

MINUTES OF HARRISONBURG PLANNING COMMISSION
December 12, 2012

The Harrisonburg Planning Commission held its regular meeting on Wednesday, December 12, 2012, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

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

Members absent: 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 six members in attendance. He then asked if there were any corrections, comments or a motion regarding the minutes from the November 14, 2011 Planning Commission meeting.

Mrs. Fitzgerald moved to approve the minutes from the November 14th Planning Commission meeting.

Mr. Chenault seconded the motion.

Dr. Dilts abstained from voting because she was not in attendance at the November 14th meeting.

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

New Business

Capital Improvement Program

Chairman Jones said the first item on the agenda is the Capital Improvement Program (CIP). The CIP is a multi-year production and scheduling of capital projects of \$50,000 or greater, within the appropriate financing plan to fund these projects. Planning Commission's recommendation on the CIP is forwarded on to City Council for their action. Questions were sought for Department Heads prior to tonight's meeting and I will ask those questions.

Chairman Jones continued by asking City Manager Kurt Hodgen to come forward. Last year the Municipal Building Annex was in the CIP with expected expenditures spread over three years. This year it is described as a Municipal Building Complex and the expected expenditures are compressed into one year; which is next year. Is this a change in priority and is there additional information about the change.

Mr. Hodgen said this is a change in direction. Once the old City School Board building became available, City Council had some change in what they thought about doing with that building. In prior CIPs we had discussed demolishing that building and constructing an annex to the north of the existing Municipal Building. We could then vacate the Municipal Building one floor at a time in order to provide the much needed renovation for it. That would have resulted in some additional space that we currently need. Once it was decided that we did not want to take down the old City School Board building, we needed to look in a new direction and you may have seen the presentation last night at City Council on what we are conceptually looking at right now. That essentially sums up the reason for the change in the CIP. The timing and dollar amount will likely change, but we did want to have a project in this year's CIP for public discussion.

Chairman Jones asked if there were any questions for Mr. Hodgen. Hearing none, he said the next questions are for Mr. Jim Baker, Director of Public Works. Are there more details that could be

supplied regarding the Cantrell Avenue widening General Fund project request on page 64 of the CIP. I realize that part of the impetus of this project is traffic volume and the opportunity to look at areas where JMU is conducting construction; but, is there any more information or sense of prioritization about this at this time.

Mr. Baker replied first of all the traffic volume that is there today warrants a left turn lane at the intersection of Mason Street and Cantrell Avenue, although we do not have the right-of-way to install those lanes now. This would really improve the intersection and take away the split phase signaling that is in place now. That is the number one priority. The number two priority is we would like to get a north bound right turn lane off of South Main Street onto Cantrell Avenue so that we can have some traffic flow through that traffic signal as well. This project has been placed here to be in coordination with JMU's planning for their improvements to the North Campus (the old hospital) and we have contacted the university and given them our preliminary plan on this and the need for the additional right-of-way. To give you specifics on the schedule, I do not have any and I do not know JMU's schedule or exactly where the funding will come from for all of this. It is traffic volume and intersection congestion that is driving this project.

Chairman Jones said question number two is why did the North End Greenway get placed in the CIP as a line item within Public Works instead of Parks and Recreation.

Mr. Baker said a lot of the trail and biking improvements that have been installed are initially Public Works projects and are in tandem with Parks and Recreation. This is for work installing the projects; future maintenance would probably be shared between the two departments.

Chairman Jones said lastly, is it possible to get more information about the Water Street parking deck project.

Mr. Baker replied the Water Street parking deck is a place holder for a conceptual idea of what may need to be done to the parking deck in the future. When it is done we may want to expand that project into building a more multi-use facility with perhaps a commercial building or commercial sales around it and within it. Many cities are doing this now when they construct new parking decks. We hesitate to even put a number there because we are not actually sure of what that cost may be. The parking deck is not to the point where it needs to be rebuilt; but it will come shortly, it is one of the first decks constructed in the downtown area.

Chairman Jones asked if this consideration was in last year's CIP.

Mr. Baker responded no.

Chairman Jones said that question is in part connected to some of the various proposals floated through Downtown Redevelopment regarding work towards solving or anticipating future parking issues downtown. Is that correct?

Mr. Baker replied yes, we took into consideration what we have heard from Downtown Redevelopment.

Chairman Jones asked if there were any further CIP questions for the Departmental personnel. Hearing none, he asked Planning Commission if they had any further comments.

Mr. Chenault recommended forwarding the CIP to City Council for its consideration.

Dr. Dilts seconded the motion.

All voted in favor (6-0).

Chairman Jones said this would be heard at the January 8th, 2013 City Council meeting.

Special Use Permit – 1042 West Market Street (10-3-91 (9))

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: Commercial structures, zoned B-2
- North: Vacant land, non-conforming quarry property, zoned B-2
- East: Commercial building, zoned B-2
- South: Across West Market Street, commercial buildings, zoned B-2
- West: Non-conforming dwelling, zoned B-2

The applicant is requesting a special use permit per Section 10-3-91 (9) of the Zoning Ordinance to allow a reduction in the required 10-foot side yard setback to zero feet along a property line adjoining a parcel zoned B-2. If a special use permit is granted, the applicant would subdivide the property located at 1042 West Market Street into two lots; each lot would have a building located no closer than 4 feet, 6 inches of the new property line. Although the special use permit allows a setback of zero feet, with this particular request, the applicants are requesting a reduced setback only as shown on the submitted plat.

