



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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September 1, 2021

**TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA**

SUBJECT: *Consider a request from Skylar & Talli, LLC for a rezoning to amend proffers for a +/- 5.44-acre property at 1051 & 1351 Peach Grove Ave*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: August 11, 2021**

Chair Finnegan read the request and asked staff to review.

Ms. Dang said that on June 11, 2019, the subject property was rezoned from B-2, General Business District to R-5C, High Density Residential District Conditional while also receiving approval of three special use permits, (SUP) which included:

1. To allow multi-family dwellings of more than 12 units per building per Section 10-3-55.4(1) of the Zoning Ordinance,
2. To allow multi-family buildings to be greater than four stories and/or fifty-two (52) feet in height per Section 10-3-55.4(2) of the Zoning Ordinance, and
3. To allow retail stores, convenience shops, personal service establishments, restaurants (excluding drive-through facilities), and business and professional offices per Section 10-3-55.4(4) of the Zoning Ordinance.

The 2019 staff report described the following with regard to the proposed project at that time:

“If all the requests are approved, Skylar & Talli, LLC plans to construct one, six-story mixed-use building containing non-residential and multi-family residential units. The applicant’s letter describes plans for the building to contain approximately 16,000 sq. ft. of retail (i.e. non-residential) space that may include uses such as restaurants, coffee shops, bookstores, clothing retailers, and convenience stores. The applicant also plans to include the following on the first floor of the building: interior dumpster facilities, a loading dock to serve both retail and residents, and residential amenities such as a lobby, exercise room,

computer room, laundry facilities, and space for bike storage. The second through sixth floors of the building are planned to contain apartments with 1, 2, 3, and 4-bedroom configurations. The applicant's letter describes plans for a total of 120 multi-family dwelling (apartment) units."

While the applicant described in their 2019 proposal to provide "an approximate mix of 20 – 1-bedroom units, 20 – 2-bedroom units, 30 – 3-bedroom units, and 50 – 4-bedroom units for a total of 120 total units," this was not proffered.

In 2019, staff recommended denial of the rezoning stating "[w]hile staff supports the location of this site for a mixed use development staff has concerns about the proposed entrance location, does not believe that the project, as presented, supports the mixture of uses between this property and neighboring properties, and does not believe that the project provides a safe and comfortable pedestrian environment that promotes walkability for residents and visitors as described in the purpose section of the R-5 district in Section 10-3-55.2..."

Planning Commission (PC) recommended denial of the rezoning with a 4-3 vote. Both staff and PC recommended approval of the three special use permit requests if the rezoning was approved. City Council (CC) approved the rezoning and special use permits unanimously. The May 28, 2019 CC agenda packet, including an extract of minutes from the April 10, 2019 PC meeting, is available at: <https://harrisonburg-va.legistar.com/Calendar.aspx>. (May 28, 2019 was the first reading and public hearing for CC and June 11, 2019 was the second reading on CC's consent agenda.)

About seven to eight months after receiving approval of the rezoning and SUPs, the applicant began the process of pre-requisite submissions for the engineered comprehensive site plan (ECSP) review process by submitting for a Preliminary Fire Review and a Preliminary Engineering Report for water and sewer matters. As noted above, the publicly discussed concept plan at PC and CC indicated 120 units with 1, 2, 3, and 4-bedroom units, however, when going through the ECSP process, the project had 100, 4-bedroom units. The ECSP was ultimately accepted for construction (approved) on August 17, 2020. While the ECSP is accepted for construction, before the applicant can begin land disturbing activities and construction, there are requirements including, but not limited to, submitting an acceptable form of surety for public improvements and recordation of stormwater best management practice (BMP) maintenance agreements, as well as other miscellaneous matters.

With regard to the Comprehensive Plan, the site is designated as Mixed Use. 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.

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

- Site: Undeveloped property, zoned R-5C
- North: Retail and other commercial uses, zoned B-2
- East: Convenience store, fueling station, and restaurant, zoned B-2
- South: Across Peach Grove Avenue, private school, retail, and a single-family detached dwelling, zoned B-2
- West: Undeveloped property, zoned B-2

The applicant is requesting to amend proffers for a +/- 5.44-acre property addressed as 1051 and 1351 Peach Grove Avenue and zoned R-5C, High Density Residential District Conditional. If approved, the applicant plans to construct one, six-story multi-family building without commercial or retail uses.

The applicant explains their reasons for seeking a rezoning to amend the proffers in an attached letter titled “Reasons for seeking a rezoning of the property to amend proffers.”

