



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections

Engineering

Planning & Zoning

June 3, 2019

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Delaware Bay, LLC, Robert L. and Carolyn W. Frank, and Johann Vargas with representatives Johann Vargas and Julian Pena to rezone three parcels together totaling 1.06 +/- acres from R-1, Single-Family Residential District to R-3C, Medium Density Residential District Conditional. The first parcel containing 17,975 +/- sq. ft. is owned by Delaware Bay, LLC, is addressed as 706 Greenbriar Drive, and is identified as tax map parcel 12-I-1. The second parcel containing 13,736 +/- sq. ft. is owned by Robert L. and Carolyn W. Frank, is addressed as 710 Greenbriar Drive, and identified as tax map parcel 12-I-2. The third parcel containing 14,258 +/- sq. ft. is owned by Johann Vargas, is addressed as 714 Greenbriar Drive, and is identified as tax map parcel 12-I-3.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: May 8, 2019

Chair Way read the request and asked staff to review.

Ms. Banks said that Greenbriar Drive was annexed into the City of Harrisonburg from Rockingham County in 1983. Greenbriar Drive was part of a master planned community and the zoning in the County at that time was R-5, Planned Residential District. The intent of the R-5 zoning in the County was *“to permit greater flexibility and consequently, more creative and imaginative designs.”* The district served *“to create residential environments with a diversity of housing types, amenities, and services; more usable tracts of open space for recreation, conservation; preservation of the natural landscape features and amenities; and to attain more efficient development by grouping buildings, thereby resulting in smaller networks of streets and utilities.”* In 1983, the R-5 County zoning most closely resembled the City of Harrisonburg’s R-4, Planned Unit Residential District. Therefore, when the area was annexed into the City, it was designated as R-4.

At the time of annexation, the master planned community was comprised of 35 +/- acres and included parcels along Port Republic Road, Forest Hill Drive, Greenbriar Drive, and Devon Lane. The master plan for the development consisted of single-family detached dwellings, townhomes, multi-family dwelling units, a commercial component, and open area. The City’s R-4 zoning designation allows for single-family detached dwellings, duplexes, multi-family dwelling units, and townhouses with occupancy by a family or not more than four persons per unit.

On June 10, 1986, the City of Harrisonburg’s City Council reviewed an eight-parcel subdivision request for the Greenbriar Drive area. During the discussion the developer was asked about the possibility of changing the zoning from the R-4 designation to R-1. At that time, the developer declined the idea to rezone to R-1 and instead submitted a letter stating that he would deed restrict the properties to single-family [detached dwellings]. Deed restrictions are private agreements between property owners and the

City has no authority to enforce them. Conflicts must be handled privately between property owners or through the court system.

In September 2000, residents of Greenbriar Drive submitted to Planning Commission a petition to rezone the properties along Greenbriar Drive from R-4 to R-1. The signed petition to rezone consisted of sixty-one percent of the property owners along Greenbriar Drive (excluding the six townhomes at the end of the street, which were not part of the rezoning request). The letter submitted with the petition to rezone noted that *“this change in status from R-4 to R-1 fits within the same comprehensive plan that is now in effect for these properties.”* (The 1998 Comprehensive Plan Land Use Guide in effect at the time, designated Greenbriar Drive as Low Density Residential.) In addition, the Forest Hills Neighborhood, which is zoned R-1 and directly abuts Greenbriar Drive submitted a support petition with twelve signatures from eight properties along Oak Hill Drive. In October 2000, staff supported the approval of, and Planning Commission recommended approval of the rezoning request for Greenbriar Drive from R-4, Planned Unit Residential District to R-1, Single Family Residential District. City Council unanimously approved the rezoning in November 2000.

Prior to rezoning the properties along Greenbriar Drive to the R-1 district, two single-family dwellings were legally occupied by four unrelated persons – 706 and 973 Greenbriar Drive. Additionally, 942 Greenbriar Drive had previously legally converted to a duplex with four unrelated persons residing in each unit. These dwellings continue to be occupied as such and are nonconforming. Nonconforming uses are defined in Section 10-3-24 of the Zoning Ordinance as “[a]ny lawful use existing at the time of the enactment or subsequent amendment of the Zoning Ordinance which does not conform to the current zoning regulations prescribed in the district in which it is situated.” Prior legally existing uses may continue so long as the then existing or more restricted use is not discontinued for more than two years. Therefore, when the zoning was changed from R-4 to R-1, the duplex and two single-family detached dwellings became nonconforming uses within the R-1 District.

