



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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May 2, 2022

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: *Consider a request from Devon Lane LLC for a special use permit to allow reducing required parking areas at 716 & 722 Foley Road*

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: April 13, 2022

Commissioner Baugh said the Virginia State and Local Government Conflict of Interests Act requires that I make disclosure, to be recorded in the City records, in any matter in which I am prohibited by law from participating. Therefore, I make the following disclosures:

1. The transaction involved is the item taken up on the April 13, 2022 Harrisonburg Planning Commission Agenda as Item 4(b), a request for a special use permit.
2. My personal interest in this transaction relates to the ethical requirements to which I must adhere as a licensed member of the Virginia Bar.
3. I affirmatively state that I will not vote or in any manner act on behalf of the Planning Commission in this matter.

Commissioner Baugh left Council Chambers.

Chair Finnegan read the request and asked staff to review.

Ms. Dang said in 2021, Planning Commission (PC) recommended approval (6-0; Baugh recused) and City Council (CC) approved (5-0) the applicant's request for a special use permit (SUP) per Section 10-3-48.4 (6) of the Zoning Ordinance (ZO) to allow multiple-family dwellings of up to 12 units per building on the subject property. The following conditions were approved with the SUP:

1. All newly constructed multiple-family units shall be efficiency, or one- or two-bedroom units.
2. Prior to issuance of any certificate of occupancy for multiple-family dwellings, the property owner shall dedicate necessary public street right-of-way to encompass curb and gutter plus 0.5-ft., and deed a public sidewalk easement to include the remainder

of the two foot wide grass strip, a five foot wide sidewalk, and 0.5-ft behind the sidewalk. The future curb and gutter location shall be equidistant from the street centerline similar to what exists across the street.

3. The entrance at Foley Road to serve multiple-family building(s) on the site shall be no greater than 30 feet wide.
4. The special use shall be established, or any construction authorized shall be commenced and diligently pursued within five years from the approval date of the special use permit.

The December 14, 2021 CC minutes, including agenda packets and the extract of minutes from the November 10, 2021 PC meeting, is available at: <https://harrisonburg-va.legistar.com/Calendar.aspx>.

The Comprehensive Plan designates this site as Medium Density Residential. These areas have been developed 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.

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

Site: Single-family detached dwellings; zoned R-3

North: Across Foley Road, single-family detached and duplex dwellings; zoned R-3

East: Single-family detached dwelling; zoned R-3

South: Single-family detached, duplex, and multiple-family dwellings; zoned R-3

West: Single-family dwelling; zoned R-3

The applicant is requesting a special use permit (SUP) per Section 10-3-48.4 (3) of the Zoning Ordinance (ZO) to allow reducing required parking areas to permit fewer than the required number of vehicle parking spaces, provided that an amount of open space equal to the amount of space that would have been used for the required number of vehicle parking spaces is left available for parking in the event that, at the discretion of the City Council (CC), it is needed at some time in the future. This request is associated with the applicant's plans to keep two existing single-family detached dwellings on the property, to vacate the property line between the two parcels, and then to add a three-story multiple-family building consisting of 11 efficiency dwellings. As part of the SUP request, the applicant is requesting approval be granted for three years from the date of approval.

Given that the applicant plans to maintain the two existing single-family detached dwellings, the R-3 district requires 12,000 square feet of lot area be allotted to those two units (6,000 square feet per single family detached dwelling), which then leaves enough square footage to construct up to 11 multi-family units. With regard to required off-street parking, one parking space shall be provided for each single-family detached dwelling. Per Section 10-3-25 (7) of the ZO the parking requirements for multi-family dwellings in R-3 includes:

- 1.5 spaces for each dwelling unit with one bedroom
- 2.5 spaces for each dwelling unit with two or three bedrooms
- 3.5 spaces for each dwelling unit with four or more bedrooms

If all 11 multi-family dwellings contain no more than one bedroom, then 17 off-street parking spaces would be required per the ZO. However, if all 11 multi-family dwellings contained two-bedrooms (the maximum number of bedrooms allowed per the 2021-approved SUP), then 28 off-street parking spaces would be required. At this time, the applicant plans to construct 11 efficiency or one-bedroom dwelling units. The SUP requested herein is to essentially allow the property owner to provide only one parking space per efficiency or one-bedroom multi-family unit rather than to provide the ZO's typical 1.5 parking spaces per unit.