The approved and existing proffers (from the 2019 rezoning) include the following (written verbatim):

- 1) The site shall contain residential and non-residential uses.
 - a) There shall not be any residential dwellings located on the first floor of any building. However, the first floor of buildings may contain residential lobby area and other residential amenities for use by residential tenants, such as recreational facilities, computer room, and laundry, etc. These amenities shall not be counted as non-residential.
 - b) A minimum of 15,000 square feet of non-residential uses as permitted by Section 10-3-55.4(4) (i.e. retail stores, convenience shops, personal service establishments, restaurants (excluding those with drive-through facilities), and business and professional offices shall be contained on the first floor of buildings. The proffer does not preclude the property from adding non-residential uses up to the entire first floor of any building.
- 2) The site shall contain no more than 400 bedrooms.

- 3) No more than two rows of parking and associated drive aisles can be located between any building and Peach Grove Avenue and between any building and the existing private access road on the property.
- 4) A sidewalk shall be provided along the southwestern side of the private access road from Peach Grove Avenue to tax map parcel 92-F-11 as generally depicted on the submitted layout titled "The Shoppes at Peach Grove" dated February 23, 2019.
- 5) A right-turn taper shall be provided for the proposed driveway. The taper shall have a minimum taper length of 125 feet.

The revised, new proffer statement includes the following (written verbatim):

1. The site shall contain no more than 460 bedrooms.
2. No more than two rows of parking and associated drive aisles can be located between any building and Peach Grove Avenue and between any building and the existing private access road on the property.
3. A sidewalk shall be provided along the southwestern side of the private access road from Peach Grove Avenue to tax map parcel 92-F-11 as shown on the accepted site plan with the project name, "The Shoppes at Peach Grove" dated August 17, 2020.
4. A right-turn taper shall be provided for the proposed driveway. The taper shall have a minimum taper length of 125 feet as shown on the accepted site plan with the project name.
5. A bus pull off will be constructed along with a concrete pad for a bus shelter, and a bus shelter easement will be dedicated to the City at a location acceptable to the Department of Public Transportation.
6. All traffic generating uses from the site shall not exceed the maximum number of trips in the traffic impact study accepted by the Harrisonburg Department of Public Works on April 2, 2019, as calculated using the latest edition of the Institute of Transportation Engineers' Trip Generation Manual.

Note that within the applicant's supporting documents, Exhibit D-2 is sheet C3 from the accepted site plan that is referenced in Proffer #3 of the proposed revised proffers. No other element of the accepted site plan is proffered.

New proffer #1 is similar to the 2019-approved proffer #2, except that the applicant has increased the number of allowed bedrooms from 400 to 460. While the applicant has described in their letter a building containing a mix of 22, 2-bedroom units and 100, 4-bedroom units for an approximate total of 126 total units, this is not proffered. As noted above, the accepted ECSP has 100, 4-bedroom units, which is different than what was planned and illustrated during PC's and CC's 2019 review. However, the applicant was allowed to change their plans as the bedroom per unit makeup was not proffered.

The proposed, revised proffers #2, 3, and 4 are similar to the 2019-approved proffers #3, 4, and 5, respectively, except for the noted reference to the accepted ECSP.

With proffer #5, a concrete pad will be constructed and an easement dedicated for a future bus shelter. The Harrisonburg Department of Public Transportation will provide the bus shelter.

The revised, new proffers do not include the 2019-approved proffer #1 that required residential and non-residential uses on the site. Because the SUPs approved in 2019, which included a SUP to allow retail stores, convenience shops, personal service establishments, restaurants (excluding drive-through facilities), and business and professional offices remains valid, and because new proffer #2 would allow 60 more bedrooms than previously proffered, city staff encouraged the applicant to consider a limit on the traffic generated from the site that is in line with the traffic impact analysis (TIA) study accepted by the Department of Public Works on April 2, 2019. Therefore, the applicant has offered Proffer #6. This proffer allows the applicant to have any combination of allowed uses on the site that would not exceed the maximum number of trips in the accepted TIA study. The current proposal for 460 bedrooms and no non-residential uses compared to 400 bedrooms with non-residential uses results in a calculated decreased number of vehicle trips during peak hours. Attached within the applicant's supporting documents is a memorandum from Ramey Kemp Associates dated August 5, 2021 that describes that information.

During the 2019 rezoning, with the plans for a mixed use building, staff recommended that the building be located to the front property line (along Peach Grove Avenue) and along the private access road, and to not have parking spaces or drive aisles between the building and the public street and private road. At that time, the applicant said that such a design is not desirable because retailers want parking in front of the building to serve customers and that moving the building closer to Peach Grove Avenue would impact the availability of parking spaces within the development. As noted above, with the current 2021 rezoning request, the applicant proposes to remove all nonresidential uses from the building.

