



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

August 25, 2020

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Richard L. and Betty L. Sampson with representatives Edilza M. Alfaro Diaz and Carlos Madrid to rezone a +/- 2.0-acre site comprised of 12 separate parcels from M-1, General Industrial District to B-2C, General Business District Conditional. This site includes seven parcels addressed as 143, 145, 149, and 153 Charles Street and five parcels with no street address that have frontage along Clinton Street. The 12 parcels are identified as tax map parcels 41-F-17, 18, 19, 20, 21, 22, 48, 49, 50, 51, 52, and 53.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 10, 2020

Ms. Banks said that the Comprehensive Plan designates this area as Commercial (tax map parcels 41-F-48 through 53) and Neighborhood Residential (tax map parcels 41-F-17 through 22).

Commercial uses include retail, office, professional service functions, restaurants, and lodging uses. Commercial areas should offer connecting streets, biking and walking facilities, and public transit services. Interparcel access and connections are essential to maintaining traffic safety and flow along arterials. Parking should be located to the sides or rear of buildings.

Neighborhood Residential areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types; but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

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

- Site: Antique furniture store and non-conforming salvage business, zoned M-1
- North: Across Charles Street, storage and warehousing, vehicle repair and sales, zoned M-1
- East: Conforming and non-conforming single-family detached dwellings, zoned R-2 and M-1
- South: Across Clinton Street, single-family detached dwellings, zoned R-2

West: Vacant industrial site and conforming and non-conforming single-family detached dwellings, zoned M-1 and R-2

The applicant is requesting to rezone 12 parcels, totaling +/- 2-acres from M-1, General Industrial District to B-2C, General Business District Conditional. The parcels are located along the southern side of Charles Street and the northern side of Clinton Street, between Jefferson Street and undeveloped Albert Street. Located on the site is a +/- 8,680 square foot principal structure, which currently serves as a warehouse and showroom for an antique and salvage business; this building fronts along Charles Street. Directly behind the principal structure, is a +/- 2,300 square foot accessory building, which is situated closer to Clinton Street; however, this building has no direct entrance, or doorways facing, to Clinton Street and must be accessed from Charles Street.

If approved, the applicant plans to utilize the principal structure as an event space for weddings, baby showers, family reunions, baptisms, birthdays, quinceaneras, and other events to serve the community. The applicant has described to staff that events will take place within the building, while the area around the building will be used for parking. In conversations with staff, the applicant has also indicated allowing additional B-2 uses, such as auto repair, to occur in the accessory building to the rear of the property. The B-2 zoning district allows vehicle repair as long as all activities and storage of inoperable vehicles are completely enclosed within a permitted structure. The B-2 district does not allow repair of over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment as a by right use, but would allow it with an approved special use permit.

With the rezoning request, the applicant has proffered the following (written verbatim):

1. There will be no entrances or exits from the subject property onto Clinton Street.
2. At the time of redevelopment, or when any new use occupies the property, a six-ft opaque fence will be constructed and maintained by the property owner, along the Clinton Street side of the property. The fence will be placed at least 10-ft from the Clinton Street property line and will connect to the existing structure situated entirely on tax map parcels 41-F-17 & 18. If the structure on tax map parcels 41-F-17 & 18 is ever removed, the fence must be extended to the western property line of the subject property with at least a 10-ft setback from the property line. (Reference "Exhibit A", attached with this rezoning letter.)
3. Seven (7) large deciduous trees will be planted and maintained by the property owner, along the Clinton Street side of the 6-ft, opaque fence. One tree will be planted every forty (40) linear feet of frontage.

At the time of planting, trees shall meet the following:

- a. Deciduous tree, large: A tree that loses its foliage at the end of the growing season, which at maturity exceeds four (4) inches in caliper. When planted, these trees shall be at least two (2) inches in caliper and be a minimum of ten (10) feet in height. Multi-stem trees shall also be a minimum of ten (10) feet in height.

4. There will be no advertising signs, freestanding or wall, placed within 150-ft of the property line with Clinton Street. (Reference “Exhibit A”, attached with this rezoning letter.)
5. At the time of redevelopment, or when any new use occupies the property, the subject property will be limited to two vehicular openings (entrances) along the Charles Street frontage. The vehicular openings shall meet the following:
 - a. Be separated by 150-ft or more.
 - b. Be 30-ft wide for two-way (entrance/exit) vehicular traffic or 14-ft for one-way vehicular traffic.
 - c. Be delineated with material or structures, such as a permanent post and chain or other permanent fencing, along the remainder of the Charles Street frontage as approved by the Department of Public Works. The material or structures will be installed maintained by the property owner. (If and when curb and gutter is installed along Charles Street and serves to delineate the vehicular opening, the property owner will not be required to maintain the aforementioned materials or structures along the Charles Street frontage.)

As described above, the subject parcels fronting along Charles Street are designated as Commercial within the Comprehensive Plan’s Land Use Guide. The Commercial designation aligns with the requested rezoning to the B-2 zoning district. However, the subject parcels fronting along Clinton Street are designated as Neighborhood Residential within the Land Use Guide. The entire site, all twelve parcels, have been zoned industrially since annexation into the City in 1962.

In being conscientious with the residential neighborhood to the rear of the subject property along Clinton Street, the applicant offered proffers numbered 1-4 as written above. By not allowing entrances/exits along Clinton Street, there will be no additional vehicular traffic traveling through the neighborhood to access the subject property. Prior to redeveloping, or occupying the subject property with any new use, a 6-foot tall opaque fence must be constructed, at least 10 feet from the property line along Clinton Street. Within the 10 or more feet distance between the Clinton Street property line and the 6-foot tall fence, seven large deciduous trees will be planted, with one planted every 40 feet along Clinton Street. This ratio is the same as the current landscape border for parking lots, but differs from the parking lot landscaping regulations in that tree locations are not at the discretion of the property owner, but must be planted every 40 feet. The intent is to form a screen to provide separation between commercial uses and the neighboring residential district. The minimum 10-foot landscape area with large deciduous trees, and 6-foot fence would provide noise reduction as well as visual screening from lights and activities associated with commercial uses. If rezoned to B-2, the site could redevelop with new buildings or uses other than what the applicant is proposing. Proffer #4 is intended to restrict signage, freestanding or wall, within 150 feet of Clinton Street, which is the approximate depth of the existing parcels that front along Clinton Street. Attached as “Exhibit A” is an aerial photo illustrating the approximate proffered fence and sign setback locations.