The site is located along the northern side of West Market Street, just west of the Waterman Drive and West Market Street intersection. Currently located on the parcel are two commercial buildings that sit within 9 feet of one another. The applicant desires to establish a new property line between the two existing buildings; thus placing each structure on a lot to itself. This would allow the applicant to sell the newly created parcels and structures separately. At present, one of the structures located on the site has a property line running through it and therefore is positioned on the subject property and parcel 37-B-1, also owned by the applicants. Should the SUP be approved, the applicants will proceed with a minor subdivision to place the two commercial structures on separate parcels.

This proposal has been discussed with the Building Official and, based upon the Virginia Construction Code, it was determined that no improvements to the existing buildings would be required should this special use permit be approved and the new property line established. Also, during a recent site visit, staff noted a violation of inoperable vehicles and discarded materials on the property. A certified notice of violation has been sent to the property owner making them aware of the situation, and requesting the property be brought into compliance with regulations of the B-2 zoning district.

Staff does not have concerns with the requested special use permit and recommends approval of the reduced setback as shown on the survey plat submitted with the application.

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

Mr. Mike Pugh with Old Dominion Realty, said he represents the owners, the Heatwole family. We do have a potential buyer for the property located to the east. It is a business located within the City that would like to expand, Twin's Auto Sales. They have been located on South Main Street for a number of years and they would like to establish a collision center at the West Market Street location, along with an auto detail center. They intend to paint the structure and repair and rebuild the retaining wall on the site that is currently in disrepair. They would re-pave the parking area and would install some screening to hold inventory at that location. I would like to thank you for your time and that of City Staff for all their help on this request. I would be happy to answer any other questions that the Planning Commission may have.

Chairman Jones asked if there were any questions for Mr. Pugh. Hearing none, he asked if there was anyone else with the applicant wishing to speak. Hearing none, he asked if there was anyone in favor of the request wishing to speak. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Chenault made a motion to recommend approval of the special use permit as presented.

Dr. Dilts seconded the motion.

Chairman Jones said there is a motion and a second, is there any further discussion. Hearing none, he called for a voice vote on the matter.

All voted in favor of the motion (6-0) to recommend approval of the special use permit request.

Chairman Jones said this item will move forward to City Council on January 8, 2013.

Rezoning – 342 South Main Street B-2 to B-1C

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

Mrs. Banks 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: Professional office, zoned B-2
- North: Commercial complex, zoned B-2
- East: Apartment building, zoned U-R
- South: Professional office building, zoned B-2

West: Across South Main Street, City Municipal Building, zoned B-1

In January 1979 the single-family home at 342 South Main Street was purchased for use by the law firm of Hoover, Hoover, and Penrod to house their offices. The following month, the parcel was granted a variance from the Board of Zoning Appeals for a reduction in off-street parking requirements. A condition of the variance was that the applicants (Hoover, Hoover, and Penrod) would provide 8-10 parking spaces on the site for clients. In October 2004 the property received approval for a special use permit to allow a reduction to the side yard setback to construct an addition at 2'3" from the northern property line. In October 2012, Hoover Penrod, PLC applied for a building permit to construct an addition along the southern facing side of the building. The permit was denied after zoning review because the addition would encroach into the required setback. In a conversation with the applicants, staff suggested they consider rezoning the property to B-1, as such a rezoning would be in conformance with the Comprehensive Plan, and would allow for a zero setback.

The applicants are requesting a rezoning from B-2, General Business District to B-1C, Central Business District Conditional. The applicant has submitted the following proffers:

1. Front and rear setbacks shall be 20 feet.
2. Ten off-street parking spaces shall be maintained on the parcel.
3. If used residentially, the property shall be a single-family dwelling and occupancy shall be limited to the occupancy restrictions of the R-1, Single Family Residential District.

While this rezoning could be considered an accepted expansion of our downtown area and in compliance with the Comprehensive Plan's land use designation of Mixed Use Development Areas, any extension of our B-1 district could place undue burdens on the City. Because the B-1 classification allows for a zero setback, a building could be constructed on a parcel from property line to property line. The subject site is directly adjacent to two highly used public alleys as well as fronting along South Main Street. Staff has concerns that constructing to the property line at either the front or the rear of this parcel would cause a disruption of the sight distance at the adjacent street and alley intersections. To alleviate this concern, the applicant is proffering a 20-foot front and rear yard setback.

As well, the Central Business District does not have an off-street parking requirement and rezoning property to B-1, without consideration for how the parking need would be met is not in the best interest of our downtown area. At staff's suggesting, the applicants have proffered to maintain ten off-street parking spaces, which as mentioned previously, was a condition of the 1979 variance approval.

Staff is also appreciative of the owner's offer to keep the parcel from development as multiple dwelling units by proffering a residential use and occupancy of single-family. The request is in line with the Comprehensive Plan for this area and staff recommends approval of the rezoning request with the above listed proffers.

Chairman Jones asked if there were any questions for staff.

Mr. Way asked if the ten parking spaces were for clients or just overall ten parking spaces required.

Mrs. Banks said just overall, ten off-street parking spaces.

Mr. Da'Mes asked when was the Land Use Guide amended to incorporate this area as a Mixed Use Development.

Mrs. Banks said I checked that earlier it was changed during the 2004 Comprehensive Plan update.

Mr. Da'Mes asked how far out does the Mixed Use Development Area extend south.