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

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

- Site: Single-family dwellings, zoned R-1
- North: Across University Boulevard and Oak Hill Drive, single-family dwellings, zoned R-1
- East: Single-family dwellings, zoned R-1
- South: Across Greenbriar Drive, townhomes, zoned R-4 and single-family dwellings, zoned R-1
- West: Across Forest Hill Road, a hotel, zoned B-2

The applicants are requesting to rezone three parcels totaling 1.06 +/- acres from R-1, Single-Family Residential District to R-3C, Medium Density Residential District Conditional. The properties are located along the northeastern side of Greenbriar Drive at the intersection of Greenbriar Drive and Forest Hill Road. Each parcel contains a single-family detached dwelling. The applicants’ letter describes the use of each dwelling and states that:

- “706 Greenbriar Drive is currently a nonowner-occupied residence by not more than four unrelated adults. [Note: This is a nonconforming use as described above.]

- 710 Greenbriar Drive is currently a nonowner-occupied residence by a family of five -parents and three college children [Note: This unit would also allow rental of space for occupancy by not more than one (1) unrelated tenant.]
- 714 Greenbriar Drive is owner-occupied residence with rental of space for occupancy by two unrelated tenants.”

If approved the applicants desire to rent each dwelling to four unrelated individuals. This would be an increase in occupancy for 710 and 714 Greenbriar Drive and would bring 706 Greenbriar Drive into conformance with zoning regulations.

With the requested rezoning the applicants have submitted the following proffers, written verbatim:

Prohibited Uses:

- Duplex dwelling units with limitations as required by area and dimensional regulations.
- Attached townhouses of not more than eight (8) units.
- Hospitals, convalescent or nursing homes, funeral homes, medical offices and professional offices as defined by article F.
- Child day care.
- Adult day care.
- Cemeteries.
- Small cell facilities. Wireless telecommunications facilities are further regulated by Article CC.
- Community buildings for associated townhouse and multiple-family developments.

Uses Permitted by Special Use Permit:

- Special use permits shall be permitted as approved by the City Council.

Screening/Buffer

- A fence that is a minimum of 4 feet tall shall be installed and maintained along the northeast property line adjacent to Oak Hill (See Appendix A). The fence shall be installed within 120 days of rezoning approval. (706 and 710 Greenbriar Drive only)
- A fence that is a minimum of 4 feet tall OR trees that are 4-feet in height at planting and spaced 2-feet apart shall be installed and maintained along the northeast property line adjacent to Oak Hill (See Appendix A). The fence or trees shall be installed within 120 days of rezoning approval. (714 Greenbriar Drive only)
- There will be no entrances for vehicular access permitted from Oak Hill Drive onto the subject property.

Easement Path for Forest Hills Drive (706 Greenbriar Drive only)

- Easement dedication, from tax map parcel 12-I-1, to extend 30-feet to the east of the double yellow painted centerline on forest Hills Road, shall be dedicated for a future shared use path. As depicted on Appendix B (green line)
- In addition, a 15-foot temporary construction easement, as measured from east of the new right-of-way line, shall be dedicated for future shared use path construction. As depicted on Appendix B (red line).
- Such dedications shall be completed and recorded within 90 days of approval.

Note: Each property owner has submitted separate proffer letters.

As previously stated, the Comprehensive Plan designates this area as Low Density Residential. These areas that consist of single-family detached dwellings in and around well-established neighborhoods with

a target density of around four dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. In this particular situation, the existing neighborhoods are zoned R-1, which allows for only single-family detached dwellings and has limits on occupancy.

This designation extends not only along Greenbriar Drive, but into the Forest Hills Neighborhood, which is directly adjacent to Greenbriar Drive. The properties along Greenbriar Drive are located along one boundary of a larger neighborhood area, including the Forest Hills Neighborhood, and which are all currently zoned R-1 and designated in the Land Use Guide as Low Density Residential.

