet our standards, they are too short for a typical passenger car to park in. So, something has to change. It cannot exist the way it is with the addition of the food trucks.

Mr. Fletcher said for me, and I know Meg has already stated this, but I kind of like to think about breaking it down into four concerns. One is the small size of the subject properties. Two is the number of existing uses; there is a lot going on. Not that we do not want some very productive commerce to go on out there, we just want to make sure it is an efficient and effective and safe for folks. The parking is the third. It is inadequate and the space and maneuverability is of concern. The fourth is really just how the uses have been operating, which you have to remember that automobile repair is very difficult to separate the different kinds of automobile repair, then what is permitted in the different zoning districts from B-2 to an M-1. If a site is zoned M-1, automotive repair can occur outside in the open air, but in B-2 it is to occur inside. There has been...and maybe in good faith, the operators were confused in that. So, it is just trying to piece all of that together. Then by adding food trucks to the site, two trucks we think is too many. If you all think one is okay, that is for you all to decide, but it just seems to be too much for us to be comfortable offering a favorable recommendation knowing that we are not meeting certain standards.

Ms. Dang said if I may add also, just to confirm is that, in M-1 the repair and storage of inoperable vehicles, so repaired vehicles and storage of inoperable vehicles can occur outside, but it has to be in a screened area.

Mr. Fletcher thanked Ms. Dang for the clarification.

Ms. Dang added that is a distinction whereas in B-2 it has to be within a permitted structure.

Mr. Fletcher thanked Ms. Dang again.

Chair Finnegan said just to clarify, that is the violation. So, there are currently inoperable vehicles that are not behind...

Ms. Dang said ...and repair operations occurring in the lot.

Mr. Fletcher said we have not issued official notices of violation. The applicant is clearly trying to rectify them. We are trying to work with them, but we also just have concern with what is going on.

Commissioner Armstrong said one food truck how much traffic is there? That is a small operation. Is it servicing primarily pedestrian traffic? Either workers on site or a pedestrian neighborhood. I only know that when I visited, it just happened to be there was very little traffic and there was no traffic on site. It was in the afternoon.

Vice Chair Byrd said that sounds like a question for the applicant.

Chair Finnegan agreed.

Commissioner Armstrong said I guess that the City would say to me “That is not relevant. These parking requirements, do not take that into account that is not relevant,” right?

Mr. Fletcher said food trucks do not require parking. What we inform folks of on our website, which we call it mobile vending, is to ensure that that mobile vending unit does not sit in a parking space that is required by the operating business on site. So that you are not reducing the capacity for the onsite operation to have its sufficient spaces for parking. You cannot set up in a location that impedes sight distance when you are pulling out of the site. So, you have to remember that parking is irrelevant to a food truck in some respects. Now, you may, and we have talked about it before at other sites, where food trucks garner a great deal of traffic, necessitate parking, especially if they are providing onsite picnic seats because if they are providing picnic seats, they are inviting traffic to come and stay. So, there is a lot of different things to take into consideration.

Commissioner Armstrong said I apologize for belaboring this I know we have a full agenda, but I do appreciate entrepreneurship. So, that’s where I am trying to reconcile here like you mentioned.

Vice Chair Byrd asked staff for clarification on the number of structures at the property.

Ms. Rupkey said if you look at the map right here, 841 is this one right here this front parcel or the front building. Then the rest of the addresses, part of it is on the property that is addressed as 841, the second building with the storage bays. There is one right here in the back and then there is an automobile bay and another one on the bottom of this property. So, it is like double decker. Vice Chair Byrd asked whether we are saying that for all three of those buildings are what the 8 parking spaces are for.

Ms. Rupkey answered yes.

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

Russell Lockey, property owner and applicant, came forward regarding this request. He said I purchased the property about two and half to three years ago and the food truck was in operation and the parking lot was in operation. I was not aware that we were in violation until it was pointed out to me after our purchase. I am trying to get it fixed so that we can operate it without violation. The goal is if the food truck is permitted on the property, the current...there is a automotive repair facility at the other end of the building that is more likely or not going to be shut down and the building will be used simply for storage for the food truck. Refrigerators and freezers. No cooking. No cleaning. The food trucks will remain outside. The idea is to relocate the food truck slightly closer to the building, which actually opens up parking in the adjacent lot. Then, I will be glad to restripe as necessary or put bumpers in as necessary to restrict traffic flow to make it flow more smoothly.

Mr. Lockey continued and stated that the majority of traffic in the past for the food trucks has been in the evening and Friday night and Saturday night. They just parked in the parking lot right next to it. In some cases, they park in the Dollar Store parking lot right next to it on the other side. Then if you look at the layout of the B-2 lot that I am trying to change the restrictions on, part of that is B[-2] but there is actually a section of M[-1] along that building that we can park five cars in that, which is technically apart of the original area, so if you need nine spaces, I think I have 9 delineated at the top lot. In theory I have spaces for five more cars along that back building that would be on the same parcel. So, I think I have enough parking separated out. Now, I understand that part of the M[-1] lot in the back that they can work on the cars outside, but we need to put a fence of some kind up to separate the M[-1] from the B[-2]. I am willing to do that. I am willing to delineate parking within the B[-2] lot and make it more obvious as to where the cars could park.

That is my goal to try and get in compliance and do what I can to facilitate my tenants' ability to do their job. There is some discussion of one of the tenants on the lower side leaving and that is a weird building because you have four doors, and each door had a separate address that is why there are so many addresses –it is one building, but it has four doors on it. So, every door has its own address. Two technically on Chicago Avenue and two of them are technically on Rockingham Drive. It is weird. Sometimes Rockingham Drive is North Dogwood. So, it is bizarre. I am really just trying to neaten all of that up. My goal is to clean all of that up and make sure that they are not doing auto repair in the parking lot anymore except for the M[-1] section that is right adjacent to the building. They are not parking the inoperable vehicles except on the backside where it is screened. And that we open up the truck if possible. Like I said, if we get the automotive repair facility out of 841, there is possibility of opening space for another food truck on the other end of the lot. But once again, we would keep the traffic flow. Just for reference there is 30 feet between the sidewalk and the front of the building. I think that is more than enough to park cars diagonally along the side and have enough room for cars to move behind them to get through there.

Chair Finnegan asked if there were any other questions for the applicant. Hearing none, he closed the public hearing.

Commissioner Armstrong said I mean especially after hearing the applicant, I would be inclined to support alternative A. Which is in suggested conditions on page 3, which includes only one food truck permitted because...

Chair Finnegan said do you mean alternative B?

Commissioner Armstrong said I mean alternative B. Did I say A?

Chair Finnegan said yeah

Commissioner Armstrong thanked Chair Finnegan and said that is what I would be...The second food truck was pretty iffy. I mean even the applicant was very unsure about that. So, that would be my inclination is to try to make this work.

Chair Finnegan said for the purposes of this discussion I will just kind of summarize that at the bottom of page 3 if the desire is to recommend this request for approval the existing parking lot is maintained. This is what you are making reference to in that, it would only be one food truck permitted with brick-and-mortar restaurants prohibited. I struggle with this one. This is my neighborhood. When I look at that section of Chicago, I would describe it as being blighted.

Chair Finnegan then referenced an image on the screen and said we see a sign structure with no sign in it. I mean that is because we need to change the sign ordinance, but there is a pile of tires. When you walk through that walking path, there have been cars stored in that area on the other side of the fence I have seen that. There is a lot that needs to be cleaned up in that area. And I agree with Commissioner Armstrong. I think the reason I struggle with this is because we have businesses that are allowed that are okay, like Family Dollar, because it is part of a corporate family of Dollar Stores that is proliferating and all over the country. Then, we have got small entrepreneurs who want to start a food truck and want to operate a business. I struggle. I do not like the way that looks. I do not think it is aesthetically appealing in any way. I think it looks sloppy and bad. At the same time, I think we need to think about people who want to start businesses and have entrepreneurship in the City and not squash that and allow bigger corporations to come in. I do struggle with that. And I think I would also be in favor of... I could support alternative B as well. I feel like I could live with that.

Commissioner Armstrong said I am sorry I do not want to dominate. It is not just the entrepreneurship of the property owner; it is also that when I look at that I see jobs. There are people working there.

Chair Finnegan said and there are business owners that do not own the property, but they own their business and they have been operating there.

Vice Chair Byrd said looking at this application in and of itself that in connection with the next application about the adjacent property, I see a parking lot here. I am not as much concerned about the tires. I have noticed with old structures, especially the ones involving automotive repair, they tend to involve stacks of tires for some reason or another. But we have seen another that came before us about this concern about the storing of these vehicles. I am concerned that businesses who operate these type of businesses in the City need to make sure they are checking themselves with these ordinances, so they do not keep bumping into this. We have seen this randomly and haphazardly. So, involving this particular property, I am not against food trucks being in the parking lot. I am against two. I am not seeing the parking spaces or any space that would be able to accommodate two trucks. From what was presented today and mentioned by members of the board, I would likely be in favor of alternative B as well.

Chair Finnegan said I would also add, and I do not envy staff's position in making these kinds of recommendations because it is hard. I will say that in general, I am not in favor of denying a request on the basis of not having enough parking spaces. I just want to enter that into the record. That is not really my concern here, my concern is about just the general way that this property has been kept.

Vice Chair Byrd said there was a question that I forgot to ask staff. Will the special use permit expire if condition one of the conditions listed one, two, and three?

Chair Finnegan asked are you talking about the next request?

Vice Chair Byrd said no this request. Because if we are talking about going with alternative B, then I should have thought about it more about what it says in the first one within six months of approval.

Ms. Rupkey said it would be a zoning violation.

Vice Chair Byrd said it would be another zoning violation.

Ms. Rupkey said yes.

Mr. Fletcher said since we are talking about parking and this particular proffer, I think the applicant had mentioned that he believed that it was 30 feet between the curb and the building, you want to allow him to correct it?

Chair Finnegan allowed the applicant to correct his prior mistake.

Mr. Lockey said it is 30 feet from the inside of the sidewalk. From my side of the side of the asphalt is 30 feet wide from the sidewalk to the building.

Mr. Fletcher said in knowing that, I was double checking our Design of Construction Standards Manual just to see what requirements were for travel way widths. Depending upon the angle of a parking space, whether it is 45 or 60 degrees, it is going to determine depth. So, if you take into consideration there is only enough space to have a one-way travel lane, if you did 45-degree parking, you would need 33 feet to make it work. And then if you were going with 60-degree parking, which would be the worst scenario for them, you would need 36 feet. Those scenarios are with a one-way travel lane not two lanes. I just wanted to clarify that just because there was a comment of it being adequate. Of course, from a standard standpoint, it is not. So, I would encourage, depending upon what happens, that we try to figure out the safest solution for people that are trying to pull into that parking lot. Because if it should really be one way, you do not want people confused in which entrance they are turning into. That is one matter, and then with regard to the number of parking spaces, policy wise staff is encouraged by lesser parking, but we also have to make a stance on when it is not legally meeting the requirement.

Chair Finnegan thanked Mr. Fletcher and then asked whether there were any other thoughts on this. It sounds like there could be some support. Just for the Vice Mayor Dent's...there seems to be at least some support from these three members who would support alternative B allowing one food truck.

Vice Chair Byrd said one more thing about that. Just want to remind my fellow members that based on what we just heard from staff and what they hope to do, this might not solve the problem. It might end up within six months, if this gets approved by City Council, it will still be

in violation. But I would still feel that this gives the applicant a chance to improve the situation. That is the last thing I will say about that.

Commissioner Armstrong said can I just clarify what Mr. Fletcher said that it would require 33 feet at a 45-degree angle. They are 3 feet short. Does that mean that they would also need to apply for a parking reduction?

Mr. Fletcher said it really does not. What complicates this particular situation is no one has questioned, and therefore staff has not investigated, what is the legality of whether the parking lot layout is considered nonconforming or illegal. There is some argument to be made that it could be considered nonconforming because this area did not always have curb and gutter. For those that have been around for some time you will remember that Chicago Avenue was... the infrastructure was different. There was sheet flow off of the street, no curb and gutter, no sidewalk. This area, this particular site in fact, probably utilized some of the public street right-of-way as part of their parking. The City, I am almost positive, probably purchased some of the right-of-way to make Safe Routes to School improvements along this section. So, to answer your question Commissioner Armstrong, I do not know, sitting here trying to think through all of this, whether or not it would be considered not possible because there could be some nonconformities that allow them some flexibility. I solely was looking at it from the design standpoint.

Ms. Dang said but adding the food truck kind of changes the...it is adding a new use onto the site. Which is why it is scrutinized right now.

Mr. Fletcher said like the staff report notes, it adds another element of concern.

Chair Finnegan asked whether this applicant would then need to come back and ask for a parking variance potentially?

Mr. Fletcher said it is hard to tell.

Ms. Dang said there is no zoning variance available. The special use permit that is available requires open space be provided. The buildings pretty much take up the whole lot. Therefore, there is no open space available to be able to apply for that special use permit.

Commissioner Baugh said I will also throw out too, just because I can think of some other spots, where you get back to this sort of dirty issue about the public right-of-way. That comes up not infrequently, where you have a roadway that has maybe been there for quite some time and visually everybody kind of has their own concept of where the private property ends and where the public property starts, except for it is not like that. And one of the things that does come up is that one of those situations where, I will just say, let us say you allow it and it turns out later to be a problem, you do not really have a lot of discretion on that. If somebody is getting their parking and it is determined that they are only able to do it by using the public right-of-way and that it is discovered the City really does not have any choice but to tell them to move. For reasons having to do with, among other things, the insurance stuff. That option to say, "well it is not hurting anything." Thus, I think you have a lot of these situations, where the City does not go looking for it and it is out there. I have known of situations, where I think in particular if

somebody in the neighborhood does not like it and then you call it to everybody's attention, and then suddenly it is an actual problem. Again, it is not something you have the discretion to just say well just leave it alone.

Vice Chair Byrd said in light of all of this discussion, I will then move to approve the special use permit request with suggested conditions from staff, which are listed as one, two, and three

Commissioner Armstrong seconded the motion.

