AGENDA – REGULAR MEETING OF CITY COUNCIL – February 9, 2010

1. 7:00 p.m. roll call.

2. Invocation.

3. Pledge of allegiance.

4. Comments from the public, limited to five minutes, on matters not on the regular agenda.

5. Consent Agenda (any item placed on the consent agenda shall be removed and taken up as a separate matter, if so requested by any member of Council, otherwise all items will be voted on with one (1) motion).

    a. Approval of minutes of the previous meeting and dispensing with reading of minutes.
    b. Consider supplemental appropriation in the amount of $15,000 to the general properties budget "Rawley Springs Improvements" – Second Reading.

6. Public Hearing – Consider a request from South Avenue, LLC and Patrick and Virginia Logan to rezone three parcels from M-1 to B-2C.

7. Consider amending Sections 10-3-92 and 10-3-98 of the Zoning Ordinance.

8. Consider request from HRHA for permission for an existing encroachment at 715 North Main Street.

9. Presentation by Blue Ridge Community College

10. Presentation by Big Brothers Big Sisters

11. Presentation by Shenandoah Valley Bicycle Coalition (SVBC)

12. Bicycle Friendly Community Application presentation by Department of Public Works and Shenandoah Valley Bicycle Coalition

13. Consider supplemental appropriation for the Police Department in the amount of $71,022.84 – First Reading

14. Other Matters:

    a. Council and Staff

15. Boards and Commissions

    a. Board of Zoning Appeals – Kent Darrah has resigned.
    b. Board of Zoning Appeals – Dr. Elizabeth Swallow has resigned.

16. Closed Session

    a. Discussion concerning prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made

REGULAR MEETING

January 26, 2010

DRAFT

At a regular meeting held this evening at 7:00 p.m., there were present: Mayor Kai Degner; City Manager Kurt Hodgen; Assistant City Manager Evan Vass; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor Richard A. Baugh; Council Members David Wiens, Carolyn W. Frank and Ted Byrd; City Clerk Yvonne "Bonnie" Ryan, MMC; and Chief of Police Donald Harper.

Council Member Byrd gave the invocation, and Mayor Degner led everyone in the Pledge of Allegiance.

Members from the cast of "Joseph and the Amazing Technicolor Dreamcoat" presented a brief performance of a musical to be held at the Harrisonburg High School Auditorium February 18-21, 2010.

Council Member Byrd offered a motion to approve the consent agenda, including approval of the minutes and the second reading of supplemental appropriations for the Police Department, Fire Department, and Parks and Recreation Department. The motion also included establishing a deer hunting season (archery) within the City limits. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Baugh
Council Member Frank
Council Member Wiens
Council Member Byrd
Mayor Degner

Absent – None

The next item of business was holding a public hearing to submit an application for the Edward Byrne Memorial Assistance Grant Fund. Police Chief Harper said these funds in the amount of $23,808.00 will be used to purchase equipment for the department. A public hearing must be held prior to the Police Department receiving the funds.

At 7:10 p.m., Mayor Degner closed the regular session temporarily and called the evening's first public hearing to order. He called on anyone desiring to speak for or against the grant application. There being no one desiring to be heard, the public hearing was declared closed at 7:11 p.m., and the regular session reconvened. Council Member Byrd offered a motion to approve the request for the Edward Byrne Memorial Assistance Grant Fund application. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Baugh
Council Member Frank
Council Member Wiens

Council Member Byrd
Mayor Degner

Absent – None

The next item of business was holding a public hearing to consider CDBG Funding Priorities. Ande Banks, Director of Special Projects and Grants Management, presented an overview of CDBG funding priorities to be consider for the 2010-2011 Community Development Block Grant (CDBG) Program. The Community Development Block Grant (CDBG) Program is a direct entitlement grant amount that stems from the US Department of Housing and Urban Development. Mr. Banks outlined the City needs and objectives in the CDBG Strategic Plan and reviewed the tentative schedule for 2010-2011 CDBG Program. There is no action needed on this item at this time.

At 7:15 p.m., Mayor Degner closed the regular session temporarily and called the evening's second public hearing to order. The following notice appeared in the Daily News-Record on Tuesday, January 19, 2010

PUBLIC HEARING NOTICE & REQUEST FOR PROPOSALS

CITY OF HARRISONBURG
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

PUBLIC HEARING - The City of Harrisonburg will hold a public hearing on Tuesday, January 26, 2010 at 7:00 p.m. in the City Council Chambers, 409 South Main Street, in order to receive citizen input regarding funding priorities for the Community Development Block Grant (CDBG) Program. Citizen participation is essential to the City's involvement in the Federal Department of Housing & Urban Development's (HUD) CDBG Program. Citizen participation and comments on funding needs and priorities will assist the City in the development of the City's 2010-2011 Action Plan. The Action Plan serves as the City's guide for addressing overall community development and housing needs that will utilize the City's annual entitlement of CDBG funding available from HUD to meet those needs.

All citizens and organizations are invited to attend the public hearing to comment orally or in writing on funding needs and priorities. Questions regarding the grant program are also encouraged. The City of Harrisonburg will make reasonable accommodations and services necessary for sensory-impaired and disabled citizens at the public meeting. Additionally, translation services may be offered upon request and availability. Persons requiring such accommodations/services should contact the City at least three working days in advance of the meeting.

REQUEST FOR PROPOSALS – The City of Harrisonburg is requesting proposals from non-profit organizations, for-profit businesses and organizations, and government agencies for the 2010-2011 CDBG Program. The City's CDBG Program is funded by an annual entitlement from HUD. The entitlement amount for FY 10-11 has not yet been announced by HUD, but will likely be approximately $539,947. Projects must meet all local and federal eligibility requirements, and eligible projects must meet one of HUD's three

national objectives: 1) Low and Moderate Income Benefit, 2) Elimination of Slum and Blight, or 3) Urgent Need. Furthermore, eligible projects must address at least one of the objectives identified in the City's Consolidated Plan. City objectives include funding projects related to health care and dental services, housing, child care, transportation, sidewalks and pedestrian infrastructure, employment services and job creation/retention, homeless services, recreational services, services for the disabled, parks & playgrounds, and more! Specific objectives, eligibility requirements, and the Consolidated Plan (including a listing of projects funded in previous years) are available on the City website or in the City Manager's Office.

All parties interested in applying for funding through this Program are *strongly* encouraged to attend the Public Hearing outlined above AND to contact Ande Banks prior to submitting an application, to ensure that the proposed project is eligible. The 2010-2011 CDBG Application package is available on the City website at www.harrisonburgva.gov. Applications are due no later than 5:00 am on Wednesday, February 17, 2010. Late applications will not be accepted.

Please contact Ande Banks, at ande.banks@harrisonburgva.gov or 540-432-8923 with questions. Written comments may also be mailed to Ande Banks, Director of Special projects and Grants Management, 345 South Main Street, Harrisonburg, VA 22801.

Mayor Degner called on anyone desiring to speak for or against these recommendations for the CDBG program.
Mary Ellen Chewning, Executive Director of The ARC, discussed their program and thanked everyone for making up to 15% of HUD funds available for non-profits.
Jennie Amison, Executive Director of Gemeinschaft Home, discussed the local program and requested funding to help homeless people with substance abuse problems. She also said that residents of Gemeinschaft Home have been doing a lot of community service projects.
Janet Mash, Executive Director of Camp Still Meadows, said the camp serves children and adults with mental and/or physical disabilities. She thanked Council for their past support. There being no others desiring to be heard, the public hearing was declared closed at 7:22 p.m., and the regular session reconvened.

Todd Bale, Executive Director of the Boys & Girls Club, presented a brief overview of the club and teen center programs. The mission of the Boys & Girls Club is to inspire young people to realize their full potential as productive, responsible and caring citizen. The Boys & Girls Club is a safe place for young people to learn and grow, have on-going relationships with caring adults, provides a life enhancing program that develops character, hope and opportunity. Mr. Bale reviewed financial and operational information.

The next item of business was a Downtown Study presentation. John Edwards, Transportation Consultant, and Brad Edwards, Professional Engineer and Transportation Consultant, presented an overview of the downtown parking study. The survey process began in October 2009 with oversight by an advisory committee made up of downtown business owners and public officials. The report and study includes an inventory of both public and private parking spaces, timed limited spaces, parking management approaches, redesign of existing lots, and the parking demand for a thirty-eight block study area that has been divided into "Core" and

"Fringe" Study areas. The report also recommended improving parking enforcement, encouraging "Shared Use" parking, increasing the over-time parking fine, establishing additional parking fines for repeat offenders, reducing the parking limits in the City's garages, constructing a new parking deck, demolishing and rebuilding the Water Street Deck, and making the parking manager's job a full-time position.

Assistant City Manager Vass presented a supplemental appropriation for the general properties budget "Rawley Springs Improvements". A portion of the revenue generated from the sale of the timber on the City owned property near Rawley Springs will be utilized to develop a recreation plan through JMU and to install gates as well as other barricades to prevent unauthorized vehicle access. Council Member Byrd offered a motion to approve this request for a first reading, and that:

$15,000.00 chge. to: 1000-31908 Sale of Timber

$11,339.00 approp. to: 1000-430221-4823 Recreation Plan JMU
3,661.00 approp. to: 1000-430221-4823 Gates Manu. & Install

The motion was seconded by Vice Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Baugh
Council Member Frank
Council Member Wiens
Council Member Byrd
Mayor Degner

Absent – None

City Attorney Thumma presented the following resolution for Council's consideration of approval:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA AUTHORIZING THE MAYOR TO RESPOND TO THE PROTEST FILED REGARDING THE REJECTION OF ALL BIDS RECEIVED FOR THE CONSTRUCTION OF STONE SPRING ROAD/ERICKSON AVENUE, PHASE II, IN THE CITY OF HARRISONBURG

WHEREAS, on January 12, 2010, the City Council of the City of Harrisonburg rejected all bids for the Stone Spring Road/Erickson Avenue, Phase II project; and

WHEREAS, there was a protest filed by the apparent low bidder, General Excavation Services, Inc., which protest was received by the City Council on January 26, 2010; and

WHEREAS, the City Council wishes to respond to the protest as being late and further to acknowledge that all bids for the Stone Spring Road/Erickson Avenue, Phase II project were rejected by resolution of this Council dated January 12, 2010;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA:

The Mayor and the City Attorney are directed to respond to the protest of General Excavation Services, Inc. pursuant to Section 4-3-54 of the City's Purchasing and Contracting Policy Manual.

Approved: January 26, 2010.

_____
MAYOR

ATTEST:

_____
CITY CLERK

City Attorney Thumma said that the City rejected all the bids on the Stone Spring Road/Erickson Avenue, Phase II project. The City has received a protest filed by the apparent low bidder. Mr. Thumma requested that City Council adopt the resolution authorizing the Mayor and the City Attorney to respond within the guidelines of the City's Purchasing and Contracting Policy Manual. Vice-Mayor Baugh offered a motion to approve the resolution as presented. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Baugh
Council Member Frank
Council Member Wiens
Council Member Byrd
Mayor Degner

Absent – None

Council Member Byrd offered a motion that Joe Bowman, 3309 Mesinetto Creek Drive, be appointed to an eighth term on the Shenandoah Valley Airport Commission to expire on January 28, 2013. The motion was seconded by Vice-Mayor Baugh and approved with a unanimous voice vote.

At 8:24 p.m., there being no further business and on motion adopted, the meeting was adjourned.