While staff did not reiterate to the applicant to relocate the building as suggested in 2019, we continue to believe this is a desirable option. During the review of the current request, however, and with the intent to have a site layout that we thought could encourage future development that would promote a pedestrian friendly and mixed use area, rather than continuing forward with the applicant's desired layout, staff offered for them to consider two different site layout options. The two options included: (A) to move the structure towards the James Madison University Foundation property to the west so that the building's pedestrian entrance/exit is in line with the sidewalk in front of the existing shopping center. This could make it easier for residents to have access on foot to the existing commercial uses without having to navigate a large parking lot. This option could preserve a portion of the Peach Grove Avenue frontage for a future commercial or mixed use building, or (B) to rotate the structure about 90 degrees and push it as close as possible to the rear property line adjacent to the existing shopping center parking lot to the north. This option could preserve the entire Peach Grove Avenue frontage for a future commercial or mixed use building. The applicant explained that they have already invested a lot and are so far along with site development and building plans that they are not interested in changing the location or configuration of the building. The applicant is aware, however, that their proposal will require revisions to the accepted ECSP and building plans for the removal of the non-residential spaces and the addition of more dwelling units to the building.

As we all know, since the 2019 approval of the rezoning and SUPs and during the review and ultimate acceptance of the ECSP, a great deal has happened in the world associated with the Covid-19 pandemic. In the applicants document titled "Reasons for seeking a rezoning of the property to

amend proffers,” it states, “[d]ue to the many challenges created for the commercial/retail industry by the Covid-19 pandemic, we are asking to amend the proffers for this property.” Staff recognizes these struggles. However, as most know, since the rezoning approval and acceptance of the ECSP, the City has completed a Comprehensive Housing Assessment and Market Study (Housing Study), which provides a great deal of information in understanding the housing situation in the City and offers recommended tools for improvement.

While considering the proposed project, as indicated in the Housing Study, there are points that should be understood, which, among others, include:

- The City’s rental market is comparably tight with rental vacancy rates as low as 2 – 3.5 percent. This creates high levels of competition for scarce units and where the lowest income households have the fewest options.
- College students drive population growth and the housing market. The demand for off-campus units for college students exerts upward pressure on rental rates, pricing out non-student households.
- There is strong demand for expanding rental housing inventory at the lowest and highest income spectrums. In other words, the number of households in the lowest income group and the highest income group significantly exceed the number of housing units available for and affordable to them.
- There are very few studio apartments. Smaller units are ideal for the creation of supportive housing.

The Housing Study also places the subject property within Market Type C. Along with other details of this market type, it is the smallest but fastest growing market type in the City. Among other characterizations, Market Type C has a large number of university students. The Housing Study states “[l]ike Market Type A, Market Type C has above median overall access to amenities such as public transit within walking distance, full-service grocery stores, and multiple parks and recreation facilities.” It goes on to say that “Market Type C has above median access to amenities yet is the most affordable market type in the City. The creation and preservation of affordable housing and construction of middle income housing would be appropriate here as there are already amenities in place that would make these areas attractive locations for housing...” The Housing Study also notes that “[h]aving an adequate supply of smaller apartments in Market Types A and C is important because these block groups have higher scores for access to amenities such as jobs, parks, full-service grocery stores, and public transit.”

Staff does not believe that more student housing is necessarily needed at this time, which the applicant is likely marketing to, given the bedroom and bathroom configuration. Staff suggested that the applicant consider proffering a multi-family building that would have one-, two-, and three-bedroom units and to proffer a breakdown of the number of each type of unit. Furthermore, staff asked if the applicant would be interested in discussing an ordinance amendment to create a special use permit ability to allow multi-family units in the B-2 district at a greater density than the R-5

currently allows. Staff's reason for doing so is because we are proposing in the draft Zoning Ordinance update for property owners with parcels zoned AUC, Auto Urban Commercial District (somewhat equivalent to the B-2, General Business District) to have the ability to apply for a special exception to allow apartment units at 38 units per acre compared to the current R-5 district's 24 units per acre maximum. Again, the applicant explained that they have already invested a lot and are so far along with site development and building plans that they are not interested in changing their plans at this time.

