

MINUTES OF HARRISONBURG PLANNING COMMISSION

July 13, 2011

The Harrisonburg Planning Commission held its regular meeting on Wednesday, July 13, 2011, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: MuAwia Da'Mes, Judith Dilts, Deb Fitzgerald, Bill Jones and Henry Way.

Members absent: Charles Chenault and Alan Finks.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Jones called the meeting to order and determined there was a quorum with five of seven members in attendance. He then asked if there were any corrections, comments or a motion regarding the minutes from the June 8th Planning Commission meeting.

Mr. Way moved to approve the minutes from the June 8, 2011 Planning Commission meeting.

Mrs. Fitzgerald seconded the motion.

Chairman Jones abstained from voting because he was not in attendance at the June meeting.

All voted in favor of approving the minutes. (4-0)

New Business

Street Closing – Intersection of West Bruce Street and Old South High Street

Chairman Jones read the request and asked staff to review.

Mrs. Banks said this is a request to close a 3,630 square foot portion of right-of-way located along the northeast corner of West Bruce Street and Old South High Street. The applicants desire to purchase the right-of-way and add it to their adjacent property in order to enlarge an existing parking lot.

The right-of-way along this intersection was originally established when Old South High Street was Route 42 through the City. The wider turn radii at the intersection were necessary to accommodate the heavier traffic flow when this was a major thoroughfare. In late 1967-1968, South High Street was relocated just west of the existing, leaving the section of roadway we know as Old South High Street, along with the considerable right-of-way at its intersection with Bruce Street.

Upon review of this request, the Public Works Department was hesitant to recommend in favor of closing this portion of the street. Over the years since the relocation of South High Street this portion of Bruce Street has not had as much traffic flow; however, with recent developments in the area and the B-1, Central Business District moving more towards the South High Street corridor, it was felt that this right-of-way may be necessary in the future for sidewalk or roadway expansion. Therefore, the Public Works Department is recommending that a ten foot strip, from the back of sidewalk inwards towards the parcel; remain as right-of-way for future expansion needs. This would leave an area of approximately 2,046 square feet for closure and sale to the applicant.

Staff has no objections to closing the approximately 2,046 square foot portion of the street. There are no public utilities within this section of the right-of-way; however, staff recommends that a ten foot general utility easement be provided along the interior of the new property line. Vacating this portion of the right-of-way does not impact the function of the intersection and staff supports the request.

Chairman Jones asked if there were any questions for staff. Hearing none, he asked the applicant, or the applicant's representative to speak.

Andrew Forward introduced himself as the representative for D & B Investors and said we did originally want to purchase the entire area; but, after meeting with staff and discussing the ten foot right-of-way proposal, we are agreeable to that. We would like to move forward with this proposal. We have not seen a drawing with the ten foot utility easement and how that would impact us; but I am sure we could work with that.

Mrs. Banks described where the ten foot easement would be placed and said it would still allow for parking to be placed within it.

Mr. Forward asked if there would be an opportunity for drainage to be placed within it.

Mrs. Banks said yes.

Chairman Jones asked if there were any questions for the applicant's representative. Hearing none he asked for discussion or a motion.

Mr. Way said I see no problem with this request.

Mrs. Fitzgerald moved to approve the request as presented.

Mr. Way seconded the motion.

Chairman Jones called for a voice vote on the motion to approve the request.

All voted in favor (5-0).

Chairman Jones said this request will move forward to City Council on August 9, 2011.

Preliminary Plat – Traber Plat Variance (Garbers Church Road)

Chairman Jones read the request and asked staff for a review.

Mr. Fletcher said the Comprehensive Plan designates this area as Low-Density Residential. This designation states that these areas consist of single-family detached dwellings with a maximum density of 1 to 4 units per acre. Low-density sections are found mainly in well-established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

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

Site: Farm house and outbuildings, zoned R-1

North: Single family home lots, zoned R-1 and Rockingham County property, zoned A-2

East: Single family homes fronting along Rhianon Lane, zoned R-1

South: Across Garbers Church Road, single family homes, zoned R-1

West: Single family homes fronting along Glanzer Court and Rorrer Circle, zoned R-1

The applicant is requesting to preliminarily subdivide nine single family home lots from a 6.24-acre parcel zoned R-1, Single Family Residential District having frontage along Garbers Church Road. The applicant's planned layout requires a variance from the Subdivision Ordinance Section 10-2-42 (d) to allow lots to not front on a public street and a variance from Section 10-2-41 (a) for further deviations from the Design and Construction Standards Manual (DCSM). (This request was

originally scheduled to be heard during the October 2010 regular Planning Commission meeting. The applicant tabled the request in October to be heard in November, but then tabled it once more until further notice was given. Near the end of May 2011, the applicant's engineer contacted staff to proceed with the request.)

Due to the topography and shape of the property the applicant requests permission to allow the lots to front along a private street. The parcel has approximately 280 feet of road frontage along Garbers Church Road, however, more than 100 feet is practically unusable as the property's pond restricts and controls the location of where the street must intersect with Garbers Church Road. Although not planned as an age restricted community, this neighborhood would function similarly to the nearby Heritage Estates Subdivision, where the lots exceed the R-1 lot area requirements and have a private street mainly encompassed within each lot. All but one lot is more than double the minimum size requirements of the R-1 zoning district; two properties are close to an acre in size. The density of the planned neighborhood is almost 1.5 units per acre; well within the Low Density Residential guideline of one to four dwelling units per acre.