_____ _____
CITY CLERK MAYOR

AGENDA ITEM # 5b

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type**: Regular X Special ___
Requestor: X Manager ___ City Attorney ___ Department ___ Other	**Item:** Consider supplemental appropriation in the amount of $15,000 to the general properties budget "Rawley Springs Improvements" – First Reading
Reviewed: X Manager ___ City Attorney X Department ___ Other Finance	**Review:** A portion of revenue generated from the sale of timber on the City owned property near Rawley Springs will be utilized to develop a recreation plan through JMU and to install gates as well as other barricades to prevent unauthorized vehicle access.
Recommend: YES: X NO: ___ X Manager ___ City Attorney X Department ___ Other	
Feb9.222	**Attachments:** 1. Supplemental appropriation form

CITY OF HARRISONBURG, VIRGINIA
REQUEST FOR: SUPPLEMENTAL APPROPRIATIONS
For Fiscal Year Ended June 30, 2010

From:

FUND	CODE	ACCOUNT DESCRIPTION	AMOUNT
1000	31908	Sale of Timber	15,000.00
		Total	15,000.00

To:

FUND	CODE	ACCOUNT DESCRIPTION	AMOUNT
1000	430221-4823	Recreation Plan JMU	11,339.00
1000	430221-4823	Gates Manu. & Install	3,661.00
		Total	15,000.00

Reason: To develop a recreation plan to guide future land use of the property and to provide funding for the manufacture and installation of two gates at common access point on the property.

Requested by : _____ Head of Department — 1-19-10 Date

Funds Available : _____ Director of Finance — 1/19/10 Date

Recommended & Approved : _____ City Manager — 1/19/10 Date

City Council Approval: 1-26-10 **(1st reading)**

City Council Approval: _____ **(2nd reading)**

FINANCE DEPARTMENT'S POSTING _____ NAME DATE — _____ JV #

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AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type:** Regular X Special ___
Requestor: ___ Manager ___ City Attorney ___ Department X Other	**Item:** Public Hearing - Consider a request from South Avenue, LLC and Patrick and Virginia Logan to rezone three parcels from M-1, to B-2C.
Reviewed: ___ Manager ___ City Attorney ___ Department X Other	**Review:** Planning Commission recommended approval (7-0) of the rezoning request for property located on tax map parcels 20-A-9, 10, & 12. The parcels are located at 191 South Avenue and 1100 and 1118 South High Street.
Recommend: YES: X NO: ___ ___ Manager ___ City Attorney ___ Department X Other	
Feb9.100	Attachments: 1. Public Hearing notice. 2. Planning Commission extracts and other supporting documents.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a public hearing on **Tuesday, February 9, 2010 at 7:00 p.m.**, in the City Council Chambers, 409 South Main Street to consider the following:

Rezoning – Corner of S. High St. & South Ave. (CVS Pharmacy)

Public hearing to consider a request from South Avenue, LLC and Patrick and Virginia Logan to rezone three parcels totaling 2.41 +/- acres from M-1, General Industrial District to B-2, General Business District. The parcels are located at 191 South Avenue and 1100 and 1118 South High Street and can be found on tax maps 20-A-9, 10, & 12. The Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, wholesale, or service functions. These areas are found along major travel corridors and in the Central Business District of the City. The Zoning Ordinance states that the M-1, General Industrial District is intended primarily for manufacturing, processing, storage, and distribution activities, which are not properly associated with, nor compatible with, residential and institutional development. No minimum lot size restrictions exist in the M-1, General Industrial District. The B-2, General Business District is intended to provide sufficient space in appropriate locations for a wide variety of retail shopping, commercial, automotive, miscellaneous recreational, and service activities. No minimum lot size restrictions exist in the B-2, General Business District.

Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m.

All persons interested will have an opportunity to express their views at these public hearings. Any individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

CITY OF HARRISONBURG
Kurt D. Hodgen
City Manager

1/25; 2/1

City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
409 South Main Street
Harrisonburg, Virginia 22801
Website: http://www.harrisonburgcommdev.com/
Telephone: (540) 432-7700 Fax: (540) 432-7777

February 1, 2010

TO THE MEMBERS OF CITY COUNCIL

CITY OF HARRISIONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from South Avenue, LLC and Patrick and Virginia Logan to rezone three parcels totaling 2.41 +/- acres from M-1, General Industrial District to B-2, General Business District. The parcels are located at 191 South Avenue and 1100 and 1118 South High Street and can be found on tax maps 20-A-9, 10, & 12.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: January 13, 2010.

Chairman Jones read the agenda item and asked staff to review.

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

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

Site: Automotive mechanic shop and non-conforming uses, zoned M-1

North: Across the South High Street/South Avenue intersection, commercial uses and dwellings, zoned B-2 and M-1

East: Across South Avenue, industrial uses, a church, and the Rocking R Hardware property, zoned M-1

South: Across the Norfolk Southern rail line, residential dwelling units, zoned R-2 and industrial uses, zoned M-1

West: Across South High Street, non-conforming commercial uses, zoned M-1

Two separate property owners are contracting with Lee Hall Plaza, Inc. to attempt to rezone three properties from M-1, General Industrial District to B-2C, General Business District Conditional for the planned use of a CVS Pharmacy/retail business. The properties are located at the southern corner of the intersection of South High Street and South Avenue—many residents know this property as Logan Corner. Two retail uses, an automotive repair shop, residential dwelling units, an advertising billboard, and several out buildings currently occupy the subject property.

The submitted development plan has been proffered, which incorporates razing all of the existing buildings to make way for a CVS pharmacy/retail building that has two entrances—one, right-in right-out access along South High Street, and one, full service entrance along South Avenue. Staff conveyed to the applicant's engineer to design the "pork chop" island, which would regulate the right-in right-out

access, in a manner that would discourage illegal traffic movements on South High Street. The "pork chop" design is shown on the submitted layout, but, if approved, the details would be worked out during the site plan review. As specified in the proffers below, CVS would like to create a shared full service access with the adjacent property owner at 1124 South High Street (tax map 20-A-8A). This entrance would be further south on South High Street than the right-in right-out entrance. If CVS can work out a private arrangement with the adjoining property owner, the right-in right-out entrance may not be provided as the proffers would allow the full service shared entrance. This would be beneficial to the City as it would help reduce the number of entrances on South High Street.

The plan also illustrates CVS's typical pharmacy layout (similar to the CVS at the corner of Port Republic Road and Peach Grove Avenue) consisting of a patron entrance at the corner of the building, parking surrounding the front facades of the building, a drive-thru, a compactor at the rear of the building, a screened dumpster, a corner pylon sign, and enter and exit directional signage at each vehicular entrance. The proposed layout also exceeds the City's landscaping requirements.

The layout illustrates 13 more parking spaces than the required minimum. Rather than having a large, hard surfaced parking area at the corner of the property, staff suggested removing what we believe is unnecessary additional parking, and relocating the building closer to the streets to help create a more aesthetically pleasing property layout. Although they preferred to maintain their traditional design, they have proffered landscaping details suggested by staff to help beautify the property, providing an example of landscaping properties along major travel corridors throughout the City—a goal of the Comprehensive Plan.

The proffered landscaping details include planting and maintaining a large deciduous tree, at two and a half inch caliper at planting, every forty feet on center along their property frontage. It also includes planting and maintaining evergreen trees at the base of the retaining wall, at three feet tall at planting, every ten feet on center. This detail should help the aesthetics of the retaining wall. Most of the other "undeveloped" areas of the property would be covered with grass.

The following proffers were submitted:

1. Applicant will generally comply with the details identified on the Site Plan Sheet Number 1 and Landscape Plan Sheet Number 2 dated July 21, 2009, prepared by Kimley-Horn and Associates, Inc., submitted with its application for Change of Zoning District, with the exception that the "right in, right out" entrance located on South High Street, as shown on the Site Plan, may be replaced by a full access shared entrance as may be negotiated with the adjoining property owner (Roy C. Weller and Amy M. Weller TM# 20-A-8A) located along South High Street at the south west corner of the subject property.
2. All planted landscaping upon the subject property shall be maintained by the property owner.
3. Applicant shall incorporate into its site plan development, accommodations for future bicycle facilities along the South Avenue frontage.
4. The existing Billboard Sign located on the south side of South Avenue at 191 South Avenue currently under Sign Location Lease dated November 18, 2005 with The Lamar Companies shall be removed by the applicant at the earliest possible date, but not later than sixty (60) days from the end of the current lease term of December 31, 2015.

5. Applicant shall erect only one (1) free standing sign on the subject property until the subject Billboard Sign is removed. No additional free standing store signs shall be allowed on the subject property until such time as the Billboard Sign is removed.
6. Applicant will have "Enter" and "Exit" signs located at the entrances for the subject property but with no additional letters or words on the sign other than enter or exit.
7. Applicant shall take the required actions to have all internal lot lines vacated on the subject properties.

If approved, the above proffers relating to the advertising capabilities of CVS would be further regulated by the Sign Ordinance. Without going into great detail about this issue, from an aesthetic perspective, CVS and staff would like the billboard sign on the property to be removed. It is important for CVS to remove the billboard, as doing so would ultimately allow them to advertise their business with additional signage. They have been working toward an agreement to get the billboard sign removed. Staff and representatives from CVS believed it was best to outline the advertising sign details in proffer form to clarify, for the future, how signs would be handled on the subject property.

A Traffic Impact Analysis (TIA) was performed prior to the submittal of the application. The TIA only analyzed the site with a CVS use in mind, which determined the CVS-generated traffic would have no effect on the overall intersection level of service and would have negligible effect on individual traffic movement—meaning no major traffic improvements were warranted. In addition, the right-in right-out entrance on South High Street would operate in a safe and efficient manner. This entrance, however, would require a taper lane.

Per Section 3.3.3.2 of the Design and Construction Standards Manual (DCSM), sidewalks shall be constructed along the street frontage of all developing and redeveloped properties. This means, if CVS or any future developer were to redevelop this site, sidewalk construction along the street frontages would be part of the development plan. As part of this project, as mentioned above, they have proffered they will construct the bicycle improvements along their South Avenue property frontage.

The subject properties, along with many other properties in this area of the City are zoned M-1, and have had this zoning classification since their annexation into the City. The Comprehensive Plan Land Use Guide designation for these properties and many of the other lots on this section of South High Street is Commercial—meaning a rezoning to B-2 would be more compliant with the City's long term goals than having properties zoned for industrial use. Staff believes the intended use, and the B-2 zoning, are beneficial and favorable for the long term plans in this area. This rezoning could initiate new development and/or encourage other re-development projects in this area of the City.

Given the details of the proffers, the determinations of the TIA, and the fact the rezoning is compliant with the City's long term goals, staff supports a favorable recommendation to City Council to rezone the properties from M-1 to B-2C.

Chairman Jones asked if there were any questions for staff.

Mr. Baugh said looking at the landscape plan it appears the tree buffer along the railroad side, stops at the point where the billboard is. Is that the case, and is there any particular reason that it is stopping there?

Mr. Fletcher said it would be welcomed by staff if the buffer continues to the property line. We did convey to the developer that a buffer at the retaining wall would help visually take away from the concrete wall that would back up to the residences. The billboard is high off the ground and I do not see any reason why they could not put landscaping along the property boundary to the corner. There

could be some issues within the contract the developer has with the billboard company that does not allow them to block the billboard, we would have to ask the applicant to speak to that.

I would also like to point out that sidewalk will be part of this project; it is a requirement now through the Design and Construction Standards Manual (DCSM). Sidewalk will be installed along both South High Street and South Avenue.

Mrs. Fitzgerald asked if there was any concern about the traffic issues with the full service entrance along South Avenue.

Mr. Fletcher said no, there were no concerns. There was a TIA performed and the CVS-generated traffic did not warrant any major improvements; there was a minor warrant to create a taper lane at the entrance along South High Street.

Mr. Baugh asked if a joint entrance is not worked out with the adjoining property owner, would the South High Street entrance be on the CVS site and would it be right-in right-out only.

