



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

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April 6, 2015

TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Fred and Carol Showker for a special use permit per Section 10-3-91 (8) of the Zoning Ordinance to allow for the reduction in required parking spaces within the B-2, General Business District. Areas that would have been used for parking must remain as open space and shall not be used to meet any conflicting requirements of the Zoning Ordinance. The 14,810 +/- square foot property is located at 15 Southgate Court and is identified by tax map parcels 1-B-7 & 8.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING
HELD ON:** March 11, 2015

Chair Fitzgerald read the request and asked staff for a review.

Mrs. Banks said the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, office, wholesale, or service functions. These areas are generally found along the City's major travel corridors and in the Central Business District of the City.

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

Site: Office building, zoned B-2

North: Across Southgate Court, car dealership, zoned B-2

East: Office building, zoned B-2

South: Commercial uses, zoned B-2

West: Photography studio, zoned B-2

The applicants are requesting a special use permit (SUP) per section 10-3-91 (8) to allow fewer than the required number of parking spaces. A requirement of the SUP obligates the property owner to provide open space equal to the area that would have been used for the required number of parking spaces in the event that more parking spaces are needed in the future. If approved, the applicant must record this requirement of the permit as part of the deed to the property.

The subject property was annexed into the City in 1983 as a single-family home and given a B-2, General Business District zoning classification. In 1985, a building permit was approved converting the single-family dwelling to a business; however, the only parking provided was the one space within the driveway.

If approved, Bridgewater Montessori School desires to relocate their facility to the 14,810 square foot parcel located at 15 Southgate Court. The facility currently operates from the Bridgewater Brethren

Church and has an enrollment of ten students. The applicants state that moving the school to the Southgate Court location would provide a more convenient location for their students and would allow the program to increase their enrollment total to 25 or 30. Enrolled children would range in age between 2½ years to kindergarten age – all being served by a total of three employees.

Pre-school services offered to children ages 2½ to 4 years are generally considered child day care centers rather than a school; thus, required off-street parking is calculated at one parking space for every 200 square feet of gross floor area, which is the same as for a retail business and similar mercantile establishments. A total of eleven parking spaces would be required for the 2,200 square foot building.

As shown on the submitted layouts, they are requesting a reduction in the required eleven spaces to a total of five. They have provided two scenarios of parking arrangements for the property; each reflecting a total of five parking spaces. One illustration includes an off-street drop-off area for children, while the second illustrates a sidewalk leading to the public street. Also, as required, a site plan showing the total eleven spaces and how they could fit on the property is provided.

The applicants state that students arrive at the facility via parent drop off and a staff member meets them at “curb side”. Drop-off is scheduled between 7:30 am and 8:30 am with three different pick-up times: 1:00 pm, 3:30 pm, and 5:30 pm. Potential traffic congestion is reduced due to the varied drop-off/pick-up times, and the applicants note there are several sibling groups and carpool arrangements, which may help to reduce vehicular traffic.

Additionally, in addition to the five on-site spaces, the applicants have stated they have an agreement with Steven Toyota, a business located directly across Southgate Court, to utilize five of the car dealership’s parking spaces. At this time, the applicants state their three employees would utilize three of the five spaces. Staff is not comfortable with such an arrangement and would rather they try to utilize the flexibility offered by Section 10-3-26, which allows shared parking agreements or reductions in required parking for two or more uses based upon hours of operation. Staff understands, however, the applicants have been unsuccessful in trying to utilize the accommodations offered by this section.

As noted above, the parking requirement is calculated the same as a retail business; because there is not a separate parking regulation within the Zoning Ordinance for child day care facilities. The applicants have researched and provided information on pre-school and day care facilities from neighboring towns and cities and believe their proposal of five on-site parking spaces is adequate given other localities’ regulations.

Generally at such facilities, parents park and come in to the school—whether it is to drop-off or pick-up children, to volunteer for the day or to attend a school program—and therefore, staff believes the proposed reduction is inadequate.

Staff has had conversations in the past regarding parking for child day care centers and whether the retail calculation is too strict. The concept of perhaps changing the requirement to a percentage of the allowed occupancy of the building, plus one space per employee, rather than the square footage of the overall building has been considered. However, in most cases, staff finds that with such a scenario the required parking still falls within one or two spaces of what a retail parking calculation requires.