Since the street would be private, the City would not provide street maintenance, snow removal, or trash pick-up, and depending upon the needs of the neighborhood's residents, a school bus would probably not travel down the cul-de-sac. The neighborhood's draft home owner's association (HOA) document specifies the street maintenance responsibilities, and due to the design of the street, the HOA document further restricts building setbacks beyond enforcement of the City Code.

The applicant is also requesting a variance from the Subdivision Ordinance Section 10-2-41 (a), which states that "proposed streets and alleys shall conform to the standards and specifications outlined in the Design and Construction Standards Manual." Recently, the City adopted private street standards, which specifies regulations such as allowable street and travel widths and issues related to on-street parking. The regulations further specify that most of the City's other street design principles such as materials and specific design criteria must meet the same construction standards of the City's public streets. The planned subdivision's private street illustrates three deviations from these construction standards. First, the private street standards require sidewalk along both sides of the private street. The applicant requests to build sidewalk only on the northern side of the street. Secondly, private streets require a 100-foot tangent section between horizontal curves. The applicant's desired street has no horizontal tangent, thus they are requesting this requirement be waived. Finally, private cul-de-sacs are required to provide a 45-foot radius. Since the applicant is utilizing the 24-foot private street width, which does not allow on-street parking, and due to the steep topography near the northwestern end of the property, the applicant would like to deviate from this requirement and provide a 40-foot radius.

Other issues, which will be worked out during the site plan review, include: ensuring that sight distance is appropriately met along Garbers Church Road, acquiring any easements necessary to construct retaining walls near adjoining properties, and dealing with the floodplain and floodway. Although the stream that flows through this property is arguably a small watercourse, the floodplain would extend into each subdivided property. (Lot nine is completely encompassed by the floodplain and almost enveloped by the floodway. This lot might be incorporated into one of the adjoining lots.) Since the private street crosses the stream, the developer could be required to conduct a flood study with submission to FEMA. The developer will also be required to verify water and sewer capacities through a Preliminary Engineering Report prior to their site plan submittal.

The use of the property and the size of the lots are consistent with the surrounding properties and with the Comprehensive Plan's Low Density Residential land use designation. Staff has no major issues with the planned deviations from the DCSM. Staff supports the preliminary plat and the requested variances and offers a favorable recommendation for approval.

Chairman Jones asked if there were any questions for staff.

Mrs. Fitzgerald said I assume that if school buses are okay to maneuver through the private street with the smaller tangent and the smaller cul-de-sac, it is also enough for public safety vehicles to maneuver.

Mr. Fletcher replied yes, the Fire Department reviewed this request and had no comments.

Mr. Way asked if staff was okay with the one sidewalk instead of the two.

Mr. Fletcher replied yes.

Chairman Jones asked what would be the length of the cul-de-sac.

Mr. Fletcher replied he did not know, perhaps the applicant's engineer would know.

Chairman Jones asked if there was a standard for cul-de-sac length in the Design and Construction Standard Manual.

Mr. Fletcher said yes, the cul-de-sac cannot exceed eight-hundred feet; which I do not believe it does. Also, it does not exceed the number of lots permitted along a cul-de-sac.

Dr. Dilts said it strikes me that there are a lot of ordinances here that the applicant is asking for some type of variance from.

Mr. Fletcher replied there are two.

Dr. Dilts clarified there are numerous sub-sections within those two ordinances; sidewalk, tangent, radius, and so forth. Philosophically, I am having trouble with all the variances to rules that were obviously laid down for some specific reason. I do not know your rationale, or rather the City's rationale behind that.

Mr. Fletcher said that is a very good question and there may not be a perfect answer for it. In this situation it is a small street, traffic is very low, and the width would not permit on-street parking; therefore, sight distance issues and the design of the street are not, in the opinion of the City Engineer, of such a great concern that they needed to be fully enforced. Had this been serving more lots or if it were a thru street, maybe it would have been more of a concern; but, not with this plan.

Dr. Dilts asked about the rationale of building in what is clearly a fairly extensive flood plain and considerations about any effects on sewage, or stormwater.

Mr. Fletcher replied all of those items are design regulations that would be reviewed during the Comprehensive Site Plan Review. For the preliminary plat phase, which we are reviewing now, those things are not as much of a concern.

Dr. Dilts asked if the pond was a detention facility.

Mr. Fletcher replied it is not a detention facility.

Chairman Jones asked if there were any further questions for staff. Hearing none, he said this is not a public hearing; however, if the applicant, or representative would like to speak they may do so at this time.

Mr. Nathan Blackwell, with Blackwell Engineering, said he has been working with Mr. John Traber on this project. I will also be preparing the Comprehensive Site Plan; therefore, I can answer any questions you may have regarding the site.

Mr. Way said there are many old, large trees on the site; would you be taking measures to protect some of those trees.

Mr. Blackwell said some of the trees had a disease; some even had to be removed. The ones that are healthy we would try to keep. Others that are diseased or just in the way would have to be removed. In the back of the property, those are just scrub trees that have come up over the years.