The applicant describes in their letter that they have not yet retained a professional engineer for the project. However, the applicant has provided a photo mockup showing where 17 off-street parking spaces could be located on the property and has provided a letter from a professional engineer, who, among other things, stated they believe that there is sufficient land to build 17 parking spaces. The applicant is aware that the Building Code requires handicap accessible parking spaces and access aisles be provided for apartments (multi-family dwellings) and that a submitted site plan for the new construction will need to show the reserved open space area for parking if CC determines it is required. The applicant also understands that, if the SUP is approved, the area that would have been used for parking must be recorded in a deed, must remain as open space, and shall not be used to meet any conflicting requirements of the ZO.

During the 2021 SUP review, which allows for the planned multi-family units on the subject property, some might recall the following issues being discussed: the dedication of right-of-way, the deeding of a public sidewalk easement, and the construction of sidewalk and frontage improvements. At that time, City staff recommended a condition which, among other things, would have required the property owner to construct sidewalks along the property's frontage. The condition did not require full street widening improvements such as curb and gutter.

However, PC disagreed with staff's recommendation and instead recommended the following condition that was ultimately approved by CC, which does not require sidewalk construction:

“Prior to issuance of any certificate of occupancy for multiple-family dwellings, the property owner shall dedicate necessary public street right-of-way to encompass curb and gutter plus 0.5-ft., and deed a public sidewalk easement to include the remainder of the two foot wide grass strip, a five foot wide sidewalk, and 0.5-ft behind the sidewalk. The future curb and gutter location shall be equidistant from the street centerline similar to what exists across the street.”

While staff understands that CC approved the SUP without the condition to require sidewalk construction by the property owner, staff believes that this topic should be revisited because some tenants might not have vehicles. Earlier this year the property owner was selected to receive \$350,000 of gap funding from the Central Shenandoah Planning District Commission (CSPDC) so that the subject multi-family project could provide income controlled affordable housing units. According to the CSPDC, at this time the contract has not been officially finalized, however, the plan is for this project to provide affordable housing units up to 60% area median income for a 20-

year period. In knowing this detail of the project, it likely increases the potential that individuals that reside within the units might not have a vehicle and might rely on public transportation, and therefore sidewalk construction is essential for the residents. Residents without vehicles will have limited transportation choices and access to public transit may be their best option, provided they feel comfortable walking to the nearest bus stop. City bus Route 2 has a southbound bus stop that would transport people from the nearest bus stop to Sentara RMH in under 10 minutes. In addition, City Route 1 has a northbound bus stop on the other side of Reservoir Street that could get people to the Valley Mall in under 10 minutes with bus stops not much further at several other commercial and employment centers. (Note that there is no crosswalk at the intersection of Reservoir Street and Foley Road and that people will need to walk across four lanes of traffic to reach the northbound side of Reservoir Street.)

While a 200-foot long segment of sidewalk along the front of the subject property may appear negligible compared to the overall need for sidewalks on Foley Road, the City has a large backlog of sidewalk construction needs all across the City because sidewalk construction was not required years ago when streets were being constructed in the City or the City acquired streets without sidewalks during annexation. When public funding is available, the City has used those funds to retrofit legacy development. In general, staff believes it is not responsible to allow larger-scale housing to be constructed without sidewalk when residents will be walking in the street because they have no other choice than to walk. Sidewalks are an essential service for people who do not have cars. Therefore, staff recommends a condition with this SUP to require the construction of sidewalks.