As noted, staff is uncomfortable with the arrangement with Steven Toyota and believes that five on-site parking spaces are insufficient to cover the needs of the child day care facility. Staff appreciates the work the applicants have put into the application; however, we recommend denial of the special use permit request.

If desired for approval however, staff recommends the following condition:

- The SUP shall be applicable only for child day care centers, which operate substantially the same as the proposed use.

Chair Fitzgerald asked if there were any questions at this point.

Mr. Way said can you explain why staff is not comfortable with the arrangement with Steven Toyota for parking across the street.

Mrs. Banks said the agreement does not satisfy off-street parking regulations. Staff is not in favor of parents and children walking across the street. This is a verbal arrangement between the two parties which concerns staff – is it a long term arrangement; what happens if the agreement does not work out; what happens if a parcel changes hands. There are too many concerns and it is not something staff is comfortable with.

Mr. Colman asked if there was a lot of traffic on Southgate Court when Planning Commission did the tour on Tuesday.

Mrs. Banks said there was a considerable number cars driving along the street.

Mr. Fletcher said traffic was steady. We were there around 5:00 p.m. and it was the end of the workday for some of the businesses and offices on the street, so traffic was steady.

Mr. Heatwole said how many businesses are there in the cul-de-sac beyond the location in question – maybe five or six.

Mrs. Banks said I do not know for certain, but those buildings are condominiums and there are probably four businesses in each; so 20 plus businesses.

Mr. Way asked whether the property was zoned residential at the end of the cul-de-sac.

Mr. Fletcher replied the property was never residential. It was annexed in 1983 and given the B-2, General Business District zoning classification.

Mr. Way said when did the buildings in the cul-de-sac get constructed?

Mrs. Banks said they were constructed after annexation into the City.

Mr. Da'Mes asked if there is an occupancy limit to the subject building. What is that occupancy limit? Is it equivalent to occupancy for a retail establishment?

Mrs. Banks said there will be an occupancy limit established. The applicant's architect will need to work with the Building Code official and several factors will be considered – square footage, numbers of students and teachers.

Mr. Da'Mes asked will it be the same occupancy number as what a retail establishment would be.

Mrs. Turner said it would be difficult to put a number on that. It is going to be dependent on things like number of restrooms, egress from the building, and other issues. It is not something you can tell just by looking at the footprint of the building.

Mr. Colman said in terms of the traffic – here in the City people park all over the place to access different businesses or whatever is going on throughout the City. If we think it is too much of a risk to have people park across the street for this location, how does it compare to the parking across the street from the Children's Museum?

Mrs. Turner said that is a good question and the only difference I can think of are sidewalks and crosswalks downtown on Main Street and no sidewalks or crosswalks on Southgate Court.

Mr. Colman said as far as the agreement, I believe it needs to be something more solid; such as availability and time a commitment.

Mr. Heatwole asked for clarification of the request. The application proposes eight parking spaces for staff, family, and visitors; plus three parking spaces designated, with a handicap space, as well as five spaces across the street.

Mrs. Banks said instead of providing the required eleven parking spaces on-site, the applicants would like to provide five on-site spaces with a reduction of six parking spaces. We cannot factor in the five across the street because it does not meet the provisions of the ordinance.

Mr. Way asked what is the problem here that we are trying to address in terms of requiring a letter from the property owner. What is the problem with having fewer than eleven parking spaces on site? Is it a neighborhood concern like traffic congestion on the street?

Mr. Fletcher said anytime you are not providing the minimum number of spaces it means you are pushing it off somewhere else, whether it is out onto the street or onto someone else's property. In this particular case we believe that eleven is the sufficient amount needed; we do not believe that five on-site spaces are enough. Staff feels there are no problems with the way we approach our parking requirement for this type of facility. The applicants did research other localities in the area, which they have provided in the packet, and staff believes that those localities' requirements are too low. Our requirement of one space per 200 square feet of gross floor area seems to be working for our locality. When we look at other daycare facilities throughout the City in B-2 zoned areas the requirement is met.

Mrs. Banks said many daycare facilities are located within churches and have plenty of parking. However, we have had concerns with some facilities in B-2, where parents have had to park across the street because the parking lot is full.

Mr. Way said so the problem is pushing the parking elsewhere and potential safety issues.