Chair Finnegan said just to clarify that is alternative B? Recommended approval of the special use permit with suggested conditions.

Commissioner Baugh said just to be clear about this, by approving this, what you are saying is they have six months to work out the parking?

Mr. Fletcher said it is only associated with the one parking space in the entrance.

Ms. Dang said they should not be able to move the food truck there until the parking situation is figured out.

Chair Finnegan clarified that it should be re-delineated and remeasured.

Ms. Dang said yeah. Because condition one is just about the entrance.

Mr. Fletcher said it is only about the entrance and the parking space that is in the entrance.

Commissioner Baugh said that is why I wanted to flesh that out.

Chair Finnegan said I do have a clarifying question before we get to the next item. Does alternative B... is there anything we should know about item 4c that could impact...

Mr. Fletcher they are unrelated.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Chair Finnegan	Aye

The motion to recommend approval of the request passed (6-0). The recommendation will move forward to City Council on July 11, 2023.

***Consider a request from Lock-Minn Holdings, LLC to rezone a portion of 831 Chicago Avenue***

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said on September 24, 2013, City Council approved a rezoning of the subject property, which was then part of the parcel that was rezoned to allow for the construction of the existing Family Dollar. On October 23, 2014, the Family Dollar property was subdivided, which separated the +/- 6,181 square foot area from the developed portion of the parent tract and created the subject property. 2 Although now a separate property, the existing 2013-approved proffers still regulate how this property can be used. Not only do the proffers provide details about the uses that are permitted on the property, but the proffers also identify that the conceptual site plan provided during the rezoning is also a regulating provision of the site. Since the plan demonstrated the subject area as undeveloped and open space, the subject site is limited to being open space. A copy of the proffers and the proffered site layout are attached to this staff report. Almost two years after the property was subdivided, in 2016 the subject site was sold to Melvin E. Higgins Sr, who also owned two adjacent properties to the north (tax map parcels 39-F-2 and 3). Then in November 2020, Lock-Minn Holdings, LLC purchased the subject property along with Mr. Higgins' two adjacent properties—tax map parcels 39-F-2 and 3. While the City has not issued a formal notice of violation letter to the property owner, the property owner is aware that the property is in violation and is hoping to amend the proffers to allow for a parking lot on this property. The applicant is aware that if the rezoning is denied, they will have to remove the parking lot. The applicant has also been made aware that, if the rezoning is approved, changes to the parking lot are required to comply with parking lot landscaping requirements and that while a parking lot may exist to support general customers and temporary parking of vehicles, the parking lot cannot be used as a storage lot to store inoperable or salvage vehicles. It appears to staff that inoperable vehicles with damage and without license plates and possibly salvage vehicles are currently being stored on the subject property. Lock-Minn Holdings, LLC, the applicant, is requesting to rezone a +/- 6,181 square foot property from B-2C, General Business District Conditional by amending the existing proffers. The applicant wants to use the site as a parking lot for the businesses that are located on the adjoining properties, addressed as 837, 841, 871, 887, 889, and 891 Chicago Avenue (tax map parcels 39-F-2 and 3). These businesses include two automobile repair shops, a tire shop, and a storage space for a food truck that is illegally located on the 813 Chicago Avenue site.

*Proffers*

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

The follow [sic] uses will not be permitted:

- (3) Hotels, motels and similar types of transient accommodations. Nontransient housing facilities are not permitted nor may existing housing facilities be expanded.
- (4) Theaters, community rooms, museums and galleries and other places of assembly for the purpose of entertainment or education. In addition, customary recreational and leisure-time activities which are compatible with surrounding uses are permitted.

- (5) Religious, educational, charitable or benevolent institutional uses which do not provide housing facilities.
- (9) Pet shop or pet grooming establishment and animal hospitals.
- (10) Radio and television stations and studios or recording studios.
- (11) Public utilities, public service or public transportation uses or buildings, generating, purification or treatment plants, water storage tanks, pumping or regulator stations, telephone exchange and transformer or substations.
- (13) Funeral homes.
- (19) Vehicle fuel stations, bus terminals or other facilities designed for vehicular convenience. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
- (20) Small cell facilities, concealed wireless telecommunications facilities, industrial microcells, distributed antenna systems, and macrocells. Telecommunications towers are permitted only by special use permit. Wireless telecommunications facilities are further regulated by Article CC.

To be clear, the above proffer would prohibit the listed uses from operating on the site.

#### *Land Use*

The Comprehensive Plan designates the property as Mixed Use and states that:

“The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way. Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multifamily buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.”

While not proffered, staff recommended the applicant consider proffering out higher intensity uses and uses that are not necessarily in line with the desired built environment envisioned by the Mixed Use Land Use Designation that are allowed by right in the B-2 zoning district. Although the applicant proffered to not allow vehicle fuel stations, bus terminals, or other facilities designed for vehicular convenience, staff remains concerned that the following uses per Section 10-3-90, which would be permitted, would not conform with the Mixed Use designation:

- (6) Vehicle, recreation equipment, or trailer sales served by a permanent building facility unless clearly incidental to an existing building. Vehicle excludes over the road tractors, their trailers, 4 heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.
- (7) Repair of vehicles, recreation equipment, or trailers with all activities and storage of inoperable vehicles completely enclosed within a permitted structure. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment.
- (12) Warehousing and other storage facilities with floor area limited to twenty thousand (20,000) square feet, which are contiguous to permitted uses in this district

Mixed Use areas are planned environments where more walking, biking, and public transit and pedestrian friendly design is encouraged. The uses listed above are generally places where the vehicle uses are more predominate. In fact, the existing proffers already prohibit Subsections (6) and (7) from being able to operate on the property. Although the applicant is not planning on doing these uses, if they were to sell the property in the future, a future owner would have the by-right ability to have these types of operations.

#### *Transportation and Traffic*

While staff has concerns regarding the entrance width to the parcel, which measures at +/- 40 feet in width, staff acknowledges that the City had installed the entrance at this width with the Waterman Elementary School Safe Routes to School project that was completed in June 2014.

#### *Public Water and Sanitary Sewer*

Staff has no concerns regarding water and sanitary sewer service availability for the proposed development.

#### *Recommendation*

While staff appreciates the applicant's willingness to provide proffers to limit the uses on this property, staff is still concerned about the remaining allowable uses not fitting in with the surrounding area and not being aligned with the Comprehensive Plan. Staff recommends denial of the rezoning.

Chair Finnegan asked if there were any questions for staff.

Vice Chair Byrd said yes, I am trying to make sure I understand what I was reading here. It says that there are proffers that the applicant has offered that were written verbatim. Under 19 there is a list of vehicles excluded over the road...so, these are the ones being excluded from the list.

Ms. Rupkey said correct. Number 19 is excluding vehicle fuel stations, bus terminals, and other facilities for vehicular convenience. So, gas stations and convenience stores for trucks to come in. Vehicles exclude over the road tractors and their trailers, heavy equipment, and manufactured homes those are also...

Mr. Fletcher said what 19 is saying is the vehicle fuel stations would be permitted. The rest of that subsection is saying that a vehicle is not a tractor and trailer therefore you cannot have a tractor and trailer like a Flying J or one of the other tractor trailer gas stations...

Commissioner Baugh said a truck stop type of thing.

Mr. Fletcher said I could not think of the word truck stop, thank you. It is just a standard vehicle fuel station and then of course the catch all language of no vehicle salvage or storage of inoperable vehicles will be permitted. This is coming directly from a code, just to clarify.

Vice Chair Byrd said so what I want to know is, is that last sentence a separate sentence in and of itself or is it linked to...

Chair Finnegan said where it says vehicle excludes, that sentence?

Vice Chair Byrd said no, where it says no vehicle salvage or storage of inoperable vehicles.

Ms. Dang said I am trying to understand, and I think I can appreciate the confusion on how this is presented because these statements are verbatim from the Zoning Ordinance in the list of by right uses. So, when you look at it, if we were looking at the Zoning Ordinance at subsection 19 in this section it is saying that vehicle fuel stations, bus terminals, and other facilities designed for vehicle convenience are allowed. And then it further clarifies that vehicles excludes these other things. Meaning that it is really meant for passenger vehicles or little trucks and stuff like that, but I think there is some...I am trying to explain it. He is proffering out that vehicle fuel stations are not allowed. The rest of the sentences in subsection 19 are not relevant. I think it is adding confusion because it is really intended to clarify the Zoning Ordinance.

Mr. Fletcher said it is taken in context with the way it is written in the ordinance.

Ms. Dang asked does that help? Please ask more questions.

Chair Finnegan said so he is saying vehicle fuel stations are not allowed?

Ms. Dang and Mr. Fletcher agreed with Chair Finnegan.

Chair Finnegan continued saying he is not saying auto repair shops are not allowed.

Mr. Fletcher and Ms. Dang agreed.

Vice Mayor Dent said but truck stops are allowed?

Mr. Fletcher said to understand the context of no vehicle salvage or storage, it is an emphasis that you cannot do that in those districts. That language shows up in other sections of the code and it is just to clarify. When you have a vehicle fuel station, at times you will have automobile repair associated with it and then it is telling you cannot just have salvage vehicles on the site. Does that help?

Vice Chair Byrd said I am looking at this is not a fuel station; it is a repair place. So, I was more focused on storage of inoperable vehicles.

Ms. Dang said I think it would have been more clear if that was just stricken from the proffers. I mean I do not know how else to describe it. He just copied out a section of the ordinance. So it is not telling him that he can now do vehicle salvage by two negatives in there. He still cannot do vehicle salvage, storage of inoperable vehicles, he still cannot do junk. If that is a concern that you have.

Commissioner Armstrong said based on our previous discussion, was it allowed if it was screened or is it...

Ms. Rupkey said the lot is B-2. In B-2 it has to be within a permitted structure. M-1 allowed it to be screened.

Commissioner Armstrong said and it is not... there is that strip of M-1.

Ms. Rupkey said the strip of M-1 is on the other property if you see the map right here. The map right here also shows the M-1 strip is on the last property we just talked about.

Vice Mayor Dent said I just wanted to clarify that, while not proffered, staff has a concern that the property still could be used for vehicle sales, repair and or warehousing?

Ms. Rupkey said yes.

Vice Mayor Dent said okay, even though their intention is to use it as a parking lot, they have not proffered it so that it is the only thing that they can do.

Ms. Rupkey said correct. Even though that is not his intention, say five or ten years down the line he decides to sell the lot, someone could go in and put in vehicle sales. Like those uses that were not proffered out, someone could go through and put in that type of business in there.

Vice Mayor Dent said my only concern is that would make it that much more crowded in that little corner.

Ms. Rupkey said the concern is that it does not fully align with the Mixed-Use Comprehensive Plan designation that is on there. The Mixed Use was working on pedestrian friendly biking, walking. There were more public transportation opportunities and those are more vehicle centric businesses so there will be more cars going to that...

Mr. Fletcher said and a little bit of historical context, probably Commissioner Baugh was the only one around when this occurred, but when this site was rezoned from M-1 to B-2 back when the Family Dollar was being presented, as we do with all applications, we recommended to that applicant at the time to eliminate what we considered to be uses that were not in alignment with how we wanted Chicago Avenue to develop. They heard our concern. They proffered out automobile repair and automobile sales, all of those things we did not want them to do. This applicant is asking to reintroduce them.

Chair Finnegan said thanks that helps to add context to this.

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

Commissioner Armstrong said with this B-2C, they could be doing these repairs if it was inside of the building? That would be alright.

Mr. Fletcher said well, from a legal standpoint they could do it. We are hoping that our recommendations for denial to not allow vehicle repair here.

Vice Mayor Dent said and since this is a zoning instead of a special use permit, we cannot add conditions they have to proffer. There is that distinction

Chair Finnegan opened the public hearing allowing the applicant to speak to this request.

Russell Lockey, property owner and applicant, came forward regarding this request. He said once again there has got to be a distinction on the property we are talking about. We are talking about 6,000 square feet that is currently used as a parking lot in front of a repair facility that is in the M-1 section, so we are trying to conform by saying to not allow repair in the parking lot, but to designate it correctly and to allow parking for the building that supports the business and the building behind that, which is an M-1 repair facility that is in operation. We can be glad to delineate, fence it, whatever, but it is really hard to explain unless you get out and walk the property to see that there is a significant portion of that lot as you look at the picture. It is an M-1 lot. I feel if I fenced it in, it could conform to the requirements of doing it behind the fence and I am willing to do that, but the proffers were confusing, and I was trying to do it as quickly as I could and I apologize for that. The desire was to keep the ability to sell cars on the lot allowing the mechanics to buy a car and fix it up and sell it. Which he would like to do on occasion. Not necessarily a full used car lot, but he wanted the ability to sell one or two cars that he repaired on a regular basis. But he was told he could not do that because of the zoning issues. So, he has not yet set his business up that way at the present time, but that was his desire. That is why that was not proffered out. But I mean we can go back and work on that if we have to, but it is like I said it is my desire to conform to what it is being used for now and make sure that we are not causing more trouble in the future by fixing what is there.

Chair Finnegan asked if there were any questions for the applicant.

Vice Mayor Dent said I guess that clarifies that, it is not so much of a question, but that these were intentionally not proffered out because you wanted to reserve the right to have some sales or repair there.

Mr. Lockey answered yes ma'am on a minimal level. I am not going to put a used car lot in there for full size. I did want to have the option because we were told he could not even sell one car that he had fixed up and stuck a sign on. So, he wanted the ability to do that on occasion

Vice Chair Byrd said I have a question, was the use of that piece of property communicated to you at purchase?

Mr. Lockey said the restrictions were not communicated at purchase. I purchased it with the gravel parking lot in place with all the cars on it. I just assumed it was available for use of that. That is why I am trying to fix it. And right now, like I said, with the adjacent lot if we can move the food truck on the adjacent lot that actually opens up more parking on this and frees up more parking and more availability for vehicles required for all of the buildings around. And then they get the vehicles off of the backside. We have heard complaints about the vehicles on the backside of the building and I am working with the tenants to get the vehicles from the backside or at least in a screened section. And I know that along Chicago Avenue it has been posted no parking along the street and so we are trying to work on that. That is part of getting this rezoned and using it correctly to avoid these problems in the future.