Chairman Jones said keeping in mind the existing waterway and the topography, especially towards the back of the property, are you anticipating any retaining or detention systems.

Mr. Blackwell said we will have to evaluate the water quality and definitely the stormwater management. The pond that is on site is fed by a well and is not associated with the stream; but, it is in the floodway. We might be able to utilize it for some of our stormwater management; however, I have not looked into that design yet.

Mr. Da'Mes asked about the idea of having sidewalk along just one side of the street.

Mr. Blackwell replied there are only nine lots and one of them is completely unusable; therefore there are only eight usable lots. There will be limited traffic, and having only one side of the road with sidewalk is more than adequate for a subdivision of this size.

Mr. Da'Mes said the purpose of a sidewalk is to really bring communities together and allow for pedestrian traffic. To have a sidewalk on the opposite side of the homes does not make much sense. Why put a sidewalk on the opposite side of the street?

Mr. Blackwell said on some other subdivisions that I have worked on, we have had one sidewalk and houses on both sides. With driveways adjacent to the sidewalk, if someone parks their car only partially into the drive, you would have to walk around the vehicle, off of the sidewalk. The thought process with this is to have the sidewalk on the opposite side of the road, so that vehicles do not block the walk. I live in Reherd Acres and everyone walks in the street.

Mr. Da'Mes asked if a wider street would be more appropriate.

Mr. Blackwell said if it was a public road we would be putting in a wider road; but, twenty-four feet allows for people to pass and it prevents people from parking on the street, meaning people would park in their driveway.

Mr. Fletcher agreed that it is a good argument. He continued by pointing out that if you put sidewalk on both sides you are making the complete street wider.

Mr. Da'Mes said I am not suggesting that, I just think in this situation it would make sense to have a wider street rather than a useless sidewalk on the opposite side of the road. Are we doing a sidewalk just because it is a requirement? What is the rationale behind the sidewalk?

Mr. Fletcher said you could argue this both ways. The developer wanted to put it on the opposite side of the street. We questioned it at the time of the review as to why would you not want sidewalk on the same side of the street as the driveways. They felt that it made more sense for the community not to have the sidewalk on the same side of the street as the driveways.

Mrs. Turner said she believes Mr. Da'Mes is suggesting a wider asphalt street and no sidewalk.

Mr. Blackwell replied that would be fine. I think it would be logical to add four feet to the street, as opposed to putting the sidewalk behind it.

Mr. Fletcher said you could do that; however, keep in mind, if you lose a sidewalk and you widen the street, it somewhat visually gives people the feeling they can travel faster on the street. A narrow pavement makes people slow down and providing no sidewalk would be a disservice to this community.

Mrs. Turner said also, if the street becomes wider it may appear to people that it is okay to park along the street. It could be signed with “no parking”, and it would be signed with just twenty-four feet.

Mrs. Fitzgerald said so there are some parking control, traffic control, and safety issues for having one sidewalk along one side of the street.

Chairman Jones said it is certainly a parking control and a traffic calming effect to have narrower pavement. Then again, no longer than it is, I do not believe speed would be an issue. He then asked if there were any further questions for staff or the applicant.

Mr. John Traber, owner of the property, said that the trees along the front were Siberian Elms and that some had Dutch elm disease. One had to be removed; its trunk was thirteen feet in diameter. I have had some treated with chemicals and hopefully they will not die.

Chairman Jones asked if there was any further discussion.

Mr. Way said going back to the sidewalk discussion; I am of the opinion that it is better to have one sidewalk rather than none.

Mr. Da’Mes said he is fine with that too.

Chairman Jones said personally he would prefer a sidewalk. He is not opposed to people using a street as a walkway; however, it can be detrimental.

Mr. Da’Mes moved to approve the preliminary plat with variances to 10-2-42(d) and 10-2-41(a) with subsections to tangent, radius, and sidewalk.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor of the motion (5-0) to approve the preliminary plat with the requested variances.

Chairman Jones said this moves forward to City Council on August 9, 2011.

Special Use Permit – 130 University Boulevard (Easy Radio, Inc. Verizon Wireless)

Chairman Jones read the request and asked staff to review.

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

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

- Site: Office building containing Easy Radio, Inc. (WMXH-FM) and Donovan’s Framery, zoned B-2
- North: Professional office complex, zoned B-2

- East: Empty building being demolished for new construction, zoned B-2
- South: Undeveloped parcel, zoned B-2
- West: Professional office, zoned B-2

In August 2000, a special use permit was granted to the subject property to allow for the co-location of telecommunications equipment on a 75-foot pole existing on the site. The pole was permitted by-right as an accessory use, per Section 10-3-90 (15) of the Zoning Ordinance, to Easy Radio, Inc., a radio station located within the building at 130 University Boulevard. At the time of the request, three telecommunication companies, Shenandoah Personal Communications, CellularONE, and RICA.net, were proposing to co-locate on the pole.