Staff believes that the SUP to reduce parking shall only be applicable for efficiency and one-bedroom multi-family units up to a total of 11 units, which is what the plan is for the subject property. In conclusion, the requested SUP is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of the special use permit to allow a reduction in the required parking areas on the subject property only with the following conditions:

1. Reduction in required parking shall only be permitted for efficiency or one-bedroom multi-family units up to a total of 11 such units, where one parking space per unit may be provided.
2. Prior to issuance of any certificate of occupancy for multiple-family dwellings, the property owner shall construct a five-foot wide public sidewalk along the entire length of the property frontage. The sidewalk may be located within dedicated public street right-of-way or within a deeded public sidewalk easement so long as 0.5 feet of right-of-way or easement area is provided beyond the width of the sidewalk infrastructure. Furthermore, the property owner shall be responsible for engineering design to ensure that the sidewalk is constructed at the appropriate grade and location for future construction of curb and gutter and any other street widening by the City.
3. The special use shall be established, or any construction authorized shall be commenced and diligently pursued within three years from the approval date of the special use permit.

Chair Finnegan asked if there were any questions for staff.

Commissioner Whitten said I remember that a sidewalk does exist across the street.

Ms. Dang said that is correct, (referring to the PowerPoint slide) along the frontage of these three buildings here there is maybe 100 foot of sidewalk length on the other side.

Commissioner Armstrong said she was confused about the five years to three year distinction in the third condition. Are you suggesting that it be reduced from five years to three years?

Ms. Dang said that the applicant had requested the three years in their application. The five years is from their previous application in 2021. They had requested a five-year period for that SUP. I recall conversations with the applicant that with this project moving forward, potential grant money coming in, he felt that the three years was adequate.

Commissioner Whitten said I also remember the applicant speaking about the expense of the sidewalk and affordability of the apartments. That was a factor in keeping the affordability, which we want. Is that correct?

Ms. Dang said I recall that.

Chair Finnegan asked was that before the CSPDC income controlled affordable housing unit grant?

Mr. Fletcher said that the applicant had not applied for the grant at that time. It was before the grant.

Chair Finnegan said that might offset it somewhat. One thing that I have brought up before, and I brought up in the CIP, is the difference between a sidewalk and a multi-use path. What is important for me is that people have a safe place to walk, whether it is made of concrete or whether it is made of asphalt. This would be a sidewalk. I hope this is something that we can look at when we are looking at redoing zoning. If we are concerned about affordability and we can have for a lesser amount of money something that is functionally a sidewalk that is less expensive than a sidewalk. There is one right in front of Bluestone Elementary School.

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

Ms. Dang said we did expect the applicant to be here tonight, but I do not see them in the audience. The applicant did submit a letter. A copy is in front of you.

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

Commissioner Byrd said the request is to reduce parking. That is considering that more people are walking. That would make me more in favor of having a sidewalk for those people to walk on as this road is going to be done piecemeal over time.

Chair Finnegan said I remember that when we had this discussion before, it was this sidewalk is not connected to any other sidewalk. It just ends. It is the chicken or the egg issue. There is no sidewalk because there is no sidewalk. If we do not require sidewalks, there will never be a sidewalk.

Commissioner Whitten said that the reduction in parking is the same as we have done for others in terms of leaving it in grass and space that could be usable to the tenants of this building that do not have to be asphalt or concrete or gravel. To me that is a plus. The proviso is that if City Council decides that those parking spaces are needed, the space is there for those parking spaces. I do not like making a decision about the sidewalk and then having this thrown in. I feel like that decision has been made. We thought it through. Whether or not there was a grant. Whether or not there was a parking offset. I know that the applicant is aware. He said that in his letter. I am not crazy about that either.

Chair Finnegan said, to clarify, you are not crazy about requiring a sidewalk as a condition.

Commissioner Whitten said now, as a condition now that they do not want to build these parking spaces. What I get from this letter is that he would like that to be greenspace, space for a picnic table or a play space, space that could become communal for the residents. I think that is very important. I think that is what we talked about in the first case, the fabric of the neighborhood or community.