Chair Finnegan asked if there were any questions for the applicant.

Vice Mayor Dent said well, this is maybe more a question for staff based on what you just said, given that these two properties are adjacent but zoned slightly differently the desire to move the food truck onto this lot instead would that be allowed in this rezoning.

Ms. Rupkey said with the proffers that he presented, and if it was approved, he could move to keep the food truck on his property. If it is denied, it needs to get off the property because the proffers that are on the previous rezoning do not allow anything to be this property. Does that help?

Mr. Lockey said that was part of the confusion with the...I was unaware of the proffers on the property, but I knew it was B-2 versus M-1. That is why the food truck is in the B-2 lot now.

Mr. Fletcher said if the rezoning were approved as presented, the food truck could operate on the B-2C zoned property, no questions asked. Just as long as they did not have any sight distance concerns or anything. Just remember that staff is not against food trucks operating in the Chicago Avenue corridor, it is about in an appropriate space, efficiency for the public.

Chair Finnegan said and also potential future uses. Not this owner. Not these tenants.

Chair Finnegan asked if there were any questions for the applicant.

Commissioner Washington said quick clarification just to put it all together. So, this lot, we did this yesterday, there is supposed to be nothing here, right? Open space, rainbows, and sunshine right? But you bought the lot with cars on it, cars that...

Mr. Lockey said the City, when they built the sidewalk and they put a 45-foot-wide curb cut right there designed for a parking lot to drive in and out of it. So, I assumed based on that it was appropriate to be used as a parking lot because that is what it was being used for.

Mr. Fletcher said so there could be confusion in this situation, if I may. So, when the City negotiates right-of-way acquisitions, they are negotiating particular situations with individual property owners. They try to meet requests of a property owner. Putting in entrances in locations where they hope to have them in and all sorts of things, right? So, what has been interesting about the history of this particular parcel, before the individual in front of us bought the property, the person he bought it from, Mr. Higgins, owned the adjacent properties that we just talked about. We discussed with Mr. Higgins that buying the property was an interesting decision knowing that the B-2C zoned proffers would not allow it to be used for anything. But the individual bought the property. And this area has been difficult to keep up with the violations that occur and when the property was sold. It is possible that it was in violation at that moment. So, when any general passerby walks past, they may think that it is okay to use that space, but by proffer it is not.

Ms. Dang said if I may add one other piece of history to what Mr. Fletcher is describing. So, when going off of dates, and myself having had the experience working at Public Works, and I looked on the website that the Waterman Elementary School Safe Routes to School project was completed in 2013. It was designed and negotiated before the Family Dollar rezoning.

Mr. Fletcher said so that gives more context to it.

Ms. Dang said those entrances were already planned or even possibly constructed already before the rezoning.

Mr. Fletcher said absolutely before Mr. Higgins purchased this.

Mr. Lockey said I guess that was his assumption was that it was supposed to be accessible.

Mr. Fletcher said so, even when it was being subdivided, and I am obviously going by memory here, I remember the concern that we could not prevent the subdivision from occurring. And the Family Dollar Corporation was creating a lot for a very interesting reason. It could not be used for anything, it was to be open space.

Mr. Lockey said as I recall, prior to Family Dollar being there, looking at maps of the City, where the Family Dollar sits now was basically a big parking lot that was used to access all of the buildings. So, I guess the assumption of Mr. Higgins, who owned the building for many years before that was, if I could drive on it and park on it before you built the Family Dollar, you built

me a curb cut there, I should be able to do it now. He may or may not have been aware of that. My understanding is that historically, before the Family Dollar was there it was a big parking lot.

Mr. Fletcher said it was a...I would not necessarily call it a parking lot, but it was a big area with gravel that sort of circled around a space. Was it used for the storage of vehicles and trailers and other matters? Yes, but by definition, not necessarily a parking lot.

Chair Finnegan said according to the zoning.

Commissioner Washington said so the question...so there are cars that do not work plus you want cars that do work and a food truck?

Mr. Lockey said there are cars that do not work simply because, once again, my tenant was not aware of all of the restrictions. We are working to fix that problem now and make sure that there are no inoperable cars in the B[-2] section in the future. And if it is approved a fence will go up and any inoperable vehicles will be behind the fence, as required by code.

Commissioner Armstrong added on M-1.

Mr. Lockey agreed on the M-1 section, yes ma'am and then there is some space between the buildings, it is also shielded. Where we could put inoperable vehicles and that is the desire of the operator, to be in compliance, as well he does not want to be in violation and causing complaints. So, we are going to, like I said if approved, we will survey off this particular lot and fence out the M-1 section in a way that he can park vehicles there that need to be worked on or stored that are inoperable and only have vehicles that can be driven into and out of the facility for repair in the parking lot.

Chair Finnegan thanked the applicant and asked if there was anyone who wanted to speak for, against, or about this particular request. Hearing none, he opened the request to comments from the board.

Chair Finnegan said this is, I think often times on Planning Commission, our choices between something we do not like and something we like even less than that and I feel like this is one of those situations. I am not in favor of an empty lot that does nothing and has no activity, but I am also not in favor of a bunch of inoperable vehicles being stored there.

Commissioner Armstrong said correct me if I have got this wrong, but if this is denied the applicant can still go through with the plan of partitioning off that M-1 section and storing vehicles there, that would make them legal vehicle storage if it is screened? So, denying this does not prohibit them from going forward on the other pieces. It is not going to put that auto repair out of business. Is that correct?

Mr. Fletcher said I hesitate to give a lot of confirmation about what screening and fencing, and what vehicles are stored, what kind of state the vehicle that is in repair is in, there is...

Commissioner Armstrong said but this is M-1.

Mr. Fletcher said correct, but you still cannot have an inoperable vehicle without tags without inspections or anything on M-1 properties. There is a time period in which you can of course, because you are repairing it, but it cannot just be stored indefinitely there. What we experience, unfortunately, is that happens a lot.

Vice Chair Byrd said but this is not M-1.

Ms. Rupkey said whether it is approved or denied the inoperable vehicles cannot be stored on the lot.

Commissioner Baugh stated for inoperable, unlicensed, untagged vehicles. Inoperable vehicles that are in the process of being repaired can be on the M-1 lot.

Mr. Fletcher said that is true

Commissioner Armstrong said but that is not what we are talking about here, we are...

Chair Finnegan stated this is not M-1 though. This is a rezoning from B-2C to B-2.

Commissioner Armstrong said but my question...

Mr. Fletcher said she was asking about the other stuff.

Vice Mayor Dent said adding the proffers, right?

Commissioner Armstrong said my question is, if we deny this, the applicant's plan to go forward with developing that M-1 strip can go forward, but they have got to do it with tags.

Mr. Fletcher said they can continue to work with us so we can help them to get into compliance.

Commissioner Baugh said let me throw in something else here that has not come up. You know, I am looking at the Land Use Guide and what you have got here really is a sea of planned mixed use and it was not always like that so it... I cannot remember, staff might know whether it was the last iteration of the Comprehensive Plan or the next to last, I think it was probably the last one because...so in the last iteration of the Comprehensive Plan we intentionally took a number of these areas and said yeah, we significantly expanded where we said we would be planning for mixed use. Going maybe to some of the points that you made Mister Chairman about what area, and I will go back to someone who was around when the thing came 10 years ago. I think another characterization of that area and you may remember this, we may be fuzzy on the details, but you were talking you used the term blighted and one of the things that we liked about Family Dollar was compared to what it was. Because it was a whole big parcel of just this hodgepodge of where people threw their tires and if you get all the way to the other side the use was a little different but I guess what I...what jumps out at me about this is... like I said there are things about it not to like about what I am saying in terms of maybe the personal impact of the property owner. But from a planning land use standpoint, we said we want all of this to be mixed use. We

said we want to sort of prime the pump to let this go in a mixed-use area. This is a proposal to take part of what we have gotten in that direction, and in fact, move it in the other direction and say well because you got a... and by the way while the zoning on the property, again, I am just looking at what we have in our packet. While the zoning on that side of the street from everything that is sort of there north is M-1, the Land Use Guide has it as mixed use. So, supposedly, we have a vision for not just this property, but the property even on the other side of it, to prefer to move it into a mixed use direction not an industrial direction. So, again that is always challenging when you have got the existing uses there, but I confess I am a little reluctant. When you have had a process albeit 10 years ago that sort of moved it...moved this parcel in the direction that we say we want and now we are going to move it back. I am struggling with that.

Chair Finnegan asked so you are saying... what I hear you saying is that you would support a denial in this case.

Commissioner Baugh stated that would be...that is where that path leads is...and really I think the idea is if we have a vision for this area to be different, that different really does not include expansion of that particular...and I think this is really what staff is trying to tell us that expansion of this particular use is not consistent with what we have said is our vision for this area. And that the boundary, and I am just pointing out that it is the actual boundary right now between the zonings, but our planning says we do not even want this to be the boundary. Wherever the boundary would be, we have said we really do not care for these industrial uses in this area as part of a long-term planning.

Chair Finnegan said that is a good point, a valid point. I would say Chicago Avenue is about halfway there to being an actual pedestrian and bike friendly street. It ends right about here. I do think there is a better tier point. There is a better vision for, a different vision, for this area and to that end I would also support denial.

Vice Chair Byrd said one thing I do not like about this is that I feel a corporation played a little shell game on the City by knowing that the City wants to move to mixed use. Then they go "well I am not going to put anything on this piece of...this little strip here."

Commissioner Baugh said actually I think that is not right. Was it already mixed use in 2013?

Mr. Fletcher said it was not mixed use at that time. Like we are always in many cases, but sometimes our policy thinking is a little ahead of the Comprehensive Plan update. We were already envisioning what we knew we wanted with Chicago Avenue. Which is why we suggested them to eliminate those uses. They had already eliminated the uses, that was in 2014 I think the rezoning was...

Ms. Dang corrected saying 2013.

Mr. Fletcher said and then the 2018 Comprehensive Plan update we relooked at this space and said we want it to be mixed use. So, the sequence is not accurate.

Commissioner Baugh said I apologize for interrupting, but the sea of hatch that I am looking at here now did not exist in 2013 in the Land Use Guide.

Vice Chair Byrd said well good, because the way I was hearing it was sounding a little weird to me so, thank you for the clarification.

Chair Finnegan said any other thoughts on this? Support for, approval or denial? Either way? I am looking for a motion.

Commissioner Baugh said okay I will go ahead and move denial of the rezoning request.

Commissioner Armstrong seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	No
Vice Mayor Dent	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend denial of the request resulted in a spilt vote (5-1). The recommendation will move forward to City Council on July 11, 2023.

***Consider a request from Riadh S. Mamund to rezone 130 West Mosby Road***

***Consider a request from Riadh S. Mamund for a special use permit allow attached townhouses at 130 West Mosby Road***

Chair Finnegan said the next two requests will be presented together.

Chair Finnegan read the requests and asked staff to review.

Ms. Rupkey said In February 2023, the applicant subdivided a +/- 39,545 square foot parcel. That subdivision created the subject parcel for the requested rezoning now known as tax map parcel 7-C-4 a vacant +/- 18,999 square foot lot addressed as 130 West Mosby Road. The residual square footage remained identified as tax map parcel 7-C-1 and contains +/- 20,546 square feet and includes an existing single family detached dwelling addressed as 140 West Mosby Road. The applicant is requesting to rezone a +/-18,999 square foot property from R-2, Residential District to R-8C, Small Lot Residential District Conditional and is simultaneously applying for a special use permit (SUP) per Section 10-3-59.4(1) to allow attached townhouses of not more than eight (8) units. If the application requested herein is approved, at some point the developer must complete a preliminary subdivision plat, where, among other things, they must request a variance from the Subdivision Ordinance to allow lots to not have public street frontage.

### *Proffers*

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

1. A 5-foot width sidewalk shall be constructed along West Mosby Road frontage including a grass strip. Property shall be dedicated up to 13.5-feet from the existing back of curb-line as depicted in the submitted Concept Layout for public right-of-way. This accommodates a future 6-foot width bike lane (constructed by others), 2-foot width grass strip, 5-foot sidewalk and 0.5' maintenance strip.
2. The Site Entrance shall have a maximum width of 30 feet.

Aside from the public street right-of-way dedication and the site entrance width being restricted to 30 feet the submitted concept plan is not proffered.

As noted within proffer #1, the property owner will be required to dedicate up to 13.5 feet of public street right-of-way from the back of the existing curb-line. This dedicated space will be the area in which the developer will construct a five-foot-wide sidewalk and two-foot grass strip. The dedicated ROW area will also allow for the future construction of a six-foot-in-width bicycle lane that would be constructed by the City or a separate private developer.

To assist with access management, staff suggested for the proposed development to share one entrance with the adjacent property to the west (tax map parcel 7-C-1). However, the applicant did not want the existing single-family detached home to have to share an entrance with the townhome development. Staff believes one entrance serving the townhome community and the existing single family home would be better for traffic along West Mosby Road rather than having two entrances. Staff understands the existing undeveloped parcel has the legal ability to have an entrance; the second proffer limiting the townhome development's entrance to 30-feet rather than the maximum width of 50-feet should improve access management and safety.

### *Land Use*

The Comprehensive Plan designates the property as Mixed Use and states that:

“The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multifamily buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.”

Per the R-8 zoning regulations, the square footage of the parcel would allow up to 10 units per acre. Nonetheless, the shape of the parcel and required off-street parking requirements, among other things, will dictate the number of townhomes that can actually be constructed.

#### *Transportation and Traffic*

As previously mentioned in the proffer section of this report, staff wanted one, shared entrance for the proposed development and the adjacent parcel addressed as 140 West Mosby Road, however the applicant preferred to have separate entrances.