The special use permit was ultimately approved with multiple conditions attached. Those conditions were as follows:

- a) No companies' equipment, except equipment used by the radio station, shall be placed on the pole until the radio station is operating from the office building, at 130 University Boulevard and all radio station equipment is on the pole. In addition, if the radio station ceases to operate from the building, the co-located equipment shall be removed.
- b) If Shenandoah Personal Communications, CellularONE, and/or RICA.net go off the air or their equipment no longer operates for more than twelve (12) months, then all equipment associated with that company shall be removed from the pole.
- c) Only the equipment shown on the submitted drawing shall be approved under the issuance of this special use permit. Any other equipment placed on the pole not shown on this drawing will constitute a violation of the special use permit and make the permit null and void. Therefore, all equipment for Shenandoah Personal Communications, CellularONE, and RICA.net will have to be removed from the pole. This shall not include equipment approved under another special use permit.
- d) The equipment attached to the pole shall be painted a uniform color to match the pole that decreases the visual impact on the surrounding environment.
- e) The fence shall be maintained so as not to appear dilapidated or in poor condition, and to provide security against entrance by unauthorized persons.
- f) Landscaping surrounding the fence line shall consist of evergreen materials and shall be maintained to improve the appearance of the surrounding area.
- g) Placement of advertising of any kind is prohibited on the fence and/or antennas, except for an 11" X 17" sign, placed on the fence, displaying telephone numbers in case of an emergency.
- h) City staff shall review the special use permit annually, on the date of permit issuance, for compliance to the above conditions. If any of the above conditions are found to be in neglect, then a certified letter will be sent to the property owner, at which time the condition shall become compliant. If the condition is not brought into compliance then the special use permit will be held null and void and all equipment approved under the issuance of this permit shall be removed from the pole.

It should be noted that Alltel Communications later acquired CellularONE and in due course acquired the antennas CellularONE had located on the pole. Because there was no break in service and no change in equipment, a new special use permit was not required.

The applicant is requesting a special use permit (SUP) to co-locate twelve wireless communication antennas to the top of an existing radio tower, per Section 10-3-91 (4) of the Zoning Ordinance. At this time, the tower has satellite dishes and antennas that serve the on-site radio station, along with the co-location of Shentel (Shenandoah Personal Communications) and Alltel Communications antennas, approved as part of the August 2000 special use permit. Verizon Wireless, which recently

merged with Alltel Communications, desires to remove the three existing Alltel antennas and replace them with twelve new antennas attached to the top of the pole. The tower, which is currently at a height of 75-feet, would be increased by four feet to a height of 79-feet.

At present, Verizon Wireless has a set of mounted antennas that are co-located on the rooftop of the Hampton Inn, across University Boulevard from this request. However, due to recent changes in Hampton Inn Corporate policies, all leases for rooftop space will be terminated at the end of their current terms. Therefore, Verizon began evaluating new co-location sites and because they already had the Alltel co-location at 130 University Boulevard, they inquired with City staff as to what they would need to do to utilize the tower. As this is a complete change in equipment and location on the pole, staff informed Verizon that a new special use permit would be required; this determination is based on condition “c” from the 2000 permit.

Currently, Alltel Communications has mounted on the tower three, eight foot, flush mounted antennas, which provide cellular service. Verizon would continue to provide this service. In addition, they are licensed to provide personal communications service and long term evolution 4G network services for expanded data technologies; each of these services is licensed at a different frequency. Verizon would need to provide three separate antenna configurations to ensure that there is no interference. Therefore, the T-mounted brackets are needed in order to allow adequate separation between the antennas.

Since the inception of the special use permits to regulate telecommunication facilities, staff has pushed to co-locate antennas on existing sites, rather than constructing new towers for each licensee. The requested special use permit is not a new one, as previously discussed in the history section. This tower had been approved to allow other wireless co-locations, with the thought that there could be more requests in the future. As wireless technology changes and advances, so too must the equipment that serves it. Staff recommends approval of the request and, in keeping consistent with the previous approved SUP, suggests the following conditions be attached:

1. If the radio station ceases to operate from the building, the co-located equipment shall be removed.
2. If the cell provider goes off the air or their equipment no longer operates for more than twelve (12) months, then all equipment associated with that company shall be removed from the pole.
3. Only the equipment shown on the submitted drawing shall be approved under the issuance of this special use permit. Any other equipment placed on the pole not shown on this drawing will constitute a violation of the special use permit and make the permit null and void. Therefore, all equipment will have to be removed from the pole. This shall not include equipment approved under another special use permit.
4. The equipment attached to the pole shall be painted a uniform color to match the pole that decreases the visual impact on the surrounding environment.
5. The fence shall be maintained so as not to appear dilapidated or in poor condition, and to provide security against entrance by unauthorized persons.
6. Landscaping surrounding the fence line shall consist of evergreen materials and shall be maintained to improve the appearance of the surrounding area.
7. Placement of advertising of any kind is prohibited on the fence and/or antennas, except for an 11” X 17” sign, placed on the fence, displaying telephone numbers in case of an emergency.

8. If in the opinion of Planning Commission or City Council, the equipment becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked the applicant or the applicant's representative to speak.

Mr. Steven Blaine, attorney representing Verizon, said he appreciates the comments from staff. We have one observation on the conditions that we would like to discuss. Condition one states that if the radio station goes out of business, then Verizon must remove their equipment. We do not quite understand why the fate of the cellular service should be tied to the radio station. We have no reason to think that the radio station is in trouble; but, the condition just does not have any real logic. I suspect, because of the history of this site, and the fact that the tower came on as an accessory use; this condition has been repeated throughout other approvals. I do not see the need for this condition and we ask that you consider removing just this condition. We have no problem with the other conditions, and of course, if the cell company goes out of business we would remove all equipment.