Mr. Fletcher replied that is correct. It would be full access if it is a joint entrance on the adjoining property and only right-in right-out if it is on the CVS site.

Mrs. Fitzgerald asked what happens to the full access entrance on South Avenue if the full access, joint entrance is done on South High Street.

Mr. Fletcher said South Avenue would remain full access.

Chairman Jones asked if there were any further questions. Hearing none, he opened the public hearing and asked anyone who wishes to speak in favor of this request to please come forward.

Mr. Dusty Rhodes said he is an attorney here in Harrisonburg, and is the local counsel for the applicant. We appreciate your consideration of the application and we are open to addressing any questions you may have.

Mr. Baugh asked about the issue of the screening along the retaining wall and billboard area that was previously discussed. Can you elaborate on the plans for that screening?

Mr. Rhodes said he will refer to Mr. David Todd for that answer.

Mr. David Todd of the Rebkee Company, said in response to continuing the trees along that side of the property, I do not know of any potential problem with the billboard lease; but I would want to review it before agreeing to anything. It is something I will definitely look into, and I do not see a problem with the idea from an aesthetic or cost perspective.

Chairman Jones asked if there were any further questions. Hearing none, he asked if there was anyone else in favor of the request wishing to speak. Hearing none, he asked if there was anyone opposed to the request wishing to speak. Hearing none, he closed the public hearing and asked the Planning Commission for discussion.

Mr. Finks asked if the trees would be planted on the level at the top of the retaining wall or lower level along the railroad tracks.

Mr. Fletcher replied it would be at the base along the railroad tracks.

Mr. Chenault said he moves to recommend approval of the rezoning request with the stated proffers. I think it is consistent with the zoning in that area, and I was happy to see that the TIA did not warrant any additional issues.

Mr. Finks seconded the motion.

Chairman Jones said there is a motion to recommend approval and a second. He then called for a voice vote on the matter.

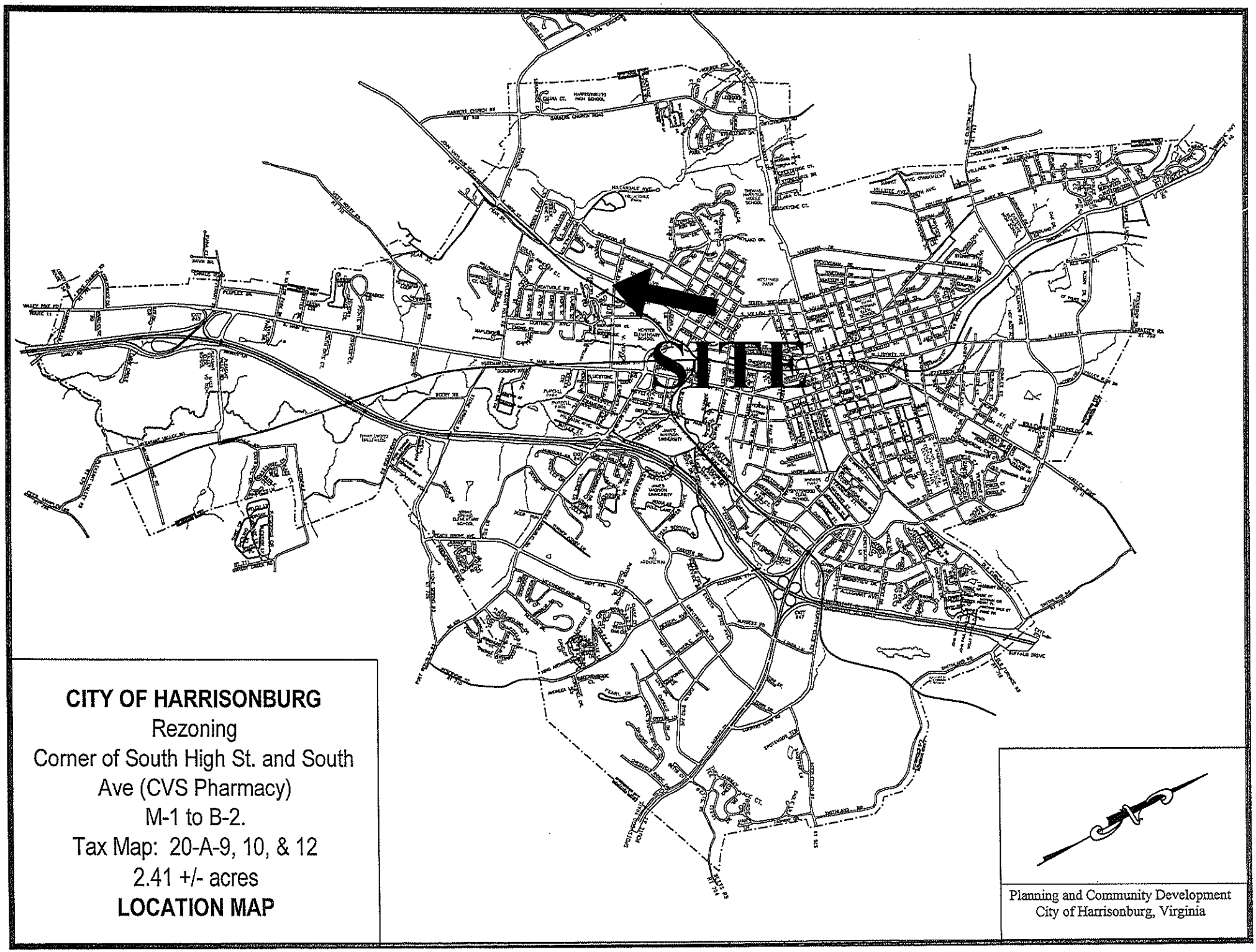
All voted in favor of the motion to recommend approval. (7-0)

Chairman Jones said this will be taken up at the February 9, 2010 City Council meeting.

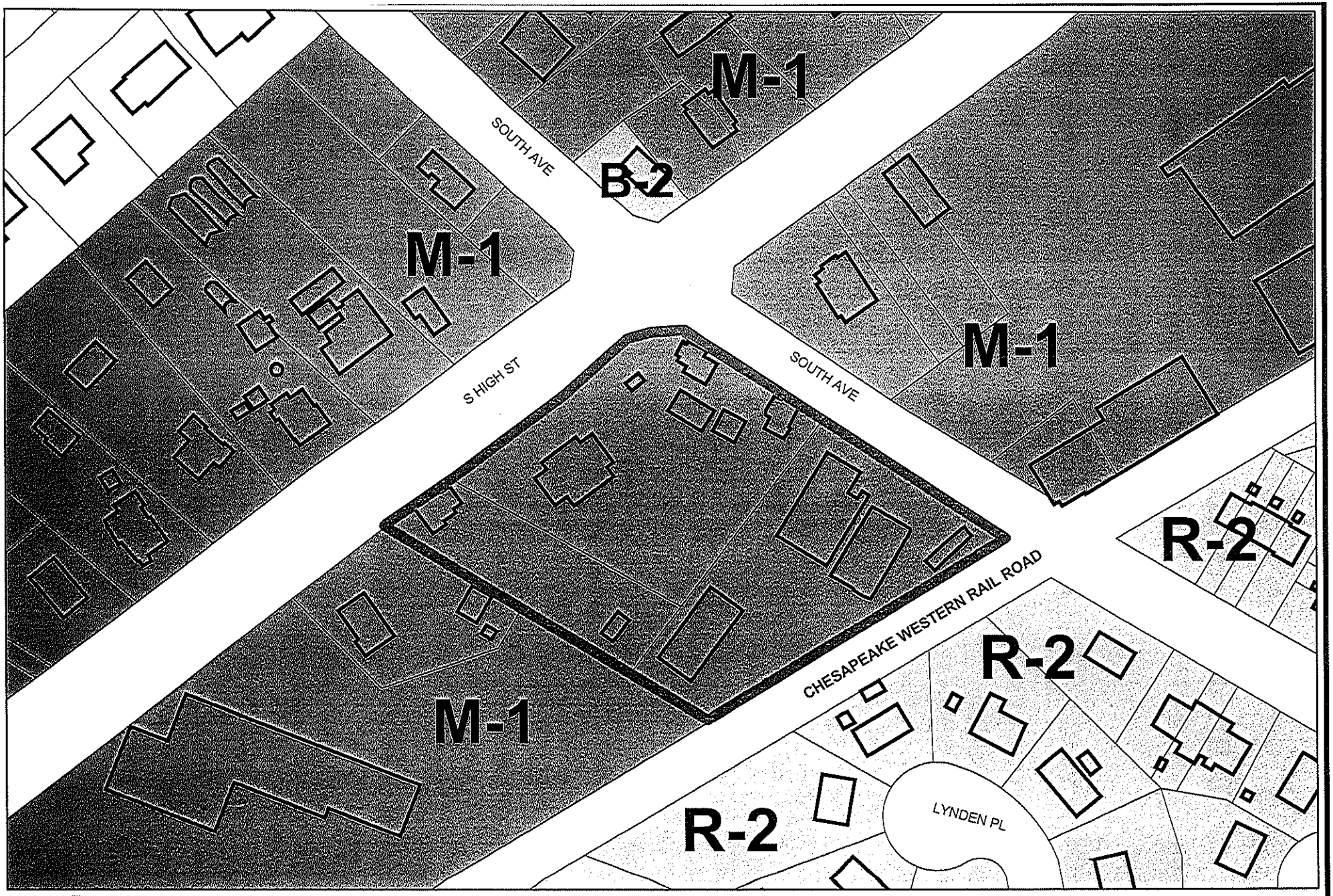
Respectfully Submitted,

Alison Banks

Alison Banks
Planner



CITY OF HARRISONBURG
Rezoning
Corner of South High St. and South Ave (CVS Pharmacy)
M-1 to B-2.
Tax Map: 20-A-9, 10, & 12
2.41 +/- acres
LOCATION MAP



CITY OF HARRISONBURG VIRGINIA

N W E S

Rezoning - M-1 to B-2 - (CVS Pharmacy)
Corner of South High Street and South Avenue

City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
January 13, 2010

REZONING – CORNER OF S. HIGH ST. & SOUTH AVE. (CVS PHARMACY)

GENERAL INFORMATION

Applicant: South Avenue, LLC and Patrick and Virginia Logan

Tax Map: 20-A-9, 10, & 12

Acreage: 2.41 +/- acres

Location: Corner of South High Street and South Avenue

Request: Public hearing to consider a request to rezone three parcels from M-1, General Industrial District to B-2C, General Business District Conditional.

LAND USE, ZONING, AND SITE CHARACTERISTICS

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

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

Site: Automotive mechanic shop and non-conforming uses, zoned M-1

North: Across the South High Street/South Avenue intersection, commercial uses and dwellings, zoned B-2 and M-1

East: Across South Avenue, industrial uses, a church, and the Rocking R Hardware property, zoned M-1

South: Across the Norfolk Southern rail line, residential dwelling units, zoned R-2 and industrial uses, zoned M-1

West: Across South High Street, non-conforming commercial uses, zoned M-1

EVALUATION

Two separate property owners are contracting with Lee Hall Plaza, Inc. to attempt to rezone three properties from M-1, General Industrial District to B-2C, General Business District Conditional for the planned use of a CVS Pharmacy/retail business. The properties are located at the southern corner of the intersection of South High Street and South Avenue—many residents know this property as Logan Corner. Two retail uses, an automotive repair shop, residential dwelling units, an advertising billboard, and several out buildings currently occupy the subject property.