Staff also recommended the applicant provide a private access easement to the property to the north and/or east to allow for interparcel connectivity when the adjacent property develops. However, the applicant was not interested to provide an easement to the property on the northern property line due to their plans to allocate that area for parking spaces.

#### *Public Water and Sanitary Sewer*

Staff has no concerns regarding water and sanitary sewer service for the proposed development.

#### *Housing Study*

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

#### *Public Schools*

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

#### *Recommendation*

Although staff would prefer one shared entrance onto West Mosby Road and has concerns about the lack of connectivity to surrounding properties, staff believes there are benefits to rezoning

this site to R-8 as it would provide more housing in the City. Staff recommends approval of both the rezoning and the SUP.

Typically, per Section 10-3-130 (c) SUPs that are not established or diligently pursued within 12 months of City Council approval would expire. However, for this SUP, the Virginia General Assembly extended approvals to address the COVID-19 pandemic directing that any SUP approved after July 1, 2020, will not expire prior to July 1, 2025. Know that applicants can request for a SUP condition to allow for a longer period of time for the SUP to remain valid.

Chair Finnegan asked if there were any questions for staff. Hearing none, he opened the public hearing.

Bill Moore, Engineer for Balzer & Associates and representative for the applicant spoke to these requests. He said I think staff did a good job explaining the application and I am just here to answer any questions you all might have.

Chair Finnegan asked if there were any questions for the applicant.

Chair Finnegan said is the plan currently to have just one of those...is that going to be a street like a private street going off of...

Mr. Moore said it would simply be an access to parking.

Chair Finnegan said okay, so it is not going to say something drive or...it is not like a private street?

Mr. Fletcher said actually it will technically...

Mr. Moore said I guess for the...

Mr. Fletcher said for 911 purposes. Any time there are more than three units served off of one drive they will get a private street address.

Chair Finnegan said so they could name it Dale Earnhardt drive or whatever?

Mr. Fletcher said they can propose it during the Engineered Comprehensive Site Plan Review. Part of our staffs' review team will evaluate what the name is, run it through the 911 system, and ensure that there is no duplication and ensure efficient, accurate addressing.

Chair Finnegan asked so would that be a private...like a different color?

Mr. Fletcher answered white with green.

Chair Finnegan said white with green okay. There was one of those in Broadway called Dale Earnhardt Drive, that is why I said that.

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

Vice Mayor Dent said well, I guess this is a combination of staff and the applicant. The request by staff to consider an easement for adjacent properties in the case of future development on this aerial map. I am seeing this huge green field, is that a potential for a subdivision or what was the discussion about that?

Mr. Moore said the request to us was to consider access through the parcel to [often] provide... I mean it is always a good plan to have interparcel connectivity, right? In our opinion, well two things, the geometry of the parcel does not permit that and permit the parking that we need to meet the requirements. Secondly, as you mention that is a very large parcel. I would offer that a better planning mechanism is to put a new entrance, when those adjacent properties do develop, it directly aligns it with that, I think if you pull up the imagery, directly across Mosby at Mosby court and make that just a much safer intersection.

Vice Mayor Dent said so we do not know who owns that or what it will become. So, that is hypothetical the easement for some future development so I could see that.

Chair Finnegan said we do know what it is zoned, it is R-2.

Mr. Fletcher said we know what it is zoned, and we know who owns it.

Chair Finnegan said and we know it is mixed use. Nothing is currently planned there that we know of?

Mr. Fletcher said nothing has been submitted to our office.

Chair Finnegan asked does that answer that question?

Vice Mayor Dent answered yes.

Chair Finnegan asked if there were anymore questions for the applicant. Hearing none, he closed the public hearing.

Chair Finnegan stated this will be two votes. We will need two motions, two votes. One for the rezoning and one for the special use permit. Any thoughts? Do we need any clarification on anything?

Commissioner Baugh said I will help us to keep moving on, I will go ahead and put on the floor move to approve the rezoning at 130 West Mosby Road.

Vice Mayor Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Vice Chair Byrd asked are the proffers attached to zoning or are the proffers attached to the special use permit?

Commissioner Baugh, Chair Finnegan and Ms. Rupkey all answered zoning.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Chair Finnegan	Aye

Commissioner Baugh moved to approve the special use permit as presented.

Vice Mayor Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Chair Finnegan	Aye

The motion to recommend approval of both requests passed unanimously (6-0). The recommendation will move forward to City Council on July 11, 2023

***Consider a request from Farhad Koyee and Mikael Bahar to rezone 937 Vine Street***

Chair Finnegan said I was made aware on the site tour of the potential conflict of interest for the next item and so I will recue myself and I will hand the gavel over to Vice Chair Byrd.

Vice Chair Byrd read the request and asked staff to review.

Ms. Dang said on November 9, 2022, public hearings were held for the subject property to consider two requests from the applicant: 1) to rezone the property from R-1, Single Family Residential District to R-8C, Small Lot Residential District Conditional, and 2) for a special use permit (SUP) per Section 10-3-59.4 (1) of the Zoning Ordinance to allow attached townhomes of not more than eight units within the R-8, Small Lot Residential District. At that time, the applicant planned to demolish the building addressed as 935 Vine Street (the building located closest to Wren Way), to keep the single-family detached dwelling addressed as 937 Vine Street, to construct 10 duplex units (5 structures) and eight townhomes, and to permanently terminate Wren Way. Staff recommended approval of both the rezoning and SUP. Planning Commission recommended denial of the rezoning (6-1) and denial of the SUP (6-1). The applicant later

withdrew the requests and the items were never presented to City Council. The applicant is requesting to rezone a +/- 1.77-acre parcel from R-1, Single-Family Residential District to R-8C, Small Lot Residential District Conditional. If the request is approved, then the applicant plans to demolish the building addressed as 935 Vine Street (the building located closest to Wren Way), to keep the single-family detached dwelling addressed as 937 Vine Street, to construct eight duplex units (4 structures), and to permanently terminate Wren Way.

If the rezoning is approved, at some point the developer must complete a preliminary subdivision plat, where, among other things, they must request a variance from the Subdivision Ordinance to allow lots to not have public street frontage. During the preliminary plat process, the developer could also request other variances of the Subdivision Ordinance or Design and Construction Standards Manual (DCSM) that might be needed to build the project. It is possible the developer could request deviating from cul-de-sac or other street termination designs. These matters should be considered when making a recommendation for this project as approving the rezoning could be perceived as also providing an endorsement for the variance that would be requested during the platting phase.

### *Proffers*

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

1. A 6-ft wide pedestrian access easement will be provided between Wren Way and the property line closest to Vine Street [*sic*].
2. A sidewalk access easement will be provided along the western property boundary closest to Vine Street, 7.5-ft from back of curb.
3. No townhouses of [*sic*] multifamily structures will be allowed.
4. At the time of development, the property owner shall construct an acceptable turnaround at the end of Wren Way. The turnaround may include a cul-de-sac or another design accepted and approved by City staff. The property owner shall also dedicate the necessary land for public right-of-way to include the turnaround, and along the south side of the turnaround, the property owner shall dedicate an additional 7.5-ft. width of land as public right-of-way for future sidewalk. The property owner will not be responsible for constructing the sidewalk.

Note that the submitted conceptual site layout is not proffered.

With proffer #1, the property owner will dedicate a 6-ft. wide pedestrian access easement between Wren Way and the property line closest to Vine Street. The reason why the access easement cannot extend to Vine Street is because there is an unusually shaped parcel (TM 28-O-21) between the subject property and Vine Street that is not owned by the applicant.

With proffer #2, a sidewalk easement would be provided along the western boundary of the property so that the City may construct a new sidewalk along Vine Street in the future.

Of the residential uses allowed, the R-8 district allows single-family detached dwellings and duplex dwellings by right and allows townhomes by special use permit (SUP). With proffer #3, the applicant has proffered that townhomes and multifamily structures will not be allowed. It should be understood that multifamily structures are not permitted by right or by SUP. While

proffering to prohibit multi-family structures is not necessary, the applicant is proffering this in response to concerns heard from neighbors after meeting with them.

With proffer #4, the property owner will be responsible for constructing an acceptable turnaround, which may be a cul-de-sac or tee/hammerhead turnaround. Details will be worked out during the engineering design and preliminary plat phases of the project. Note, however, that the proffer indicates they would not be responsible for constructing sidewalk along the public extension of Wren Way. If the City accepts this proffer, it means the City must also be accepting of and must ultimately approve a Subdivision Ordinance variance to deviate from the requirements to not construct the public sidewalk. The variance request would be part of the preliminary platting process.

#### *Land Use*

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

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

The proposed density of the development is just over 5 dwelling units per acre.

Adjacent properties are designated Low Density Residential and Medium Density Residential. The Medium Density Residential area is described as:

“[D]eveloped or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.”

To the north of this property, across Vine Street, and within the Reherd Acres neighborhood on and around Meadowlark Drive, there are existing townhomes that are adjacent to existing single-family detached dwellings.

Know also that the R-8 district’s occupancy regulations are the same as the R-1 district’s occupancy regulations. When the R-8 district was drafted, the proposed occupancy regulations were intentionally designed to mimic the R-1 and R-2 districts because the R-8 district was intended to promote family occupancy with higher unit density abilities. The occupancy regulations allow:

- (1) 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, and
- (2) 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.

Said differently, owner-occupied dwellings can be occupied by a family plus two individuals or a maximum of three individuals and nonowner-occupied dwellings can be occupied by a family plus one individual or a maximum of two individuals.

#### *Transportation and Traffic*

During pre-application meetings with the applicant for the 2022 rezoning and SUP requests, there was much discussion between the applicant and City staff on how best this property should connect to the public street network. Three general scenarios were explored: (1) to extend Wren Way to connect to Vine Street (which included a few intersection options such as full access, right-in right-out, right-in only, or right-out only), (2) to have vehicular access only to Vine Street, or (3) to have vehicular access only to Wren Way. Ultimately, City staff believed that vehicular access only to Wren Way was best due to factors including, but not limited to: a parcel between the subject property and Vine Street that is not owned by the applicant; at times, southwest bound traffic on Vine Street backs up from the intersection with Country Club Road to the frontage of the subject property; and connecting these proposed homes to Wren Way, which would create a more inclusive component of this residential development by making it part of an existing neighborhood rather than separating it from that neighborhood.

During staff's review of the current rezoning application, the applicant explained that their intent is to allow two duplex units in the southwestern corner of the property to have an entrance on Vine Street and for the remaining dwellings to have entrances onto Wren Way. Staff is comfortable with this and will continue to review proposed entrance locations for each parcel during the engineering design and preliminary platting phases. Note that in the conceptual site layout, the applicant illustrates a private access easement for Lot 8 to cross Lot 9 to have access to Vine Street.

As required per Section 10-2-41 (e) of the Subdivision Ordinance “[c]uls-de-sac [sic] and other permanent dead-end streets are prohibited except when permitted by the planning commission in accord with the DCSM.” Therefore, Planning Commission must give consent to constructing an acceptable turnaround at the end of Wren Way and permanently terminating Wren Way. If Planning Commission consents to creating a permanent termination, the applicant can continue later with applications for preliminarily platting the property with the permanent termination of Wren Way. If the rezoning request is approved, then staff recommends approval of the request for permanent termination of Wren Way. (Note that the proposed permanent cul-de-sac only requires Planning Commission approval.) Staff requests for Planning Commission to consider this component of the project now and to act on this request during the current application reviews.

#### *Public Water and Sanitary Sewer*

Staff has no concerns regarding water and sanitary sewer service availability for the proposed development.

#### *Housing Study*

While reviewing this project, the City's Comprehensive Housing Assessment and Market Study (Housing Study) should also be considered. The Housing Study places the subject site within Market Type A, which is characterized by “high population growth” and that “houses in these

markets are quick to sell.” The Housing Study also notes that “[w]ithin this market type reside 32% of the City’s population and the lowest concentration of college-aged persons.” Moreover, “Market Type A tends to be more built out” and “priorities and policies that are appropriate for Market Type A areas include an emphasis on increasing density through zoning changes, infill development and housing rehabilitation to maintain the quality of housing.” Staff believes that the proposal follows two components of the Housing Study by proposing to increase density for this parcel and by attempting to create an infill development.

While the proposed development of new duplexes is not providing single-family detached dwellings that are recommended by the Comprehensive Plan’s Low Density Residential designation, staff does not believe that the proposed project is inconsistent with existing development in this area nor what is believed to be appropriate per substantiation by the Housing Study.

#### *Public Schools*

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

#### *Recommendation*

Staff recommends approval of the rezoning and for Planning Commission to approve constructing an acceptable turnaround at the end of Wren Way and permanently terminating that public street.

Vice Chair Byrd asked if there were any questions for staff.

Commissioner Armstrong said the existing house was accessing Vine Street via the easement, I guess, or the one that is now going to be used, will they no longer do that and now be going out of the cul-de-sac?

Ms. Dang said yes. The intention is that yes, they would access through the cul-de-sac. And again, those particular details could change later on but at this time staff is comfortable with two units accessing Vine Street.

Vice Chair Byrd asked if there were anymore questions for staff.

Commissioner Armstrong said this all has to be platted, right? This is a pretty large space, so there is nothing in here about parking or any sort of roadways within this.

Ms. Dang said maybe the applicant can speak to this a little bit more, but what I was thinking was that their intention was to just have driveways because each of these units here, as far as minimum required parking, the Zoning Ordinance only requires one parking space be provided for each of the dwelling units. They might try to put two or the length of a driveway or something there.

Vice Chair Byrd opened the public hearing.