Proffer #5 addresses the large, wide open entrances along Charles Street onto the subject property. Charles Street does not have curb and gutter and most of the properties along the street were developed with entrances across the entire frontage. This creates an unsafe situation for maneuvering vehicles into and out of properties because customers can pull in and back out onto

the street from any location on the site. Typically, staff would suggest curb and gutter be installed to creating smaller entrances and a landscape border across the remaining frontage of the subject property; however, staff believes that doing so could make stormwater issues worse for this area. Staff believes street improvements along Charles Street will require a more comprehensive design for street and stormwater improvements, which would be more appropriate to do with either a future road improvement project by the City or with redevelopment of the sites along Charles Street with an engineered comprehensive site plan. Therefore, proffer #5 addresses staff's concern regarding the entrances along Charles Street, while not compounding any stormwater concerns. It should be understood that the materials or structures delineating the entrances can be landscaping, fencing, or other as approved by the Department of Public Works.

The Comprehensive Plan Land Use designation of Commercial, along the Charles Street frontage, supports the rezoning request to B-2C and the proffers offered by the applicant address concerns regarding the use and redevelopment of the site along the Clinton Street frontage. Staff recommends approval of the rezoning request as submitted.

Chair Colman asked if there were any questions for staff.

Commissioner Finks asked why the decision was made to specify deciduous trees rather than evergreen?

Ms. Banks said that the applicant chose the trees. In conversations with the applicant, it was their decision that they would like large deciduous trees.

Chair Finnegan asked if there was any concern that this is next to an R-2 neighborhood and there is the non-conforming house on 141 Charles Street. Is there any concern from the City about making future housing sites unavailable? They are now zoned M-1, but they are in the middle of an R-2 district.

Ms. Banks said that the owner of 141 Charles Street uses Albert Street as their driveway. It is designated as commercial in the Land Use Guide. It is currently being used as a single-family detached dwelling. They did not reach out to us.

Commissioner Finnegan asked if there are any future plans to make Albert Street connect with Clinton Street?

Ms. Banks said that the City does not have any plans right now. It would be up to a developer to connect Albert Street from Charles Street to Clinton Street.

Ms. Dang said that, in this area, we have requests on other paper streets to vacate the street. It goes through an evaluation of what utilities may run through the area, how the stormwater flows, and other things. Otherwise, we may or may not look at this street to be developed. We do not have an answer for that.

Councilmember Romero said that the Clinton Street neighborhood is predominantly Hispanic. I know people who live there. In fact, I own a property on that street. Community input is critical

any time we want to make a change. Property owners on Clinton Street, including me, received the letter. I wonder if they have any idea what this is about. My concern is that right across Clinton Street from the subject property, out of those five or six houses, I believe five, or all, are Hispanic, Spanish speakers. I do not know if they speak the language or not. It would be important for us to assist a neighborhood in knowing what is happening. They live there. I do not live in this property that I have. My sister does. She did not receive the letter. I received it. In order for us to really be able to hear the people from the community and their suggestions and their feelings about it, it would make sense that we try to reach out and have the letter in Spanish, as well. I can tell you that a good number of the houses there, and if you follow Clinton Street all the way to Jefferson Street, that is a predominantly Hispanic neighborhood. That is a concern that I have with the communication.

Ms. Banks said that a member of the neighborhood, who lives in one of the houses in the area, Mr. Hernandez, has reached out to staff as a spokesperson for the neighborhood. He reached out via email addressing multiple concerns. The concerns ranged from noise; mass gatherings; cleaning up of the property with the trailers, trash and debris; and, a question about the automotive repair or what other businesses would be permitted. I answered their question to discuss what proffers had been offered about the fence. There was a concern about whether Albert Street would be utilized. They have started a neighborhood conversation and they have a spokesperson who was asking questions and we have been responding to them. They may participate in public input.

Commissioner Whitten asked if the commissioners got a copy of the email.

Ms. Banks said that it was not included in the packet. Would you like a copy?

Commissioner Whitten said that she did not need it right now. It is nice to know that there was communication.

Ms. Banks said that it happened while the packet was going out.

Ms. Dang said that there were a lot of questions directed at staff to help him (Mr. Hernandez) understand what the request was and what the proffers were. We could ask if they want to submit that as formal comments.

Commissioner Whitten said that it would be helpful.

Commissioner Finks said that people may not see a difference between comments and questions. It would help to inform us to see the questions the public asks.

Commissioner Whitten said that she thinks that it is germane.

Chair Colman said that they would like to know of any type of public input. It sounds like that the neighborhood was aware of the request.

I wonder about completely blocking the area from the neighborhood. If there are going to be businesses and services here, it is very difficult for the neighbors to get through. They would have

to jump the fence or go through the undeveloped alley, which is another reason to keep it and perhaps create a path to allow the neighborhood access to the new services that develop within this property or another property here. If we are looking at this as the land use being commercial, we want to have the connectivity. We do not want the noise and the lights at night, which can be managed by landscaping and some fencing. We have to consider the connectivity of the services to the neighborhood.

Ms. Dang said that could be a future use of Albert Street, if not developed as a public street. It is a future idea that can be explored there. The proffers were offered to address concerns and to protect the neighborhood from light and noise. That is why the fence and the trees were offered.

Commissioner Finnegan said that this is not a street or alley closure request, but I echo Chair Colman's concerns. The only walkable street to get out of that neighborhood, if you are trying to get to Charles Street, would be Jefferson Street or North Main Street. We should keep that option open for people who live in that neighborhood.

Commissioner Whitten asked if the number of guests that would be attending this event center is regulated by the square footage of the building?

Ms. Banks said that Building Codes would set an occupancy level that can be within the building for any particular event. The applicant has stated that everything will take place within the building, but should there ever occur an event, perhaps in a tent, outside the building, all regulations as with mass gatherings apply. If the tents that they were to erect are 900 square feet or greater, they are required to get a building permit. If they are planning to have more than 50 persons under the tent, they are required to get a building permit. If they were erecting a tent for an event, and they are getting the permit when needed, staff would be addressing the need for a mass gathering permit, as well.

Commissioner Whitten asked if parking would come after the fact?

Ms. Banks said that parking would be established when the occupancy of the event center is established.

Commissioner Whitten asked if there were any projections about numbers?

Ms. Banks said no.

Commissioner Whitten said that if there is a concern of screening with the use of fencing and trees, evergreen trees are a much better screen than deciduous trees.

Chair Colman asked if that is a recommendation we can add.

Ms. Banks said that it is a proffer, not a condition of any type.

Chair Colman said that if we are not happy with that proffer, if we do not think that is enough, can it be amended? As Commissioner Whitten has said it is not as robust of a screening as evergreen trees.

Ms. Banks said that it is aesthetic, as well, between the fence and the deciduous trees. Quite often the evergreens can grow out. The applicant made the proffer. If Planning Commission is uncomfortable with the proffers, you can deny the request and state your reasons why. If the applicant changes the proffer, it may mean that they have to bring the information back to Planning Commission for your review. It is a proffer and if you are uncomfortable with the proffers or do not approve of them, you should recommend denial.