Chairman Jones said I would assume at the time of that original approval, the tower belonged to the radio station, and is their property.

Mrs. Banks said yes.

Chairman Jones said therefore, the permit was issued in that nature. I would also assume in the event of the radio station ceasing to operate, Verizon would probably be able to enter into some sort of agreement, whereby they could purchase the tower and apply for a special use permit to continue its use. Therefore, it is probably more of a procedural matter, rather than an issue of losing the service completely if the radio station goes out of business.

Mrs. Banks added that there is still another co-locator on the tower from a previously approved special use permit. Perhaps the two could work together on an arrangement, should the radio station cease to operate.

Chairman Jones said I feel that should this issue come to fruition, we would be able to move forward as a matter of procedure. He then asked if there were any further questions for the applicant or their representative. Hearing none, he asked if there was anyone wishing to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition to the request. Hearing none, he closed the public hearing and asked for comments or discussion from the Planning Commission.

Dr. Dilts asked who owns the land where the tower is located.

Mrs. Banks replied the radio station, Easy Radio LLC.

Dr. Dilts asked would someone have to buy the land and do a special use permit so that the tower with co-locaters could stay there.

Mrs. Banks replied yes, whoever owns the land could apply for a special use permit to allow a communications tower, up to 125-feet in height.

Mr. Way asked if it was possible to place more cellular communication equipment on the tower.

Mrs. Banks replied it may be possible; it would depend if the services were at different frequencies. Previously, there were three cell companies located on this tower; but technology has changed and it may not be suitable now.

Mr. Da'Mes asked have the conditions covered what cell tower technology may be like in the future – ten to fifteen years from now, without actually putting a time limit on it.

Chairman Jones said as we have seen in the past, technology is evolving so rapidly, that we may all be on a satellite link by then.

Mr. Way said condition two states if this communication equipment no longer operates, after twelve months it must be removed. That should take care of your concern.

Mr. Da'Mes said the idea is that we do not want obsolete towers just standing.

Mr. Fletcher said it should be understood that even if the radio station does go out of business and all the communications equipment comes off, that tower does not have to come down. It is an accessory structure and we do not have the authority to require them to remove it.

Mrs. Fitzgerald said the general idea of going from one co-location to another co-location is better overall, rather than starting something new somewhere else. As the Hampton Inn leases expire, I am sure we will be seeing others come before this body for the same reason.

Mr. Way agreed and said co-location makes a whole lot of sense.

Mrs. Banks said if the radio station were to go out of service and the co-locaters all came forward and asked for a communications tower special use permit, then there could be a condition placed on that approval that said the tower must be removed if it becomes obsolete and all equipment is removed.

Mr. Da'Mes moved to recommend approval of the special use permit request with the conditions provided by staff.

Mr. Way seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor (5-0) to recommend approval of the special use permit request with the conditions.

Chairman Jones said this will move forward to City Council on August 9th, with a favorable recommendation.

Special Use Permit – 120 West Wolfe Street (WRockstreet LLC)

Chairman Jones read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Mixed Use Development. This designation includes both existing and proposed new mixed use areas. These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for “live-work” and traditional neighborhood developments. Live-work developments combine residential and office/service uses allowing people to both live and work in the same area, which could be combined in the same building or on the same street. The gross residential density in areas outside downtown should not exceed an average of 15 units per acre, though all types of residential units are permitted: single

family detached, single family attached and apartments. Apartments are permitted only if single family detached and/or attached units are also provided and together cover a greater percentage of the project site. Residential densities in downtown may be higher than an average of 15 units per acre, and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

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

- Site: Illegal vehicle repair shop, zoned B-1C
North: Vacant property (owned by the applicants), zoned B-1C
East: Across the Norfolk Southern Rail Line, vacant paved lot, zoned B-1
South: Across West Wolfe Street, vacuum repair shop, zoned M-1
West: Non-conforming dwelling unit, zoned M-1

The applicants are requesting a special use permit (SUP) per Section 10-3-85 (4) of the Zoning Ordinance to allow for vehicle repair in the B-1, Central Business District to bring their illegal use into conformance with the Zoning Ordinance. The property is located at 120 West Wolfe Street and is zoned B-1C, Central Business District Conditional.

The property is one of two properties rezoned in March 2009 from M-1, General Industrial District to B-1C. At that time, their plan was to demolish the existing structures and to construct a mixed use building containing commercial and residential uses. The existing proffers (written verbatim) are as follows: (The proffer letter and mentioned exhibits are provided for reference within the packet.)