Staff does not believe that the proposed higher occupancy is compatible with the adjacent residential neighborhood along Greenbriar Drive and the Forest Hills Neighborhood. Moreover, the request for higher occupancy is not supported by the Comprehensive Plan, which designates this area as Low Density Residential. To consider rezoning the subject properties to R-3C because they are located in close proximity to other properties that are nonconforming with higher occupancy and/or that are zoned and have higher occupancy, would set a precedent to allow other property owners along Greenbriar Drive to request the same rezoning for the same reasons.

Staff recommends denying the requested rezoning from R-1, Single-Family Residential District to R-3C, Medium Density Residential District Conditional.

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

Sam Vargas and Julian Peña, co-owners of 714 Greenbriar Drive came forward in support of their request.

Mr. Vargas thanked Ms. Banks for her help throughout the process. I never expected this early so in my career, but thankfully Ms. Banks gave a lot of guidance and insight into the neighborhood. There are four primary streets that are near Greenbriar Drive: Port Republic Road is not far away; Village Lane which is zoned R-4; Forest Hill Road which contains other townhomes; and, University Boulevard which leads to JMU. Behind the property there is Oak Hill Drive and the Ridgewood communities.

Mr. Vargas said that staff mentioned many of the neighborhoods and many of the roads but failed to mention a key street that is a major component of our argument. That is the Village Lane street. There are 50 townhomes on that street that empty out into Greenbriar Drive. All that traffic goes through Greenbriar Drive to get to the major roads, which are Forest Hill Road, Port Republic Road and University Boulevard. We bear the majority of that traffic, as opposed to the rest of Greenbriar Drive and Oak Hill Drive. Most of those townhomes have four or five unrelated adults.

Mr. Peña distributed a printed PowerPoint in support of the request.

Mr. Vargas said that the aerial view shows that Village Lane immediately pours out into our home. We gauged the neighborhood and took a survey of where our home was located relative to everybody else. Each of the homes has a parallel home to them that has an R-1 designation. In our case, we have R-4, but also Village Lane that immediately pours out into our driveway. There have been many times that vehicles speed past the stop sign. That is why 706 Greenbriar Drive was in support of the easement path. Not only do our homes bear the burden of scooters getting placed on our lawns, but also the hotel, and given specific events, there is a lot of capacity and foot traffic that our home, specifically, get. As you get further into the neighborhood from our home, you can see less of that and cars have more space, while ours is a very concentrated area. We went through our letter and tried to address a lot of the neighborhood concerns. Did everybody have a chance to read our letter? That is a key factor that we tried to take from the neighborhood. We would not be here today if the neighborhood did not feel that we had a precedent to go through this. We also distributed a petition and gauged the rest of the neighborhood to have them understand our viewpoint. From what we saw, 55 percent of Greenbriar ended up supporting our request. They did understand that we are bearing a big burden at the beginning of the street. Since 2000, there has

been a dramatic shift in the demographic of Greenbriar and how people have been using Greenbriar. The previous owners of our home bought their home and were illegally renting it to five unrelated adults. That went unchecked for several years. There is a very mixed-use on Greenbriar Drive. We provided some statistics here. Ten of the twenty-five (40 percent) Greenbriar Drive homes are occupied by unrelated adults. In the first quadrant alone, using Village Lane as a key determinant where we see the first quadrant of Greenbriar Drive, you can see that 78 percent are already occupied by four unrelated adults. The first home 706 Greenbriar Drive has been occupied by unrelated adult for the past twenty years. We believe that our homes are not representative of the very restrictive R-1 zoning. We also gauged the neighbors. We do not want to disturb the neighborhood. We spoke to the neighbors directly in front of us. They supported us. Our direct neighbor to the right said that they do not have an opinion. They said that do not have any strong feeling either way. We do understand that there is some opposition down the street, but from our proffer statements, we believe that we are not only making our homes very isolated and very protected, but it will not interfere with the rest of the neighborhood. What we are recommending is a three percent change in the entire neighborhood. It will not be detrimental or change the sanctity of the neighborhood. It will not be changing the R-1 that the Ridgewood community and the Oak Hill community want.