The Comprehensive Plan designates this area as Mixed Use and states that "Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods." While the proposed building would not contain residential and non-residential uses, staff could envision supporting a proposal for a residential-only building if the location of the building were changed to allow opportunities for future commercial and/or mixed use development on the property as described earlier, and if the bedroom per unit breakdown and overall per unit design provided more housing options for the non-student demographic. While staff understands that the applicant has invested a great deal in their previously planned project, with the knowledge and data of the completed Housing Study, staff does not believe changes should be made to accommodate a project for more student housing. Staff recognizes that the applicant can already build units to accommodate students with the existing zoning and ECSP, but there is an opportunity here to change direction and provide for other multi-family housing that is greatly needed for our community.

Staff recommends denial of the rezoning request to amend the proffers.

Chair Finnegan asked if there any questions for staff.

Chair Finnegan wanted clarification regarding the massing and location of the building. You showed Option A and Option B, massed to the west and up against the shopping center parking lot. Was the original 2019 massing discussed?

Ms. Dang said that she did not discuss that with the applicant. We were trying to open the conversation by presenting Options A and B as potential ideas.

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.

Mac Nichols, attorney for the applicant, came forward to speak to the request. The request is straight forward. It changes the first floor of the building from about 15,000 square feet of commercial space to residential space. In the packet was exhibit C, which shows what the plan is for the conversion. The commercial space was going to be the area here (pointing to plan). It was always planned that this would include the club room, the computer room, mechanical room, bike storage and those other things. It is not the entire floor that was going to be commercial, only part of it. Back in 2019, I assumed that everyone understood that this was going to be student housing. I believe that we had discussions about that. It was designed exactly like 865. This project before the cost increases was going to be about \$35 million dollars. The present owner, in 2019, was considering doing this project himself, but after further reflection decided not to. There have been

three potential purchasers of this property based on the plans that were submitted. The first one was not a serious buyer. They terminated their contract before they had developed the architectural and engineering plans. After those were completed, we had two other potential purchasers who were student housing developers. They decided not to purchase the property because of the commercial space. Looking at the City and the available commercial space that was vacant and the fact that they are in the residential business, they did not feel that the commercial space was going to be viable. As a result, they both did not go forward with their contract. That is one of the driving reasons why the applicant is asking to convert the first floor commercial space to residential. The increase from 400 beds to 460 beds is a result of making the first floor residential. The combination of four bedroom and two bedroom configurations comes to about 50, so they put forward 60. They are committed to this plan. They have a lot of money on the architectural plans. They are complete. With respect to the building location, the original proposal by the applicant in 2019 was to have it in a similar location to Option A, backing up to the JMU Foundation property. As a result of discussions with staff, they decided to move it to where it is right now. The reason they have the parking around the building between the private drive and Peach Grove Avenue was because it is commercial. To move the building would be a substantial cost added to what the applicant has invested. Moving it back next to the shopping center could create problems. If the anticipation is to add commercial along Peach Grove Avenue, the existing parking that is available on the site is maxed out. If you added commercial on Peach Grove Avenue, you would have a parking issue. Secondly, adding commercial would be in violation of proffer #6 and have to come back to ask for an amendment to that proffer. We understand the City's desire for affordable housing for residents of the City. By having a mix of bedrooms in this building, in the anticipation that there would be families and non-students... I do not think that anyone would want to live in a building with a large student population. I do not think that you could have a mixture of students and non-students. Having the additional 460 bedrooms in an area where there is substantial student housing already, what could happen is that students that currently live in the City in single family resident housing and apartment buildings would be attracted to a new building like this. For example, 865 has been substantially high ever since it was built. This is in line with that. It is very possible that having this as student housing will help provide affordable housing by opening up some of these other properties where students are living. We are asking for the ability to make this project viable by eliminating the commercial space, in the current climate and the low occupancy for commercial space.

Chair Finnegan asked if there any questions for the applicant's representative.

Chair Finnegan said that you have 100 four bedroom units, not proffered but estimated to go in there. Are they leased by the room?

Mr. Nichols said that exhibit C, while we are not proffering the two- and four- bedroom units, this area would be two-bedrooms. Each floor, in this section are two-bedroom units. The rest are four-bedroom units.

Councilmember Dent asked how many parking spaces are planned for the development.

Mr. Nichols said that he does not know the number, but it is in compliance. When they submitted the site plan, under the present plan, they had sufficient parking. The architect, when we looked at

changing from commercial to residential, we asked that. He said that the change would only impact one parking space.

Councilmember Dent asked how many parking spaces are being reserved for electric vehicle (EV) parking stations.

Mr. Nichols said that he does not know, but suspects that the plans do not provide for that.

Councilmember Dent asked if there were any plans for solar panel or other clean energy or green building practices.