1. The site Plan as provided in Exhibit A is proffered as to general layout, approximate square footage of the building and dedicated parking. The amount of commercial space will be up to 2,816 sq. ft., and the amount of residential space will be up to 6,570 sq. ft. The number of residential units will not exceed 7. The number of bedrooms will not exceed 9. The building will be Mixed Use.
2. The occupancy of each residential unit will not exceed a single family or two unrelated persons per unit.
3. Parking for residential units will be one space per bedroom. Parking for commercial space will be one space for each 300 sq. ft.
4. Use Restrictions. The following uses as delineated in Harrisonburg's Zoning Ordinance, Article P. B-1 Central Business District, §10-3-84 shall be permitted on the Property:
 - a. Retail stores, convenience shops, personal service establishments, restaurants, food and drug stores;
 - b. Governmental, business, professional offices and financial institutions;
 - c. Hotels, motels, and buildings used for dwelling units, CBD, as defined under Article F, except that such occupancy may be superseded by building code regulations;
 - d. Theaters, community rooms, museums and galleries and other places of assembly for the purpose of entertainment or education;
 - e. Religious, educational, charitable and benevolent institutional uses which do not provide housing facilities;
 - f. General service or repair shops, when not employing more than ten (10) persons on the premises in a single shift (not including persons whose principal duties are off the premises) and providing that all storage and activities are conducted within a building;
 - g. Accessory uses incidental to any permitted uses which are attached to or within the principal building.
5. Applications will be made for all Special Uses where necessary.

6. Buffer. A 6' fence of one type shown in Exhibit B will be placed on the west boundary of the property.
7. Landscaping will include a minimum of two (2) deciduous trees or planters and a minimum of ten (10) bushes in locations as shown on the conceptual plan.
8. The buildings will have a brick façade on the south side of the building facing Wolfe St. and the east side facing the railroad, and no vinyl siding will be used on any part of the façade. A brick walkway or brick stamped decorative concrete will be provided on the south side of the building where elevation permits. The style of the building will be esthetically similar to Exhibit C. A bicycle rack will be located on the property.
9. Severability. The unenforceability, illegality, elimination, revision, or amendment of any proffer set forth herein, in whole or in part, shall not affect the validity or enforceability of the other proffers or the unaffected part of any such proffer.

The SUP process began as a result of a zoning enforcement inspection due to an anonymous complaint regarding the potential storage of inoperable vehicles as well as the potential lacking of proper screening, which is typically associated with a vehicle repair business in an M-1 district. Upon inspection and further investigation of the parcel, the prominent issue that arose was that the operation of vehicle repair is not a use permitted by-right on the subject parcel due to its B-1 zoning classification. Staff then sent a notice of violation to the property owners informing them that the vehicle repair use was not permitted by-right. During the rectification period, the property owners explained they thought that vehicle repair was permitted per proffer number 4.6) above specifying that general service and repair shops were permitted. Staff explained the Zoning Ordinance further clarifies that general service and repair shops include examples such as cleaning and laundry establishments, printing and tailoring shops, appliance repairs, and upholstery and furniture repairs and that vehicle repair is a separate use and can operate in the B-1 district only with a SUP. The property owners decided to rectify the situation by applying for a SUP to allow a vehicle repair use. The SUP in which they are applying is per Section 10-3-85 (4), which states: *Repair of vehicles, recreation equipment, or trailers with all activities and storage of inoperable vehicles completely enclosed within a permitted structure. Vehicle excludes over the road tractors, their trailers, heavy equipment, manufactured homes, industrialized buildings, and agricultural equipment. No vehicle salvage, storage of inoperable vehicles, or sale of junk is allowed.*

As noted within the letter submitted by the applicants, a vehicle repair business may have operated on site for more than 40 years. Staff cannot confirm that statement to be exactly true, however research performed by staff has proved that a vehicle repair business did operate on site for many years and as recent as 2007. In addition, one can clearly observe the buildings on site are designed for a vehicle repair business as well as a car wash establishment, which per staff's research are some of the uses that operated on this property in the past.

It should be recognized, however, that during the time when a vehicle repair business operated at this property, the parcel was zoned M-1, which permits vehicle repair by-right. It should be further understood that unlike in the B-1 and B-2 zoning districts, where all vehicle repair activities must occur within an enclosed structure, the M-1 district states that outside storage or repair shall be located in a designated area and screened from general public view. In conversation with the business owner, he stated that he previously worked from the automotive repair shop at 191/193 South Avenue, where the associated buildings have recently been demolished for the construction of the forthcoming CVS pharmacy/retail store at the corner of South High Street and South Avenue, which was previously zoned M-1.

During the review of the special use permit request, staff recently observed inoperable vehicles on site as well as the collection of junk, debris, and several other inoperable vehicles on the adjoining lot, behind the vehicle repair business, which is also owned by the applicants. Staff has discussed this issue with the property owners and has mailed them a notice of these violations.

Despite the situation in which this case surfaced, and irrespective of the property's other violations, the main question under consideration is whether the subject property is an appropriate location for a SUP to operate a vehicle repair use. After much scrutiny and discussion, staff believes a SUP for a vehicle repair use is fitting at this location. Clearly, main parts of the building are intended for such a use, and as discussed above, such a use has operated on site for many years in the past, and had this property not been rezoned in 2009, vehicle repair would be a by-right use.

As noted within the applicants' letter, if the SUP is granted, they will install garage doors on the old, open car wash bays, where some vehicle repair and storage occurs. Although they are willingly stating they will perform such measures, as stated in the SUP ordinance language, all activities must occur within an enclosed structure thus enclosing the open bays is essentially a requirement of the permit.