Mr. Peña asked that the Planning Commission weigh the opinion of the neighbors closer to the properties in question. Consider that when you are thinking of the opposition from the neighbors from the far away neighborhood. What this comes down to buffered zoning. I believe that we have become victim to buffered zoning. We bear the burden of having the most restrictive zoning that you can get in Harrisonburg, but also dead in the middle of a high density and medium density residential neighborhood surrounded by townhouses. I do not think that is fair and we would like that instead of having the homeowners bear the burden of the buffer, we would like for there to be a more natural buffer, such as the vegetation, the fence and Village Lane which is a very clear divider. There is also elevation of the land from the beginning to the end of Greenbriar Drive. Staff mentioned that this is not supported by our Comprehensive Plan, but the Comprehensive Plan is a big document, over 200 pages with sixteen sections. One of those sections is the Land Use Guide. This rezoning might not be aligned with the Land Use Guide, but it is our opinion that it does align with the overall Comprehensive Plan which calls for an increase of mixed-use housing. There are almost no options in Harrisonburg for a single-family home for young professionals. Young professionals are forced to live downtown in one or two-bedroom apartments. We would like to provide that opportunity to young professionals who would like to live close to the City. Staff said that the neighborhood would not be able to support the increase in occupancy, however that there are thirteen adults living in these three houses now. After the rezoning, there will be twelve, which is a decrease in occupancy. Could you elaborate on that?

Ms. Banks said that she does not think we ever said that we did not support that.

Mr. Peña read from the staff report:

Staff does not believe that the proposed higher occupancy is compatible with the adjacent residential neighborhood along Greenbriar Drive and the Forest Hills Neighborhood.

Ms. Banks said that staff does not feel that a higher occupancy of four unrelated individuals in each is compatible with the existing neighborhood. In the particular case of 710 Greenbriar drive, I believe that is occupied by a family. There is a difference between a family component and unrelated individuals.

Chair Way said that the point is that if one of these houses is sold, it could become an R-1 single family home again. I want to be clear about what we are talking about here. There is current use and there is how that is currently zoned.

Mr. Vargas said that in conclusion something that they have seen in analyzing the City of Harrisonburg is that we have not seen anywhere where there have been two different zoning extremes in that type of

proximity. When people talk about affecting their homes, given that a home is one of your most valuable assets, we are the ones bearing the entire burden and we are limited in what we can do. That is why we want to have this house for those who can conform that is in that R-3 or R-4 type of neighborhood. We saw another hearing with Lucy Drive and that did get staff's recommendation. That would have changed the entire neighborhood because it was a student housing complex. In the scenario, we are not going to be increasing to duplexes. We want to keep the homes, as is. We simply want to be able to have four unrelated adults.

Mr. Peña said that an issue that was brought up during the Lucy Drive hearing and gets brought up frequently is the concept of precedent. Even tonight it has been brought up; it was stated that staff believes in the best practice that occupancy should increase the closer you are to busy roads. What we are proposing here aligns with that. Staff said that rezoning our three homes would set a precedent for the rest of Greenbriar, but they do not have the argument that they are right next to a busy street. That precedent has already been set by staff. They also do not have the argument that they are across the street from a polar opposite zoning, with also is not best practice. They also do not have the fact that Village Lane is there as a divider. If any of the other homeowners on Greenbriar Drive were to say that we got rezoned, the Planning Commission and City Council can say that they do not meet the same criteria that we have met. Best practice is higher occupancy close to busy road, they are not close to busy roads. They are in a low-density residential neighborhood.

Chair Way asked if there was anyone else who would like to speak to the request and asked that speakers keep their comments on point.

Mr. Howard Cohen, 709 Oak Hill Drive, came forward to speak in opposition to the request. Let's be clear, when we talk about young professionals, a lot of people in these houses are students. I want to play something that I recorded from my front porch. I live across the street. I bought the house for quiet enjoyment.

Mr. Cohen played a recording of loud voices and yelling.

Mr. Cohen said that the sound was a drunken brawl. I had to call the police on several occasions. We are not talking about young professionals. We are talking about students. I asked one question- If you had a son with a heart condition, that had to put up with this, many nights and could not sleep, and it went on to all hours of the night, would you vote for rezoning?

Mr. Eugene Leffel, 1107 Ridgewood Road, came forward to speak in opposition to the request. I enjoyed the comments earlier about the original plan for R-1 in that established neighborhood. That neighborhood has been there for a very long time. It is single-family, residential. While we know that students are coming, and that they are coming in droves, we have a buffer. That is a quiet neighborhood. The people who live in that neighborhood bought those areas for that very reason. Several years ago, we petitioned City Council to take a rezoning that they had off Ridgewood Road from R-4 back to R-1. It was approved for that very same reason. I would ask you to try to respect the integrity of the neighborhood and oppose this rezoning.