Commissioner Armstrong said I share the view that we have made this decision about the sidewalks. It is odd to have it rolled into this proposal. I have not changed my opinion about that original view of this requirement that we decided was not essential. I like the idea of reduced parking. We have been talking about that in lots of different contexts.

Chair Finnegan said I recently read this book *The High Cost of Free Parking* by Donald Shoup. It talks about off-street parking requirements. I want to negotiate in good faith with anyone who wants to reduce parking requirements while also allowing for, as Commissioner Whitten said, green space that could turn into parking spaces if the number is too low. I do support the reduction in parking. I am on the fence about the conditions. I could go either way on that. The reason why, earlier, I raised a shared use path, as opposed to a sidewalk, is because people need a place to walk. Ideally, that is a sidewalk. If you look on Reservoir Street, next to Wal-Mart, there is literally nowhere to walk. There is no space. There is a guardrail where people have to step over.

Commissioner Byrd said rereading the original wording that currently exists on the property, not the suggested one. It goes from that area being dedicated to us saying build the sidewalk now. Having reread that part, I think it is still set off for when the sidewalk needs to be built. It will be built.

Chair Finnegan said that to staff's point, we have seen the CIP and the backlog of sidewalks that the City has. I think that was another way of saying that the City is not going to get to that sidewalk anytime soon.

Commissioner Byrd said I remember that there was the issue of that whole side where there was no sidewalk, whereas the other side has some sections of sidewalk.

Chair Finnegan said what is before us right now is alternative (a) Recommend approval of the SUP as submitted, without the conditions, or (b) staff's recommendation to approve the SUP with suggested conditions.

Ms. Dang said that you could also consider alternative (c) with modified conditions.

Commissioner Whitten asked Ms. Dang to bring up a map of the area on the screen and asked, across the street where the sidewalk is existing, the apartments that are to be built on Reservoir Street would that include the rest of the sidewalk on the other side of the street being completed to the corner, correct?

Mr. Fletcher said yes.

Commissioner Whitten said that would connect to Reservoir Street making it a complete sidewalk. That is a lot more than they have on Ott Street right now. It is apples and oranges to some degree.

Mr. Fletcher said another thing to consider when sidewalk is constructed along a frontage, or it exists along a frontage, is that when adjacent properties that develop or subdivide, our subdivision regulations have the requirements in place that state that the other property owner has to extend it. Once it is in place, if the adjoining properties subdivide or create a development, it is required. In this instance, for example, if you look across the street to the left of Sour Cherry Court, if that individual wanted to demolish that single-family home and subdivide it into three townhome lots, that process requires them to construct a sidewalk. While the City might not get here in the near future, other private development might beat us to the punch and fill in some of those blanks. Once that sidewalk goes in there, there are other opportunities that come to pass.

Ms. Dang noted that the applicant arrived.

Chair Finnegan reopened the public hearing and invited the applicant to speak to the request.

Frank Gordon, Manager, Devon Lane LLC, came forward in support of his request. My request is to have a reduced amount of parking at this location. The fact that the City has an ordinance that allows for this suggests that there are occasions in which it is preferable to have less parking. I think it is very important to remind ourselves that the ordinance which allows this also makes clear that the City Council reserves the right to change their mind about that at any point in the future. I would go into this request with the knowledge that that could occur. As a part of that, to make that an easier decision, I have indicated that I would have my engineer demonstrate on the site plan where that would be if that is required. It is also possible that the marketplace indicate that it needs to be converted back into parking. As I indicated in the letter, which may have not had a chance to read since it came out later, I am aiming this project for people of a lower income. Having a lower income presents a number of challenges but it does not eliminate certain human needs, an opportunity to connect with nature, an opportunity to meet your neighbors and earn a friend, or a chance to enjoy the outdoors on a pretty day. My plan for this additional six parking spaces that I

would have held in reserve to be built if needed, or if demonstrated by the Council that they wanted it later, is a grassy area with perhaps a picnic table. I think that would be a great amenity for this. I am trying to make this a pleasant place to live for the people who live there.