The property owners and the operator of the business must strive to rectify their violations relating to the collection of inoperable vehicles and the storage of junk and other debris. Failure to do so could result in a misdemeanor charge. It should be clearly understood, that if the SUP is approved, the actions related to these violations are still not permitted.

Staff believes vehicle repair at this location would have no more adverse effect on the health, safety, or comfort of persons living or working in the surrounding area than would any use generally permitted in this district. Staff supports a favorable recommendation to City Council to approve this request with the following conditions:

1. One parking space shall be provided per bay plus one additional space shall be provided associated with the office space of the business. Parking spaces shall be clearly marked and delineated on site. (Thus, if each bay is used as discussed with the applicant, which was to use five bays, then six parking spaces would be required.)
2. The garage doors to cover the open bays shall be installed within 30 days of approval of the SUP.
3. If in the opinion of Planning Commission or City Council, the use becomes a nuisance, the SUP can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chairman Jones asked if there were any questions for staff.

Mr. Way said the City received a complaint about the junk cars. Did the City receive any complaints about the general activities of the repair shop?

Mr. Fletcher said the complaint was that they were potentially storing inoperable vehicles on the property, and that there was no screening of the vehicles. When our inspectors went out and did the investigation, the bigger issue that came up was that this is not even a use permitted by right for this property.

Chairman Jones said it was more of an aesthetic complaint as oppose to an actual use complaint; is that correct?

Mr. Fletcher replied yes.

Chairman Jones asked if there were any further questions. Hearing none, he opened the public hearing and asked the applicant or the applicant's representative to speak.

Mr. Casey Stemper, of Harrisonburg, said he is one of the owners in WRockstreet LLC. I would like to thank staff for helping us in this situation. We are working with staff on this, we have a good tenant in the location and we feel he has a good business. As stated earlier, if we would not have gone through the lengths to have the property rezoned, this business would be in compliance with zoning. We still intend to do the rezoned, B-1 Conditional plan; we are just waiting for more favorable economic times. I would be happy to answer any questions that you might have for us concerning the property or use.

Mr. Da'Mes said I wish we were in more favorable economic times, because I really like the plan that you have for this site. As the owner of the site, do you plan to install the garage doors, as conditioned in number two, or will you require your tenants to have them installed. I asked this because these bays do not appear to be conventional size.

Mr. Stemper replied he, as the owner, has received price quotes and will be having them installed; not the tenant. They are a bit taller than a conventional garage door, but the width is the same. We will be taking care of that issue in a timely fashion, 30-days, or less.

Chairman Jones asked if there were any further questions for the applicant. Hearing none, he asked if there was anyone wishing to speak in favor of the proposal. Hearing none, he asked if there was anyone wishing to speak in opposition to the proposal.

Mr. Barry Kelly said he is a Harrisonburg resident and owns properties downtown. I am not really opposed to this; but, I do have some concerns. I have just redeveloped 202 North Liberty Street and it is very close to this property; I also own residential properties across the street from this location. My desire is to see more office and residential in the downtown location, so I was very excited when Mr. Stemper submitted his plan for B-1, Conditional and I agree that economic times are very difficult right now. I understand the reasoning for Mr. Stemper doing what he is and I am not opposed. My concerns are the hours of operation and the noise that might come from this operation. With having residential and office across the street these concerns could be big factors that affect those properties. I am not opposed to this request; I just hope my concerns can be addressed.

Mr. Andrew Forward said he owns property adjacent to this site at the corner of North Liberty Street. I am also concerned about the hours of operation; specifically, how many days of the week will the business be operating and the time of day. I have concerns of noise that may emanate out of the operation. We are looking at developing our property into a mixed use at some point and I would not want this operation to adversely affect the nature of our development.

Chairman Jones asked if the applicant would like to address those concerns.

Mr. Stemper said the hours of operation are something we would be willing to work with everyone on in order to rectify that.

Mr. Fletcher said you as the property owner can say what you would like to offer as far as the hours of operation; but, being this is a special use permit request, Planning Commission has the authority to recommend a condition be placed upon the special use permit. This would then be forwarded to City Council for their consideration.

Mr. Da'Mes said it would be more favorable for Planning Commission to recommend a condition at this time; rather than City Council having to come up with something, they could amend or approve what we recommend.

Mr. Fletcher replied my recommendation would be that if it is a concern of Planning Commission to limit hours of operation, then give it a time limit so that City Council can then take that into consideration during their public hearing. It is flexible, as Mr. Stemper said, you could consider 8am-5pm or 7am-7pm; it is rather arbitrary. We did not have any complaints whatsoever from any one regarding noise or hours of operation. Staff considered the idea of limiting the time; but, we felt it was not something that staff was hard pressed to make a condition of the special use permit.

Mrs. Fitzgerald said the first two conditions might, in part, take care of the concern on its own; in that you are going to be working in a space covered by door, you are going to be more proactive about inoperative vehicles and discarded materials, and you are going to be creating orderly parking on site. Some of the aesthetic and orderly operation of the business might be affected by those conditions.

Chairman Jones said I am thinking that, as you have noted, it has been in operation and the City has received no complaints. I think that condition number three would cover this issue in the event that complaints started to come in, we or City Council, can call it back for further review. If necessary, at that time we can impose time restrictions. I do not know that it is absolutely necessary at this point. I am sure that if complaints do come in, we can speak with the property owner, and he can talk with the business owner, and it may take care of itself; if not, we can condition it.