Mrs. Banks said it depends on which side of the street you are looking at. It extends to the merge of Main and Liberty streets on the western side of South Main Street and to the Campbell Street intersection on the eastern side.

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

Mr. David Penrod said he is one of the attorneys and partner at Hoover Penrod and we are making this request because we desire to construct a one story addition of approximately 580 square feet to the south side of our building. Rather than go through the process of requesting a variance or a special use permit, we followed staff's suggestion of rezoning to B-1. We currently have 21 parking spaces on site, which is an increase in what we have had in previous years and we intend to keep all of those spaces. There is something of a tension with parking, one of the partners suggested a few years ago that we put parking within the front yard; most of us thought that was utilitarian, but not very attractive. We are conscious of keeping the building attractive and taken care of; but at the same time we want to be able to maintain our business. I believe the staff report is accurate and complete and I would gladly answer any questions you may have.

Chairman Jones asked if there were any questions for Mr. Penrod. Hearing none, he asked if there was anyone else with the applicant wishing to speak. Hearing none, he asked if there was anyone in favor of the request wishing to speak. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Chenault moved to recommend approval of the rezoning request with the submitted proffers. I would also like to say that this building is probably one of, if not the best, architectural and historical restorations in Harrisonburg and the significant additions that have previously been made to the structure are in absolute keeping with what is existing there now. It is an example of what we should look for when we aspire to restore and reuse these types of structures. Additionally, it is of my opinion that this should be part of the Central Business District anyway.

Mr. Way said I echo everything Mr. Chenault has said and second the motion.

Chairman Jones said there is a motion and a second, is there any further discussion. Hearing none, he called for a voice vote on the matter.

All voted in favor of the motion (6-0) to recommend approval of the rezoning request with the submitted proffers.

Chairman Jones said this item will move forward to City Council on January 8, 2013.

Rezoning – 305 North High Street R-2 to R-3C and Zoning Ordinance Amendment – Section 10-3-26 Charitable or Benevolent Institutional Uses Off-Street Parking Location Exception and Other Modifications

Chairman Jones read the request and asked staff to review.

Mr. Fletcher said what I will do is present the next two items on the agenda together and then we can have discussion on them. The Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. These are older neighborhoods, which can be characterized by large housing units on small lots.

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

Site: Single family dwelling, zoned R-2

North: Single family dwelling at the corner of North High Street and Park Place, zoned R-2

East: Across North High Street, single family structures converted to multiple dwelling units fronting North High Street and West Rock Street, zoned R-2 and R-3

South: Across Green Street, Mercy House, Inc. operations, zoned R-3

West: Single family dwelling fronting Park Place, zoned R-2

Mercy House, Inc. (Mercy House) is proposing to amend the Zoning Ordinance Section 10-3-26 Location in Relation to Building or Use Served to allow for charitable and benevolent institutional uses to locate required parking on parcels that are not the same parcel as the uses served. At the same time, Mercy House is also requesting to rezone the property located at 305 North High Street from the R-2, Residential District to R-3C, Medium Density Residential District Conditional with intentions to expand their operations and to use the subject property as offices associated with their non-profit charitable/benevolent institutional use that is currently located across Green Street at 243 and 247 North High Street. The applicants have submitted one proffer with the rezoning, which includes:

- Residential occupancy shall be limited to the occupancy restrictions of the R-1, Single Family Residential District.

If approved, the proffer maintains the existing residential occupancy restrictions of the R-2 district, which are the same restrictions of the R-1 district, where owner occupied units can rent space to two boarders and non-owner occupied units can be rented to a single family or one individual plus one boarder. All other uses in the R-3 district would be permitted so long as zoning regulations are met.

The two requested applications should be considered a “package deal,” as Mercy House has informed staff that if the Zoning Ordinance amendment is denied, they do not want to proceed with the rezoning request.

The proposed amendments to Section 10-3-26 are shown below. The only amendment proposed by Mercy House is the addition of 10-3-26 (a) (1) b. All other modifications are proposed by staff and are unrelated to the amendment desired by Mercy House and shall be considered for modification regardless of positions for Mercy House’s request. If Mercy House’s proposed amendment is not desirable, but all other suggested provisions are, then 10-3-26 (a) (1) b. shall not be included in the revised Code. (Proposed deletions are “stricken” and proposed additions are “underlined.”)

10-3-26 – Location in relation to building or use served.

(a) All parking spaces required herein shall be located on the same lot with the building or use served or on adjoining lots within a zoning district permitting the same, located on property zoned where such parking is permitted. A common or cooperative location shall be in the ownership of all of the participating property owners, or shall have easement and maintenance agreements between the participating property owners for a period of at least ten (10) years following the date of city approval and shall ~~have parking space equal to the sum required by subsection 10-3-26(b).~~ provide the minimum sum of required parking spaces for all uses. ~~The amount of space may be further reduced by the planning commission subject to its determination that fewer spaces are needed due to different hours of activity among the various uses, a guarantee of the permanent availability of such space, or other such factors.~~ When assembly uses propose borrowing parking from other public or private parking facilities which are properly zoned and in reasonable proximity, the planning commission, upon site plan review, may modify the number of on-site parking spaces.