Mr. Colman said this is not just incidental to the zoning district.

Mrs. Banks replied no, the requirement is for the use of the building, not the zoning district.

Mr. Colman asked if you were downtown in B-1 you would not be required to have any off-street parking.

Mr. Fletcher said the theory there being that you rely on public parking facilities and as mentioned earlier, you have infrastructure in place for safe crossing of streets.

Mr. Colman said I am just trying to see what would be required if the daycare were in a different setting.

Mr. Fletcher said in a different setting, or a perfect world, they would have a larger piece of property where they could install all of the required parking and green space that they need.

Mr. Heatwole said if we allowed parking across the street – have we looked at a specific location where people would cross the street.

Mr. Fletcher said we have not discussed with the applicants how they would get from one location to the other. This was always just a verbal agreement, there is nothing to solidify this arrangement, there is no time frame, and staff did not like the general idea of this arrangement; therefore, we did not give it much consideration. We tried to work with the applicant to get as many parking spaces on site as

possible; and there are still many other different designs for parking that could be done on this property, what you see before you is not the only way to achieve parking. The applicants originally started out providing only three on-site parking spaces and staff informed them that it was too few. They are showing five now, but this is not the only way to make parking work on this parcel. As for the parking across the street, staff never really took it as a good answer.

Mr. Colman said if approved, would they need to build the five spaces and reserve the other six as green area?

Mr. Fletcher said it is required as part of the special use permit.

Mr. Colman said that means that they do not have to have all eleven spaces constructed right now, just the five?

Mr. Fletcher said that is the permission you are offering right now, if you approve this special use request. They are required to have space on-site for eleven and they have proven they can do so. If Planning Commission and Council are good with just five and approve the request, and then later there are problems with the arrangement, the day care would have to install the additional spaces that were reserved as green space.

Mr. Way said on a related technical point in terms of attaching conditions to this SUP, do we want to have the condition that the SUP will be revisited if there are complaints or concerns. The standard language we attach with many of the special uses.

Mr. Fletcher said we can certainly add that, it is somewhat redundant because it is already in the code for this SUP. If Planning Commission feels most comfortable adding that condition, then you should most definitely do so.

Mr. Colman said I believe condition-wise, I would most definitely say that if we were going to allow them to have off-site parking, then having a firm commitment in writing is important; something that is tied to the SUP.

Chair Fitzgerald asked what language would you include in a firm commitment.

Mr. Colman said for me it needs to have some type of letter stating where the spaces are located, for what extent of time the agreement was for, and whatever other items we may think are necessary.

Mr. Heatwole said I thought possibly we could ask for a defined area where they would cross the street. Perhaps a crosswalk installed or something.

Mr. Fletcher said that is typically not a thing that Public Works likes to do in a mid-block situation such as this. All of the entrances that you see along Southgate Court are private entrances and crosswalks usually go at public intersections.

Mrs. Turner said in Public Works' comments back to us regarding this request they said they were concerned with this and not in favor of it.

Mr. Fletcher replied that is absolutely correct. They also stated to me that the applicant should be de-emphasizing the fact that they were reserving the five parking spaces across the street; because Public Works felt that meant that they do indeed need the parking, they just did not want to put it on their site.

Chair Fitzgerald asked if there were any further questions. Hearing none, she opened the public hearing and asked if the applicant or the applicant's representative would like to come forward to speak.

Mr. Dave Jahne introduced his wife Danielle and said they reside in Bridgewater. First we would like to thank Mr. Fletcher and Mrs. Banks for their support and for fielding so many repeat questions from us as we went through this process. We want to give you a bit of background and history of the school and we have a brief presentation describing our plans for this facility.

Danielle Jahne said we have been in operation for three years and have leased from the church for the last two years. There is another pre-school program operating from Bridgewater Brethren Church and the church basically leased to us to spring board our program. We were originally only leasing for one year; however, after not being able to find a property after the first year, the church allowed us to lease for a second. The church now needs their space back and they let us know early on so that we could begin our search. We had been looking at properties for quite some time and when we found this property we were really excited because it is convenient to our Bridgewater and Harrisonburg families as well as not being much different for our Staunton families. The green space around this property was also a big draw for us. With other properties we looked at, there was not much in the way of green space – so this was a big plus for this property.