Mr. Jeff and Mrs. Sarah Domingus, 904 Oak Hill Drive, came forward to speak in opposition to the request. Mr. Dominguez said that they are sensitive to the balance that being in a university town brings. We moved here two years ago from North Carolina. The university was a good draw for us. We wanted to be a part of that and all the positive that comes from that, but there has to be that delicate balance. One of the things that we started with was finding good family housing in the City. We wanted to live in the City. I like the public schools and diversity. I am family physician at the Community Health Center that you were talking about earlier. We were very drawn to all the positives about being in this community. It was very difficult to find a house, for a family, in the city that met those requirements. We were close to buying a house in the County, getting ready to make an offer, but we knew it was not the right move. My

wife persuaded me to completely renovate our house from top to bottom. We are happy where we ended up.

Mrs. Domingus said that she is a public-school teacher, but she stays home now. We have four kids and another on the way. For us, it was important to be in the City public schools. As a public-school teacher, I understand the importance of, not only having diversity culturally, but also in demographics. That is a way that we could support the schools and be involved in the schools. Our kids are having a great experience at Stone Spring Elementary School. We want to support the college, but we also want to support young families that are here all year long and have these communities. Oak Hill community and Forest Hill community are a tight knit community. We do many neighborhood things. When we first moved in, I said that I felt that I was in a Hollywood 50s movie because that is the way it is. People look out for each other. It is a unique thing that these neighborhoods that still exist in Harrisonburg. We have not had a flight to the suburbs. You still have these communities. Not just ours, but for these other neighborhoods, as well.

Mr. Donald Simon, 963 Greenbriar Drive, came forward to speak in opposition to the request. About 30 years ago, the Greenbriar Drive area was rezoned into single-family residences. In the approvals, it was recommended that we watch out for what is happening right now. It was rezoned so that there was more chance for single-family homes in the Harrisonburg area. It was warned that this would happen. Please be careful to not let it revert back. What I see now is the potential for serial rezoning and that is what I am concerned with for Greenbriar Drive. I think the key problems were presented by the residents of the housing are partly rather false. By putting students and other people in those three homes add to a parking problem. The beginning of Greenbriar Drive has gotten very full of cars and it is a bit scary to come in when the students are in town. Village Lane which was indicated as a housing development for students, therefore Greenbriar Drive might not worry about a few more. There is a 40-foot vertical separation that takes care of building separation as far as Greenbriar residences and Village Lane residences. I am opposed to the application.

Mrs. Roann Nieto, 815 Greenbriar Drive, came forward in opposition to the request. I admire that there are young people who want to be in the business of generating from their properties. We have been hearing low-density or moderate density, but I think that the two gentlemen forgot to mention that it is not low-density because on party nights there are more than 50 people on that one little property. Along Village Lane, starting on Tuesday night there was a party or loud music blasting. That was Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday. Monday night is the only night that it is not as loud. It makes you wonder if they are really studying or just partying. It is a nice family lane, family drive. We have young children and we do not want them to be exposed to all this partying and think that college life is party life. I know that this is an investment property. Maybe with all that money you have you would like to sell your property and buy another property, please.

Ms. Banks said that before you move on to the next public comment, I placed an additional letter that I received this afternoon in front of everyone from the family that lives at 815 Greenbriar Drive. It is in opposition to the rezoning. I have also received phone calls. Although they are not in attendance, the hotel across the street called in. They have concerns with parking because people park in their parking lot and walk to the properties.

Mrs. Sherry Leffel, 1107 Ridgewood Road, came forward in opposition to the request. In front of the townhouses and those three houses there are cars. If a fire truck has to come, it would have a hard time getting up that street. It happened several years ago, when we had the little riot.

Mr. Greg Bellamy, 816 Greenbriar Drive, came forward in opposition to the request. Thank you for your dedication. I am strongly opposed to this rezoning. My family moved thirteen years ago. We like the street because it is close to our business. We like that we have families next to us. If the applicants are wanting to compare and include statistics on Village Lane, I definitely do not want that on Greenbriar

Drive, where my family is and what is my biggest investment. I want to protect it. As far as fences go, Mr. Edsell at the end of the cul-de-sac had a fence to separate from the townhomes behind him, but that got broken down by the college students coming down to 714 Greenbriar, last year. Probably about 500 kids went into that house, through that house, into the back yard. There is a water line that broke. It was the house beside me. That is the reason I remember the date. I cannot believe how many people walked through Mr. Edsell's property, who is deceased, to go there. These guys were the owners then, and they have not been good neighbors, since they have owned the home. Therefore, I am opposed to this.