The submitted development plan has been proffered, which incorporates razing all of the existing buildings to make way for a CVS pharmacy/retail building that has two entrances—one, right-in right-out access along South High Street, and one, full service entrance along South Avenue. Staff conveyed

to the applicant's engineer to design the "pork chop" island, which would regulate the right-in right-out access, in a manner that would discourage illegal traffic movements on South High Street. The "pork chop" design is shown on the submitted layout, but, if approved, the details would be worked out during the site plan review. As specified in the proffers below, CVS would like to create a shared full service access with the adjacent property owner at 1124 South High Street (tax map 20-A-8A). This entrance would be further south on South High Street than the right-in right-out entrance. If CVS can work out a private arrangement with the adjoining property owner, the right-in right-out entrance may not be provided as the proffers would allow the full service shared entrance. This would be beneficial to the City as it would help reduce the number of entrances on South High Street.

The plan also illustrates CVS's typical pharmacy layout (similar to the CVS at the corner of Port Republic Road and Peach Grove Avenue) consisting of a patron entrance at the corner of the building, parking surrounding the front facades of the building, a drive-thru, a compactor at the rear of the building, a screened dumpster, a corner pylon sign, and enter and exit directional signage at each vehicular entrance. The proposed layout also exceeds the City's landscaping requirements.

The layout illustrates 13 more parking spaces than the required minimum. Rather than having a large, hard surfaced parking area at the corner of the property, staff suggested removing what we believe is unnecessary additional parking, and relocating the building closer to the streets to help create a more aesthetically pleasing property layout. Although they preferred to maintain their traditional design, they have proffered landscaping details suggested by staff to help beautify the property, providing an example of landscaping properties along major travel corridors throughout the City—a goal of the Comprehensive Plan.

The proffered landscaping details include planting and maintaining a large deciduous tree, at two and a half inch caliper at planting, every forty feet on center along their property frontage. It also includes planting and maintaining evergreen trees at the base of the retaining wall, at three feet tall at planting, every ten feet on center. This detail should help the aesthetics of the retaining wall. Most of the other "undeveloped" areas of the property would be covered with grass.

The following proffers were submitted:

1. Applicant will generally comply with the details identified on the Site Plan Sheet Number 1 and Landscape Plan Sheet Number 2 dated July 21, 2009, prepared by Kimly-Horn and Associates, Inc., submitted with its application for Change of Zoning District, with the exception that the "right in, right out" entrance located on South High Street, as shown on the Site Plan, may be replaced by a full access shared entrance as may be negotiated with the adjoining property owner (Roy C. Weller and Amy M. Weller TM# 20-A-8A) located along South High Street at the south west corner of the subject property.

2. All planted landscaping upon the subject property shall be maintained by the property owner.

3. Applicant shall incorporate into its site plan development, accommodations for future bicycle facilities along the South Avenue frontage.

4. The existing Billboard Sign located on the south side of South Avenue at 191 South Avenue currently under Sign Location Lease dated November 18, 2005 with The Lamar Companies shall be removed by the applicant at the earliest possible date, but not later than sixty (60) days from the end of the current lease term of December 31, 2015.

5. Applicant shall erect only one (1) free standing sign on the subject property until the subject Billboard Sign is removed. No additional free standing store signs shall be allowed on the subject property until such time as the Billboard Sign is removed.
6. Applicant will have "Enter" and "Exit" signs located at the entrances for the subject property but with no additional letters or words on the sign other than enter or exit.
7. Applicant shall take the required actions to have all internal lot lines vacated on the subject properties.

If approved, the above proffers relating to the advertising capabilities of CVS would be further regulated by the Sign Ordinance. Without going into great detail about this issue, from an aesthetic perspective, CVS and staff would like the billboard sign on the property to be removed. It is important for CVS to remove the billboard, as doing so would ultimately allow them to advertise their business with additional signage. They have been working toward an agreement to get the billboard sign removed. Staff and representatives from CVS believed it was best to outline the advertising sign details in proffer form to clarify, for the future, how signs would be handled on the subject property.

A Traffic Impact Analysis (TIA) was performed prior to the submittal of the application. The TIA only analyzed the site with a CVS use in mind, which determined the CVS-generated traffic would have no effect on the overall intersection level of service and would have negligible effect on individual traffic movement—meaning no major traffic improvements were warranted. In addition, the right-in right-out entrance on South High Street would operate in a safe and efficient manner. This entrance, however, would require a taper lane.

Per Section 3.3.3.2 of the Design and Construction Standards Manual (DCSM), sidewalks shall be constructed along the street frontage of all developing and redeveloped properties. This means, if CVS or any future developer were to redevelop this site, sidewalk construction along the street frontages would be part of the development plan. As part of this project, as mentioned above, they have proffered they will construct the bicycle improvements along their South Avenue property frontage.

The subject properties, along with many other properties in this area of the City are zoned M-1, and have had this zoning classification since their annexation into the City. The Comprehensive Plan Land Use Guide designation for these properties and many of the other lots on this section of South High Street is Commercial—meaning a rezoning to B-2 would be more compliant with the City's long term goals than having properties zoned for industrial use. Staff believes the intended use, and the B-2 zoning, are beneficial and favorable for the long term plans in this area. This rezoning could initiate new development and/or encourage other re-development projects in this area of the City.

Given the details of the proffers, the determinations of the TIA, and the fact the rezoning is compliant with the City's long term goals, staff supports a favorable recommendation to City Council to rezone the properties from M-1 to B-2C.

BotkinRose PLC
Attorneys at Law

Mark W. Botkin
Lindsay C. Brubaker
Daniel R. Lauro
Erin E. Layman
Carolyn Madden Perry
Steven C. Rhodes
Kevin M. Rose
Ryan P. Waid

Steven C. Rhodes

3210 Peoples Drive
Harrisonburg, Virginia 22801

540.437.0019 (Firm Tel)
540.437.0022 (Firm Fax)
540.437.0210 (Direct Tel)
rhodes@botkinrose.com
www.botkinrose.com

January 11, 2010

Mr. Adam Fletcher, City Planner
City of Harrisonburg
409 South Main Street
Harrisonburg, VA 22801

RE: Application for Change of Zoning (M1 to B2)
Corner of South High Street and South Avenue (CVS Pharmacy),
Consisting of 2.41 acres, more or less
Planning Commission Meeting January 13, 2010

Dear Mr. Fletcher:

Please find the following Proffers made on behalf of my client, Lee Hall Plaza, Inc., relative to the above rezoning Application. Pursuant to City Ordinance § 10-3-123(b), the undersigned owners hereby proffer that the development of the subject property on this application shall be in strict accordance with the conditions set forth in this submission.

PROFFERS

1. Applicant will generally comply with the details identified on the Site Plan Sheet Number 1 and Landscape Plan Sheet Number 2 dated July 21, 2009, prepared by Kimley-Horn and Associates, Inc., submitted with its application for Change of Zoning District, with the exception that the "right in, right out" entrance located on High Street, as shown on the Site Plan, may be replaced by a full access shared entrance as may be negotiated with the adjoining property owner (Roy C. Weller and Amy M. Weller TM# 20-A-8A) located along South High Street at the south west corner of the subject property.

2. All planted landscaping upon the subject property shall be maintained by the property owner.

3. Applicant shall incorporate into its site plan development, accommodations for future bicycle facilities along the South Avenue frontage.

4. The existing Billboard Sign located on the south side of South Avenue at 191 South Avenue currently under Sign Location Lease dated November 18, 2005 with The Lamar Companies shall be removed by the applicant at the earliest possible date, but not later than sixty (60) days from the end of the current lease term of December 31, 2015.

5. Applicant shall erect only one (1) free standing sign on the subject property until the subject Billboard Sign is removed. No additional free standing store signs shall be allowed on the subject property until such time as the Billboard Sign is removed.

6. Applicant will have "Enter" and "Exit" signs located at the entrances for the subject property but with no additional letters or words on the sign other than enter or exit.

7. Applicant shall take the required actions to have all internal lot lines vacated on the subject properties.

Very truly yours,

Steven C. Rhodes

SCR/pcw

SEEN AND AGREED:

Ron Dunham, Manager,
South Avenue, LLC
Property Owner

Patrick W. Logan, Sr.
Property Owner

Virginia W. Logan
Property Owner

Client Letter/Rebkee.City of Harrisonburg.Proffer ltr.1.11.10

BotkinRose PLC
Attorneys at Law

Mark W. Botkin
Lindsay C. Brubaker
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January 11, 2010

Mr. Adam Fletcher, City Planner
City of Harrisonburg
409 South Main Street
Harrisonburg, VA 22801

RE: Application for Change of Zoning (M1 to B2)
Corner of South High Street and South Avenue (CVS Pharmacy),
Consisting of 2.41 acres, more or less
Planning Commission Meeting January 13, 2010

Dear Mr. Fletcher:

I hereby certify to you on behalf of my client, Lee Hall Plaza, Inc., concerning its application for rezoning identified above that:

1) one of the tax parcels involved in the aforesaid application for rezoning is subject to a certain ten (10) year term Sign Location Lease concerning a billboard sign located at the south side of South Avenue east of High Street; and

2) the said ten (10) year sign lease term expires on December 31, 2015.

Very truly yours,

Steven C. Rhodes

SCR/pcw

Client Letter/Rebkee.City of Harrisonburg.1.11.10

PROPOSED USE DESCRIPTION

The herein stated applicants are under contract to sell the subject three parcels of real estate to Lee Hall Plaza, Inc., a Virginia corporation, for the intended purpose of constructing a CVS Pharmacy.

PREPARED BY:
WILSON & BOWERS
120 OLD SOUTH HIGH STREET
HARRISONBURG, VA 22801

****TAX EXEMPT PURSUANT TO VA CODE SECTION 58.1-811(D)****

TAX MAP #20-A-10

THIS DEED OF GIFT, made this 9th day of April, 2002, by and between ELLEN H. LOGAN, widow, and PATRICK W. LOGAN, SR., Grantors, and PATRICK W. LOGAN, SR. and VIRGINIA W. LOGAN, husband and wife, Grantees,

WITNESSETH:

That for and in consideration of a gift, the said Grantors do hereby grant and convey with General Warranty and English Covenants of Title unto the said PATRICK W. LOGAN, SR. and VIRGINIA W. LOGAN, husband and wife, Grantees, as tenants by the entirety with the right of survivorship as at common law, all that certain lot or parcel of land, together with any improvements thereon, and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, situate in the southwest portion of the City of Harrisonburg, Virginia, on the southeast corner of the intersection of South High Street (State Route 42) and South Avenue. The northwestern boundary of this parcel being the southeastern line of South Avenue; the southeastern boundary being the northwestern line of a parcel conveyed by Edna Logan, et als, to Port Road Developers, Inc., by deed dated July 6, 1973, said deed being of record in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 423,

Page 430, and the southwestern boundary being a parcel owned by the grantor herein, conveyed to C. Worth Logan and Ellen H. Logan by deed dated April 16, 1942, said deed being of record in the aforesaid Clerk's Office in Deed Book 186, Page 421.

LESS AND EXCEPT THEREFROM, HOWEVER, a small parcel containing .11 of an acre conveyed to the Commonwealth of Virginia for the widening of State Route 42 by deed dated March 29, 1988, and recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 902, Page 675.

Grantor, Ellen H. Logan, acquired her interest in the hereby conveyed real estate by virtue of the following:

(A) Pursuant to the Last Will and Testament of her husband, C. Worth Logan, which Will is of record in the Clerk's Office aforesaid in Will Book 28, Page 4; and

(B) Deed dated April 2, 1976, from Edna W. Logan, of record in the aforesaid Clerk's Office in Deed Book 469, Page 4; and

(C) Pursuant to the Last Will and Testament of Donald H. Logan, which Will is of record in the aforesaid Clerk's Office in Will Book 77, Page 505.