I feel like I have a very positive working relationship with Planning staff. I am well aware of their desire to have as much concrete and asphalt as possible. However, I also know that a few months ago, the Planning Commission and City Council thought about this matter carefully. I was honored to have a number of you come to this site to look at it in person. I feel like you had a robust discussion about whether we should require parking at this time. You have heard Mr. Fletcher indicate that if someone builds next door, they could be required to have parking. I would respectfully point out that he did say that if they tore it down and built it up, that the people next door had a plan to make that into four units and to expand housing for community members. That is not going to happen. They are not going to do that. Instead, what we have is a student rental house based on the out of state license plates in the parking lot. From a practical matter, based on what they paid for the property, they are never going to tear that down and build townhouses. It is not going to happen.

What I disagree with staff about is to have you reverse your decision that you made four months ago even though none of the circumstances involved in making your original decision have changed. I told you at the time that I wanted to have an affordable place to live. We pointed out the practical point, as Mr. Byrd has said about deferring construction. I ceded to every single request that staff has made for an actual six inch strip and an easement, even things that they asked for that came up between your meeting and the City Council meeting I said they could have. As I was discussing with Ms. Dang the other day, when I was growing up, if I asked my dad, "Can I borrow your car?" and he thought about it and he said, "No" I did not come back ten minutes later with no change in circumstances and ask him again. The reason for that is because I respect his capacity to make a reasoned decision and his authority in doing so. While I get along great with the staff, I would appreciate it if they would respect your capability to make a reasoned decision and respect your authority to do that. It is not just you who have done that, but City Council has unanimously decided that they agreed with you. I was pleased to see that Dr. Armstrong, having seen it, and being an avid walker herself, said that this does not affect walkability on that street. She was right four months ago. She is right now. I would respectfully ask that you demonstrate that the decision you made originally is a sound one. The composition of the Planning Commission has not changed. The circumstances on this street have not changed. The project has not changed. Nothing has changed. They just did not like that you did not agree with them and now they are asking you, after I have made plans and budgets for this project that will increase the number of efficiency units in this City by five percent with this single project, they did not like what you said so they want you to change your mind. You just told them no. Thank you for the opportunity to speak even though I was tardy. It was not intentional on my part but a mistake in terms of what time the meeting was.

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

Councilmember Dent said I tend to agree that this is a bait and switch on the part of staff, that we have already approved it.

Mr. Fletcher said I want to clarify a few points. Staff definitely does not want to have a bunch of asphalt. The circumstances in this case are that, while we recognize that a decision was made, the circumstances in our minds have changed because of the request to reduce the parking indicating that there would not be as many people with vehicles indicating that more people would be walking and to necessitate our need from a philosophy across the City that sidewalk is a desired amenity to have in neighborhoods. It was not that we disrespected your decision, or City Council's decision. In fact, we debated that quite a bit among staff. After communicating with the Department of Public Works, we talked about the lower income individuals and not overlooking the fact that they should also have sidewalk in their neighborhoods. We felt it prudent to offer the recommendation to capture an opportunity to bring that sidewalk to fruition.

Councilmember Dent said the other thing that has changed is that they won this grant. I do not think that is a reasonable request to take advantage of that to have them build a sidewalk, too. I am on the CSPDC Board of Commissioners. I know that the purpose of that was to provide affordable housing. They applied for the grant as we approved it before, and they got the grant. I do not think that should be a consideration for now requiring the sidewalk either.

The commissioners discussed the conditions they would include with their recommendation.

Commissioner Armstrong moved to recommend approval of the SUP with conditions 1 and 3 as proposed by staff, but not including condition 2.

Commissioner Whitten seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Recused
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the SUP passed (6-0). The recommendation will move forward to City Council on May 10, 2022.

Commissioner Baugh returned to meeting at the conclusion of this item.