(1) Notwithstanding the requirements set forth above:

a. ~~Notwithstanding the requirements set forth above,~~ industrial operations for the manufacturing, processing, storage, or treatment of products which are not customarily found in retail centers as permitted by the M-1, General Industrial District may also locate required parking on parcels that are not on the same or adjoining parcels from the uses served. Such parcels shall be zoned B-2, General Business District or M-1, General Industrial District, located in reasonable proximity to the property in which the parking serves, and may be located across public streets and/or alleys. A common or cooperative location shall be in the ownership of all of the participating property owners or shall have easement and maintenance agreements between the participating property owners for a period of at least ten (10) years following the date of city approval.

b. ~~charitable or benevolent institutional uses may also locate required parking on parcels that are not on the same or adjoining parcels from the uses served. Such parcels shall be zoned where such parking is permitted and shall be located directly across local public and private streets and/or alleys (as depicted on the Comprehensive Plan's Street Network Map) from one another. A common or cooperative location shall be in the ownership of all of the participating property owners or shall have easement and maintenance agreements between the participating property owners for a period of at least ten (10) years following the date of city approval.~~

~~(b) For uses located on contiguous but separate lots, the number of required parking spaces may be reduced in accordance with the following provisions:~~

~~(1) The uses are contiguous uses.~~

~~(2) Parking areas of the respective uses are connected by safe and convenient pedestrian access, as well as by automobile access.~~

~~(3) A shared parking agreement is submitted and approved by the zoning administrator. The agreement will be binding on the current and future property owners as long as the permitted uses remain substantially the same.~~

(b) Reductions in required parking for two (2) or more uses may be approved by the zoning administrator, at the request of the applicant, where a shared parking calculation and agreement, if applicable, shall be submitted to and approved by the zoning administrator. Such agreements shall be binding on the current and future property owners as long as the permitted uses remain substantially the same. Reductions shall be in accordance with the following calculation provided by the applicant:

- ~~a.~~(1) The total number of parking spaces required for each land use is determined in accordance with section 10-3-25.
- ~~b.~~(2) Using the table below, determine the number of spaces needed by each use for each of the four (4) time periods by multiplying the parking required for each use by the corresponding percentage of use for that time period.
- ~~c.~~(3) Calculate the total number of spaces needed for all uses for each time period.
- ~~d.~~(4) The time period with the highest number of parking spaces required for the sum of all uses shall be the number of parking spaces required.

Shared Parking Calculations for Contiguous Uses				
Use	Weekday		Weekend	
	Daytime (8:00 a.m.— 6:00 p.m.)	Evening (6:00 p.m.— 11:00 p.m.)	Daytime (8:00 a.m.— 6:00 p.m.)	Evening (6:00 p.m.— 11:00 p.m.)
Office	100%	10%	10%	5%
Industrial	100%	100%	100%	100%
Retail/personal services	60 <u>60%</u>	90%	100%	70%
Hotel	75%	100%	75%	100%
Multifamily residential	50 <u>50%</u>	75%	100%	80%
Restaurant	75%	100%	100%	100%
Entertainment/recreational	40 <u>40%</u>	100%	80%	100%
All other uses	100%	100%	100%	100%

The issues involving these applications began at the end of August when Sallye Trobaugh, a real estate broker and member of the Board of Directors for Mercy House, inquired with staff about the ability of Mercy House to use 305 North High Street as office space for the non-profit. Staff informed Ms. Trobaugh that Mercy House would have to rezone the property to a zoning district that permitted such a use and that if they were interested they should consider rezoning the property to R-3—the least intensive zoning district permitting the desired use. Staff also informed them that using the 1,800 +/- square foot building would require, at minimum, six off-street parking spaces

and that it appeared physically impossible to meet that requirement on such a small lot. To make it work, staff explained that Mercy House could propose an ordinance amendment to the parking regulations. Staff also stated that we recognized there could be favorable arguments made in Mercy House's favor to rezone the property for a charitable and benevolent institutional use, but doubted that staff would positively recommend for the Zoning Ordinance amendment.

Nonetheless, after more discussions with Mercy House and upon further staff evaluation, and because staff was already considering making amendments to 10-3-26 for other reasons (as demonstrated above), staff informed Mercy House we would propose additional modifications to 10-3-26 to attempt to resolve their issue as it seemed, in this particular situation, the zoning regulations could be unnecessarily restrictive.

Instead of narrowly tailoring the Zoning Ordinance amendment to resolve Mercy House's situation, staff originally attempted a more comprehensive and flexible off-street parking guideline for all uses. Staff concluded, however, such an amendment would have created problems. An example of our concerns included the general policy approach that if staff was okay with allowing uses to count parking directly across the street from uses served, then staff should also be in favor of allowing uses to count off-street parking spaces on lots that could be one lot separated from the use served. However, staff discussed the many problems in allowing the latter to occur including the question of how far is too far from the use served. Another example, although maybe not so relevant for Mercy House's particular case because both of the properties in question are corner lots, was that staff was not in favor of promoting individuals to cross public or private streets, mid-block, to get to the desired property. Although this practice could already occur across the City because individuals, at their own discretion, might park across the street at another business's parking lot, staff did not want to promote and allow it through City Code.

As staff recognizes Mercy House's great service to the City, it makes it difficult to not be supportive of such an ordinance amendment. Staff also explained to Mercy House we could not support a narrowly tailored amendment to allow such practices to occur for charitable/benevolent organizations only. Our concerns remain the same regardless of whether the parking would serve a non-profit or for profit use. Staff believes a line has been established in permitting such accommodations with allowing the City's larger industries that provide manufacturing, processing, storage, or treatment of products uses as they operate in a much different capacity than other industries and businesses. For these reasons, staff removed the proposition from consideration and Mercy House tabled their rezoning request, both of which were planned for the November regular meeting.