Grantor, Patrick W. Logan, Sr., acquired his interest in the hereby conveyed real estate by deed dated April 1, 1991, from Ellen H. Logan, widow, which deed is recorded in the Clerk's Office aforesaid in Deed Book 1059, at Page 318.

This conveyance is made expressly subject to the conditions, restrictions, and easements of record, if any, contained in the instruments constituting the chain of title to the property conveyed herein, and to matters visible upon inspection.

WITNESS the following signatures and seals:

Ellen H. Logan (SEAL)
ELLEN H. LOGAN

Patrick W. Logan Sr. (SEAL)
PATRICK W. LOGAN, SR.

COMMONWEALTH OF VIRGINIA

CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 12th day of April, 2002, by Ellen H. Logan, widow.

My commission expires: July 31, 2003.

NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 12th day of April, 2002, by Patrick W. Logan, Sr.

My commission expires: July 31, 2003.

NOTARY PUBLIC

GRANTEES' ADDRESS:

1600 South High St.
Harrisonburg VA, 22801

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County
The foregoing instrument was this day presented in the office aforesaid, and is together with the certificate of acknowledgement annexed, admitted to record this 12 day of April, 20 02 at 10:49 M. I certify the taxes were paid when applicable
Sec. 58-54 – State ____ County ____ City ____
Sec. 58-54.1 – State ____ County ____ City ____ Transfer 1.00
Recording 17.00 TESTE
L. WAYNE HARPER
CLERK

Deed Book No 2065 Page 269

PREPARED BY:
WILSON & BOWERS
120 OLD SOUTH HIGH STREET
HARRISONBURG, VA 22801

****TAX EXEMPT PURSUANT TO VA CODE SECTION 58.1-811(D)****

TAX MAP #20-A-9

THIS DEED OF GIFT, made this 9th day of April, 2002, by and between ELLEN H. LOGAN, widow, and PATRICK W. LOGAN, SR., Grantors, and PATRICK W. LOGAN, SR. and VIRGINIA W. LOGAN, husband and wife, Grantees,

W I T N E S S E T H :

That for and in consideration of a gift, the said Grantors do hereby grant and convey with General Warranty and English Covenants of Title unto the said PATRICK W. LOGAN, SR. and VIRGINIA W. LOGAN, husband and wife, Grantees, as tenants by the entirety with the right of survivorship as at common law, all that certain lot or parcel of land, together with any improvements thereon, and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, situate on the southeast side of State Route 42 (formerly Warm Springs Turnpike) in the City of Harrisonburg, Virginia, and described in prior deeds as follows:

"Beginning at a planted stone, a new corner in the east line of the Warm Springs Turnpike, in the line of the grantor and grantee herein; thence S 57 1/4 E 24.10 poles, a new line to a stone in the line of the Chesapeake-Western Railroad right of way with the grantors and grantee herein; thence with same S 62 1/8 W 6.40 poles to a planted stone, corner of said railroad right of way and Tim Swartz; thence with Tim Swartz's land N 57 1/4 W 22.88 poles to a planted stone on the south side of the pike; and thence with same N 57 1/2 E 6.105 poles to the beginning, containing approximately three-fourths of an acre."

LESS AND EXCEPT THEREFROM, HOWEVER, a small parcel containing 0.035 of an acre conveyed to the Commonwealth of Virginia for the widening of State Route 42 by deed dated March 29, 1988, and recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 902, Page 675.

Grantor, Ellen H. Logan, acquired her interest in the hereby conveyed real estate by virtue of the Last Will and Testament of her husband, C. Worth Logan, which Will is of record in the Clerk's Office aforesaid in Will Book 28, Page 4; and also pursuant to the terms of the Last Will and Testament of Donald H. Logan, which Will is of record in the aforesaid Clerk's Office in Will Book 77, Page 505.

Grantor, Patrick W. Logan, Sr., acquired his interest in the hereby conveyed real estate by deed dated April 1, 1991, from Ellen H. Logan, widow, which deed is recorded in the Clerk's Office aforesaid in Deed Book 1059, at Page 318.

This conveyance is made expressly subject to the conditions, restrictions, and easements of record, if any, contained in the instruments constituting the chain of title to the property conveyed herein, and to matters visible upon inspection.

WITNESS the following signatures and seals:

Ellen H. Logan (SEAL)
ELLEN H. LOGAN

Patrick W. Logan Sr. (SEAL)
PATRICK W. LOGAN, SR.

COMMONWEALTH OF VIRGINIA

CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 12th day of April, 2002, by Ellen H. Logan, widow.

My commission expires: July 31, 2003.

NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 12th day of April, 2002, by Patrick W. Logan, Sr.

My commission expires: July 31, 2003.

NOTARY PUBLIC

GRANTEES' ADDRESS:

400 South High St.

Harrisonburg VA. 22801

011285

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County
The foregoing instrument was this day presented in the office aforesaid, and is together with the certificate of acknowledgement annexed, admitted to record this 12 day of April, 20 02 at 10:46 AM. I certify the taxes were paid when applicable:

Sec. 58-54 – State _____ County _____ City _____
Sec. 58-54.1 – State _____ County _____ City _____ Transfer 1.00
Recording 11.00

TESTE
L. WAYNE HARPER
CLERK

Deed Book No 2065 Page 266

Recorded On-2008-Aug-04 As-23360

ROCKINGHAM COUNTY
Chaz W. Evans-Haywood
CLERK OF COURT
Harrisonburg, VA 22801

60 2008 00023360

Instrument Number: 2008- 00023360
As
Deed of Bargain & Sale

Recorded On: August 04, 2008

Parties: DUNHAM RONALD G
To
SOUTH AVENUE LLC

Recorded By: LAYMAN & NICHOLS

Num Of Pages: 5

Comment: PARCEL HBURG/ASHBY

**** Examined and Charged as Follows: ****

Deed of Bargain & Sale	6.50	10 or Fewer Pages	14.50	Open Space Preservation Cot	1.00
Transfer Fee City	1.00				
Recording Charge:	**23.00**				

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: ROCKINGHAM COUNTY, VA

File Information:

Document Number: 2008- 00023360
Receipt Number: 110165
Recorded Date/Time: August 04, 2008 12:32:25P
Book-Vol/Pg: Bk-OR Vl-3366 Pg-325
Cashier / Station: A Wolverton / Cash Station 3

Record and Return To:

LAYMAN & NICHOLS
268 NEWMAN AVE
HARRISONBURG VA 22801

ROCKINGHAM COUNTY, VA CLERK OF COURT

THE STATE OF VIRGINIA}
COUNTY OF ROCKINGHAM}
I certify that the document to which this authentication is affixed is a true copy of a record in the Rockingham County Circuit Court Clerk's Office and that I am the custodian of that record

CLERK OF COURT
ROCKINGHAM COUNTY, VIRGINIA

Recorded On-2008-Aug-04 As-23360

Doc Bk Vol Pg #of Pgs
00023360 OR 3366 325 5
Aug 04, 2008

Tax Map Nos. 021-F-4, 122A2-(A)-98, 020-A-12

THIS DEED, exempt from recording taxes pursuant to Virginia Code Section 58.1-811.A.10, made this 27th day of September, 2007, by and between RONALD G. DUNHAM and REGINA M. DUNHAM, husband and wife, Grantors, and SOUTH AVENUE, LLC, a Virginia limited liability company, Grantee,

WITNESSETH:

As a capital contribution to South Avenue, LLC, upon its formation, the Grantors, as the initial members of South Avenue, LLC, do hereby grant and convey with General Warranty and English Covenants of Title unto South Avenue, LLC, Grantee, those certain tracts or parcels of land, together with improvements thereon, and all rights, privileges, easements and appurtenances thereunto belonging or in anywise appertaining, as described in Exhibit A, which is attached hereto and made a part hereof.

This conveyance is made subject to all easements, conditions, restrictions, reservations and agreements contained in duly recorded Deeds, plats and other instruments constituting constructive notice in the chain of title to the property herein conveyed, which have not expired by limitation of time contained therein or otherwise become ineffective.

Reference is here made to the aforesaid deed and plat for further description and derivation of title to the property described herein.

(This space intentionally left blank.)

Prepared by Layman & Nichols, P.C., 268 Newman Avenue, Harrisonburg, VA 22801
The existence of title insurance is unknown to the preparer of this deed.

WITNESS the following signatures and seals:

_____(SEAL)
Ronald G. Dunham

_____(SEAL)
Regina M. Dunham

COMMONWEALTH OF VIRGINIA,
CITY/~~COUNTY~~ OF Harrisonburg, to-wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this 1st day of August, 2008 by Ronald G. Dunham and Regina M. Dunham, husband and wife.

My commission expires: 3/31/09.

_____
Notary Public

JENNIFER L. PACE
COMMONWEALTH OF VIRGINIA
Expires 03-31-09
ID# 303273
NOTARY PUBLIC

Grantee's Address:

140 Bennington Place
Harrisonburg, VA 22801

Exhibit A

TRACT ONE

All that certain lot or parcel of land, together with the improvements thereon, and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, situated on the north side of State Route #42, in the City of Harrisonburg, (formerly Central District, Rockingham County) Virginia, designated as Lot 1 on a plat entitled "Final Plat Hidden Creek Properties Subdivision, Section One", and being more particularly bounded and described according to a survey made by Michael W. Mars, Land Surveyor, dated September 13, 1990, recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 1043, page 259, as follows:

Beginning at an iron pin found in the northwestern line of South High Street, said pin being a corner to Lot 2, Section 1, Rockingham Square Subdivision; thence with the said northwestern line of South High Street S 72° 01' 00" W 80.95' to an iron pin found, said pin being a corner to David M. and Mary Ann Fisher; thence leaving said South High Street and with said Fisher N 40° 05' 00" W 314.11' to an iron pin set, a new corner; thence leaving said Fisher and with a new division line N 50° 13' 18" E 75.00' to an iron pin set in the line of Lot1, Section 1, Rockingham Square Subdivision; thence with said Lot 1 and the aforementioned Lot 2, Section 1, Rockingham Square Subdivision S 40° 05' 00" E 344.16' to the beginning, containing 24,685 Sq. Ft. (0.567 acres) of land.

TOGETHER WITH a twenty-five (25) foot nonexclusive right of way for purposes of ingress and egress to South High Street as shown on the aforesaid plat which was reserved unto Hidden Creek Properties, a successor in title to GSW Investors, by deed dated December 14, 1983, recorded in the aforesaid Clerk's Office in Deed Book 701, page 28, and is shown on the subdivision plat recorded in Deed Book 701, page 25.

The real estate herein conveyed is the same property acquired by the Grantors herein, by deed dated December 7, 1990, from GSW Investors, a Virginia General Partnership, recorded in the aforesaid Clerk's Office in Deed Book1044, page 144.

TRACT TWO

All that certain lot or parcel of land, together with the improvements thereon located on the southeast corner of North River Road and Grove Street, in the town of Bridgewater, Rockingham County, Virginia, and being more particularly described according to a survey made by George E. Foard, L.S., dated June 14, 1982, as follows:
Beginning at an iron pipe in the easterly right-of-way of Grove Street, said point also being the southwesterly corner of the land of Fulton; thence running with the easterly line of Grove Street, N 26° 56' 00 " E 57.74 feet to an iron pipe, and N 70° 39' 40" E. 14.24 feet to an iron pipe in the southwesterly line of North River Road; thence running with the southwesterly line of North River Road, S 62° 46' 00" E 71.34 feet to an iron pipe, and S 46° 17' 00" E 151.64 feet to an iron pipe, said pipe being the northerly corner of the land of Riggleman; thence running with the northwesterly line of Riggleman, S 42° 18' 00" W 85.60 feet to an iron pipe in the northeasterly line of the land of Ritchie; thence running with the northeasterly line of Ritchie and continuing

with the northeasterly line of Fulton, N 47° 00' 00" W 211.97 feet to the point of beginning, containing 0.4241 acres.