Akarr Koyee, son of the applicant, spoke on this request. He said we are working on this development project. I think I see a couple of new faces, but we were here last year discussing the same project. Thank you, Thanh, for giving the review of that. Our previous design was met with some heavy feedback from the last meeting. I do not know if you guys remember there were a lot of concerns about neighborhood safety, too high density in that neighborhood, especially with that access to Vine Street, there have been concerns of cars cutting through there and exacerbating that situation. We went back to the drawing table with Mr. Colman and we lowered the density significantly because we wanted to match something that would reflect the existing neighborhood and not make them feel like we butted up a big development against them. That private cul-de-sac was met with good feedback and the duplexes being built looking more like single family homes is something that was very appealing as well. We felt that the design met the needs of everybody that was concerned. We actually had the opportunity to meet with the people in the community, in the neighborhood last weekend and we were met with some really good feedback. They were supportive of the project. That was really good for us because when we walked away from the last meeting, we were like oh man we do not want to make everyone upset. We feel much better personally moving forward with this project, should you guys accept it. Thank you guys again, for taking the time to meet with us. I am happy answer any questions.

Gil Colman, from Colman Engineering and representative of the applicant said it is good to see you all and this is another nice small infill project that fits what I believe that the Comprehensive Plan and what the Housing Study is looking for and it is respectful to all of the neighborhood. That providing housing that, in this case, when you think about the duplexes on R-8 especially, with the lots being the size they are, they are reputedly small homes. Which, you know, speaks to affordability to whatever extent we can. Then there is also the fact that there were issues with Wren Way, and all of the traffic going to that direction, this is much more palatable when it comes down to it. And then as we know, the City was also concerned about the traffic going into Vine Street, which that would...perhaps provide a different avenue to increase the density and put more units going in that direction, but it is also limited. So, we only have two units going in that direction at this time. Like staff...related to the layout, this sort of proffer layout, but it is very limited what you can put there in R-8. That is where we decided to proffer out the townhomes, which is something you can request a special use permit for. So, it is headed towards that direction, but it would instead limit that development to that number of homes. It is possible perhaps to put a couple more depending on the single-family lot duplex unit also, or something like that, but in general that is the number we are looking at right now. Perhaps this does not satisfy the huge need for higher density, but it does increase the density on that property and hopefully provides affordable housing there. There is some conversation with other groups in terms of planning to buy this property to provide actual affordable housing. There is something along those lines, that perhaps could move in that direction specifically, and I cannot speak to that right now because there is nothing in concrete, but there is a possibility. Something else about this layout, or the lower density in terms of homes, is that potentially preserves, as you might have an interest in, some of the mature vegetation that is there already perhaps some of the trees especially in the boundary and maybe some of the interior ones. Maybe not so much on the north side where we have those four units, but on the rest of the property that is a possibility. There was a question about drives and parking. Most likely, I mean as a regular duplex or single

family, it would be a driveway and a place to park. We are going nothing beyond that. There is no need and no interest to do anything like that. If there are any questions, we are happy to answer them.

Vice Mayor Dent said not so much a question as a comment, I remember reluctantly voting to deny before. Not because I was against it, but just went back to the drawing board. You have done an excellent job of going the back to drawing board to mitigate both the density and the traffic by having the combination of only two units going out onto Vine Street so it is not a huge traffic dump and lessening the traffic into Wren Way, which was a lot of what the negative feedback from the neighborhood was, so you have mitigated that all really well. So good job, thanks.

Vice Chair Byrd asked if there were anymore questions for the applicant.

Commissioner Armstrong asked do you anticipate these for rent or for sale? Just curious.

Mr. Koyee answered for sale is the anticipation. If it was rented, I believe Thanh mentioned that it would be rented to families or no more than two people.

Ms. Dang clarified saying no more than one person.

Mr. Fletcher said it is like R-1, it sort of depends. So, if they rented it, they own it and rent it...

Ms. Dang said and they live there, it is different.

Mr. Fletcher said it is confusing. If they own it, if the developers own all of the lots, for instance, and they rent each unit, they have the opportunity to rent to a family regardless of how large the family is and then one border can also reside there. The misstated two unrelated individuals rule, that is like a family or two gets said that way because being a college community, and often times people are renting to students, that student counts as like a family. That one student and then you get the one more and that is where the two comes in.

Mr. Koyee said we really wanted to mitigate renting out to college students, especially as it is butted into a neighborhood. We personally do not want to rent to college students. I need it as a neighborhood. So, the intention was to create homes that would be sold to families. Potentially, from our conversations, people that already live there have family members that are looking to potentially locate into that area, so that is the intention there.

Vice Chair Byrd asked if there were anymore questions for the applicant.

Jennifer Nelson, a resident on Wren Way, and Michael Walsh, a resident on Star Crest Drive came forward to speak on this request. Ms. Nelson said so we are really just here to say that the comparison of the two developments is staggering and we were happily surprised by the second development. We felt like the applicants listened and we have told them that we really appreciate that they did listen. It really felt like they took the concerns of the neighbors and the neighborhood into this second proposal. I appreciate in that my section of the neighborhood is

going to continue to be R-1. That this portion even though it is R-8 with the proffer that is being offered of not putting townhomes on that property, not in two years applying for a special use permit to drop in townhouses. We feel like it approximates R-1 and then it is family units. If you look at the number that is coming off of Wren, right now it is seven. If you do the math, that amount of property would house about 6 single family homes. So, we felt like that was...we liked it. We felt happy with that. Really just here to say I speak for many of my neighbors, now I do not think 100% of them, but we are very appreciative and we are seeing this very positively.

Mr. Walsh said I would like to echo that. We think this is positive. If you remember when I spoke last time and talked about the traffic and speed on Star Crest. They did a study, unfortunately it was a little bit more than a mile below the infamous cutoff where they will do something with the street. We average over 570 cars on this stretch of Star Crest from Meadowlark to Blue Ridge. There are 29 units including Wren Way and the cul-de-sac of Bobwhite there are about 29 houses. Think about how many other cars are coming, it is a shortcut. So down the road anything, and I am just pleading I mean I understand you are limited, anything we can do, I mean it is a residential street. The average speed was almost 35 miles an hour. That is what it has to be and it was not quite there. So, we just wanted to let you know that. Anything that can help on the road we would appreciate it. Thank you.

Ben Lundy, resident on Wren Way, came forward regarding the request. He said actually that is my wife there. I went first last time, she went first this time, but same basic idea here and just echoing what she said. Essentially, when we saw the beginning of this new process and saw the layout my first feeling was just one that the Koyee's really took into account the concerns that we expressed last time. That is obvious in the difference of the density. We are grateful for that and we are grateful for that chance to meet with the chance to get feedback in that sort of thing. The attitude is generally a lot more positive about this than the previous one with the townhouses and we are grateful for that. I do agree with what was already said about how this is a lot more reflective of our neighborhood as it exists now and helps somewhat to ease our concerns about infrastructure. You know you might even remember, I am the one that had the PowerPoint that showed all of the other R-8's with the other infrastructure layout. Having said all that, I do believe the City still has some work to do with that in regard to infrastructure. This particular project aside, I think I speak for some of our other neighbors too and Mr. Walsh was just up here talking about the statistics for Star Crest. So, while I and many of us like and support this new plan, the City I think has some catching up to do with regard to infrastructure of Reherd Acres. I just wanted to express that. That is independent of this situation with this development, again, I feel good about it and I know many of us do. It is definitely a huge step in the right direction from where we were last November, but we do have some concerns about just a larger Reherd Acres area and infrastructure. I think that we are going to continue to pursue that. But as far as this particular development goes, I stand in support of it. Thank you.

Wayne Wanger, a neighbor in the area, came forward to speak to the request. He said I live close to them. I do not live right on the area where they are going to build, but I have lived there since 1975. When they built Vine Street, they were not planning on a thoroughfare like is there now. I would like to see something corrected on that. First of all, that little piece of land that would hold a lemonade stand that does connect them to Vine could be connected. You said you were going to put a sidewalk through there and just put a ramp like you were talking about on the first

project, where the guy is looking to change his lot, and just connect half of that to Vine and the other half to Wren Way, it makes sense to me. If you put the sidewalk in, you are going to have to have a ramp anyway and make some kind of arrangements with the Depoy family to get that little piece of land. It is only as big as this desk. Vine Street, if you try to pull out onto it now, it is terrible. Vine Street is loaded with all the cars and trucks because Mt Clinton Pike is connected to Vine Street and they are trying to get to interstate 81. I am going to take some pictures and I hope...I did not see what the date was for your next meeting, but I would like to show you some pictures of where I think the road should go from Vine Street around to 81. That bridge not be sitting there, but have off ramps for them to go north or south and not driving clean through Harrisonburg and Vine Street, in particular. I feel so sorry for those people that have to...some days they cannot pull out of their driveway. I go down there and I do not walk on it anymore, but we take a shortcut to get to church and different things. Mary Sue one day, she talks to people, I am going to make a little recording and then that would help them get out of the way and play it on a loudspeaker from the car. It is just horrible and it needs to be corrected for those people. I am going to take some pictures and bring them to your next meeting. I would like to go I see you are going someplace at 4 o'clock it says and see what you are talking about on these other projects. To think that they have to suffer. When they built that it was a residential road and then Vine Street was extended and then when it was connected to Mount Clinton Pike it got worse. Now with the bridge out, it is horrible to even just pull out. Even on the street, not just their homes. Thank you for listening to me. Hopefully you can change something on that, and I am going to bring pictures of how I think the new road should be built and the land bought from that farmer. He did not have cows for a while, I thought he was giving up farming, but he is not. The cows are back now. But I am sure he would be glad to sell some of that land and get the state to help buy it. We spent five million dollars to buy some land for a new high school instead of buying a one million and a half right across the street from the current school. They had 30 or 40 acres for sale and now we are going to build a housing complex there. The City spent 27 million dollars to grade the land and fill up the holes where the new school is. So, we have got money evidently, or at least somebody said my taxes are going up to pay for it. Thank you.

Vice Chair Byrd asked if there were any other comments regarding this request.

Scottie Cales, 923 Morning Glory Court, came forward regarding this request. He said I like what I see basically too. It looks very good, definitely. Compared what last time, it makes sense, everything is good.

Vice Chair Byrd asked if there were any other comments regarding this request.

Vice Chair Byrd said before I close the public hearing, the citizen reminded me that when we meet to go around for our tour on the Tuesday... so the Commission meets on the second Wednesday of every month that Tuesday at 4 pm we gather at City Hall to go and tour all of the things. That is a public event.

Ms. Dang said they do not ride with us. They can follow us or they could meet us at the sites.

Vice Chair Byrd clarified so just making sure people know when that is the second Tuesday... no the second Wednesday...the Tuesday of the week of the second Wednesday.

Commissioner Baugh said the day before.

Vice Mayor Dent said the day before the second Wednesday.

Vice Chair Byrd asked if anyone else wants to speak on this application?

Vice Chair Byrd closed the public hearing.

Mr. Fletcher asked could I just quickly interject? Just to help the public and to also speak to a comment that Mr. Wanger just made. I encourage Mr. Wanger, and anyone who might be interested in the road that he is referring to or a planned road that you would like to see built to evaluate our chapter 12 of our Transportation Street Improvement Plan Map that comes out of chapter 12 of the Comprehensive Plan. I suspect, given the description he provided, that the road that he is hoping to be built is actually shown in our Street Improvement Plan or it cuts across the property in the county over towards the bridge that is being reconstructed right now. Also, for the public to be aware of that the City has somewhat little control about interchange access. It is a federal highway. The federal highway administration has regulations as to how interchanges can be constructed and where they are connected and how many there could be within certain distances. I just encourage him to take a look at that and it might save him some time in taking the pictures and coming down to speak with staff. I encourage him to come into our office and take a look, because the road that he might be hoping for is planned.

Ms. Dang said I am trying to look at the Comprehensive Plan to see if it is in the Street Improvement Plan. But I do recall speaking with Mr. Wanger once before and printing out for him the long-range transportation plan, which is published by the Harrisonburg Rockingham Metropolitan Planning Organization in which the City is a member and participant in that planning study.

Commissioner Baugh said when you were talking about the federal side of it that also has funding implications. So, on top of everything else, the source that you get for money to deal with those types of projects is often different from what we are really used to doing with and where the pots of money tend to be available that we go after.

Vice Chair Byrd said Commissioners on this particular application, anything?

Commissioner Armstrong made a motion to approve the rezoning request.

Vice Mayor Dent seconded the motion.

Vice Chair Byrd called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Mayor Dent	Aye

Vice Chair Byrd                      Aye

The motion to recommend approval of the rezoning request passed (5-0) with Chair Finnegan abstaining. The recommendation will move forward to City Council on July 11, 2023.

Vice Chair Byrd said we have a concern about Wren Way though.

Vice Mayor Dent asked do we do the second thing for the cul-de-sac? I move to approve the cul-de-sac.

Vice Chair Byrd said permanently terminating Wren Way?

Commissioner Baugh said should we vote on the special use permit first?

Ms. Dang and Mr. Fletcher both said there is no special use permit.

Commissioner Baugh said I do not know why I am reading this wrong, my bad. Sorry, I was wrong. Sorry, excuse me.

Vice Mayor Dent said I move to permanently terminate Wren Way as presented.

Commissioner Baugh seconded the motion.

Vice Chair Byrd said any other comments about this? Oh, I have a comment. I am glad to see an applicant and the surrounding community was able to come to an agreement on something. It is very disappointing to me when I see communities and applicants having to be combative all the time. This is a nice example of why we are called the Friendly City.

Vice Chair Byrd called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Mayor Dent	Aye
Vice Chair Byrd	Aye

The motion to recommend approval of the request to permanently terminate Wren Way was approved (5-0) with Chair Finnegan abstaining.

At this point, staff and commission took a 3-minute recess and Chair Finnegan returned to the meeting.