Nevertheless, Mercy House returned with their own Zoning Ordinance amendment proposal this month, which is narrowly tailored to their exact situation. Their proposed language is shown above as 10-3-26 (a) (1) b. If approved, charitable/benevolent institutional uses, regardless of the zoning district in which they are permitted, could meet the required minimum parking spaces by locating parking spaces on lots directly across "local" public or private streets or alleys. The term "local" is important for the intent of the proposed provision because streets such as Main Street, Market Street, High Street (Virginia Avenue), Port Republic Road, Reservoir Street, and a few others are not classified as "local," and therefore, parking would not be permitted across those streets. Oddly, the narrowed policy approach would also not permit locating required parking on a parcel that is on the same side of the street as the use served that might be one lot separated from the use served by a narrow strip of property.

As noted above, staff is not supporting Mercy House’s request as we believe this is not a good practice for non-profit or for profit uses. Staff is, however, recommending adopting all of the other provisions proposed for modification. For the most part, staff’s proposed changes do not change the intent of the existing regulations, which were originally approved in January 2012 as part of the comprehensive amendments associated with the UDA grant consultant work. Instead, staff’s proposed revisions offer a more direct and simplified approach in how reductions in required parking can occur. Arguably, the only new provision is that the proposed text now clearly specifies that the minimum sum of required parking spaces shall be provided when common or cooperative parking locations are utilized. The existing text does not state this requirement, but it was intended for that to be the case.

Although staff is not supporting Mercy House’s proposed parking amendment, if it is believed such a provision should be approved, staff is supporting Mercy House’s rezoning request. This is because if the parking provision exists, the circumstances of the properties involved meet the intent of allowing the proposed use. In addition, such a rezoning should not negatively impact the surrounding neighborhood or the long term plans for this area of the City.

The applicant should be aware that if the ordinance amendment is approved and the property successfully rezoned, Mercy House must still meet the minimum parking requirements. Based upon the information provided and available to staff, Mercy House could be required to provide 25 parking spaces. See the table below:

Property	Residential Parking Requirements	Charitable/Benevolent Institutional Parking Requirements	Total Parking Spaces Required
243 North High Street	(7-one bedroom units) X (1.5 spaces per unit) = 11 parking spaces	n/a	11 parking spaces
247 North High Street	(2-one bedroom units) X (1.5 spaces per unit) = 3 parking spaces	(1,454 sq. ft.) / (300 sq. ft. of gross floor area) = 5 parking spaces	8 parking spaces
305 North High Street	n/a	(1,800 sq. ft.) / (300 sq. ft. of gross floor area) = 6 parking spaces	6 parking spaces
Minimum Required Parking Spaces			25 parking spaces

Notwithstanding the minimum requirements as demonstrated in the table above, the applicant may choose to request a reduction in required parking spaces per the proposed Section 10-3-26 (b). Based upon the table within 10-3-26 (b), the Weekday Daytime time period requires the highest number of parking spaces, which would be 18 spaces. Thus, at a minimum, Mercy House shall provide 18 parking spaces, two of which shall be handicapped accessible.

It should be further understood that if the 305 North High Street property is used as office space for the non-profit, it appears impossible for parking to be established on the subject property as there is not enough space available to meet the dimensional requirements of the Design and Construction

Standards Manual (required via the Zoning Ordinance (Section 10-3-29 (b)) or the Zoning Ordinance's landscaping requirements. The onsite parking spaces that currently exist for the single family residential use that currently use the public street right-of-way for maneuvering, can only be used if the property is used as a single family dwelling. In other words, if the property is rezoned and used as an "other use," these existing parking spaces cannot be used.

The applicant should also remember that renovations must meet all Building Code requirements, which includes making the structure handicapped accessible beginning at the property line. This means that additional site improvements, including but not limited to constructing private sidewalk, could be required to make the site handicapped accessible.

Lastly, it should be understood that future owners of the 305 North High Street property could not utilize the property for "other uses" as permitted by the R-3 district unless they owned the existing Mercy House property as well or purchased more property. In this particular situation, Mercy House would be the only "other use" that would be allowed to operate at 305 North High Street. Furthermore, due to the size of the lot, if Mercy House does not operate the property as an "other use," then the parcel can only be used as a single family dwelling and restricted to occupancy per the proffer because the lot size restricts residential uses to one single family dwelling unit.

Chairman Jones asked if there were any questions for staff.

Mr. Chenault asked if it is not safe to maneuver a car into the driveway and parking area if it were rezoned to R-3C, why is it any safer when it is left as R-2. The zoning classification is rather moot for me. How do others feel about that?

Mr. Way said building on what Mr. Chenault has said, are there any ways to waive that requirement of not backing out into the traffic within R-3.

Mr. Fletcher said it is about safety and maneuverability.

Mrs. Turner said single-family homes and duplexes are allowed to utilize the street to maneuver in and out of their driveways; it is just the nature of how most single-family homes are developed. Most people do not have a turn-around in their driveway of their single-family home. Most sites do not have enough lot area to allow you to create a turn-around in your yard. Single-family home traffic is generally on a street where people are looking out for one another, they know the characteristics of their neighborhood. This has always been an accepted regulation and it has never been questioned that single-family homes and duplexes could use the street for maneuvering.