Right now we have ten children between the ages of two and a half to six years; and we would like to expand our program. With an expansion of the program we would be looking at 25 students. We have had a lot of interest from Harrisonburg families about our program and we are getting close to that 25 number. We will work closely with licensing and numbers as far as ages go; we like to have a balanced classroom. Because we are an existing program, many of our students are at the kindergarten year, which is a bit different from the actual day care. We estimate that there will be three staff members. Our drop-off is scheduled from 7:30 a.m. to 8:30 a.m. Currently we have a good balance with that scheduled drop-off; everyone does not come at the same time.

As far as the curb side drop-off model that you have in your packet, I really like this model. When my daughter was in Montessori school, this is the model they used; I had an infant and I did not have to get out of the car. My daughter was picked-up from the car and they put my daughter in the car at the end of the day, all while my infant was sleeping, and we left. This is a practice we currently do at the church location. It is very quick and efficient – we take the children out to the car, hold their hand, put them in the vehicle and seatbelts, and their parents are on their way.

Mr. Jahne said there is also an element of increased safety with this method, because the children do not have to walk across the parking lot, even with a parent, to get to the vehicle. If you have ever had to deal with multiple children and an infant in a car seat it can become quite a challenge.

Mrs. Jahne said our next slide is our timeline for the facility. We started our feasibility study in mid-January, and we have asked for an extension because we are coming up on the end of the study. This is the last piece of the feasibility study. There are other things that once we close on the property we will need time to take care of. We would like to close on the property in May, that would give us June and July to prepare the property – renovations to the building; we would like to get an “E” use for licensing; install the parking; and install the outdoor spaces. We need to be in a facility that we can open for business on August 25, because that is what our parents are counting on.

Mr. Jahne said to go back to the question of the occupancy number for the building – much of that is going to be driven by the building code and the “E” use group that is required by the Department of Social Services licensing. I think that ratio is one child for every 35 square feet of indoor space; that is where we come up with the 30 total, it will depend on floor space once we put in the additional bathroom and other facilities needed to meet licensing. The “E” use group will also bring in the ADA aspects. Of course all of this needs to be done before the property can be licensed by the Department of Social Services.

Also, in our conversations with staff, they did recommend that we provide something in writing from Steven Toyota. We do have Ryan Sodikoff from Steven Toyota here with us this evening and he has drafted a letter for us and we would like to share that with you tonight if appropriate.

Ryan Sodikoff, General Manager and Co-owner of Steven Toyota, said he would like to read over the letter he just provided to all the Planning Commissioners. The letter stated: *“As the General Manager and Co-owner of Steven Toyota we are aware of Bridgewater Montessori’s intent to purchase 15 Southgate Court and relocate their program to that facility. In discussions with the owner, Danielle Jahne, we have offered the staff and visitors the ability to utilize parking in our lot directly across the street from 15 Southgate Court. The parking area will consist of five parking spaces, as highlighted in the attached aerial photograph. It is our understanding that the school staff would utilize these spaces first, leaving open their proposed on-site parking for family and visitors. We have also offered our back parking lot for when the school has large events and is in need of additional parking. We are looking forward to the addition of the business in our neighborhood, and adding a Montessori school to Harrisonburg. I appreciate your consideration of this.”*

The reality is, I am a business owner close to their facility, but I am also a father; I have two daughters. I am very comfortable walking my daughters across any street. My one daughter, Sophia, has one more year left in Montessori school before she moves on and my second daughter Bryne will then begin her two year program at Montessori school. My family is ultimately happy to be partnered with Montessori of Harrisonburg for the next three years, and any way we can help we are willing to do so. We have ample parking spaces available and would be happy to do whatever is necessary. I did not know what type of formal avenue would be best for this agreement, so we drafted the letter.

Mr. Way asked Mr. Sodikoff if there was a time frame for this arrangement.

Mr. Sodikoff said the good news is we have been at our location for 23 years and we plan on being there for another 50, so as long as it is required or needed the parking is there.

Chair Fitzgerald asked would you be willing to amend the letter to add the language that you just stated.

Mr. Sodikoff replied sure.

Mr. Way said my question is once your children are out of school is that parking agreement still going to be in place?