Mr. Nichols said not that he is aware of.

Chair Finnegan asked if there were any more questions for the applicant's representative. Hearing none, he asked if there was anyone present wishing to speak or any callers. As there was no one present wishing to speak and no callers, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said that he reviewed the minutes from April 10, 2019. Many of my concerns of 2019 remain my concerns today. The pedestrian hostile parking moat around the building does not lend itself to pedestrian friendly activity. There is a lot of pedestrian activity in that area, particularly on a Friday night when JMU is in session. The safer that we can make it for pedestrians the better. It is disappointing that the applicant did not want to budge on the massing of the buildings or doing anything to alleviate some of these concerns. I am concerned with the amount of traffic that this will generate. As Councilwoman Dent asked about the EV charging capabilities, it sounds like there is currently not any plan to put chargers in there. I do not fault the applicant for JMU's decision to put several large parking decks around the edges of campus, land that would have been better spent to build housing where people can walk to and from class. What we have here is something that is on the City line, about half a mile from the City-County line, encouraging more cars to drive. Those were my concerns in 2019 and they remain my concerns today.

Commissioner Whitten said that unless and until we have a requirement for EV charging stations, that cannot be part of our decisions. It is a good point to bring up, but it should not go against the applicant because they do not have it. Or solar, for that matter. That is up to City Council to make those rules and then administer those rules. The overarching concern that I have is the proof that we have that we do not have a need for more student housing. That simply does not exist. If I were the applicant, I would be more concerned about having more bedrooms in a COVID environment than taking away the retail. All the retail that they noted in the letter, McDonald's, Food Lion, CVS, ABC stores and several restaurants are still all in business, and they were prior to this point. That point falls flat. There is more retail being added all the time in the City. I voted against it last time. As a mixed-use development, that made it more palatable to some of the Commissioners. It was not palatable to me the first time around and I do not have a problem voting against it this time.

Commissioner Orndoff asked if this request were to be denied, would the developer continue what he was originally planning or would he abandon the project.

Mr. Nichols said that it would be tough to answer that. I suspect that he may continue to pursue this in its present state. That is going to be difficult. As he has determined at this point, because of the lack of interest from other partners as far as student housing and the component of commercial, based on the vacancies in the City.

Commissioner Baugh said that he did vote for this before while on City Council. Your points are well taken, Mr. Chairman, it certainly does not maximize pedestrian friendliness. I was ultimately persuaded that it would be adequate in that layout but that was assuming that you would have commercial on the first floor. I do think that there are some broad implications for us here especially considering how much in our recent Comprehensive Plan we moved strongly in the direction of approving mixed-use developments. I have some concern with taking things that we said we had planned for mixed-use and then allowing them to just be high-density residential. Get used to it because once we start approving those, we will start seeing a lot of applications for that. Who knows how it will look in five or ten years? At this point, I do not think that we have anywhere near enough data to tell us that we are on the wrong path. I did vote for this before with it being mixed-use in an area that we said would be mixed-use. I get it that it is simpler in the marketplace if you are building all as one thing, but part of the idea behind this and the potential for other similar type buildings to be in the area is that vicinity, does it not make the commercial space more valuable when you have 400 people who could get to it on foot living on top of it?

Chair Finnegan said that those points are well-taken. One of the concerns that I pointed out in 2019, is that neighborhood does have all of the ingredients for walkability. You have a CVS, the sports fields, a grocery store, all of these things right there, but you have a pedestrian hostile environment surrounding it. This certainly does not do anything to alleviate that, nor does it do anything to alleviate the number of car trips that people would have to take to leave where they live and go somewhere to get together with friends and spend leisure time. That would cut down on car trips.

Councilmember Dent concurred that we do not need more student housing. We need housing designed for families. These four-bedroom layouts are designed for four different students. What happens if we do not approve this? What is the developer able to build under the current approvals they have?

Ms. Dang said that the developer would be able to continue with the plans that have been approved through the comprehensive engineered site plan process and building plans. They can do the planned 100 four-bedroom units. If they move quickly their plans and the rezoning from 2019 as well as approved special use permits would continue to be valid. There will come a point where the special use permits would expire. That would happen if they become inactive and they do not work towards any plan, they could expire. Then they would have the rezoning without the special use permits. By that point, we would probably have a new zoning ordinance and would be rethinking things a bit differently. There are a number of scenarios.

Commissioner Baugh moved to recommend denial of the proffer amendment.

Commissioner Whitten seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Baugh	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend denial of the rezoning to amend proffers passed (5-0). The recommendation will move forward to City Council on September 14, 2021.