The real estate herein conveyed is the same property acquired by the Grantors herein, by deed dated August 1, 1989, from Garten Bros., Inc., a Virginia corporation, recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in Deed Book 975, page 699.

The real estate herein conveyed is the same property acquired by the Grantors herein by deed dated June 13, 1988, from Roger J. Green, divorced, which deed is duly of record in the Clerk's Office of the Rockingham County, Virginia, in Deed Book 909, page 683.

TRACT THREE

All those two (2) certain lots or parcels of land, containing in the aggregate approximately 42,193 square feet, more or less, together with the improvements thereon and all rights, privileges and appurtenances thereunto belonging or in anywise appertaining, situate on the southwestern side of South Avenue on the northwestern side of C & W Railroad right-of-way, in the City of Harrisonburg, Virginia, designated as Parcel No. 1 and Parcel No. 2 as shown on the plat attached hereto and incorporated herein and a survey thereof, dated December 3, 1986, by Bobby L. Owens, L.S., as follows: Beginning at an iron pin set, in the northwestern line of the C. & W. Railroad and southwestern line of South Avenue; thence with the C. & W. Railroad right-of-way line S 59-03-27 W 323.70 ft. to an iron pin set, a corner with Howard F. and Aldalene S. King; thence with the line of King N 59-57-00 W 85.96 ft. to an iron pin, found, a corner with Ellen H. Logan; thence with the line of Logan N 36-43-27 E 288.18 ft. to an iron pin, found, in the southern line of South Avenue; thence with said line S 59-05-33 E 209.46 ft. to the beginning and enclosing an area of 42,193 square feet.

The real estate herein conveyed is the same property acquired by the Grantors herein by deed dated December 9, 1986, from Wayne B. Rothery and Karen B. Rothery, husband and wife, which said deed is duly of record in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 821, page 211.

Date Application Received 12-08-09 Total Paid $1,400.00 AF

Application for Change of Zoning District
City of Harrisonburg, Virginia

Section 1: Property Owner's Information

Name: (A) South Avenue, LLC, a Virginia limited liability Company
Street Address: 140 Bennington Place Email: unknown
City/State/Zip: Harrisonburg, Virginia 22801
Telephone (work): c/o Todd C. Rhea, Esquire – (540) 433-2601 (home or cellular): N/A
(fax): (540) 433-5528

(B) Patrick W. Logan, Sr. and Virginia W. Logan
Street Address: 1100 S. High Street Email: unknown
City/State/Zip: Harrisonburg, Virginia 22801
Telephone (work): c/o Todd C. Rhea, Esquire – (540) 433-2601 (home or cellular): N/A
(fax): (540) 433-5528

Section 2: Owner's Representative Information

Name: Steven C. Rhodes, Esquire

Street Address: BotkinRose PLC, 3210 Peoples Drive Email: Rhodes@botkinrose.com

City/State/Zip: Harrisonburg, Virginia 22801

Telephone (work): (540) 437-0210 (home or cellular): N/A (fax): (540) 437-0022

Section 3: Description of Property

Location (street address): (A) 191 South Avenue, Harrisonburg, Virginia 22801
Tax Map Number: Sheet: 20 Block: A Lot: 12 Total Land Area (acres or square feet): 42,143 square feet
Existing Zoning District: M-1 Proposed Zoning District * : B-2
Existing Comprehensive Plan Designation: M-1

(B) (i) 1100 S. High Street, Harrisonburg, Virginia 22801 and (ii) 1118 S. High Street, Harrisonburg, Virginia, 22801
Tax Map Numbers: (i) Sheet: 20 Block: A Lot: 10 Total Land Area (acres or square feet): 50,600 square feet
(ii) Sheet: 20 Block: A Lot: 9 Total Land Area (acres or square feet): 33,300 square feet

Existing Zoning District: M-1 Proposed Zoning District * : B-2
Existing Comprehensive Plan Designation: M-1

*If applying for conditional rezoning, provide a letter stating proffers on separate sheet of paper

Section 4: Application Fee

$325.00 plus $25.00 per acre, and if applicable, Fees for a Traffic Impact Analysis (TIA) Review (see below)

(a). Would the development from this rezoning require a Traffic Impact Analysis by VDOT?
Yes_____ No_ X__

If yes, then fees must be made payable to VDOT to cover costs associated with the TIA review.

PLEASE NOTE – If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.

(b). Would the development from this rezoning require a Traffic Impact Analysis review by the City?
Yes_ X__ No_____

If yes, then an additional $1,000.00 must be made payable to the City to cover costs associated with the TIA review.

PLEASE NOTE – If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.

Section 5: Names and Addresses of Adjacent Property Owners (Use separate sheet for additional names) SEE ATTACHED LIST

North: _____

East: _____

South: _____

West: _____

Section 6: Certification

I certify that the information contained herein is true and accurate. Signature: Patrick W. Logan Sr.
Patrick W. Logan, Sr.
Virginia W. Logan
Virginia W. Logan

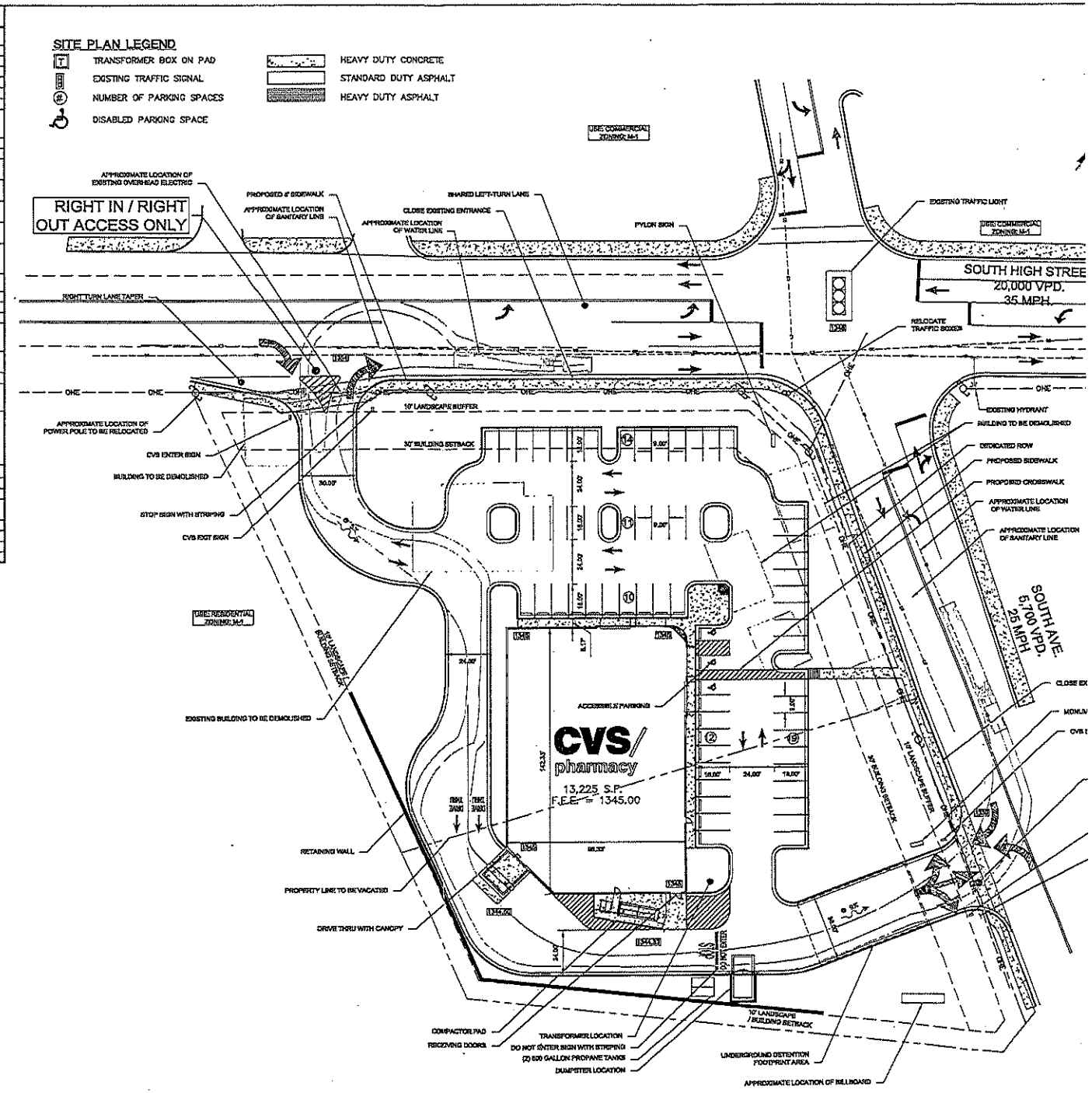
ITEMS REQUIRED FOR SUBMISSION

_____Completed Application
_____Survey of Property
_____Description of Proposed Use
_____Adjacent Property Owners

_____Fees Paid
_____Source Deed
_____Proffers (if applicable)
_____ _____

SITE CRITERIA CHECKLIST

	2.41 ACRES
	13,225 SF
RED	1 SPACE / 250 SF = 53 SPACES
DED	66 SPACES PROVIDED
	1 LOADING ZONE
ED	1 LOADING ZONE
N	
	N/A
	20-A-10 & 20-A-09
	BASED ON CITY OF HARRISONBURG GIS DATA
EY	BASED ON SITE VISIT
TS	TO BE DETERMINED ONCE TRAFFIC IMPACT ANALYSIS HAS BEEN COMPLETED
	REQUIRED BY CITY OF HARRISONBURG WITH REZONING APPLICATION
	NONE
ION	
	M-1 (GENERAL INDUSTRIAL)
	B-2 (GENERAL BUSINESS)
	75 FT
I	
TION	CITY OF HARRISONBURG
TION	CITY OF HARRISONBURG
MATION	
	☒ YES ☐ NO ☐ SHOWN ON PLAN
ION	
	☐ YES ☒ NO ☐ SHOWN ON PLAN
	☒ YES ☐ NO ☐ SHOWN ON PLAN
TY	☒ YES ☐ NO ☐ SHOWN ON PLAN
	☒ YES ☐ NO ☒ SHOWN ON PLAN
	☒ YES ☐ NO ☒ SHOWN ON PLAN
	☒ YES ☐ NO ☐ SHOWN ON PLAN



SITE PLAN LEGEND

- TRANSFORMER BOX ON PAD
- EXISTING TRAFFIC SIGNAL
- NUMBER OF PARKING SPACES
- DISABLED PARKING SPACE
- HEAVY DUTY CONCRETE
- STANDARD DUTY ASPHALT
- HEAVY DUTY ASPHALT