For businesses it has not been something that we ever wanted to establish. The right of a business to line parking spaces along the street, across the span of their property, and then use the street to maneuver in and out of those parking spaces is not something we wanted to encourage. That would degrade the use and function of the street. It is just something that has not been permitted for a long time. Those are some of the reasons for why we do not allow this. Therefore, if this is changing from a use as a single-family home to an office use, then that is why it would need to behave like other offices throughout the City.

Mr. Chenault said I understand that, but three cars backing out are three cars, whether it is a business or a single-family home. We are talking about a maximum of two maybe three cars fitting in that driveway.

Mr. Fletcher replied it is physically possible that you could get two vehicles to park in the driveway, it would be very tight. You must also remember we are not talking about pulling cars into there and

leaving them; it is a business establishment with constant turnover. As well, the business would be relying on backing, or pulling out, at this intersection; which is not something else we want to promote either.

Chairman Jones said I understand the backing out issue, but is it not an issue with pulling out as well.

Mrs. Turner said the backing takes more maneuvering in the public street than if you are just pulling out into the street.

Chairman Jones said I agree it would take more of a time element backing out. I guess what I am trying to say is I do not think that a vehicle coming off of that parcel, whether pulling out or backing out, is safe. You are still going to have the same situation for vehicles that may be turning off of High Street, it is the same situation.

Mr. Fletcher said yes, it is true. In this situation, if it is used as a single-family home you are going to have vehicles maneuvering out into the road. If it is used as a professional office, what we are saying is it could not be used at all. If you approve the amendment, there will not be cars backing or pulling out there. I know there was the question of giving some type of a waiver to allow them to use it, but to me it is two different issues. If the amendment and rezoning are approved there will not be any parking allowed on that parcel.

Mrs. Turner said the fact of the matter is that if the amendment is not supported, they cannot get six cars parked on that parcel, even if you grant them some type of a waiver.

Mr. Chenault asked if they could get a variance for maneuvering.

Mr. Fletcher replied there is not a variance mechanism for parking. There is already a tremendous amount of flexibility in how you can get reduced parking, all of those provisions are in place. We looked at this in so many different ways and we really wanted to make it work for them.

Mr. Way said your principle problem with having the off-site parking is to avoid having people cross the street at mid-block.

Mr. Fletcher said that is one issue. Arguably it might not be as much of an issue in this particular situation because they are both corner lots; people can walk to where you are suppose to cross the street, the intersection. People crossing mid-block; that is not something we want to say okay to in the City Code. We do not want to establish this and promote it as being safe.

Mrs. Fitzgerald said you are worried about setting a precedent for this.

Mr. Fletcher replied exactly.

Mr. Way asked does this actually set the conditions that people will cross mid-block.

Mr. Fletcher said if you are allowed to park across the street it somewhat opens that door. If you are parked mid-block in a half mile block are you going to walk to the intersection, cross at the intersection, and walk back to the mid-block?

Mr. Way said I do understanding what you are saying.

Mr. Da'Mes said you made mention to the fact that with larger industrial complexes parking across is allowed. Where do you draw the line?

Mr. Chenault said I was noticing the same thing. It seems to me it ought to be the reverse. The dangers are much greater in an industrial situation with the number of people involved and the distances involved. An example is Liberty Street at the poultry plant. Seems to me that logic would tell you it should be the other way around. The dangers in industrial would be much greater than in this particular situation.

Mr. Da'Mes said there is something to be said for safety in masses and also for sight distance; in those situations they are rather wide open campuses and areas. Extra considerations are made because there are knowingly going to be large volumes of people crossing back and forth. But my question is where do you draw the line?

Mr. Fletcher said the uses that allow such are listed out in the exact situations where those accommodations are allowed. The uses are those which are generally not found in the business district.

Mr. Way said I am a bit uncomfortable with the assumption that is being made that people are irresponsible when crossing the street, and that they will cross mid-block. We, of course, need to make things as safe and sensible as possible. But the assumption that if you create something that crosses mid-block and you assume that people would "jay walk", is that wrong of us to think in that way?

Mr. Fletcher said there is a State Code section that says you should cross at intersections, at the crosswalks.

Mr. Way said I understand that is what one should do; I am just uncomfortable with assuming that people would not do that.

Mrs. Turner said we all questioned ourselves and asked if we were parking mid-block would we cross mid-block or walk down the street to the intersection. Everyone in on the discussion said we would cross mid-block. However, if the majority of you feel that you would be safer than us, then perhaps the amendment should pass.

Mr. Fletcher said the applicants have attempted to narrowly tailor their particular situation. But the question for us is – are we going to do this for the next business that has the same situation at the next corner?

Mr. Way said I see what you are saying.

Mr. Chenault said I am okay with this from the standpoint that it is limited to charitable and benevolent uses and the ball is in Mercy Houses' court to make their particular situation work. It appears it is possible, but if they cannot than we have done everything we can do to facilitate their effort.

Chairman Jones asked if there were any further comments or questions for staff. Hearing none, he said we will take public input on both the ordinance amendments and rezoning request. He then opened the public hearing and asked the applicant or the applicant's representative if they would like to speak.