Chair Colman said that for aesthetics and safety, deciduous trees may be the better option. The evergreen might be a potential hiding place. Deciduous might be a better option. It depends on what they are taking into consideration.

Commissioner Finks said that, in relation to deciduous versus evergreen trees, he is more concerned with the possibility of automotive repair in the back building. If that had not been part of the discussion, I would not be as concerned. An evergreen tree will help more than a deciduous tree, year-round, with noise or view from the automotive repair that would be closer to Clinton Street than the event space.

Ms. Banks said that there is also a six-foot tall fence. In the B-2 district you cannot perform automotive repair outside. It has to be within the building.

Commissioner Finks said that when he visited the property, the building seemed like an open building. That would mean that they would have to add garage doors.

Ms. Banks said that the building has three garage doors on the east side. It has nothing on the Clinton Street side. It is closed, concealed completely.

Commissioner Finks said that they must have been open when I was there.

Ms. Banks said that it is a down-zoning. The vehicle repair business could operate right now, out here, and does not have to be enclosed. They could bring tractor trailers in and start repairing them, by right, today, with the M-1 zoning. If it is B-2, it must be interior and you cannot have the heavy equipment repair.

Commissioner Whitten said that I would like to see us do everything we can to protect the existing neighborhood. I know that when people leave events, they are noisy and car doors slam, sometimes include alcohol and late hours. It might not be the best neighbor.

Chair Colman said that the rezoning, in itself, certainly when they clean all this up, will improve the neighborhood. That would be my expectation. The fence and the trees will also provide a barrier to that. In terms of noise and some of the other issues that Commissioner Whitten mentioned, what can we do to prevent that? Do you have any suggestions along those lines?

Ms. Banks said that there could be an agricultural farm equipment sales business that moved into this property, right now, by right, and one week out of every year, raised a tent in the back portion had a customer appreciation week playing music and serving a dinner meal. It would only be one week out of the year, but a lot of the things you are questioning are things that can currently happen on this property by right. The proffer providing the fence to protect the neighborhood and the taller deciduous trees, which would grow and expand the buffer. They would not get that if the property were to remain M-1 and a committed business were to move in here.

Commissioner Orndoff said that the traffic concern seems to not be as big of an issue because there is no access to the rear of the property. The only vehicle ingress and egress would be on Charles Street. Clinton Street would not be affected, so it would not affect traffic within the neighborhood.

Chair Colman said that concern is with the number of people who would come to an event and the amount of noise that might generate.

Commissioner Whitten said that they will still be heard. It is a concentrated area. That is why I was trying to get an idea of how many people would be there. It was helpful to hear that if there would be a tent, then they would be under the mass gathering ordinance. If it will be an event center, to be successful they would have to have events every week. Some might be smaller than others, but if there is a large event every week, that is a lot different than the example that was given about a farm equipment sales facility having a customer appreciation week once or twice a year. If it is every weekend, it does impact the neighborhood.

Councilman Romero said that there is a demand for a facility like this. They will very likely be booked throughout the year. It might be operating Friday, Saturday and Sunday to some extent. There is room for something like this in the City. I am concerned about the noise levels. Is there a noise level that they are required to operate under?

Ms. Banks said that parcel will be required to comply with Section 15-3-2, the noise violation and penalty section of City Code along with 15-3-3, that is the permit for the use of any sound amplifying equipment in connection with outdoor social or mass gatherings. They will have to comply with those. At night, between 10:00 p.m. and 7:00 a.m., you cannot exceed 55 decibels. This is measured and handled by the Police Department. During the day, from 7:00 a.m. to 10:00 p.m., you cannot exceed 65 decibels. In conversation with the neighborhood representative, I reminded them that with this site or any of the M-1 sites, if they hear any of this kind of noise, they should contact the police department for a patrol to come to the site. Do not wait to call Zoning on Monday morning. Contact the Police Department. The noise ordinance violations apply to this property, just as they do in Old Town.

Commissioner Ford-Byrd asked if noise was a concern when communicating with the neighborhood spokesperson.

Ms. Banks said, yes, it was. I am reading from the email, the response that I discussed with them.

Commissioner Whitten said that maybe we will hear from them in the public hearing.

Chair Colman said that we will let them speak and we can ask them some of those questions. When we hear from them, it will be what they expect. I do not know if we have any statistics on event centers and the noise levels are. Given that we have an improvement to the property, to B-2 Conditional or to B-2, would be more helpful to the neighborhood compared to M-1 because it would be cleaner. On the other hand, if it is going to be a facility like this, it has the potential to create a nuisance as well. I feel supportive of it, but at the same time I am concerned about the noise. We can ask the applicant that question.

Are there any further questions for staff?

Ms. Banks said that the applicant has worked diligently with staff on this. I reached out to them to get a phone number that we could call for them to come online with you this evening. I did not hear back from the applicant. They do have the ability they could call in here and perhaps they will, but we did not call them this evening because we did not have a number with which to reach them.

Commissioner Whitten said that there is number at the bottom of the "To whom it may concern" letter in the packet.

Ms. Banks said that there is also a language barrier.

Ms. Dang said that we could call the number, but we have been working through their representative. They did not get back with us. They know how to call into the meeting if they need to.

Chair Colman opened the public hearing and invited the applicant or their representative to call into the meeting.

Carlos Madrid, 1532 College Avenue, called in to speak in favor of the request. I represent the buyer of the property. To address the concerns regarding noise, the events will happen within the building. The building itself will be soundproof. It will be completely protected from noise coming to the outside environment in order to protect the neighborhood. The number of people to every event will be to the maximum capacity that the Fire Department and City codes address. The owner will abide by those numbers and regulations. The auto shop was simply an idea, not something that is going to happen. There is not going to be an autobody shop after the closing is done on that building. This building is not to be used for an auto repair. It is for events. The auto shop idea was just an idea, not a plan. On the fence side, the proffer states a six-foot fence. My client says that she wants a ten-foot fence. I want that to be a complete barrier so that the neighborhood can be protected. I agree that it is better to have large trees because small trees can be a hiding place for people. Tall trees will be planted there to give the neighborhood the residential mood even though there is a business operating on Charles Street. Clinton Street will not be affected. The parking will be according to code. The entrances will be on Charles Street only.

Commissioner Finks asked when you obtain the capacity inside the building, are you planning on getting a number for planning and seating.

Mr. Madrid said that there are numbers, but the new owner will adhere to the recommendation of the Fire Department.