***Consider a request from 130 Franklin Street LLC to rezone 130 Franklin Street***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said around 1993 or 1994, the property, as it is today, was zoned B-2, General Business District. At that time, the site contained a nonconforming single-family detached dwelling but was illegally changed to an office use. While offices were (and still are) permitted by right in the B-2 district, there are many other considerations that must be taken in to account when changing the use of a building. As is the case with any “change of use” of a building, a building permit is required. During the review of the building permit application, Zoning staff would review for compliance with the Zoning Ordinance (ZO) while Building Inspections staff would review the application to ensure the structure meets the requirements of the Building Code for the planned new use. Once compliance is achieved, a certificate of occupancy (CO) can be issued for the building. The Department of Community Development has no records of a building permit or CO for the property. Among other things, when there is a change of use applied for, the ZO requires that the number of off-street parking spaces be provided based on the change. The property does not currently have the required number of parking spaces for the office use in the B-2 district. However, if a rezoning to the B-1, Central Business District is approved, then the property would have no off-street parking requirements and the use would be in compliance with the ZO’s off-street parking requirements. While the City has not issued a formal notice of violation letter to the property owner, they are aware the property is currently in violation of the ZO with a use violation as well as being in violation of the required minimum off-street parking requirements. The property owner is also aware that after rezoning approval and before any use other than single-family detached residential moves into the building, that the structure must be brought into compliance with Building Codes and will require permits and inspections. The property owner has been advised to discuss requirements with the Department of Community Development’s Building Inspections Division. The applicant is requesting to rezone a +/- 4,974 square foot property from B-2, General Business District to B-1, Central Business District. The property is located on Franklin Street between the intersections of Federal Street and South Mason Street.

#### *Land Use*

The Comprehensive Plan designates this area as Mixed Use and states:

“The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.”

While abutting parcels are zoned B-2, there are nearby parcels, within 100 feet, that are zoned B-1. In addition, the Mixed Use area extends to South Mason Street to the east of the subject property. The zoning district most closely associated with Mixed Use-designated properties located in the downtown area, such as the subject property, is the B-1 zoning district.

#### *Transportation and Traffic*

Often staff has concerns with properties rezoning to the B-1 district without due consideration for the impact to how the downtown area might be impacted by parking demands. In this particular case, given the size of the parcel and the existing structure, staff has no concerns regarding transportation and traffic for the proposed rezoning.

#### *Public Water and Sanitary Sewer*

Staff has no concerns regarding water and sanitary sewer service for the proposed rezoning.

#### *Recommendation*

Staff has no concerns with the request and recommends approving rezoning the property from B-2 to B-1.

Chair Finnegan asked if there were any questions for staff. Hearing none, he opened he public hearing.

Suzanne Bothemley, representative of the owner and applicant, spoke on the request. She said I am just here to answer any questions or concerns that you might have.

Chair Finnegan asked if there were any questions for, can we call you the applicants representative?

Ms. Bothemley said you can call me Suzanne if you want.

Chair Finnegan asked any questions for Suzanne at this time?

Grant Penrod, resident at 171 Franklin Street, came forward to speak on the request. He said I have lived there with my family for more than a decade and I work just across the street here at 342 South Main Street. 130 Franklin Street has been an office building for as long as I have lived there. They have generally been a good neighbor. I have some concerns with moving this property from B-2 to B-1. One of the concerns is parking. Currently parking between Federal Street and Mason Street on Franklin is a red zone. You have got to be a resident and have a red zone sticker to park there. The business that was operating there until the pandemic, Responsive

Management, was generally open between 5 and 9 pm, I think they were a call center of some kind. During those hours parking on Franklin Street right there was very tight. It was after the red zone hours. The employees were parking there. There were times where I could not park in front of my house between 5 and 9 pm. I would have to go and park at my office or other places. One concern that I have is that the City does not change that part of the street from the red zone to 2-hour parking. We want it to remain red zoned so that residents could still park there. I do not have concern with them running an office building there without the parking spaces that are required in the B-2 zone. There is adequate public parking available on Main Street and on Franklin Street, I think between Federal and Main, and of course the lot behind this building. If they wanted to put an office building, a counseling office, or something there would be plenty of parking there for them to do that with a B-2 zoning requires some type of an exception I assume. By moving it from B-2 to B-1, I think you are going to solve a parking problem and potentially create a much larger problem because of the much expanded permitted uses that you would have in a B-1 over a B-2. That neighborhood is primarily residential from about that building east. All three buildings on the opposite side of the street between Federal Street and Mason Street are residences and I am including First Step in there because it is primarily a residence even though it is a domestic violence shelter. On the 130 side of Franklin Street, beginning at Federal, you have a residence and office building, a museum that has some counseling offices upstairs, and another residence. If you open this one property up to B-1 and they want to put a restaurant or anything else in there, it is going to change the character of the neighborhood. It is not going to be consistent with what is around it. I would like to see them be able to continue to use their building as an office. I think that is a great use of the space and they have been a good neighbor for the decade plus that I have been there. I do not think changing the property from B-2 to B-1 is a good solution because, while it would solve the immediate parking problem, it is going to open the neighborhood up to all kinds of other problems. If the next owner wants to do whatever they want to do there. Thanks.

Jim Jenkins, a resident of 166 Franklin Street, came forward regarding this request. He said basically what Mr. Penrod said is correct in my opinion. If the Responsive Management people could run a low volume style business, why does it need to be changed to B-2? Nobody wants to tell you what is going to happen, I mean to B-1. They are not here to talk and say well I am in B-2. We bought [our home] as a single-family home from the Moffet(?) -Zerkle Estate and now are we going to have problems because there is a single family residence on the corner of Franklin and Mason Street. But the parking is the problem and it should be left, as Mr. Penrod said, from Federal Street up as residential red zone. If not, it would be like what happened, as he said, with Responsive Management. They would swarm in and you could not get near your property with all the employees. Now they say the employees are supposed to park somewhere else, but that did not happen. Then they tried to get some red stickers for the back of their cars, which was not legal and they got called on that and they probably did not like it. Anyway, they also use to raise Cain a lot about so called spot zoning and it is just one little lot. What did they want to do that requires B-1 as opposed to B-2, which it already is? Mr. Childstone's next door that single family residence he owns it. Why the hot to trot to change it to B-1? Is it going to change the parking? Other than that it is no problem if they run a business in there. The real kicker is, if we

discover that they are going to be parking all over Franklin Street and if you live there, it should stay red zoned is what I am saying. Okay, I appreciate it, thank you very much.

Lauren Penrod, also a resident of 171 Franklin Street, came forward to speak to this request. She said I have the same concerns that have already been spoken to. I also have two questions that either staff or you could potentially answer that I am a little confused about. One is that I do not understand why, as the business is currently, it would need to change from B-2 to B-1. Maybe I am missing something. I know that they did not apply for something specifically maybe, but I do not know why they would have to change just that one building. The other thing is that, my understanding is that the business closed and that the house itself is for sale pending since, I think, March 30<sup>th</sup> of this year. So, why does that even matter to 130 Franklin LLC, I guess? I do not know if I should wait for that to be answered or just continue on with my..., that is my bigger question is that according to the City Real Estate records at least, the property is for sale pending something since March 30<sup>th</sup>. If I had to guess, I would say it was pending this rezoning thing. That kind of makes me wonder why this has not come up at all during this session. Like is this actually for 130 Franklin or is this for a different business entirely? And if it is for a different business, why have we not heard anything about this during this session? Then the bigger issue to that is that we know what Responsive Management was like and their hours. Which again, I think they closed sometime during the pandemic and have not reopened. That was one particular business. It was easy to work with for the most part. Once they realized “oh people have moved in across the street, we cannot park in front of their house anymore” generally it was fine. But that is one business and we do not know what the next business is going to be like. We do not even know what it is because we have not heard anything about it yet. First Step being across the street from them... we really value our neighbors at First Step. They are great neighbors. We love having them there and we are kind of protective of them as well. So, opening this up to B-1, even if the next business that goes in there is like a law office or something like that, if we kind of open that ability for a different business to go in, like a Jack Browns or something like that, what sort of scenario are we looking at in the future. Where we have victims of domestic violence living across the street from a bar. What does that do to our little block? It is a nice little block. I know it is not as cool as upper Franklin Street, which is definitely all just residential, but we like our block. We like our neighbors, businesses, and nonbusiness alike. We like that Franklin Street Apartments, down at the end of the road. Like my husband said, it would be a shame to sort of mess with the character of the existing neighborhood. That’s all I have to say. Thank you for listening.

Ms. Bothemley said I think that when we talked, there were a lot of things to consider. First to answer the lady’s question, actually the people who purchased the property, they are a counseling service and they have very low employment. So, we are not talking about tons of cars. Eventually what they are going to probably do is tear down that garage that is in the back to allow a little bit more parking space for the staff. There has to be parking for the staff, but they also want to be able to have people park in the front of the house for when they are there for counseling or whatever needs to be done. Yes, there are parking areas around, but it is not all that convenient. The backyard is not conducive to anything really. It is pretty shallow in the back, so what they are trying to do is create, eventually maybe even, a parking area back there

for the staff, which is very minimal. I think they only have like five or six people working there. It is a 9-5 operation and I think a counseling group is very appropriate to live across to be across the street from what she was talking about. We are still wondering too, a little bit, about the rezoning. But I think that maybe our Assistant Director could elaborate on that a little bit.

Ms. Dang asked do you want to say anything else?

Chair Finnegan said I guess it sounds like there is a concern. I am not doubting what you are saying, but the zoning remains if new owners come. So, I think that is a part of the concern.

Ms. Bothemley said right, and also I think the major concern to is just the red zone in front of that can get pretty...it can be distracting for people that really need to be there. It is important that they have at least a few parking spaces to come in for the clients, to come in, rather than find parking spaces around. That is, I think, the major reason why we had to rezone it from what it is to B-1. If that makes sense. Does anybody have any questions about that?

Chair Finnegan asked if anyone else wanted to speak to the request? Hearing none, he closed the public hearing.

Chair Finnegan said so, if this gets rezoned, that necessitates that red zone in front of it getting changed. Are they married together in that way? So, this request has nothing to do with the red zone? For the record Mr. Fletcher is shaking his head no.

Ms. Dang said the red zone, if it was proposed by whomever to change the permit parking, it would require a decision by City Council. It is not administratively done by staff. Just want to put that out there.

Commissioner Baugh said it would have to come back and...

Ms. Dang said and amend the ordinance.

Commissioner Baugh said am I right in thinking that we were just talking up here that visions as presented notwithstanding then if you did it and they had parking in the back? They would either have to be handing parking passes to their patients/customers, or those guys would park in the back, and they could use the spaces in the front. Based on whatever permits they could get.

Ms. Dang said the tricky thing with the site is the amount of space that is on it. If I may Chair Finnegan, answer the question that both Ms. Penrod and Ms. Bothemley had asked me. I did not want to interrupt the public hearing, but I can address that too. There is a single driveway that enters through here. I suppose they could, whoever moves into the building later, could remove that and construct the parking spaces back there. I have not evaluated the amount of space back there and I cannot use the GIS right now so perhaps they could. However, with its current zoning of B-2, the history with that is, we are...I do not know if catch 22 is the right word, but it is just like if there was a nonconforming residential use and then an illegal conversion to an office use that should have never occurred. The office use would not have met, at the time in 1993 or 94 or at present time, the parking requirements. It should have never been allowed. It never was allowed. They just moved in and nobody complained, and we never investigated whatever that

might have been. So, the rezoning to B-1 is being requested because it was thought that is a solution to address the off-street parking requirements.

Chair Finnegan said just to ask a clarifying question on what you said, so because it is not clear whether they could put a parking lot in the back?

Mr. Fletcher said no, what Thanh was saying was two different things. I do not want to speak for you [Thanh], I knew what she was thinking there. What she was talking about was that we had not yet heard about anybody developing any parking in the back. She was, I think, dimensionally trying to figure out if anybody could do it physically. Then she jumped to the topic of, okay explaining that the property was zoned and is zoned B-2. There was a conversion to an office space that the City would not have signed off on had they gone through the proper channels because they could not have met the required off street parking spaces for the B-2 district. When the property owners got into contract for a future use, and socially people were looking at this space, saying “oh, it has always been an office building I would like to put a counseling business or whatever type of office use in this space” seems reasonable. It then came to our attention when all of these questions were asked during...

Ms. Dang said a potential buyer asked questions about the property.

Mr. Fletcher said all of this stuff came out oh there is an office building in there. There is an office use. They never got building permits. They are not meeting any handicap accessibility, likely because we never knew that they were in there. And then it was well you cannot establish a counseling business in there because the use there is actually illegal. So, then it was what are our options? An option was, the only option was, to allow an office use there would be to rezone to B-1 and that led us here.

Commissioner Armstrong said I mean that is not the only option. We had this earlier application and big discussion about parking. The other option is they have to develop off street parking there and so that needs to be evaluated.

Mr. Fletcher said and the other thing that I knew that Thanh was thinking was, because the way our current Zoning Ordinance is enforced, that whole structure would have to be taken into account for office space. Now, off-street parking requirements for offices is the minimum. It is 1 space per 300 square feet of gross floor area. That is a big building, and I do not know the number I would have to do the calculation, but I would be surprised if they could meet the off-street parking requirements in the rear of the building.

Chair Finnegan said there is not enough...

Mr. Fletcher said there is not enough area. The site is just too small.

Commissioner Armstrong asked if the entire square footage has to be allocated to the business? You cannot do an upper floor or something?

Mr. Fletcher said unfortunately, under our current ordinances, the answer to that is no. We have pondered that. This has come up many times, but then you have this “dead space” that somebody is going to be like “I want to use that for something” and then you are back to square one

Ms. Dang said the building, I think it was off of the real estate record, is 2,500 square feet at a requirement of one parking space for every 300 square feet of gross floor area for an office use. Nine parking spaces would be required. It would not fit. It has not been discussed, and this is not something that the applicant needs to decide, but I just want to put it out there. It sounds like there are concerns about uses. You could talk with your client about proffering out uses to address the concerns that you are hearing this evening.

Vice Mayor Dent said well, Thanh's idea now just addressed some of my concerns potentially. It seems sort of backwards, or tail wagging the dog or something, to have the parking requirements force it into B-1, which opens up all sorts of potential unwanted uses. What are other solutions? One is to proffer out businesses that would be parking intensive or traffic intensive such as a restaurant or a bar or whatever. Still keep it B-1 but proffer out those things and the B-1 just gets you the lower [parking] requirement. What is it? Lower requirement, zero requirement for off street [parking] because it is downtown. It is just confusing with the solution too, the existing problem is...