Twyla Lee, Executive Director for Mercy House, said I want to thank you for the opportunity to speak tonight. I am here tonight with my staff and several board members who want to support Mercy House and we just want to make three points about the parking ordinance we are requesting. Mercy House has been in Harrisonburg for 25 years, housing the most vulnerable families in the community. We have been good neighbors, not causing undo stress to our public services, and

being resilient in continuing our mission. Mercy House is in the right location within our community, but we need more space. It would be a tremendous burden for us and the clients we serve to have to move to a new location. Currently we are housing 17 families at Mercy House at various locations. Mercy House Board of Directors and staff are quite aware of the fact that this has not been a match for what the City Staff wants to see happen, but we are asking for your approval anyway. Thank you.

Mr. Steve Weaver, Attorney with Clark and Bradshaw, said he is standing in for Todd Rhea, attorney for Mercy House, who is out of town. He has worked hard with staff and staff has worked hard with Mercy House on this issue which is somewhat simple on one side, yet complex on the other side. Staff is correct in that Mercy House wants both items to go together; we do not want the rezoning if we cannot get the parking ordinance amended. The rezoning would simply allow Mercy House to use the house for administrative offices. They have four to six staff that currently are mixed in, across the street, within the apartments. This is not a very good way of doing business from a confidentiality standpoint or when doing separate counseling for clients. In a way, moving the administrative offices and being able to have counseling separated for the housing really works for Mercy House. There is enough parking in the current site to be able to handle all the parking requirements, it may be tight, but it can work; we just need help with the parking ordinance. What it has come down to is a rather narrowly crafted ordinance amendment that would allow charitable and benevolent uses to park across local streets. This is not for businesses and in reality it is a very narrowly crafted parking ordinance that makes this work for Mercy House. I understand from staff's point of view that maybe there are policy concerns; but from a healthy community point of view, and for Mercy House and for the work that they do and the investment they have made in this community at this location – it makes good sense. This house has been on Mercy House's radar for a long time. It has sat vacant for seven years, and has received numerous complaints about upkeep of the property. Mercy House can come in, make an administrative office, and park at the location on the other side of the road. We are asking that this parking ordinance and rezoning request be acted upon favorably tonight. This is the right location for Mercy House and Mercy House has been an effective tool in helping temporary families in need of shelter. They are an effective organization, they are a United Way organization and they support lots of families. If you have any questions there are members of staff and the board here with us tonight.

Chairman Jones asked if there were any questions for Mr. Weaver. Hearing none, he asked if there was anyone else with the applicant wishing to speak. Hearing none, he asked if there was anyone wishing to speak in favor of the two requests. Hearing none, he asked if there was anyone wishing to speak in opposition of the two requests. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Fletcher said I need to make one point clear. If the amendment is approved, they cannot have parking on that northern parcel, the ordinance does not allow for it. So the concern of people backing or pulling into traffic would not happen. We cannot allow them to count any of their required parking on that lot.

Mrs. Fitzgerald said even though we are still viewing this as a package for them, once they get these two pieces approved, there is still some work to be done. These are just the first two pieces.

Mr. Fletcher replies yes.

Mrs. Fitzgerald said it is theoretically feasible for Mercy House to make all this work given everything we have in place.

Mr. Fletcher said yes.

Dr. Dilts said there is no sidewalk on either side of Green Street; therefore, if someone does “jay walk” they would be walking in the street.

Mr. Fletcher said yes, that is correct. The Department of Public Works did say that sidewalk is planned sometime in the future for the northern side of Green Street. It is possible that a private sidewalk may have to be built to meet handicap accessible requirements.

Dr. Dilts said if there was sidewalk on Green Street, would it be possible to have the crosswalk in the middle of the block, nearer the entrance to the south lot?

Mr. Fletcher replied that is something we would need to discuss with the Public Works Department.

Mr. Chenault said I appreciate staff’s analysis; but, I think that this is a tenable situation, particularly in light of the fact that it is limited to charitable and benevolent uses. It is apparent there is more to be done, some on the part of the City as for constructing sidewalk on one side of the street. With that in mind I am going to make a motion to recommend approval of the ordinance amendments as presented.

Mrs. Fitzgerald seconded the motion to recommend approval.

Chairman Jones called for a roll call vote on the motion.

Commissioner Fitzgerald – yes.

Commissioner Way – yes.

Commissioner Dilts – yes.

Commissioner Chenault – yes.

Commissioner Da’Mes – no.

Chairman Jones – yes.

Mrs. Banks said the motion passes with a vote of 5-1.

Mr. Chenault made a motion to recommend approval of the rezoning request.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a roll call vote on the motion.

Commissioner Fitzgerald – yes.

Commissioner Way – yes.

Commissioner Dilts – yes.

Commissioner Chenault – yes.

Commissioner Da’Mes – yes.

Chairman Jones – yes.

Mrs. Banks said the motion passes with a vote of 6-0.

Chairman Jones said these two requests would move forward to City Council on January 8, 2013, with favorable recommendations.

Zoning Ordinance Amendment – Home Occupation Horticulture Exception

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

Mr. Fletcher said the proposed amendment to Section 10-3-24 Definitions would modify the existing “Home Occupation” definition to include growing plants outside for business purposes. This type of use, on private and publicly owned property, has received awareness and support across the nation recently under the non-standardized term of “urban farming.” The intent of the amendment is not to permit all farming practices (such as animal husbandry), but only those associated with horticulture.

The amendment would create an exception to the City’s current home occupation requirement that all uses associated with a business on residential property are carried on wholly within a main building or accessory building. All other provisions of a home occupation would remain in place. The following is the existing definition of a home occupation along with the proposed text amendment, which is underlined:

Home Occupation: Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building, unless associated with horticulture, by a member of a family residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in connection with which no person outside the family is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors' offices for the treatment of patients. The foregoing notwithstanding, providing professional counseling services by appointment only for not more than ten (10) clients per week, and giving music lessons shall constitute home occupations.