Commissioner Finks said that you have the opportunity to get a seating capacity with a layout of where the tables and chairs would be and another capacity for an event that would be standing. Are you planning on hosting events where there will be seating, or would you also allow the space to be used for events that are standing room?

Mr. Madrid said that the zoning allows for different types of events. In this case, the use of the building will be on Friday and Saturday, and eventually Sunday. The usage normally happens between 3:00 p.m. and 8:00 or 9:00 p.m. Those are the timeframes in which the events will likely be happening. There is an idea of numbers. When there are no rules, people do whatever they think is best. When there are rules, the applicant will abide by the rules. There will be events where there will be seating, and they are getting some furniture for that. Eventually, there will be events where there will be standing. All will be done by code.

Ms. Banks said that occupancy is established by the applicant's architect, as the architect is addressing Building Code needs. The architect will establish occupancy levels for seating and where tables will be, if there is standing room what it will be, and it will be addressed through the Building Code.

Mr. Madrid said that the next step, after approval, would be hiring an architect who is familiar with the codes and permits. That person will be key and will educate the new owner about the concerns that you have mentioned.

Councilmember Romero asked if he or the applicant have reached out to the neighborhood, especially the homes in close proximity to the property.

Mr. Madrid said no. There has not been any contact. Since there is nothing going on until the approval comes through, there has not been a push about taking their input into consideration. When the approval comes through, of course there will be that consideration. There is this concept where a given weekend there will be an event to give back to the neighborhood. Refreshments would be free for the neighbors, inflatables for kids, that people can come and enjoy, perhaps twice over the summer. That is a business consideration on giving back to the community. Cleaning the area will be one of the improvements. The number one effect that the neighbors will see is the cleanliness. Then the green area with trees will also be something that they will applaud. Someone mentioned that most of the five or six homes are Hispanic. Most of these events will be quinceañeras. Most Hispanics use these providers as their provider for years. This facility will serve as one of those places where they can celebrate their 15-year-old girls, or their wedding anniversary, or other celebrations. It will be a place for families to build memories. That will be something that they will appreciate.

I read the letter from the neighborhood representative. He took pictures of the trailers. He was addressing that and asking if it would be the same. That will not be the case after the zoning is approved. That person will have the question answered. He also mentioned noise. As you mentioned, the six houses are residential and mostly Hispanic. Noise is the number one factor that

people worry about. I mentioned in my conversation that the building will be soundproof inside. That should address the concern.

Chair Colman asked if there were any other callers. There were no more callers, so he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that he echoes the comments made by Councilmember Romero and Commissioner Finks regarding the outreach to the community. It sounds like the site will be cleaned up, which is good. I do not feel confident in terms of what the activity level will be and whether the neighbors are on board with the proposal. I am leaning towards not supporting this simply because there are some missing pieces of information.

Councilmember Romero said that he agrees with Mr. Madrid that this venue is something that many people in our community are always looking for. There are not enough venues for the event that he was mentioning. I think this is a good business idea, especially for many in the community who do like to have celebrations and large gatherings, including in my community and many of the Hispanic communities. I do agree with that. There is a need. I was just texting my sister, who lives on Clinton Street. She has been there for a year and a half. She said that she has not heard anything about this. She lives right across from the property on the Clinton Street side. I am not sure who this neighborhood representative is because you would think that he would have asked the people who live right across from that property. I am concerned that the neighbors might not know much about what is going on. They may not be able to advocate for themselves if they do not know that this is happening. I am not opposed to it, but I think the neighborhood should think about it. Hopefully between now and the City Council meeting there will be more information and that we have a chance to listen to their concerns.

Chair Colman said that he has neighbors nearby that some weekends have loud music. This is just one neighbor. I would never want to live right there close to this event center if they are going to have activities throughout the week and on the weekend. If the events were to be indoors, it may be fine. If it is soundproof, it might be fine. I am concerned about outdoor events that may have a sound system blaring into the neighborhood. That would be a nuisance to that neighborhood. I have complained before and nothing has changed. At 2:00 a.m. in the morning, the neighbors were having a party. If it went until 10:00 p.m., fine, they are having a party. They carry on and on. At 2:00 a.m., we called the police. They came twice and nothing happened. It went on for hours after that. I have been affected by this, so I am not very sympathetic to having noise overnight or even during the day if it is going to go on and on. I think that if it is indoors and the sound is contained to an indoor event, that may be okay. I would like to recommend that the sound system be limited to indoors. Any activity outside should not have a sound system. I do not know how to word it, but I do not want speakers blaring outside and annoying the whole neighborhood. It might serve the neighborhood in some way, but I am conflicted about it because of the noise issue.

Commissioner Finnegan said that he would be more inclined to support the request if there were a proffer that limited the hours of operation or something to that effect. I know that we cannot add them here. That is my primary concern. It does not feel right to say that this is acceptable, but if there are problems just call the cops. I am not comfortable with that.

Commissioner Finks said that I am usually going to be in favor anytime we take an M-1 and turn it into a B-2 whenever it is right next to a residential zone. I think that Chair Colman is right that there should be some discussion about outside noise, or what Commissioner Finnegan said about hours of operation. I would ask that Mr. Madrid make a point of reaching out to the community, the neighbors, regardless of whatever recommendation we send. In this type of scenario, there should always be discussion with the neighbors. That is what I would like to see happen, especially when we know that there was an email in question. It seems that there are people in the community that have questions or have not been fully informed about what is going on. Mr. Madrid should reach out to the community and physically discuss the project with them.

I will take a moment to say that I hate it when we, as a City, talk about green space or how a certain type of green space will create situations where people can hide. That is used for a lot of reasons to cut down forests and trees and green buffers. It personally irritates me. It bothers me when we talk about cutting down green spaces because people can hide somewhere. It hurts our community. It hurts our neighborhood and our peace of mind. I think that, in this situation, regardless of the six-foot fence, evergreen trees are going to help keep noise down year-round.

The developer or Mr. Madrid should be reaching out regardless of how we vote tonight. They should be reaching out and discussing their plans with them and making sure that what they envision for this property is understood by all the adjoining neighbors.

Commissioner Ford-Byrd asked what it means to vote against the request at this point. Does that give the opportunity to go back and amend the proffers and bring them back? Can that be done tonight?

Ms. Banks said that additional proffers or changes to the proffers could be made at this point. I do not know if Mr. Madrid, the applicant's representative, is with the applicant at this time. They may need to discuss it before they change or add any proffers. It might be something that does not occur until tomorrow or next week, before it goes to City Council. Then it would be up to City Council to decide if they want to send it back to the Planning Commission to be heard, or you could table it this evening.