Chair Finnegan said just to clarify, is it accurate to say, if this were to get denied this evening, they could come back and say here is a different proposal with...

Ms. Dang said right, they could decide to offer a proffer statement. Mr. Russ and Mr. Fletcher remind me if they are making it more restrictive does it have to come back to Planning Commission by restricting uses? Can Council consider that without Planning Commission or is that Council's discretion ultimately?

Mr. Russ said I think we are both trying to pull up the text.

Mr. Fletcher said actually, I am looking at something a little bit different. I would answer your question by stating that I think that technically, legally, and confirm with me Wesley, it can proceed forward if it is more restrictive. In years past there was this sort of unwritten sort of feeling that if City Council was evaluating something that Planning Commission never talked about they might send it back to Planning Commission to be reevaluated. I do not think legally they have to.

Commissioner Baugh said I will say I was always a big advocate of that.

Mr. Fletcher said is that so...

Commissioner Baugh said I always found that sending it back aspect of it, and again you do not like it being a hard and fast rule, because sometimes it sort of depends on what you are doing. Sometimes at the Council level you are smoothing out a rough edge and you are coming up with a better solution and sure let's not send it back. I can think of one example in particular years ago where, heck this is when we hammered out at Planning Commission, and I lost the vote at Planning Commission to get them to come back because they were amending their proffers. My argument was why did I spend my time studying the packet and having staff evaluate it if we are then, on the fly, vote on something that is not what staff evaluated and was not a part of my packet that I had some time to think about. It is ultimately up to the discretion of the bodies particularly. What were you just saying when it is something less restrictive or more restrictive?

Mr. Fletcher said there is potentially one other option, and correct me if I am wrong, if you spoke about this, Thanh, when staff met with the applicant about this idea, but there is a provision in the Zoning Ordinance that allows for business and professional offices to accommodate the required off street parking spaces within a quarter mile of the site in a certain boundary and this is in the boundary.

Ms. Dang said I do recall discussing it with...if it is the same contract buyer. I do not recall if I spoke about that with you and Luke or not.

Mr. Fletcher said so there is another solution potentially, but it obviously could not get worked out tonight, but specifically in the code it allows, under section 10-3-26 this is titled "Location in relation to building or use served," it is talking about parking space locations in relation, and specifically business and professional offices, to any parcel within the area bounded by, walk with me here, Gay Street to the north, Mason Street to the east, Martin Luther King Jr Way to the south, and High Street to the west. What you are capturing here is a boundary that is in that Downtown Zone. That allows for business and professional office uses to then go into basically a common co-op agreement with an adjoining property owner that is in there somewhere as well, within a quarter mile of the site to meet your parking requirements.

Commissioner Armstrong asked so they could stay B-2?

Mr. Fletcher said potentially. If the use was desired to be a business and professional office. Also, there are provisions similarly for charitable and benevolent institutional uses and then the other one is irrelevant.

Commissioner Armstrong said no restaurant bars.

Chair Finnegan said I will say, I did just finish reading this book *Paved Paradise: How Parking Explains the World* and this is textbook out of that. Really, about 90% of our conversations on this board are about parking.

Vice Chair Byrd said often when I hear applications, I am always listening for all the possible solutions and when there are possibilities that do not require zoning to be changed, I tend to want people to move towards those or at least have presented to me why those would not be the preferred path. Since, I have not heard that, I would likely be in favor of denial.

Commissioner Baugh said if I may, and I guess I will look over at the applicant here. First, looking over to staff and going "do not throw anything at me for even suggesting this," but in light of some of this discussion I will just ask, do you think this could benefit from another month or so to ponder this and see whether you wanted to amend this? I feel like, it is maybe not exactly like Mr. Byrd said, but similar that it is sort of like I have got a choice between...It seems like the solutions here are we sure we cannot make B-2 work? Or could we do B-1? Is B-1 right now more open than we are comfortable with is the way I will say it. I know the last thing anybody is looking for is something to add to the agenda for the next meeting because we are already going to be meeting on two different nights. But if you are okay with it, I think it might just be worth tabling this. If that is something the applicant is okay with?

Chair Finnegan asked if we tabled it would it have to come back next month? Is that right?

Mr. Fletcher said no. I think if the Commission tables it, it has to come back in like within two meetings by the way the calendar is. I think it has to come back within two meetings because you have to act on it.

Chair Finnegan asked two meetings not two months?

Mr. Fletcher said did I say two meetings? That is because I am thinking calendar on a monthly cycle. Thank you. Two months because of the way the calendar falls, if the applicant were to table it, which they can if they want to, it is like an indefinite tabling. Then they get as much time as you want.

Commissioner Armstrong asked with tabling, can it be redrafted and come back with proffers for example?

Commissioner Baugh said if that is something they want to do.

Mr. Fletcher said absolutely, they could do that too.

Commissioner Armstrong said so, that could happen, taking it off the table? It can be a changed application?

Mr. Fletcher said oh yeah, we do not have to readvertise...

Commissioner Baugh said that was what I was thinking. To get an opportunity if they wanted.

Chair Finnegan said Planning Commission does have to take some sort of action whether that action be tabling or...

Commissioner Baugh said not if the applicant asks us to table it.

Mr. Fletcher said if you table it, eventually the time period would come where Planning Commission must act. If you do not act, then it is declared approved. Is that right?

Commissioner Baugh said there is a path where that happens. There is a path that if you do not act on it, the default is that it gets approved.

Mr. Fletcher said but if the applicant wanted to, even if you tabled it, even after you have tabled it, the applicant can say we would like to table it ourselves. Then it sort of removes that timeline; it is entirely up to them. I do want to point out however, that the proffers might help with some of the situations, the parking is still going to be a little bit sticky. Even though looking at the picture there is like an open gravel space directly behind the property, they have to go into an agreement with the property owners. Often times that is where it sort of can get a little mucky because you have to come to an agreement.

Chair Finnegan said that is just a civil...

Mr. Fletcher said that is a civil thing.

Chair Finnegan continued...thing that has nothing to do with us.

Ms. Dang said if I may, we have a message from the gentleman in the booth back there that the contract purchaser is on the phone and offered their ability to answer some questions. If you are all interested to entertain that.

Chair Finnegan said is that something that we would want to allow? Any objections to that? Okay this is not of course a part of the public hearing.

Mr. Fletcher said you can reopen it if you want.

Chair Finnegan said I will reopen the public hearing in order to allow...do I need to use this phone.

After the call was transferred, Ms. Auguste read the following statement “You are now live with the City of Harrisonburg Planning Commission. Please state your name and address, you now have 3 minutes.”

Kristen Loflin, resident at 232 Fairway Drive and purchaser of 130 Franklin Street, called in to speak on the request. Ms. Loflin said I was hoping that this was going to go through very easily and quickly and so I did not come as the purchaser, also because I am not the person requesting the rezoning, but can shed some information, shed some light for you situation. I am a mental health counselor and it has been about my 20 yearlong dream to be able to have a practice in which I own the space and then can have colleagues in the same space who share similar ethical values. I currently and have been for a number of years renting from Matchbox. I will tell you all sometimes the heat works sometimes the heat does not work. I am really looking forward to being in a space where I can have control over that. I would like to answer the question about how many spaces and providers would be there. There are four office spaces upstairs and there is one waiting room space downstairs and there is the potential for maybe a group room downstairs but basically on any given day probably three or four mental health councilors in that space, with clients coming in for about an hour at a time. The reason I did not just move into that space is because I have a really strong ethical code. I wanted to make sure I followed the Harrisonburg City Code and made sure that I was doing everything by the books. As I am not the owner, I cannot really be the person there to request the rezoning and I greatly appreciate Ms. Bothemley being there to represent the current owner. I would be really happy to answer any questions that you might have. I can also speak to the idea of the space behind the building. I happen to have information as to how much the owner of that lot is asking. It is about what I am planning to rent each office space for. It is so much money for a parking lot when there would probably be four of us max at a time in that building. It is a little bit untenable.

Chair Finnegan asked do you care to respond to the concerns about the on-street parking that the neighbors have?

Ms. Loflin said sure, my understanding is that the previous owner had actually been able to receive red zone passes. It was really truly a conversation he and I were having and it kind of sounded like “oh you just go down to transportation and parking and you get these stickers easy peasy” and I found out very quickly that it was not easy peasy. That was when some of this came to light. So, while I would very much appreciate being able to park in front of the building, that

is very expensive for me to buy, I also understand that it is a mixed use residential business zone. If that means that it does not go through it is really unfortunate. I mean, I personally would love to have just a couple of two-hour spots there because if you can imagine someone who is taking mental health counseling for maybe anxiety or depression, it is hard to get away from work in the middle of the day to get to an appointment. If you are having to drive around blocks at a time to look for parking, that is an extra burden that people do not really need. So, having a couple of parking spots would be really, really helpful. Like others have said this evening, the goal would be to have staff park in the driveway section or potentially behind the building. It is really tough to imagine that. So, while I am trying to figure out other off-site parking, I have not found it yet. Part of that is that I am not the owner yet. So, I cannot really enter into an agreement with anyone either. I would also say in regard to tabling things, it is a tricky situation for me. My lease ends and I do not have anywhere to practice counseling after my lease ends. We have to wait to close until this is determined. Without parking, I cannot operate even the tiniest business there. I want to make sure that I am following the code to the letter of the law. So, if I cannot close by the end of August, I do not know what I am supposed to do exactly. So, this timetable that we are in is tight as it is. Before any of this needed to happen I should say it was supposed to close at the end of May.

Chair Finnegan thanked Ms. Loflin and closed the second public hearing.

Chair Finnegan said there is a lot going on here. Again, so much of what we do up here is about parking. It is about cars. It is about the shape and the size of cars. Where will they go and how long will they be there and is there enough space for them to turn around? I mean it sounds like there is some unresolved concerns. Even if you take the parking away, there is some unresolved concerns. I do not like to vote against something because there is not enough parking. So, if I vote for denial or against approval it would not be because of the parking concerns. Do we have any other thoughts on...it sounds like there might be an appetite to table this. There might be an appetite to deny it. Is there anyone that is looking to vote in support of this as is? Any other thoughts? Motions?

Vice Mayor Dent commented I think I share your rational. Where mine is, I would not want to vote for rezoning to be one simply because of parking. Is that more or less what you are saying?

Chair Finnegan said yeah. What I am saying is if I vote for denial, it is not because of parking, it is because there are some other potential uses for that. That is where I am.

Vice Chair Byrd said well, here is the thing, the reason why I am thinking denial is because that at least gets it moving and people in concern are on a timetable. Even if it creates a situation that one of the Commissioners mentioned we may not like City Council having to make a decision about doing something without our input. I feel we made a lot of input about the parking situation with this property in relationship to B-1 and B-2. If they were making a decision in light of that because something had changed, me not seeing it again, I would not have an issue with that. In light of that, I will make a motion to deny and see what people say.

Commissioner Armstrong seconded the motion.

Chair Finnegan asked so whether we all agree to say yes to this or whether we say no to this, this is still going to City Council on July 11?

Ms. Dang said unless the applicant chooses to postpone the application.

Vice Mayor Dent said that is a really good point, that a definitive vote sends it to City Council directly.

Chair Finnegan said that tabling holds it here.

Vice Mayor Dent said exactly.

Chair Finnegan asked what changes, I guess this is just a question for us as much as for the applicant. Are changes allowed to be made between this hearing and July 11? It has to go forward as is?

Mr. Russ said they can add new proffers essentially to address concerns that you all have brought up, or anything that would place additional limits beyond what B-1's normal limits are. So, it can look different when it gets to City Council. They can try to come up with proffers that address some of the concerns that you all have raised.

Chair Finnegan asked if there was any further discussion on this request.

Commissioner Baugh said I am going to look over at the applicant, if your choices of no vote on this or us tabling, do you have a preference?

Ms. Bothemley said just explain to me a little bit more what the owner has to do in order to...when it reaches Council in July.

Chair Finnegan said you would want to take action before it reaches Council in July.

Ms. Bothemley said I am sure he is more than willing to put any proffers in there that would be necessary in order to make the community happy and also to make the buyer happy.

Commissioner Baugh said it is really a question of that in the timing. So, if we vote no on it, then it is going forward to Council. Whether you decide to stick with what you have or want to make changes, it would go to Council in next month's meeting.

Chair Finnegan said sometimes it seems nicer for Planning Commission to table something, but sometimes in the case of if something is time sensitive...

Ms. Bothemley said and it is time sensitive, as you heard.

Chair Finnegan said then it is probably better off with a denial at this point.

Commissioner Baugh said and that is why I asked. I am trying to sort of just make sure I am not making assumptions.

Ms. Bothemley said so if it does go to Council, even though you have denied it, there are reasons why you denied it, and then if we present a proffer that might help, that could change the complexion of what is going on? We know what it wants to be used for, which would be ideal

for that neighborhood, we just have to figure out a way to make the neighbors happy that nothing else that is going to go in there down the road would jeopardize the integrity of that property. Is that correct?

Vice Mayor Dent asked and staff can continue to work with you on the proffers or whatever that might be right?

Ms. Dang said correct. I will coordinate with you on dates of when you would like to aim to get the completed proffer statement if your client chooses to do that to us so that we can get it on the Council agenda. But also that could be the date, where if your client decided if they wanted to, they could decide to postpone the application also to...but there are some details that I will save to share with you and discuss.

Ms. Bothemley said so I think that would be more beneficial to the person who wants to use that as their counseling office and it would be more beneficial all around.

Chair Finnegan said I would say yes. He then asked if there was any further discussion.

Vice Mayor Dent said well, this is going to be fun to explain at Council.

Chair Finnegan said I think the simple explanation is we did not like it as presented. That is why it was denied.

Commissioner Baugh said the Council hates it when all you have got to report back...

Mr. Fletcher said everything is in the minutes and could be captured there. Vice Mayor Dent said [referring to Mr. Fletcher] and you can explain.