SOUTH HIGH STREET

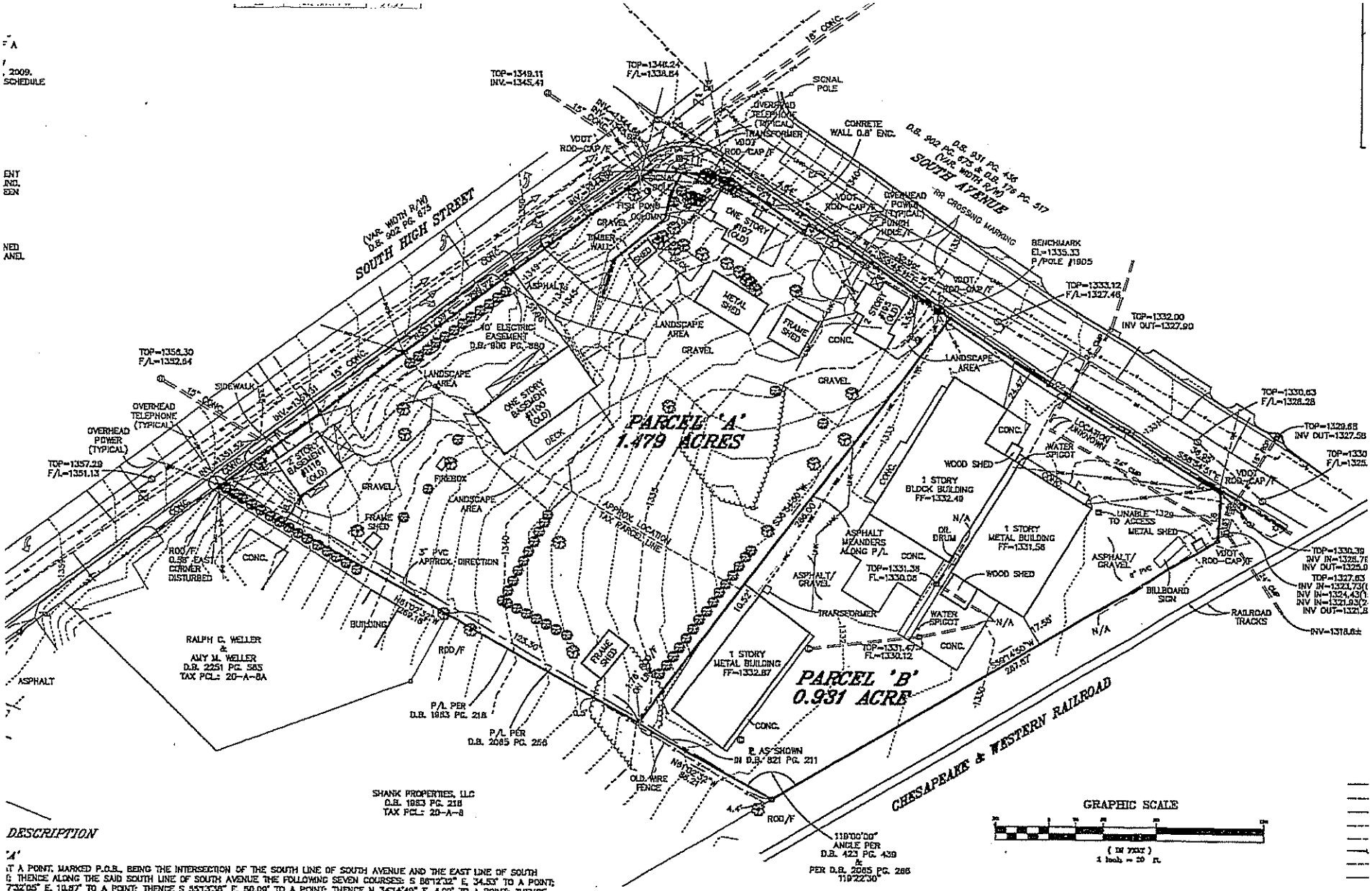
CVS/pharmacy
13,225 S.F.
F.F.E. = 1345.00

PERMANENT WETLAND SEEDING (TYP.)

CHESAPEAKE & WESTERN RAILROAD

PROPOSED	
4,086 SF	

	COMMON NAME	SIZE (MINIMUM)	DESCRIPTION



DESCRIPTION

'A'

T A POINT, MARKED P.O.B., BEING THE INTERSECTION OF THE SOUTH LINE OF SOUTH AVENUE AND THE EAST LINE OF SOUTH
; THENCE ALONG THE SAID SOUTH LINE OF SOUTH AVENUE THE FOLLOWING SEVEN COURSES: S 86°12'32" E, 34.53' TO A POINT;
7'32'05" E, 10.87' TO A POINT; THENCE S 35°13'38" E, 50.09' TO A POINT; THENCE N 34°14'49" E, 4.00' TO A POINT; THENCE
E, 25.08' TO A POINT; THENCE S 55°45'11" E, 52.99' TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF
LENGTH OF 18.18', A CHORD BEARING OF S 55°54'49" E AND A CHORD OF 18.18' TO A POINT; THENCE LEAVING THE SAID SOUTH
TH AVENUE S 38°54'50" W, 288.00' TO A POINT; THENCE N 61°02'32" W, 269.18' TO A POINT ON THE EAST LINE OF SOUTH HIGH
NCE ALONG THE SAID EAST LINE OF SOUTH HIGH STREET N 53°12'39" E, 299.72' TO THE POINT AND PLACE OF BEGINNING
1.479 ACRES, 64,418 SQUARE FEET.

'B'

T A POINT, MARKED P.O.B., BEING THE INTERSECTION OF THE SOUTH LINE OF SOUTH AVENUE AND THE EAST LINE OF SOUTH
; THENCE ALONG THE SAID SOUTH LINE OF SOUTH AVENUE THE FOLLOWING SEVEN COURSES: S 86°12'32" E, 34.53' TO A POINT;
7'32'05" E, 10.87' TO A POINT; THENCE S 55°13'38" E, 50.09' TO A POINT; THENCE N 34°14'49" E, 4.00' TO A POINT; THENCE
E, 25.08' TO A POINT; THENCE S 55°45'11" E, 52.99' TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF
LENGTH OF 18.18', A CHORD BEARING OF S 55°54'49" E AND A CHORD OF 18.18' TO THE TRUE POINT AND PLACE OF BEGINNING;
TINUING ALONG THE SAID SOUTH LINE OF SOUTH AVENUE THE FOLLOWING THREE COURSES: ALONG A CURVE TO THE LEFT
ADIUS OF 2888.79', A LENGTH OF 143.09', A CHORD BEARING OF S 57°29'39" E AND A CHORD OF 143.08' TO A POINT; THENCE
E, 36.85' TO A POINT; THENCE S 02°38'35" W, 27.27' TO A POINT ON THE NORTH LINE OF THE CHESAPEAKE AND WESTERN
HENCE LEAVING THE SOUTH LINE OF SOUTH AVENUE ALONG THE SAID NORTH LINE OF THE CHESAPEAKE AND WESTERN RAILROAD
W, 287.87' TO A POINT; THENCE LEAVING THE SAID NORTH LINE OF THE CHESAPEAKE AND WESTERN RAILROAD
W, 88.21' TO A POINT; THENCE N 38°54'50" E, 288.00' TO THE TRUE POINT AND PLACE OF BEGINNING CONTAINING 0.931 ACRE,
RE FEET.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS," JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS IN 2005, AND INCLUDES ITEMS 1,2,3,4,6(BUILDING SETBACKS ONLY) 7A,8,9,10,11B & 13 OF TABLE A THEREOF. PURSUANT TO THE ACCURACY STANDARDS AS ADOPTED BY ALTA AND NSPS AND IN EFFECT ON THE DATE OF THIS CERTIFICATION, UNDERSIGNED FURTHER CERTIFIES THAT IN MY PROFESSIONAL OPINION, AS A LAND SURVEYOR REGISTERED IN THE COMMONWEALTH OF VIRGINIA, THE RELATIVE POSITIONAL ACCURACY OF THIS SURVEY DOES NOT EXCEED THAT WHICH IS SPECIFIED THEREIN.

10-1-09
DATE

MICHAEL S. JENNINGS

COMMONWEALTH OF VIRGINIA
10-1-09
MICHAEL S. JENNINGS
Lic. No. 2405
LAND SURVEYOR

ALTA/ACSM L
TWO PARCEL
THE SOUTHEA
AVENUE AND

CITY OF

DATE: OCTOBER 01,

JENNINGS STEPHEN
LAND SURVEYOR & PLANNERS

AGENDA ITEM # 7

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type**: Regular _X_ Special ____
Requestor: ____ Manager ____ City Attorney ____ Department ____ Other	**Item:** Consider amending Sections 10-3-92 and 10-3-98 of the Zoning Ordinance.
Reviewed: ____ Manager ____ City Attorney ____ Department _X_ Other	**Review:** This item was tabled at the August 11, 2009 City Council Meeting. Planning Commission recommended approval of the proposed amendment (7-0) on July 8, 2009.
Recommend: YES: _X_ NO: ____ ____ Manager ____ City Attorney ____ Department ____ Other	
Feb9.101	Attachments: 1. City Council extract; Planning Commission extract and other supporting documents.

SUBJECT: COUNCIL TABLED SECTIONS 10-3-92 AND 10-3-98 OF THE ZONING ORDINANCE

EXTRACT TAKEN FROM MINUTES OF CITY COUNCIL MEETING HELD ON: REGULAR MEETING August 11, 2009

Council Member Frank offered a motion to table amending Sections 10-3-92 and 10-3-98 of the Zoning Ordinance. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Baugh
Council Member Byrd
Council Member Frank
Council Member Wiens
Mayor Degner

Absent – None

I, Yvonne Ryan, MMC, Clerk of the Harrisonburg City Council, do hereby certify that the foregoing is a true copy of an excerpt taken from the draft minutes of a regular meeting held on Tuesday, August 11, 2009.

Given under my hand this 17th August 2009.

Yvonne Ryan MMC
CITY CLERK

OFFICE OF CITY CLERK OF COUNCIL
HARRISONBURG, VA 22801

City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
409 South Main Street
Harrisonburg, Virginia 22801
Website: http://www.harrisonburgcommdev.com/
Telephone: (540) 432-7700 Fax: (540) 432-7777

August 3, 2009

TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISIONBURG, VIRGINIA

SUBJECT: Public hearing to consider amending the Zoning Ordinance Sections 10-3-92 and 10-3-98. The amendment would clearly specify that all structures in excess of 35 feet have increased rear and side yard setback regulations within the B-2, General Business District and the M-1, General Industrial District.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: July 8, 2009

Chairman Burden read the request and asked staff for comments.

Mrs. Banks said staff is proposing to modify Sections 10-3-92 and 10-3-98 of the City's Zoning Ordinance. These two sections regulate area and dimensional regulations for the B-2, General Business District and also within the M-1, General Industrial District. Specifically, this amendment would clearly spell out that all structures in excess of 35 feet would have an increased rear and side yard setback.

Currently, Sections 10-3-92 and 10-3-98 read as follows:

> Side (setback) – Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any building greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.
>
> Rear (setback) – Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any building greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

To further understand these regulations, the City's Zoning Ordinance defines a "building" as: Any structure intended for shelter, housing or enclosure of persons, animals, chattels or property of any kind. A "structure" is defined as: Anything constructed or erected, the use of which requires location on the premises or which is attached to something having location on the premises. Therefore, a building would be considered a structure because it requires location on the property when constructed.

Staff has always interpreted that any building/structure was confined to the regulations as specified in Section 10-3-92 and 10-3-98 to necessitate greater setbacks when in excess of 35-feet in height. This also meant that staff interpreted a cell tower as needing the greater setback when abutting a residential district. However, during recent discussions with a mobile cellular company, staff took a harder look at whether a cell tower would be considered a building. Because a cell tower does not provide "shelter or

house or enclose" anything, it would be defined as a structure and not a building. Sections 10-3-92 and 10-3-98 state only buildings need to meet the additional setbacks; therefore, cell towers would not be required the extended setback, if taller than 35-feet in height.

This amendment would replace the word "building" with "structure"; thus, clarifying that any structure greater than thirty-five (35) feet in height would require the additional setback when abutting a residential district. Staff recommends approval of the ordinance amendments.

Chairman Burden asked if there were any questions for staff.

Mr. Snell asked why are there two different words, building and structure, defined in the Zoning Ordinance. The reason I ask has to do with things like, fences, decks, pools, those non-building type things. If we amend the ordinance today, are we inadvertently impacting the idea of a fence or deck, and more?