Commissioner Finks said that we can vote it down tonight based on the proffers they presented. They could amend the proffers before City Council. It would not necessarily have to come back to us. The proffers could be amended before it went to City Council and they could make the decision based on the proffers that are amended.

Chair Colman said that has happened before. City Council may decide that they want us to review those proffers again.

Ms. Banks said recent precedent is that, if proffers are changed or amended, City Council sends it back to the Planning Commission.

Chair Colman said that we could table it. We could request that the applicant reach out to the neighborhood and consider proffers to address our concerns about noise. We could recommend that and table this for a later vote.

Commissioner Finnegan asked, if we table this, do we have to advertise a second public hearing.

Ms. Banks said that, if the Planning Commission tables the request, it does not have to be re-advertised. If you table it, you have to state that you want it to come back at next month's meeting and what specifics you want the applicant to consider.

Chair Colman asked if the Planning Commission can reopen the public hearing the next time they consider the request.

Ms. Banks said yes.

Commissioner Finks asked if they would have to re-advertise.

Mr. Russ said no.

Commissioner Finks said that, if they table the request, the Planning Commission should state that it is tabled until the next meeting, instead of the next month, due to the uncertainty in the state of the world.

Commissioner Finnegan moved to table the request in order to give the applicant the opportunity to address some of the concerns that the Planning Commission has. The request will be considered at the next meeting.

Chair Colman asked what specifics do we want to ask them to consider.

Ms. Dang said that the Planning Commission should be cautious because they cannot require or specify what the applicant should proffer. You can clearly state what your concerns are and suggest ideas about how they might address those concerns.

Commissioner Finks said that rather than addressing the proffers, my main concern is that there does not seem to have been a dialogue with the neighborhood. The proffers have not been discussed with the neighbors.

Councilmember Romero said that he has texted with three neighbors during the meeting. Out of the three people, none have heard anything about the request. They have seen the signs and knew that something was going on. I do not know who the neighborhood spokesperson is, but three people who have lived there for over 20 years do not know anything about it.

Chair Colman said that the Planning Commission encourages the applicant or the applicant's representative to engage the neighbors and address the concerns with noise, both indoor and outdoor, including, perhaps, hours of operation and things like that.

Commissioner Whitten added concern regarding lighting in the parking lot.

Commissioner Finnegan moved to table the request until the next meeting.

Commissioner Finks seconded the motion.

All members voted in favor of tabling the request until the next meeting (7-0).

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: July 8, 2020**

Ms. Banks said that Planning Commission tabled the above referenced rezoning request during the June 10, 2020 regular meeting. Staff recommended in favor of the rezoning request. The Comprehensive Plan's Land Use designation of Commercial along the Charles Street area supported this rezoning request. The proffers that were offered by the applicant as part of the request addressed concerns regarding the use and redevelopment of the site along the Clinton Street area which is a neighborhood residential land use designation. Planning Commissioners recommended that the applicant reach out to the neighbors along Clinton Street and Charles Street to inform them of the request and to solicit feedback. Additionally, Planning Commissioners suggested that the applicant consider concerns raised by Planning Commission during the June 10, 2020 meeting.

Since the June 10th meeting, the applicant delivered notices to all homes on Charles and Clinton Streets inviting neighbors to an informal gathering on the property on June 21st to discuss the requested rezoning and to answer questions and concerns. As well, the applicant went door-to-door talking with those residents that were home. The applicant informed staff that many neighbors stated, *"they are happy to know the building is switching ownership since the present owner has refused to work with them in changing the face of the street."*

Chair Colman asked if there any changes to the proffers and asked to see them again.

Ms. Banks said that there were no changes to the proffers and displayed the proffers on the screen.

Commissioner Finnegan commended the applicant for meeting with the neighbors. Has staff received any feedback about this request.

Ms. Banks said that staff has not received any comments, emails or phone calls.

Vice-Mayor Romero said that he was glad to see that the applicant was able to reach out to the neighbors. I am concerned that the meeting took place on Father's Day. That was not a good day to get people together. I believe only two neighbors came to that meeting. I happened to be in the neighborhood, last week, and had the opportunity to talk with Mr. Hernandez who sent an email to us. He lives right across from that property. He said that the meeting was a good one. That the applicants were willing to share their plans. They did feel that there were some things that were not very clear. I did encourage him to reach out to the applicants to get any clarification. Mr. Hernandez is in support of the project. He is thankful that the applicant reached out to the neighbors.

Commissioner Finks asked for clarification. Are you saying that only two neighbors came to the meeting on June 21?

Vice-Mayor Romero said that is what he heard from Mr. Hernandez. Only he and his neighbor to the right came to the meeting.

Commissioner Finks asked what the sheet of names were that was attached to the packet. I was led to believe that these were all the people that came to that meeting.

Ms. Banks said that there was the meeting, inviting everyone there. When there was a low turnout, the applicant went out into the neighborhood and knocked on doors to speak to individual homeowners and residents of the area. That is where a lot of the information went out.

Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public meeting and invited the applicant or applicant's representative to speak.

Carlos Madrid, Harrisonburg resident representing the applicant, called to speak to the request. I would like to mention that after the petition was tabled, we did our due diligence and invited the neighborhood over to the building to give them a better idea, on site, of what the rezoning was about. Two couples showed up. It was Father's Day, which we had not realized, and there was a lot of rain. We then went door to door, keeping our distance, to talk to the people in the neighborhood and get their opinions. They all were supportive of the buyer and the proffers. The clean up of Clinton Street is going to be a huge impact. The two couples that showed up are directly affected with the look of the property with all the trash that faces their homes. We gathered their addresses and they were kind enough to support us with the proffers. We presented to them what we presented to you, last time. That is building a six-foot fence as proposed by staff. The buyer is offering to build it up to ten feet. They were pleased to have a green area and trees and instead of having the ugly trailers. The signatures and names were written by them to show that they are okay with what is planned to happen there. That is what was missing, as far as I heard from you the last time. We covered all the points, so the checklist is complete for the rezoning to happen.

Commissioner Finks asked if there was a discussion regarding limiting the times of operation. Did you have any discussions internally or with the neighbors about limiting the times of operation?

Mr. Madrid said that the neighbor across the street brought that up at the meeting. We explained that normally those events run from 3:00 p.m. to 9:00 p.m. It was asked and it was addressed.

Commissioner Finks said that while the applicant may plan to have events during a limited time, the proffers will stay in place no matter what business owner runs that place. The fact that there is no proffer that dictates that any future uses not allow something to go later, then there is nothing to stop that from happening, if that becomes an issue in the future with the neighbor.

Mr. Madrid asked if that was comment or a question.

Commissioner Finks explained that it is a response. You state that the applicant plans to have the events during a certain time, but if there is no proffer that they will only happen during a certain

time, then there is nothing saying that you could not do it later or earlier than that. It could affect the neighbors. I am just clarifying.