Mr. Da'Mes said that is one way of looking at it; or we can be proactive in sensing that it may become an issue and, in essence, we have received two complaints tonight.

Dr. Dilts said these property owners are concerned that it might become that way, not that it is.

Chairman Jones said personally, I am not for more regulation unless it is necessary. I understand the proactive approach; but, it is my belief that it is not necessary at this moment.

Mrs. Fitzgerald said I tend to agree, particularly since condition one and two might go, somehow, towards helping to regulate this use more effectively.

Mr. Way said I see the case for time restrictions; however, with the focus on condition number three, if something becomes a nuisance or there are other problems, people should be proactive and come and speak to us or the City about it.

Chairman Jones said it is my belief that if there are repairs going on at all hours, in such a matter that creates a disturbance, I think we are going to hear from the residents that actually live in the area. But having no complaints at this time, I do not see the need.

Dr. Dilts asked if the violations of inoperable vehicles and junk were covered under condition number three.

Mr. Fletcher said it is rather irrelevant, because it is something they have to correct, regardless of the special use permit.

Dr. Dilts said I understand that, but, if they do not correct or it happens again, is it covered under number three.

Mr. Fletcher replied yes.

Chairman Jones said it is my belief that we have a vehicle at our disposal should it become necessary. At this point it is not see the need. The floor is open for a motion on this request.

Mrs. Fitzgerald moved to recommend approval of the special use permit with the listed conditions.

Mr. Way seconded the motion.

Chairman Jones asked for a roll call vote.

Commissioner Da'Mes – No.

Commissioner Dilts – Yes.

Commissioner Way – Yes.

Commissioner Fitzgerald – Yes.

Chairman Jones – Yes.

Mrs. Banks said the motion passes (4-1).

Chairman Jones said this will move forward to City Council with a favorable recommendation on August 9, 2011.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said proactive zoning inspected the Waterman Elementary Sector of the City, where they found 18 violations consisting of inoperable vehicles and discarded materials. Next month the Zoning inspectors will be inspecting the Bluestone Hills/Valley Mall area.

Other Matters

Preliminary Plat Validation Extension Request – Community Street Plat Variances

Mr. Fletcher said the following letter is from Kimberly Moyer, a representative of Court Square Properties, LLC, requesting to extend the validation on a previously approved, outstanding subdivision. The request is related to the July 14, 2009 approved preliminary plat titled “Proposed Redivision of the Remaining Portion of Lot 63, 64, 65, & 66 of Effinger’s Addition to Harrisonburg.”

In 2009, the intent of the subdivision was to preliminarily subdivide three lots, zoned B-1, Central Business District, located within the block bordered by Community Street, East Wolfe Street, old North Mason Street, and East Rock Street, into six lots. The application included variances to deviate from the requirements of Sections 10-2-41 (i) (3), 43, 45, 66, and 67 of the Subdivision Ordinance, which require the dedication of certain easements, right-of-way, and the construction of any necessary street improvements. Staff supported the request, Planning Commission voted 6-0 (one member was absent) in favor of the application, and then City Council unanimously approved the request 5-0. (The extract from the City Council meeting, minutes from the Planning Commission meeting, and the associated staff report and other supporting documents, including the plat, are provided for reference.)

Per the Subdivision Ordinance Section 10-2-26, which outlines the requirements for individuals to file a final subdivision plat, or section thereof, following the approval of a preliminary subdivision plat, subsection (d) states: *failure to file a final plat or section thereof within twenty-four (24) months after approval of the preliminary plat will render such approval null and void unless an extension of time is applied for and granted by the planning commission.* Thus, Court Square Properties, LLC is requesting just over a one year extension—until July 15, 2012—to file a final subdivision plat, or section thereof, to maintain their valid preliminary plat. Since the preliminary plat was approved on July 14, 2009, unless the extension is granted by Planning Commission at its July 13, 2011 regular meeting, the plat will become null and void the next day.

If Planning Commission wishes, this would take the typical motion and subsequent vote.

Chairman Jones said I see no reason not to extend it. My only question is do we want to extend this for just twelve months or more or less. Did we not just extend the time frame for filing subdivisions?

Mr. Fletcher said the City had a regulation which required a plat to be filed within twelve months. As Planning Commission is aware, over the past several years we have had several plats expire and had to go through the process again. So, the ordinance was amended and the time was increased to twenty-four months. Also, the State legislation allowed certain types of outstanding, approved preliminary plats to be valid until July 1, 2014. However, this particular applicant did not meet the criteria for that State extension.

Chairman Jones said I would recommend twenty-four months as an extension because that is what would be allowed if it were a new plat before us.

Mr. Way asked staff if there would be any problems with twenty-four months rather than twelve.

Mr. Fletcher said I do not see any problems.

Mrs. Fitzgerald moved to recommend extending the plat deadline until July 13, 2013 for the Community Street Plat Variance.

Dr. Dilts seconded.

Chairman Jones called for a voice vote.

All voted in favor of the motion (5-0).

Adjournment

The meeting was adjourned at 8:20 p.m.

Chairman William L. Jones, Jr.

Secretary, Alison Banks