Mrs. Banks said the Zoning Ordinance spells out fences separately, as well as decks, pools, patios, porches, and so on. The ordinance provides separately for these setbacks.

Mr. Fletcher said in this particular situation I do not realistically think that any pool or fence is going to be above thirty-five feet in height.

Mr. Snell questioned why do you think there was a difference.

Mr. Fletcher responded that this language has probably existed since the 1960's, maybe before, and I could not tell you what the crafters of the ordinance at that time were considering.

Chairman Burden asked what the thinking was behind the addition of one extra foot for every foot above thirty-five feet. For instance, if a building is thirty-seven feet in height, it would require an extra two feet.

Mr. Fletcher said this regulation only comes up in B-2 and M-1 districts when they abut a residential district. The fact that you have two very different type uses going on, it just provides for a further setback buffer between those two different uses.

Chairman Burden asked if there were any further questions for staff at this time. Hearing none, he opened the public hearing on the ordinance amendment and asked if there was anyone wanting to speak in general regarding the ordinance amendment.

Mr. Glen Hodge, attorney with Wharton, Aldhizer and Weaver, said on a per se basis we would not have an objection to this ordinance amendment; however on the next item that you have on your agenda you will see very clearly that the reason this ordinance is being proposed is because of the special use permit application we are making. Under the existing ordinances, our application meets all the requirements. While I am not opposing the ordinance per se, I am asking that you not allow this amendment to affect your view on our subsequent application and not give a retroactive effect on something that has not even been passed by the City Council.

Ms. Paula Figgatt, Independent Contractor representing Shentel, said there is also something else that I would like for you to consider. For anything that is in a residentially zoned area, co-location is not even a consideration; not even by a special use process. So, if you are going to make this change in your ordinance, I would like you to consider a change in residential areas to allow co-location. Had we (Shentel) been able to co-locate in the residential area on an existing structure, it would have been an easy fix.

Chairman Burden asked if there was anyone else wishing to speak. Hearing none, he closed the public hearing and asked Planning Commission for discussion.

Mr. Finks asked staff if they had considered the suggestion that Ms. Figgatt brought up.

Mr. Fletcher said we would have to look into it. We are not aware of the potential conflicts that are occurring between residential uses and communication towers and the co-location of equipment. We can look into this idea.

Mrs. Turner said it would need to be an ordinance amendment brought back at a different time.

Mr. Snell said I have concerns about the structure/building language. There was a reason for it and for some reason we are just not figuring out what that reason is. In lieu of not having anything against this proposed amendment, I move for a favorable recommendation to City Council to amend the ordinance as staff has suggested.

Mr. Chenault seconded the motion.

Chairman Burden asked if there was any discussion. Hearing none, he called for a voice vote on the motion.

All voted in favor of the motion for a favorable recommendation (7-0) to City Council.

Chairman Burden said this will move forward to City Council on August 11th, with a favorable recommendation.

Respectfully submitted,

Alison Banks

Alison Banks
Planner

City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
July 8, 2009

ZONING ORDINANCE AMENDMENT
Section 10-3-92 & 10-3-98

Staff is proposing to modify Sections 10-3-92 and 10-3-98 of the City's Zoning Ordinance. These two sections regulate area and dimensional regulations for the B-2, General Business District and also within the M-1, General Industrial District. Specifically, this amendment would clearly spell out that all structures in excess of 35 feet would have an increased rear and side yard setback.

Currently, Sections 10-3-92 and 10-3-98 read as follows:

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>
> Rear (setback) – Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any building greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

To further understand these regulations, the City's Zoning Ordinance defines a "building" as: Any structure intended for shelter, housing or enclosure of persons, animals, chattels or property of any kind. A "structure" is defined as: Anything constructed or erected, the use of which requires location on the premises or which is attached to something having location on the premises. Therefore, a building would be considered a structure because it requires location on the property when constructed.

Staff has always interpreted that any building/structure was confined to the regulations as specified in Section 10-3-92 and 10-3-98 to necessitate greater setbacks when in excess of 35-feet in height. This also meant that staff interpreted a cell tower as needing the greater setback when abutting a residential district. However, during recent discussions with a mobile cellular company, staff took a harder look at whether a cell tower would be considered a building. Because a cell tower does not provide "shelter or house or enclose" anything, it would be defined as a structure and not a building. Sections 10-3-92 and 10-3-98 state only buildings need to meet the additional setbacks; therefore, cell towers would not be required the extended setback, if taller than 35-feet in height.

This amendment would replace the word "building" with "structure"; thus, clarifying that any structure greater than thirty-five (35) feet in height would require the additional setback when abutting a residential district. Staff recommends approval of the ordinance amendments.

Draft

ORDINANCE AMENDMENT

Zoning Ordinance
Sections 10-3-92 & 10-3-98

Draft

ORDINANCE AMENDING AND RE-ENACTING SECTIONS

10-3-92 and 10-3-98

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

Be it ordained by the Council of the City of Harrisonburg, Virginia:

That Section 10-3-92 be amended as follows:

Section 10-3-92. Area and Dimensional Regulations

Amend language as shown:

Side – Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any ~~building~~ *structure* greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

Rear – Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any ~~building~~ *structure* greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

Draft

That Section 10-3-98 be amended as follows:

Section 10-3-98. Area and Dimensional Regulations

Amend language as shown:

Side – Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any ~~building~~ *structure* greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

Rear – Ten (10) feet, except on the side of a lot abutting a residential district, then thirty (30) feet; provided that for any ~~building~~ *structure* greater than thirty-five (35) feet in height which abuts a residential district, then one (1) additional foot of setback is required for each foot above thirty-five (35) feet.

The remainder of Sections 10-3-92 and 10-3-98 are reaffirmed and reenacted in their entirety, except as hereby modified.

This ordinance shall be effective from the _____ day of _____, 2009.
Adopted and approved this _____ day of _____, 2009.

_____

MAYOR

ATTESTE:

_____

CLERK OF THE COUNCIL

AGENDA ITEM # 8

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type**: Regular X Special___
Requestor: ___ Manager ___ City Attorney ___ Department X Other HRHA	**Item:** Consider request from HRHA for permission for an existing encroachment at 715 North Main Street.
Reviewed: X Manager X City Attorney ___ Department ___ Other	**Review:** The Harrisonburg Redevelopment and Housing Authority (HRHA) is the contract purchaser of property located at 715 North Main Street. The house on this property has a slight encroachment onto an adjoining alley dedicated to the City. The attached survey plan indicates the encroachment.
Recommend: YES: X NO: ___ X Manager X City Attorney ___ Department ___ Other	
Feb9.22	**Attachments:**

AGENDA ITEM # 9

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type**: Regular X Special___
Requestor: ___ Manager ___ City Attorney ___ Department X Other BRCC	**Item:** Presentation by Blue Ridge Community College.
Reviewed: X Manager ___ City Attorney ___ Department X Other BRCC	**Review:** Dr. John Downey, President of BRCC, will be present to report on the status of Blue Ridge Community College.
Recommend: YES: X NO: ___ X Manager ___ City Attorney ___ Department ___ Other	
Feb9.44	**Attachments:**

AGENDA ITEM # 10

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type**: Regular X Special___
Requestor: ___ Manager ___ City Attorney ___ Department X Other BB BS	**Item:** Presentation by Big Brothers Big Sisters.
Reviewed: X Manager ___ City Attorney ___ Department X Other BB BS	**Review:** Elly Swecker, Executive Director, will be present to update Council on their activities and the impact made with the City's youth.
Recommend: YES: X NO: ___ X Manager ___ City Attorney ___ Department ___ Other	
Feb9.45	**Attachments:**

AGENDA ITEM # 11

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type:** Regular X Special ____
Requestor: ____ Manager ____ City Attorney ____ Department X Other	**Item:** Presentation by Shenandoah Valley Bicycle Coalition (SVBC)
Reviewed: ____ Manager ____ City Attorney ____ Department ____ Other	**Review:** SVBC would like to request that City Council authorize staff to draft design plans and cost estimates for two multi user off road paths to be included in the 2010 Bicycle Plan. Path #1 is the Hillandale Connector path which would connect Circle Drive to Hillandale Park and then to Garbers Church Road Path #2 is the Bluestone Trail which would connect Stone Spring Road to Port Republic Road paralleling Interstate 81 with a side connector to the apartment complexes on the east side of South Main Street.
Recommend: YES: ____ NO: ____ ____ Manager ____ City Attorney ____ Department ____ Other	
Feb9.23	**Attachments:**

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type**: Regular X Special ___
Requestor: ___ Manager ___ City Attorney X Department X Other: Shenandoah Valley Bicycle Coalition	**Item:** Bicycle Friendly Community Application presentation by Department of Public Works and Shenandoah Valley Bicycle Coalition
Reviewed: ___ Manager ___ City Attorney X Department ___ Other	**Review:** Two times each year, the League of American Bicyclists awards communities with a "Bicycle Friendly Community" (BCF) Award. There are four (4) award levels: Platinum, Gold, Silver, and Bronze. Currently, Virginia's Bicycle Friendly Communities include Alexandria (Bronze), Arlington (Silver), and Charlottesville (Bronze). Public Works staff and members of the Shenandoah Valley Bicycle Coalition (SVBC) have been working on a BCF application for the City of Harrisonburg. The application is due February 19.
Recommend: YES: ___ NO: ___ ___ Manager ___ City Attorney ___ Department ___ Other	The BFC application audits the City of Harrisonburg and its community's efforts on Engineering, Education, Encouragement, Evaluation & Planning, and Enforcement. Some benefits of this program include recognition, promotion, bench marking, and technical help from the League of American Bicyclists. We expect to receive notification from the League of American Bicyclists around May 2010. Renewals for the designation occur every four years. More information at: http://www.bikeleague.org/programs/bicyclefriendlyamerica/index.php
Feb9.300	**Attachments:**

AGENDA ITEM # 13

AGENDA ITEM ACTION REQUEST

	Meeting Date: February 9, 2010 **Meeting Type**: Regular X Special ___
Requestor: ___ Manager ___ City Attorney X Department ___ Other Police	**Item:** Consider supplemental appropriation for the Police Department in the amount of $71,022.84.
Reviewed: X Manager ___ City Attorney X Department ___ Other Police	**Review:** These funds were reimbursed through a Justice Assistance Grant (ARRA)
Recommend: YES: X NO: ___ X Manager ___ City Attorney X Department ___ Other Police	
Feb9.50	**Attachments:** 1. Supplemental Appropriation Form

CITY OF HARRISONBURG, VIRGINIA
REQUEST FOR: SUPPLEMENTAL APPROPRIATIONS
For Fiscal Year Ended June 30, 2010

From:

FUND	CODE	ACCOUNT DESCRIPTION	AMOUNT
1000	33546	Justice Assistance Grant	71,022.84
		Total	71,022.84

To:

FUND	CODE	ACCOUNT DESCRIPTION	AMOUNT
1000	310431-48172	Software	253.93
1000	310231-46100	Police Supplies	5,620.91
1000	310231-48211	Machinery & Equipment	4,221.00
1000	310331-48111	Machinery & Equipment	13,767.00
1000	310431-48151	Motor Vehicles & Equipment	47,160.00
		Total	71,022.84

Reason: To replace funds reimbursed by Justice Assistance Grant funds (ARRA)

Requested by : _____ Head of Department _____ Date

Funds Available : Jerry O Seal Director of Finance 2/3/10 Date

Recommended & Approved : K D. Nadyan City Manager 2/3/10 Date

City Council Approval: _____ **(1st reading)**

City Council Approval: _____ **(2nd reading)**

FINANCE DEPARTMENT'S POSTING _____ NAME DATE _____ JV #