Mr. Madrid said that they will explain, in detail, what will happen to the building. The building will be soundproofed, so the events do not affect the outside world. They asked and it was addressed. One of the things that was mentioned is that there is a possibility that there will be an afternoon where there is going to be photo shooting. There is also the possibility of having inflatables, but those services are provided during the day, not at night. Normally, events like that run until five or six in the afternoon. That would occur on any given Saturday or a Sunday upon request. It is not something that will happen regularly. There had been mention of a giving back to the community event for the neighborhood, so that they may be given part of what the business can produce. Those will be done in the form of end of the school year or back to school events. Those things were considered and mentioned, as well as giving a percentage discount for the first three events for every family represented in every household.

Commissioner Finks said that we have a good understanding of the intended use of the space. The concern that we discussed last time is that as the proffers stand now, you could rent out the facilities to fraternities and sororities late at night. Even if that is not the intended use now, there is still the opportunity that something like that could be allowed based on what is presented to us right now. As there are no changes from the applicant, I do not know if that issue has been addressed.

Commissioner Finnegan commended Mr. Madrid for going out and speaking to the neighbors. Hopefully, that will continue if this gets approved and the business moves forward.

Chair Colman said that since there are no changes to the proffers, there is nothing that says that something else could not occur there. That is the main concern of the Planning Commission for you and the applicant to understand.

Mr. Madrid asked if the Planning Commission is suggesting a proffer.

Chair Colman said that he is not suggesting a proffer. I am suggesting that our concerns be addressed in some conditions that you might impose on the property, which could be in the form of a proffer, but it is up to you to decide how that is presented.

Mr. Madrid asked if there is not an approval today, would that be a condition to present.

Chair Colman said that the Planning Commission cannot change the proffers. Depending on how we vote, the applicant can make changes to the proffer and discuss with staff how to move forward. It could go to City Council. You might not need to return here. You have heard our concerns and it is important that those are addressed.

Mr. Madrid said that you are saying that we, as a business, need to have a way to control whether there is a potential of renting the building to a specific group that would come and hold their own event, in the future.

Chair Colman said that it is not about specific groups or trying to keep somebody in or out. It is more about the hours of operation, noise levels and light and how that impacts neighborhoods. That is our concern here. That is something we feel should be addressed. It has not been addressed. I know you have talked with the neighbors. If somebody else were to buy the property, the rezoning remains, so the next person could use it for something else completely but having a whole different attitude than you or your client. I am very supportive of what you are doing. I like the idea of cleaning this place up and having something nice. At the same time, we are concerned about the future. This is your opportunity to present those conditions. The hours of operation are an option. We cannot recommend proffers, but you can state it in a way that meets the Commission's concerns.

Mr. Madrid said that he now understands what is being said. We have been talking all along about how these events happen from 3:00 to 9:00 p.m. normally. Those are the basis of this business. I think that we can commit to that. That will not be a problem. Events can happen from 10:00 a.m., if it is a luncheon. If it is an evening event, the arrangements may be from 2:00 p.m. and the event ends at 7:00 or 8:00 p.m. Some people stay behind to do the dismantling. That is something that we have been mentioning all along. We can agree to that. We can say 10:00 a.m. to 9:00 p.m.

Ms. Banks reminded the Planning Commission that this is a rezoning request to B-2. We are focused on the events center. There is no proffering out any other B-2 uses. When staff worked with the applicant, we discussed what proffers are going to help protect this neighborhood from B-2 uses in general. For example, the traffic in and out of Clinton Street, the signage, the fencing, the buffering and so forth. Yes, this proffer is fine, and we can work with them on this, but if approved it is a rezoning to B-2. You could get a convenience store built there. You could get a hotel. You could get a hotel built there now. You could have a gas station. This would limit the hours to the event center, yes, but if a hotel went in, you could have hours of operations and gatherings at the hotel for different things. I just wanted to remind everyone that it is a rezoning to B-2. There are a lot of B-2 uses that can go in, but we seem to be really focused on the event center. We will work with this applicant on hours of operation for this use.

Mr. Madrid said you are the head of this here and I am here following you. I am assuming that you are aware of the four corners of this building, meaning this conversation. Ms. Banks is right on point. By approving this rezoning, I believe that we can work on those hours of operation because the B-2 allows for many businesses to happen there. The event planning is one of them. We can work around with the hours of operation. I appreciate Ms. Banks for bringing everybody to the point.

Chair Colman said that I feel supportive. I would like to support this business. I think that some of the other commissioners are in favor. We will vote in a minute. Are there any other questions for Mr. Madrid? Hearing none, he asked if there is anyone else wishing to speak to the request.

Brenda Hernandez, 147 Clinton Street, called regarding the request. I was able to attend the meeting. I do support the rezoning. There are some concerns that we explained to the applicant. One was that this area is a quiet, family neighborhood. It is very peaceful. The noise is something that really concerns us. One of the things that the applicant mentioned was that they would be soundproofing the building and putting some evergreen trees that would be better for a sound

barrier. The other concern that I have, and that I share with both of our neighbors, is that we want to have complete separation between Clinton Street and Charles Street. One of the things that I did voice during our meeting was that I am concerned about the undeveloped Albert Street. I read the proffer and it states that it would only block Clinton Street, but it has no mention of Albert Street. One of the things that they mentioned was that they would completely block with the fence all of Clinton Street and Albert Street. That will help avoid excessive traffic. We have a lot of kids playing in the street. Almost everyone on the street has children. They are free to be outside. More traffic would be a danger. If there is any passageway allowed, then that would be a concern. They did state that they would be able to completely close out all their property including the undeveloped Albert Street. I did ask if the proffers were going to be revised and resubmitted with the things that they mentioned that were not stated in the proffers. They said that it was not necessary. I do trust that they are going to keep their word. There is a small concern still because the proffers were not revised and resubmitted. The other concern was for the fence. On the proffer it states that will only have a six-foot tall fence. If they place it exactly where they mention that they are going to set it up, there is a big dip, a down slope, which would make it a four-foot tall fence. Then there would be no privacy or separation between Clinton Street and Charles Street. I was told that there was going to be a seven-foot fence. Since they stated that they will address our concerns, I would like to support it, but there is that one thing that I would like to request again to the applicant if they could resubmit revised proffers. It would give us peace of mind. I would encourage the applicant to include in the proffer certain limitation. God forbid a hotel actually comes and ends up across from us. At that point there would be no privacy or separation between the business and our lovely community.

Commissioner Finks said that there were two things mentioned that I would like staff to address; the height of the fence and the idea of a hotel going into a B-2 district, considering that it is currently M-1 and what would be available by right in an M-1 district.