Mr. Fletcher said I try to do my best. The other thing I was just going to say, to be clear, was all this talk about proffers. Technically the application can move forward with denial. No proffers submitted and City Council can still approve it if they so choose.

Vice Chair Byrd said I just want to be clear. My concern about B-1 was the amount of uses. So, if a proffer were to change those uses, then that would have addressed my concern about B-1, but the applicant did not know what my concerns were for the implied.

Commissioner Baugh said again one of the things that happens at Council, there was a stretch where it would happen not infrequently, where I would be the Council representative and they would say what was the discussion like at Planning Commission and sometimes my honest answer was they just sort of just seemed not to like it. You looked in the minutes and it was hard to tell. And one of the messages that we try to say is the Council members like to know what our thinking is. I will just sort of state, it really echoing what Mr. Byrd said, that the example of the restaurant/bar has come up but that there are some uses that when Ms. Loflin sells this to the next person and it is just a B-1 property that is free to be developed under this proposal as anything allowable on B-1. Especially if the intent is to really kind of keep it...to take what has been there and sort of perpetuate that, there are ways to do it. I think we are going to find out in a second there is probably consensus that a straight B-1 just does not seem acceptable to us at this point.

Chair Finnegan said I think that is fair. That is also why I have said it before, and I will say it again, the reason I am voting for denial is not about the parking concerns. It is about the uses.

Commissioner Armstrong said I mean I agree with that, but I think also the residents have expressed a lot of concerns about the tight parking there. That is not something that we disregard because parking is a pain. That quarter mile exploration, a quarter mile is not that far. So, that is reasonable exploration also that could show respect also for the residents' concerns about the parking too.

Commissioner Baugh said and I will even throw this out, that somebody in the audience knows the answer to this question, but if I am remembering correctly, this sort of parking area kind of across the street sort of next to First Step is actually owned, by that sort of an “L” shaped area. That parking lot...there is that area, kind of across, straight. I think what you were saying, you reached out to the people behind and found that was prohibited. Across the street might be prohibited. I stare at a lot of empty spaces over there all the time that I wonder if that might not be an option.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Chair Finnegan	Aye

The motion to recommend denial of the request passed (6-0). The recommendation will move forward to City Council on July 11th, 2023.

### **New Business – Other Items**

#### ***Consider a preliminary plat to subdivide a +/- 7.72-acre property into two lots at 199 Mount Clinton Pike***

Ms. Rupkey said the applicant is requesting to subdivide a 7.72-acre parcel addressed as 199 Mt. Clinton Pike (tax map number 45-A-4). The purpose of the subdivision is to facilitate the future development of a storage yard for Harts Towing Service, which would be located on proposed Lot 1 as illustrated on the preliminary plat. While there are no specific plans for the redevelopment of Lot 2 at this time, the property owner anticipates that general light industrial uses will be established on the property.

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 preliminary plat; therefore, no action is required by City Council.

*Land Use*

The subject property is currently zoned M-1, General Industrial District and is designated in the Comprehensive Plan as Industrial, which states that:

“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.”

*Transportation and Traffic*

The applicant intends to establish a shared entrance for the two lots while retaining the option to connect to the future roundabout. Staff discussed preference for one shared entrance to serve both Lot 1 and Lot 2; the applicant has shown on the preliminary plat that there will be one shared entrance and a shared private access easement. The applicant has confirmed that sight distance is achieved at the entrance location. City staff and the applicant also discussed the future possibility of relocating the entrance to connect into the future roundabout at the intersection of Mt. Clinton Pike and Acorn Drive.

Staff requested that the applicant consider extending the 30-foot private access easement to the southern property line, ensuring proper access to Mt. Clinton Pike for the lot situated to the south. This extension would help facilitate efficient ingress and egress for the neighboring property and enhance overall connectivity within the area. Staff appreciates the applicant's willingness to extend the access easement to the southern property line.

*Public Water and Sanitary Sewer*

As required, all lots would be served by public water and public sanitary sewer. The preliminary plat shows how the proposed private water and sanitary sewer lines will serve proposed Lot 1. The applicant is presenting the inclusion of private water and sewer easements to address the existing services on the property. While it is not the preferred approach for new lots, considering the specific locations of the available services, this solution proves to be adequate. These private service easements could remain accessible for potential redevelopment of Lot 2.

There are public sanitary sewer mains located on adjacent lots outside the northeast corner of the property. However, it is unlikely that these mains can accommodate gravity services, and therefore, an alternative route and/or pumping might be necessary. It is worth noting that utilizing private easements in this scenario can be a more cost-effective option compared to the alternative of extending a public sanitary sewer main.

*Recommendation*

Staff recommends Planning Commission approve the preliminary subdivision plat of 199 Mt. Clinton Pike.

Chair Finnegan asked if there were any questions for staff.

Chair Finnegan said this is part of what we heard is this connected with... This is not connected to the other one on Mount Clinton Pike.

Commissioner Armstrong asked this is well water and septic?

Chair Finnegan said no it would be City water.

Commissioner Armstrong said it says show how the proposed private water and sanitary sewer would serve...

Mr. Fletcher said private connection.

Commissioner Armstrong said oh, private connection. Thanks.

Commissioner Baugh said I move approval of the preliminary plat as presented.

Vice Chair Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Washington	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Chair Finnegan	Aye

The motion to recommend approval of the request passed (6-0).

### **Unfinished Business**

N/A

### **Public Comment**

N/A

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

Commissioner Washington said, with regard to the Rockingham County Planning Commission meeting, that they had two rezoning requests and three ordinance amendments. The first one was a rezoning request for 10200 Hop Hill Lane in McGaheysville from B-1 to A-2, general business to general agriculture, which was approved 5-0. The second one was a rezoning request for 14999 Randall Road in Grottoes, Virginia from planned growth to A-2, which is general agriculture, which was approved 5-0. The ordinance amendments on section 17-707.04 for signs as permitted uses to allow a special use permit to be obtained for signage in the BX, which is the business interchange district, that does not meet the requirements set forth in table 17-707.04. That was approved 5-0. The second ordinance amendment was to the Rockingham County Code Chapter 17 Zoning Ordinance Section 17-201, Definitions, generally to remove story and basement, which was approved 5-0. The last one was Chapter 17 the Zoning Ordinance Section

17-607, Supplemental Standards for Certain Land Uses, to amend the Supplemental Standards for wireless telecommunications facilities. This was approved 5-0.

Chair Finnegan said I am wondering is that wireless telecommunications...did we do something with...I wonder if that was to put those telecommunication devices on poles. A number of years ago we had to make an amendment because something changed and they are not allowed to put 5G, something or another, up there. I wonder if they are just updating their ordinance. I also wonder... the last time I sat in on a Rockingham County Planning Commission meeting, there was a question of does the basement count as a story. If the front of the building is at grade and the bottom is below grade... I wonder if that is that basement as story.

Ms. Dang asked may I ask if you all could help fill out the rest of the calendar.

Commissioner Baugh said let me jump right in because I was not here when you set it up. I know I cannot do two of them, so let me volunteer for the two that I can do. Which would be the last two.

Ms. Dang said so that would be December and...

Commissioner Baugh said November and December. I am volunteering for November and December

Chair Finnegan said I could probably do September 5<sup>th</sup>.

Ms. Dang said is someone available on the 3<sup>rd</sup>.

Chair Finnegan said October 3<sup>rd</sup>. Anyone able to do October 3<sup>rd</sup>? I am looking at you Commissioner Byrd.

Commissioner Baugh said well, somebody will get appointed between now and then. We can just dump it on them.

Ms. Dang said if not, I will check in with you all next month.

Commissioner Baugh said we have turned four blanks into one so that is good.

Vice Chair Byrd said I could take one.

Chair Finnegan said I think you owe us one.

Vice Chair Byrd said I will take it. That is fine. It is just down the road. Also, I was curious about the planned growth changing. I actually tuned in for that part that was an interesting conversation about what is coming.

***Board of Zoning Appeals Report***

Vice Chair Byrd said this is my first BZA meeting. Literally got sworn in hours before. There was an appeal...

Ms. Dang said I am sorry it was a variance request.

Vice Chair Byrd said concerning a variance for a rear setback in R-1. From what was mentioned, it sounded like the applicant was not able to present a hardship. So, we voted denial across the board. It was interesting though that there were no topographical issues. It was more the existing property behind it could be a residence. Even though the current owners said they were never going to do that. But because of that, the setbacks what they are we felt that was not enough of a reason. Well, at least I felt, I cannot speak for other members.

Chair Finnegan said quasi-judicial it is not as open to interpretation as the Planning Commission.

Vice Chair Byrd said but there was nothing about the variance that I feel we should be concerned about as Planning Commissioners.

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

Vice Mayor Dent said last night we had public hearings for a couple of things that came from Planning Commission. The 564 East Gay Street subdivision, another house on the corner of Gay Street and Hill Street, and the other house would be around the driveways on Hill Street instead of Gay Street and we approved. Now, Council Member Robinson was especially interested in that, because not only does she live in the neighborhood, but where she works, the Shenandoah Valley Black Heritage Project, is directly adjacent, and the driveways would be adjacent. She pointed out that means that the two driveways together mean that that is an understood area that people would be pulling out. It has lessened the risk of having distributed driveways. Anyways she was fine with that. The other one from Planning Commission was the 1846 Evelyn Byrd Avenue. That is the one that is on a vacant lot directly across from the Regal Theater development that we have approved before and that was approved unanimously. The Ordinance Amendments for Homestays and Short-Term rentals, we tabled because there was motion to allow Council Member Jones to have his input. He will be back presumably next time. Actually, we set it to July 11<sup>th</sup>, so that is when we will likely address that. Now, we may appoint another Planning Commissioner at the second meeting in June. I do not know yet. I think we have gotten a couple more applications and some good potential there. I do not want to promise too much but that would certainly help. Starting in July we would have a new [Planning] Commissioner.

Chair Finnegan said July would be a heck of a month for them to start. We have the two meetings.

Mr. Fletcher said the last item was the extension of Public Utilities for water and sewer off of Friendship Drive.

Vice Mayor Dent asked that was just in the consent or where?

Mr. Fletcher said that just was not a public hearing. So, it was at the end. The first item was the rezoning to allow for the subdivision on East Gay Street.

### **Other Matters**

#### ***Planning Commission Annual Report 2022***

Ms. Dang said if you have any questions for me, please let me know. It is reflecting all the things you have reviewed, and the actions taken from last year in 2022.

Chair Finnegan said it is interesting to me when you look at the last column, City Council action, how few... I mean, it feels like we have had some pretty fraught split decisions here over the years. There is only...I see denied...

Commissioner Baugh said that is always a tiny percentage.

Chair Finnegan asked so do we need a motion on one and then adoption or...

Ms. Dang said yes, just a motion to forward it to City Council.

Commissioner Baugh said I move to forward the Annual Report to City Council as presented.

Vice Chair Byrd seconded the motion.

Chair Finnegan said all in favor of forwarding the 2022 Annual Planning Commission Report to City Council say "aye".

The Planning Commission unanimously voted to forward the 2022 Planning Commission Report to City Council.

#### ***Community Development Annual Report 2022***

Ms. Dang said this report does not need to move forward to City Council, just FYI for you all. It includes a listing of some of the Zoning activities, number of permits and things we have reviewed, and our minor subdivisions and final plats that we have processed that do not come to you all in Planning Commission. If you have any questions, I would be happy to answer them. At this time, proactive code enforcement still remains on hold.

Chair Finnegan said I did have a question about that "resub," which I guess stands for resubmission.

Ms. Dang yes, or re-subdivision maybe.

Chair Finnegan said re-subdivision of portion of 66 Effinger's Addition, I guess that has not gone through yet.

Ms. Dang said that one is one that had been applied for. I attempted to contact them maybe a month and a half ago and have not heard back from them whether they wanted to continue with

their item or if they wanted to withdraw their request. There were significant comments from staff on that particular submission.

Chair Finnegan said so we do not need to take action on that. Any questions about that for staff?

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

Chair Finnegan said I have a question about...we need to look at the summary of next month's applications. Staff is recommending two meetings.

Ms. Dang said I understand that not everybody can be in attendance on Thursday the 20<sup>th</sup> but it appears to be the date that works for most and we would have a quorum for the second meeting. For the benefit of the public if you might be listening usually, our bylaws, I think, states we would meet on the 3<sup>rd</sup> Tuesday. But because Ms. Rupkey and I are going to be at a conference, we are proposing, and checking with you all, a date that works for most would be Thursday, July 20<sup>th</sup>, to do that second meeting. These are the items that are going to be considered. Unless somebody was to postpone their own application, these are the items we expect to move forward. Staff will be contacting the applicants to decide... We have an idea of who we want to go which date, but we need to confirm with them that indeed there are applicants available on the 20<sup>th</sup>. So, if you could allow us to choose which ones are on which date, we will try to split it up as evenly as we can. The other question that I have for you all that Meg brought up was the site tour, do we just want to knock it all out at one time one evening the Tuesday before the first meeting, which I would be happy to do?

Chair Finnegan said my personal preference would be yes because the days are long now so we will not be in the dark, which has happened in the past for the site tour. Also, that makes it essentially three things on the calendar as opposed to four things on the calendar.

Ms. Dang said that is correct. The four o'clock time to start still good for you all? We have the option we could start earlier if it works for the group.

Vice Mayor Dent asked and since I will only be here for the first meeting, I would know in time which items are being shown that first meeting?

Ms. Dang answered yes.

Chair Finnegan asked do we feel relatively confident that we would have a quorum for that second meeting? Show of hands, how many people think they are going to be available. I think I will be available.

Commissioner Washington and Vice Mayor Dent said that they will not be present at the second meeting.

Chair Finnegan said that is four, that is a thin quorum. No one get sick.

Commissioner Armstrong said and we might have another member.

Vice Mayor Dent said that is possible.

Chair Finnegan said that sounds like our best shot. Even though we will be down a few members, hopefully we will have someone.

The meeting was adjourned at 9:32p.m.

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Brent Finnegan, Chair

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Anastasia Auguste, Secretary