Chair Way invited the applicants to respond.

Mr. Vargas said that he wanted to gauge the entire neighborhood. This is why I have a map of some of the homes, indicated their location relative to where we are. The Ridgewood community is more than a thousand feet away from us. They are completely isolated. They do not share the entrance as us. They go through Oak Hill Drive, which does not have a stop sign, so they have a straight pass through. 816 was mentioned. I think the closest one was 963 Greenbriar Drive, which is uphill. The closest one that is a non-conforming use that is being renting out is their neighbor. They are also around 300 feet away from us, all the way down at the end of the street. I wanted to point out that it is mildly inappropriate for somebody to tell us to sell our house. We bought this because we wanted to be residents of Harrisonburg. We noticed the impacts of our home based on where we are and the traffic that we get. The scooters that we get we get in our lawn. It is not conforming with that R-1 neighborhood. That is why we are requesting a rezoning to R-3 to appeal to the people who are going to be attracted. If the people who would be attracted to be in our homes would be those who do not mind that foot traffic or are trying to use scooters to get to different areas. Our homes have sufficient parking. We have a two-car garage. Our driveway can accommodate five cars, if needed. We can extend the driveway, if we need to because there is additional space toward to the back of the property. If you look at all the other home, 706 and 710 have plenty of parking. I do not think that there has ever been an issue for anyone in those three homes ever parking in the hotel.

Mr. Peña said that he does not want any random cars parking in front of their houses either. That is a gold zone and each of these single-family homes gets two stickers. If you ever see a car parked there that does not have a gold sticker, please feel free to call the towing company and get them towed. They are not anyone that we know. Those are the people across the street parking in front of house. We do not want that either. If we were to sell our house, I do not think that you would see a single family interested in buying it. If the people whose homes are a mile out are complaining about Village Lane, imagine being directly across from them. These homes are not fit for single-family living. They are not.

Commissioner Whitten said were we not just talking about young professionals living there?

Mr. Vargas said that they face an economic impact. I know that 710 has previously tried to sell their home and were unable to do so. 706 was bought under the assumption that they were going to be under a non-conforming use. 710 had the same issue. It is already a mixed-use neighborhood. Any buyer who is going to be buying in Greenbriar already understands that.

Chair Way closed the public hearing and opened the matter for discussion.

Commissioner Whitten said that their explanation has been extensive and accurate.

Commissioner Finnegan said that he sees many signatures on the petition in support of the rezoning. Were those mostly tenants?

Mr. Vargas said that they were from both homeowners and tenants. Anyone who would be living in the area should have a right to say how they feel about the neighborhood. Both owners and tenants were captured in this, especially those on Greenbriar Drive.

Commissioner Finnegan said that this is the first time that I can remember, in my tenure on the Planning Commission since October of 2016, that I have seen tenants sign petitions like this. I will also say that it is the first time, in a Planning Commission hearing, that I have heard someone tell someone to sell a property and go buy another property.

Commissioner Whitten said that reflected a degree of frustration.

Commissioner Finnegan said that it reflects lots of things.

Chair Way said that the notion of neighborhoods, neighborhood integrity, and the particular problems of places on the edges and the margins of the neighborhoods comes up frequently. This is a classic example of that. Another issue we are wrangling with here is whether one accepts that edge case scenario and the different situations with zoning and buffer marginal areas, or you try to maintain the integrity of the neighborhood by trying to keep the entirety of the neighborhood in this similar condition and be extra sensitive to those marginal areas. This is a classic case of wrangling with that. There is strong neighborhood concern in this particular neighborhood. Through all the cases of this sort that I have seen over the years, I am more and more intent on looking out for not only single-family home neighborhoods in Harrisonburg, but also for standing as firm as we can on those marginal cases. I think that is very important. What it does is allow the people to not be dinged for spot zoning, once you start having that domino effect, when you look at those marginal cases. I can see that there is a rational, a deep rational, a logic for making this particular set of properties a little bit denser. In the interests of the broader community, I am particularly hesitant.