Mr. Sodikoff said I look at it as getting customers on my lot; I benefit when customers are on my lot, so I am fine with the arrangement. One of the bigger road blocks that I would think is this crosswalk discussion. I do have a five to seven foot median of grass between the parking lot and the public street; it is easy to stroll through the area, if that is acceptable. However, if it necessary for me to spend money to redo the curb and add a sidewalk and cross walk, then I would not be very motivated for this to happen.

Mr. Way asked what is your sense of how busy the traffic is along Southgate Court.

Mr. Sodikoff said for me that is not a main access point, my main access to my facility is South Main Street.

Mr. Way asked do you have larger delivery trucks that use that street.

Mr. Sodikoff said I do have automobile carriers that utilize that street in the wee hours of the morning to deliver vehicles. But not to shy away from the earlier question, there are a lot of businesses in the cul-de-sac of Southgate Court and it generates a lot of coming and going traffic.

Mr. Jahne said our plan for the Montessori school was to have our staff utilize the parking across the street first, so it would leave all on-site parking spaces available for anyone who wishes to park with a child. That will help minimize the need for families to cross the street.

Mr. Colman asked how often does the school have special events.

Mrs. Jahne said we do not have a lot of special events. For the past three years we have done a Christmas concert and a Spring tea, when the parents actually come to enjoy. We would not do those events at the school because there would not be enough space there; we would find another facility to do those events that would better suit the events and the families. I do not foresee that we would have a lot of parents coming at one time. Sometimes I do some training and the parents will come into the classroom; but, generally those are smaller group kind of events.

Mr. Way asked in your experience at the Bridgewater location, on a typical day, how many spaces are needed for visitors.

Mrs. Jahne replied none. Every once in a while there will be someone who wants to come and check out the program. That would be one car, sometimes two if parents drive separately. Every once and awhile we have someone come in and do something with the students, yoga or art, and they would need one parking space. As far as people coming on a daily basis, it just does not happen. Also, all the parents utilize the drop-off line, so there is really no one parking to walk in.

Mr. Way said with your experience operating at Bridgewater, there is not a high demand for on-site parking on a day-to-day basis.

Mr. Baugh said it sounds like you have three employees and just one or two people from time to time.

Mrs. Jahne said exactly.

Mr. Colman asked with the maximum number of employees being three, do you see it increasing with enrollment.

Mrs. Jahne said for licensing the ratio is one to ten, so if we have around 30 students, it would work out to three employees. The numbers are a bit different because some of our students are kindergarten year.

Mr. Heatwole asked if the plan is for employees to park across the street.

Mrs. Jahne said yes. And we would encourage families to use the drop-off if we are able to do that type of scenario; unless they are coming to school right at 7:30 a.m. and need to park and bring the children in. Our parents like to use the drop-off and rarely, maybe once in awhile, park and walk in.

Mr. Jahne said I would like to just touch on a couple more things before closing. If this were to be approved with the shown parking and the agreement with Steven Toyota, we would certainly be open to the fact that should that agreement ever expire, we would revisit putting in the parking or requesting another SUP. That could even be a condition of the SUP.

Mr. Colman said what are the plans for the rear of that property?

Mrs. Jahne replied for licensing purposes you have to have a certain amount of indoor space per child as well as outside area per child. Of course this is something we want anyway because we want an area for outside play. In the outside rear area we would like to do a natural play-scape area. The natural play-scape is different from the traditional play ground; it will not be a permanent structure or a giant jungle gym. They do a lot more with landscaping such as a boulder area or a tree limb area; so it could be something we could remove and repurpose if we need to.

Mr. Colman asked how it would impact the Montessori school if the play area were removed.

Mr. Jahne explained if we were required to remove and pave the rear area, we would probably begin looking for a new facility. This property makes sense if the SUP is approved; however, if we were required to put in the eleven spaces it would change our use of the property.

Another thing I want to point out – if you notice along Southgate Court there are “No Parking” signs along one side (north) of Southgate Court. There could potentially be on street parking available there. I spoke with Brad Reed, Transportation Planner at Public Works, and he asked around to find out why there was no parking along that side of the street – he thought it might be because at one time there were cars that were associated with the car dealership parked along the street. However, this changed when Steven Toyota added additional parking and installed curb and gutter; and it is just a matter of revisiting the sign issue. It would be nice to have parking along that side of the street and I do realize it would not count towards our off-street parking requirement. It might be nice to have additional parking for businesses in the area and for the public.