Ms. Banks said that a hotel can be constructed on this property today, by right, in the M-1 zoning; no fence proffer, no entrance proffer, no signage proffer. It can have entrances and exits to Clinton Street. There can be signs on both streets if they want to. It is a by right use. When we worked with the applicant on the request for a B-2 zoning classification, we were trying to protect that Clinton Street neighborhood. There are a lot of uses that can go there right now that are rather intense and without any proffers. A fence can, by right, be six feet tall. There is a SUP process for going over six feet in residential districts. In the B-2 district when a fence is used for safety and security purposes of the business, it can be taller than 6-feet. I do not think that this meets that; that is why we went with six feet.

Chair Colman said that he does not believe that they will be able to close Albert Street because it is City property.

Ms. Banks said that if they wanted to close Albert Street, they would have to petition the City to close and purchase it. They have the right to put a fence along the side of their property that runs parallel to Albert Street.

Chair Colman said that they could not close access to it.

Ms. Banks said that it is not their property. They could not build across it.

Chair Colman said that the applicant or applicant's representative has agreed to work with staff to address the time of operation.

Ms. Hernandez said that when they signed the document, they were confirming their presence at the meeting, not an agreement with the existing proffers.

Chair Colman asked how many people were at the meeting?

Ms. Hernandez said that it was my husband, myself, and our next-door neighbors on the right. In total, we were four people in two households.

Chair Colman said that your signature, then, did not mean that you agree with the request, but to acknowledge that you had been at the meeting.

Ms. Hernandez said that is correct.

Chair Colman asked if there were any more callers.

Brenda Alfaro, daughter of the applicant, called to speak to the request and answer questions. We were under the impression that hours of operation had to follow the Harrisonburg policy and abide by the permit requirements. We did not believe that we had to offer hours of operation as proffers. We are willing to follow any regulations that the City of Harrisonburg has for hours of operation.

Chair Colman asked if Ms. Alfaro is referring to the noise ordinance.

Ms. Alfaro said yes.

Chair Colman said that the applicant is coming to us, asking for a rezoning, and now we are discussing the noise. If we recommend in favor of the rezoning and City Council approves it, this is what is going to rule your property. We will recommend the rezoning if we agree with the conditions that you have on it. That is why we are expressing our concerns. This meeting is to express the concerns of the Planning Commission on behalf of the City and ask how you will address it. If it was something that was addressed directly by City codes, then there would be no need for us to be questioning those things.

Ms. Alfaro said that we understand that Clinton Street is a residential neighborhood. We do not want to affect the peacefulness of the neighborhood. We want to ensure the safety and security of that neighborhood while putting our business in as well.

Commissioner Finnegan said that something is getting lost in the conversation. Let us have a conversation about what will happen if you end up doing your business, exactly as you plan, and then you sell it to someone else. That is the conversation that we are trying to have. What happens when you are no longer operating that business and have sold that property to some other property owner.

Ms. Alfaro said that this is going to be a family owned business. We do hope that it will pass down generations. We have not thought so far ahead into the future selling of the property because we do plan for it to stay as a family owned business. I am sure that my mother would work to ensure the separation of Clinton Street and their safety; making sure that the future buyer would be willing to work as we did.

Chair Colman said that we are supportive of what you want to do. We feel that there is some misunderstanding here about what we are talking about. When you talk about assurances, how are those assurances going to be upheld, other than your word. We like that, but that is why we have proffers. They are something that we put in place to ensure it continues. There are some concerns of the Planning Commission that had been expressed in the previous meeting and in this meeting. I ask the Planning Commission if those concerns are being addressed. It does not appear to be the case.

Ms. Alfaro said that any recommended proffers that you would like to see, we are willing to consider those and put those in place. We will work with your concerns and the safety of Clinton Street.

Chair Colman advised Ms. Alfaro to work with staff. We do not want the proffers to be limiting or crippling to your business. We want something that is going to protect the neighborhood but is also going to allow your business to grow and thrive. Talk with staff. The idea is not to make it too restrictive, but enough to address the concerns of the neighbors.

Ms. Alfaro said that we understand that the main concern is the safety of the neighbors and making sure that we maintain a balance in that neighborhood. Not many people showed up to the meeting. We did not realize that it was Father's Day that weekend. In our culture, we celebrate it a different day. We missed the ball on that one. We would like to note that although not many people showed up, we decided that we would go door to door and discuss with the neighbors if they had any questions or concerns about the business as it is being put in place. We answered any questions that they had and made sure that they understood. I hope you are willing to see that we are behind the neighborhood and willing to protect the neighborhood to make sure that it stays nice for all the children and the families that are there.

Chair Colman thanked Ms. Alfaro for reaching out to the neighborhood.

Ms. Alfaro said that we live in a very quiet, family neighborhood, as well. We understand all the concerns that they had. We understand that maintaining the neighborhood is important not only for the families, but also for the property value and the image of the neighborhood.

Commissioner Finks said that he hears Ms. Alfaro's point and believes that they have the best intentions to protect the neighborhood and not be encroaching on the neighborhood. The concern comes from the discussion from the last meeting and the discussion with the neighborhood residents that nothing changed with the proposal. You heard our concerns. You heard the residents' concerns. You agree that there are concerns, but then nothing changed in the proposal to address those concerns. It is great that you are hearing these concerns and that you agree with them and

want to do your best. I think that is commendable. The fact that nothing fundamentally changed about the proposal from what you brought to the table last month. You brought back the same proposal. Concerns that we brought up, were brought up by the neighbors, and nothing was changed. That is where my concern is. I do believe that you will do your best, but when we are dealing with zoning and property, someone's word does not come into play. It needs to be in writing. It needs to be something concrete that is regulated.

Ms. Alfaro asked what exactly is the proposal that you would like us to consider.

Commissioner Finks said that, specifically, it was hours of operation. That is what we have been talking about is the hours of operation of this business in relation to its proximity to a residential area. That is something that we have seen with other rezonings on other commercial B-1 and B-2 properties in the City. There might be a proffer or condition put forward to limit the hours of operation for the business, such as it stops at 11:00 p.m. or 9:00 p.m. every night. I had assumed that if there was going to be any change, that it would be somewhere in that direction, specifically about hours of operation in any business going forward.

Ms. Alfaro said that it would be a proffer concerning time. We would be willing to add a proffer of time. We assumed that it was something that we would have to do with the City after this process, regarding the City noise and hour requirements. We did not know that we had to proffer it. We will be willing to add it.

Chair Colman suggested that the applicant work with staff on additional proffers or amending the proffers.