Commissioner Whitten said that there are restrictive covenants placed on those properties and I understand that we do not enforce that. I wonder if the neighbors have considered enforcing those because it seems like, from the testimony, that perhaps one of those address had more people than it was supposed to anyway. I think that would take them back to the lowest zoning density. Would it not? I do not remember what that would be, whether it was four or two.

Ms. Banks said that if they were enforcing their covenants it would not come back to us.

Commissioner Whitten said that it would go to the court system.

Ms. Banks said that their covenants say that they would be used as single-family homes. One of them was converted to a duplex, so that one clearly is violating a covenant. I do not know if those covenants described a single-family house as meaning that a single family would live there.

Commissioner Whitten said that it would be for the lawyers to figure out.

Mr. Fletcher said that we need to be careful when we say that it violated a covenant when we do not know what the covenant might have been. It was converted to a duplex when it was an R-4. It is legal. It is non-conforming, but still legal. Regarding the comments about whether or not there were higher occupancies within them, we do know that there are some higher occupancy non-conformities that exist there. We had some investigations, made based on information we learned a couple of months ago, where we looked into some of these.

Commissioner Colman asked if those were just non-conforming.

Mr. Fletcher said that they were not conforming. Were there any violations noted?

Ms. Banks said that the investigations that we performed were the townhomes across the street. They are occupied by four unrelated individuals and they are zoned R-4.

Commissioner Whitten said that her point is that there is a process that is outside of the Planning Commission.

Commissioner Colman asked if these units, the three properties as they are occupied right now, are non-conforming.

Ms. Banks responded that 706 Greenbriar Drive is occupied by four tenants. It did so legally when it was still zoned R-4.

Commissioner Whitten said that if scooters are parking on a lawn of a private home, the occupant can have those removed. You do not have to have those there. Do not talk to me about scooters. We are all tired of scooters. There is a process for that. There is also a process for noise and if your noise complaints are not being address, I would be interested to know about that. I think that City Council would be interested to know, as well. That is a recourse that you have to get your noise complaints addressed. I would encourage you to not put up with it.

Commissioner Colman said that one of his concerns is, as the applicant discussed, the value of their homes if it is impacted by Village Lane and the townhomes across the street. They are in a bind there, if they wanted to sell their house, disregarding any calls for it. Any benefits that you could have from your property is that by removing from R-1 and including the current use then that moves that line further back to the next group of homes. That is my concern. It just continues along that slippery slope. Clearly it would be warranted. As you move back, then the next group of houses is going to be exposed to the same thing. It continues until it overtakes the whole neighborhood. It is a beautiful neighborhood. It is a great neighborhood and I would hate to see it go in a different direction than what it is, a single-family home neighborhood.

Commissioner Finnegan said that it is eleven o'clock. A lot of the people here are in for the long haul on this issue. I can tell that you care deeply about it. It looks like most of the people who signed the petition in support, about 40 signatures, may not be in town. They might be students themselves. They are not here now. What I am pointing out is that it is late and there are a lot of people who appear to support this but did not have the time to show up and speak in favor of the request.

Chair Way said that there was a lot of thought in letters, as well, but they were all in opposition. They included people on Greenbriar Drive, as well, not just the surrounding neighborhood.

Commissioner Whitten moved to recommend denial of the rezoning request.

Commissioner Finks seconded the motion.

Chair Way called for a roll call vote on the motion.

Commissioner Colman: Aye

Commissioner Finks: Aye

Commissioner Finnegan: No

Commissioner Ford-Byrd: Aye

Commissioner Romero: Aye

Commissioner Whitten: Aye

Chair Way: Aye

The motion to recommend denial passed (6-1).

Commissioner Finnegan said that he heard all the evidence and believes that there is a case to be made both ways. The reason that I voted no was because what they were saying about their properties not going into the neighborhood itself. There is a turn-off for Village Lane. I strongly disagree with one of the letters that said that there is no shortage of housing R-3C in the City. I believe that we need denser neighborhoods, where possible. I do not mean that anywhere. We are going to be voting on something

later that could directly affect the neighborhood that I live in and I want to make sure that we are increasing density where possible and where appropriate.

Chair Way said that the recommendation for denial will move forward to City Council on June 11, 2019.

Respectfully Submitted,

Alison Banks

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Senior Planner