I also got the chance to review the Comprehensive Plan and there were a couple of things that jumped out at me. One of which was the objective of trying to preserve and expand green spaces and trees within the City. As well as the chapter on stormwater runoff and impermeable spaces; which this parking would be about 3,500 to 3,700 square feet of impervious space if we have to add it in. It also requires the removal of existing trees and landscaping. While working with our engineer on the parking we learned that there is a setback requirement from the street for our parking spaces; therefore, the paved area will be all the way up to the building foundation. Perhaps there is a relief in the requirements for that setback, which would definitely help in alleviating some of the impervious area. I do not know if that is an option here.

Mr. Jahne then thanked Planning Commission for the opportunity to speak and asked if they had any questions for him or Mrs. Jahne.

Mr. Way said one of the critical issues is this drop-off and pick-up area; that seems important for a lessening on the demand for parking spaces. Can you give guarantees that this form of pick-up and drop-off will always be in use?

Mrs. Jahne said yes, that is a necessary aspect of our business. It is valuable for the parent, but it is also valuable for us as staff. We know that the child is safely in their car, who picked them up and what time.

Mr. Way asked whether you ever get situations where you get multiple cars backed up. Could we have a situation of vehicles parked along Southgate Court, blocking other entrances, while waiting to get in for pick-up?

Mr. Jahne explained with the staggered pick-up it alleviates much of the congestion. As well, there are sibling groups being picked-up.

Mr. Colman said in terms of conditions on the SUP, perhaps this is something we can condition on the permit.

Chair Fitzgerald asked if there were any further questions. Hearing none, she asked if there was anyone else wishing to speak in favor of the request.

Mr. Poti Giannakouros of 98 Emery Street, said as a disinterested member of the community who just happened to be here this evening, I must say what I have heard is a very forward looking proposal that has enduring benefits for a very nice business, counter-posed against some theoretical possibilities of

occasional inconvenience. I have been persuaded by what I have heard and am interested in seeing how you all decide to vote.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor or in opposition of the request. Hearing none, she closed the public hearing and asked for discussion, comments, or a motion.

Mr. Way said I would like to put a motion out there for discussion. I am convinced, based on the experience that the Jahnes have had regarding the operation of their school in Bridgewater that this is not going to cause problems if we approve it with the five on-site parking spaces; especially with a slightly more solid agreement from Steven Toyota. Therefore, I move to recommend approval of the special use permit with the following conditions: 1. The SUP shall be applicable only for child day care centers, which operate substantially the same as the proposed use; 2. If in the opinion of Planning Commission, the parking for the child day care becomes a nuisance, the site may be subject to further review, which could lead to the need for additional conditions, restrictions, or a change to the number of required off-street parking spaces.

I understand staff's concerns, but it does not strike me that eleven spaces are needed for the particular model that the applicants have. I appreciate the applicants' review of the Comprehensive Plan to see objectives that may be relevant to this. I do not see too much public judgment of what is going on with this site. I understand the rationale of not wanting to push parking to other properties or the public street; however, I do not see that becoming an issue here.

Chair Fitzgerald asked do we need to consider adding something with regard to firming up the letter regarding the parking arrangement with Steven Toyota and perhaps add a time frame.

Mr. Way said I am happy to add that as a third condition to the motion if Mr. Sodikoff is willing to add to the letter.

Mr. Heatwole seconded the motion.

Chair Fitzgerald called for discussion on the motion.

Mr. Da'Mes said I would like to commend the applicants on their presentation and research for this request. However, I will not be supporting the motion that has been made for the following reasons. When I look at SUP I look at what makes this particular property or situation unique to the City's codes and regulations. What makes this special? What I am hearing tonight is not that this is special, but that our current (parking) regulations are not suitable for day care centers. We have to work on what we have before us and that is a requirement for eleven parking spaces. If we pass this SUP, what are we creating by approving it; an opportunity for the next business to have the same? I do not have concerns about safety or traffic. My concerns are more about things such as the pick-up times, they work now, but will they work later with more students. The agreement with the adjoining business is today, will it be there tomorrow? I do not believe there is a really good reason provided for approving the SUP and for that reason I am not going to support it.