Commissioner Whitten said that one caller was told that they would close off Albert Street. We know that cannot happen. She seemed to think there would be a taller fence, which also cannot happen, unless they get a SUP. There seem to be a lot of misunderstanding about some of these details. While I appreciate what Ms. Banks added about what is allowed in B-2, if the zoning changes to B-2, I think that some of things are going to have to be resolved before I feel comfortable voting.

Ms. Alfaro said that they wanted to put in a bigger fence than what was proffered, but it was said that we can only put in the six feet that was proffered. The applicant wants to enclose all of the property for security reasons for us. She wants to put a taller fence. We also want to address the dip that exists so that the fence is equally high all around. Once the fence is in place, you would not be able to see to the other side. If we have to get a permit for the raised fence, then that is something that we want to do. We are not putting the fence in because it is a requirement. We are putting the fence because we want it to be completely secure from all around access.

Chair Colman said that was stated by staff. A SUP is required for that fence to be higher than six feet. We do not have a SUP permit request here. That cannot be a proffer.

Ms. Banks said unless the fence is for the safety and security of the property. We would have to make that interpretation.

Chair Colman said that a fence could be installed without a SUP if staff interprets it as a security fence. That is not in our hands.

Commissioner Whitten said that the caller said that she signed the form, not as an agreement, but as a courtesy. It was not that she was agreeing with what they planned.

Ms. Alfaro said that, yes, it was for the attendance. We also answered their questions and concerns. They also understood that if they did have any concerns, they could call during the Planning Commission meeting.

Chair Colman asked if there were any more callers. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Finks said that it seems that there is a potential for people in the neighborhood not being heard for this rezoning. I am not sure that we have an accurate picture of what those concerns might be. The applicant did their due diligence in reaching out to the neighborhood. I have some concerns with some of the comments that the first neighbor said that did not sound quite right. There were a couple points of confusion. I do not feel that we have a clear picture that everyone is on the same page with what is happening. I do not know that I have a clear consideration that any action was taken by the applicant on what we talked about at the last meeting. The only concern that was heard was that the neighbors needed to be talked to and that is what happened. Perhaps we were not clear with our concerns and how we would like to see them addressed.

Chair Colman was notified that there was another caller. He reopened the public hearing and invited the caller to speak.

Gerardo Hernandez, 147 Clinton Street, called regarding the request. I am in favor of the rezoning. I have a suggestion since the height of the fence is in question. The existing topography is kind of low. That was concern of it being low relative to where we are. If getting a SUP for a taller fence is complicated, can the grade be raised? The six-foot fence would provide privacy if the grade was raised.

Chair Colman said that it would be interesting to see where the property line is. What I see on Google Earth is that the property line is along where the trailers are currently. I cannot tell if it is low or high. It seems that they are interested in a taller fence. They can discuss that with staff. If they are concerned about their own security, that might be something that they can do without a SUP.

Mr. Hernandez said that it was simply a suggestion. We would like to see the rezoning move forward.

Chair Colman asked if there were any other callers. There were none, so he closed the public hearing and reopened the matter for discussion.

Chair Colman said that there is more expense and work to raising the grade, however it is an option.

Commissioner Whitten said that they might not need a SUP if they are concerned and they want to secure their property with a fence.

Chair Colman said that the applicant's representative has agreed to discuss revising the proffers to address some of the concerns, specifically the hours of operation.

Commissioner Finnegan said that he wants to support this. In terms of running the business, it sounds like they have done the right thing. What we are focused on here is the zoning. To Ms. Banks' point, I am sure that people in the neighborhood would not want an M-1 industry to move into that neighborhood, which it could, by right. The same for B-2. If the applicant wanted to amend the request, can proffers be added between when we vote on it and when City Council votes on it?

Ms. Banks said yes. They can amend proffers. They can add proffers. Then it would be City Council's decision if they want to send it back to the Planning Commission.

Chair Colman said that we can move the recommendation forward to City Council under the understanding that the proffers would be adjusted or amended to address our concerns. That is my understanding. I want to make sure that is on the record.

Commissioner Finnegan said that regardless of how I vote on this, my concerns are regarding restrictions on noise and time of day. It has nothing to do with the business that they are trying to start there.

Commissioner Whitten said I agree.

Vice Mayor Romero asked if the times the applicant proffers, which could be 9:00 p.m. or 11:00 p.m., would those times make a difference in the way the Planning Commission votes? There might be things that change between here and the City Council meeting. I want to make sure that I understand, given the times that are provided, that this Commission would be in support of it. It is hard because we do not know what we would have done given the actual times that were provided. What if they propose 10:00 p.m.? Is there some guidance for City Council that the Planning Commission can provide regarding the time?

Commissioner Finks said that it is up to the applicant to provide the proffers and then we can vote on the rezoning or not. I do not have suggestions on it. I would consider whether it is reasonable. It will be up to the applicant, working with staff, to decide what reasonable looks like. I just do not want to see it open ended.

Commissioner Finnegan said that he agrees with Commissioner Finks.

Chair Colman said that times could vary depending on whether it is during the week or the weekend. We also need to make sure that the proffers align with the noise ordinance. Is staff able to provide some suggestions for us to discuss regarding hours of operation? We are not establishing proffers. We are simply saying what we feel comfortable with.

Ms. Banks said that the Noise Ordinance, Code Section 15.3.3, spells out the decibel levels. There is the daytime between 7:00 a.m. and 10:00 p.m. There is the nighttime, which is from 10:00 p.m. to 7:00 a.m. the next morning. The Noise Ordinance spells out that there is a limit of 65 decibels during the day and 55 decibels during the night. Then it speaks more specifically to sound producing and sound reproducing devices. Are you thinking that we should address the hours of operations along the lines of the Noise Ordinance?

Chair Colman said that is what I am suggesting. Do other commissioners find that reasonable?

Commissioner Finks said that I do not think that it is part of the Planning Commission's purview to suggest specific things about proffers. We can state our concerns. They can address those in the proffers.

Commissioner Finks made a motion to recommend approval with the understanding that the hours of operations will be addressed before it comes before City Council.

Commissioner Finnegan seconded the motion.

Chair Colman said that he does not believe that can be added to the motion. I think we can comment on our motion, but I do not think that we can add to it.

Mr. Fletcher said that he needs to better understand what your motion was. It is either approve or deny. You cannot add conditions because it is a rezoning. It is up or down.

Commissioner Finks made a motion to recommend approval. I would like to see the hours of operation addressed.

Commissioner Finnegan seconded the motion. I hope they address the noise and hours of operation.

All members voted in favor of recommending approval of the rezoning, as presented (5-0). The recommendation will move forward to City Council on August 11, 2020.

Chair Colman said that he joins Commissioners Finks and Finnegan in the concerns regarding hours of operation.