Mr. Colman said I understand where the parking requirement comes from and why it is necessary; but, as a special use, if we allow this, we can place conditions on it.

Mr. Baugh said have we agreed, conceptually, that we want a firm time commitment from Steven Toyota regarding the parking arrangement, without actually saying what that time commitment is.

Chair Fitzgerald said we have not said what we would like that commitment to be.

Mr. Baugh said is this something we want.

Chair Fitzgerald said correct me if I have interpreted what you said incorrectly, but I thought it was said that they can park on the Steven Toyota property as long as they needed to.

Mr. Sodikoff replied correct.

Mr. Baugh said let me clarify my point. I am not concerned about Mr. Sodikoff's representation of the length of time as forever, however...

Mr. Sodikoff then interrupted and said I do not want to do a ten year commitment if they only stay there for two years.

Mr. Baugh said you could limit your commitment to the applicants only. The flip side is we have no way of knowing who will be owners of what property in the future and we need to make that sufficiently bonding if something should happen.

Mr. Jahne said to be perfectly clear, the agreement would be linked to our program and operation at the school. Not to any future tenant. That should alleviate any of Mr. Sodikoff's concerns.

Mr. Baugh said I am still thinking that if you go down this path, that there is still some specific time in the letter just in case there is any change in ownership. That way we will know that the owner of the property is bound to provide those spaces.

Mr. Fletcher said what I am thinking is that it is more or less deeded in the Steven Toyota property that five spaces will be reserved to the Montessori school.

Mr. Baugh said I do not believe Steven Toyota is going to want to do that. The point is that as long as the Montessori school has some type of contractual obligation that assures us that they have the extra spaces, somewhere.

Mrs. Turner said you are thinking more of a contract between the Montessori school and Steven Toyota, rather than a deeded easement.

Mr. Baugh said yes, I was thinking of keeping it simple. Make it a condition of the SUP that puts the requirement on the school. The letter may say the time limit is five years for the agreement and after five years there needs to be a new agreement with Steven Toyota or another business that is able to provide the parking spaces, or the school installs the parking.

Mr. Sodikoff said I am willing to make a firm commitment to these applicants only.

Mr. Colman said then our SUP condition is saying that the Montessori school or tenant of the same is allowed to seek off-site parking to meet the parking requirement.

Mrs. Turner said I do not know how a condition that Planning Commission would attach to this SUP would convey to another property owner or even to Steven Toyota. How are you thinking this would be worded?

Mr. Baugh said I am just putting this out. Mr. Sodikoff's letter addresses the space, and makes a reference to a specific part in the diagram; so we know where the parking spaces are and how many there are. The other key variable that has been mentioned by us is some sort of minimum time commitment that the SUP is tied to. Mr. Sodikoff has made the representation that he is willing to make a ten year commitment and we do not have to burden his real estate, we will put the burden back on the applicant. If the circumstances change, it will be up to the applicant to reapply or make the SUP valid.

Mrs. Banks said staff has a question. The condition that staff has proposed says "the SUP shall be applicable only for child day care centers, which operate substantially the same as the proposed use."

If this center after two years moves out, or sells the business, and new owners and a new facility starts up, operating the same way, but Mr. Sodikoff does not want to deal with the new owners – where does that leave us?

Mr. Colman said I agree.

Mr. Baugh said we could make it conditional to this applicant.

Mr. Fletcher said we have stayed away from that type of recommendation just because it is somewhat discriminatory.

Chair Fitzgerald said is this something complex enough that we should pause and revisit it next month; figure out language that does not burden Steven Toyota and allows the applicants and staff to move forward.

Mr. Da'Mes said I am a bit concerned about the timeline for the applicants.

Mr. Fletcher said that would put them at City Council on May 12th.

Mr. Jahne said that would add another 30 to 40 days on our closing to mid or late June to start renovations. That would be pushing it.

Mrs. Turner said I have some language that I can propose to you; but, I have to tell you I am basically not in favor of it and do not know if it will accomplish what you are trying to do. Remember this is off the cuff, and Planning Commission seems inclined to approve this tonight, so I will propose the following: *Provided the applicant or a subsequent pre-school tenant operating in the same manner maintains an agreement with an adjacent or directly across the street property owner for the use of a minimum of five parking spaces.*

Mr. Way said the language you have proposed there sounds pretty straight forward. I think what I like about the language is it disassociates it with specifically Steven Toyota and makes it incumbent upon the applicant or the subsequent operator to find the five extra parking spaces. It just happens in this case that they have a relatively firm agreement with Steven Toyota; but it does put the obligation on the applicants or future owners. I like what Mrs. Turner has suggested.

Mr. Fletcher said we just need to ensure that it is enforceable. Anytime conditions are placed on these they are always vetted to know that we can enforce it.

Mrs. Turner said I am offering it, but I do not especially like it. What would make me more comfortable would be an actual deeded easement. I do not know if it is possible to do a deeded easement that says as long as the Montessori school continues to operate from here they can use these five spaces; this is a recorded document that is an easement with the applicants. If someone else wanted to come in and change that easement they would have to work with Steven Toyota. That is what would make staff comfortable – it is guaranteed to be there.

Mr. Baugh said if you go that route you can make it specific to the parties here – the Bridgewater Montessori School and Steven Toyota.

Mr. Sodikoff said how much of this will trigger having to reference Toyota involvement?

Mr. Baugh said yes, that would be a problem. The easement language would create a problem when using the business or property for collateral.

Mr. Sodikoff said I am willing to do this from a friendly standpoint, the more I have to drag Toyota into the picture, the less motivated I am.

Chair Fitzgerald said that brings us back to the condition Mrs. Turner suggested.

Mr. Way said I am very comfortable with that condition.

Mr. Baugh said again the drawback is the enforceability of the condition.

Mrs. Turner said should we think about limiting this to the applicant only. This is the down side of trying to get this done tonight it does not give us the opportunity to think about it ourselves or to gather feedback. We will have a letter from Steven Toyota that is particular to this applicant only; then maybe that makes a bit more sense to condition it to the applicant.

Mr. Da'Mes said the letter clearly states that the parking is offered to this particular Montessori school and these particular owners. I feel the letter covers that aspect.

Chair Fitzgerald said we have a motion and a second, is there anything further.

Mr. Heatwole asked Mr. Way if he was willing to change his motion to include Mrs. Turner's condition.

Mr. Way said yes he would amend his motion as such.

Mr. Fletcher said please add some leeway for staff to review the condition and make certain it is the language we can enforce.

Mr. Heatwole said I am still good with my second.

Mr. Baugh said I am going to keep an open mind about this. I think I know where this is going and my vote here may not necessarily be what it is at City Council. I am ultimately persuaded that Mr. Da'Mes has the better analysis regarding this request. We have spent a lot of time here tonight working out a solution for something that the applicant actually could make work. Has the case really been made that this is where we grant the exception. I would also much prefer, as the Chair suggested, tabling until next month.

Mr. Jahne asked if he could speak to Planning Commission again. To the point of this being different enough from the requirement – I think it comes back to our business operation and the model that we have. It is not a facility where people come to park, there is the drop-off of the child and then the vehicle exits. For us that is what distinguished the need for having all the parking spaces and volume of the spaces.

Mr. Way said to politely dissent from my colleagues here, it is a judgment call and this is a gray area. I am not convinced by the argument that they could run this school with the eleven parking spaces on the property. I also think that the one space per 200 square feet of gross floor area is an arbitrary and abstract kind of thing and how does it connect to a day care. I do not think this is a typical B-2 scenario.

Mr. Baugh said I agree with that and if anything my point of emphasis is probably more the issue of is it really our responsibility to go that far proactively to fix this. For me it ultimately hinges on the lack of staff being able to review and vet the condition. It is a close call or a judgment call.

Mr. Way said I hope that the staff review will happen in the next month before City Council. I also believe we have gone through a lot of effort to help something out with this, but for me the Planning Commission has dual roles. It is trying to identify what is going on in a particular situation and it is also trying to look at what is going on in the bigger picture for Harrisonburg.

Chair Fitzgerald called for a roll call vote on the matter.

Commissioner Da'Mes – No

Commissioner Colman – Yes

Commissioner Heatwole – Yes

Commissioner Way – Yes

Commissioner Baugh – No

Chair Fitzgerald – Yes

Chair Fitzgerald said the motion passes (4-2) and this will move forward to City Council with a favorable recommendation on April 14th.

Respectfully Submitted,

Alison Banks
Planner