Staff proposed the “horticulture exception” text amendment after contact with City residents Sam Frere and Dan Warren, both James Madison University students, who want to legally operate a horticulture business growing produce for local restaurants and citizens. Their business model is similar to the practice of a Community Supported Agriculture (CSA) operation, where farmers offer a box of vegetables and other products to individuals (also known as members or subscribers) for routine purchases (or subscriptions). Unlike a typical CSA, Frere and Warren noted they want to allow subscribers on a month to month basis.

Frere and Warren were recently featured in a Daily News Record (DNR) article drawing attention to their business. (The article is attached as an addendum to the staff report.) Before the article was published, Frere and Warren attempted to obtain a business license from the City. Generally, when someone attempts to obtain a business license using their home address (on residentially zoned property), the Commissioner of Revenue requires the applicant to obtain a home occupation permit, which is free of charge, from the Department of Planning and Community Development to ensure the use is permitted. Because the business is not carried on in the main or accessory building they were unable to be classified as a home occupation and were unable to obtain their business license. This also meant the business could not be operated in the R-2 residential classification. Staff met with them and discussed their options, which involved the idea of amending the Zoning Ordinance

to allow their desired use. After all of this occurred, and before Frere and Warren communicated with staff about how they wanted to proceed, the article was published. The DNR article refers to them being able to operate their business through a “pricey special-use permit,” however there is no such special use permit available to make their business legal.

A short time after the article was published, staff again met with Frere and Warren and gained more information about their practices, which in their particular case includes using every bit of their property to grow produce; arguably the most extreme example for those that would be interested in such practices. As noted by the DNR article, the two intend to run the operation as environmentally soundly as possible, and in discussions with staff, noted their aim to be considerate to their neighborhood as they hope such practices create a better community. At this point in time, the City has not received any concerns from their neighbors.

Staff recognized the use desired by Frere and Warren fits with recent social and land use trends that have citizen support. Because of this, staff determined it would be appropriate to initiate consideration of an ordinance amendment to allow horticultural uses as a permitted home occupation. We discussed different options, including various terminologies as well as making such practices a special use permit. However, with the recent portable restroom facilities issue, where staff was directed to establish general guidelines rather than allowing them through a special use permit process, staff decided to try and make it work through a home occupation permit.

As horticulture involves plant growth, and as plant growth occurs with almost all residential uses already, staff thought such an amendment could be made while maintaining the intent of the home occupation. During the official review, however, we concluded the amendment would create more problems than it would solve and that excepting horticultural businesses from the typical provisions of operating a home business entirely within a main building or accessory building would reduce zoning regulation protection afforded to surrounding residential property owners. Since staff proposed the amendment, typically we would have removed the proposition from consideration upon reaching such a conclusion, yet we thought there was merit in having a more public discussion regarding this use and allowed the Zoning Ordinance amendment to proceed to public hearing.

Staff is recommending against the amendment, as advertised, for the following reasons:

1. A primary intent of a home occupation permit is that no one should know through visual observation that the property is being used for anything other than a residential use. The definition states that “no advertising... display or storage or variation from the residential character of the premises” should occur. A horticultural use with equipment and materials stored outside is in conflict with this intent. In addition, noises and odors could be in conflict with the residential character.
2. Staff recognized upfront that “excepting” the intended use as “horticulture” was a vague approach to characterize the desired business. During the review staff talked about other terminology such as “gardening business” and “small-scale gardening” but decided those terms were equally vague. Any of these terms would be inclusive of practices where large scale equipment could be used such as a landscaping business which keeps/stores equipment outside on their property, the keeping of other materials such as fertilizers, and others. Staff also discussed proposing an additional amendment to the Zoning Ordinance by defining

“horticulture,” but decided otherwise because reason #1 above was still a main issue of concern.

3. Promoting this type of use could further complicate enforcement of the City’s tall grass and weeds ordinance. Property owners continually dispute that they do not have tall grass and weeds, but that what they have is a garden, meadow, or other vegetative growing practice, when staff is observing their property in a state of violation with the City’s tall grass and weeds ordinance. Issuing a permit for something that will at times have the appearance of tall grass and weeds may further complicate the enforcement of these regulations.

Please keep in mind that even if the Zoning Ordinance amendment is withdrawn from consideration or denied, individuals can maintain their property similarly to Frere and Warrens, where the end result is visually the same regardless of whether a home occupation permit is granted.

Although staff is recommending against the Zoning Ordinance amendment as advertised, as noted in the opening statement, “urban farming” is an issue that is receiving recognition and there are other localities that have adopted relevant ordinances. Recently, staff has learned of other terms that other cities are using including “commercial garden,” “market garden,” “urban garden,” or “urban farm.” Some of those locations have defined those terms and have established other guidelines including scale and location of operation. At this time, staff does not believe provisions such as setback requirements or setting a size or scale of operations would alleviate all of our concerns as listed above.

During the review period, staff was back and forth as to our position on the amendment, but determined there are many issues that still need to be resolved if this type of use is desired. If it is desirable to set a size or scale for these uses would it be believed that a lot similar in size to that which Frere and Warren hope to operate upon should be permitted? What scale or lot size is too large? Is there a size of property that would be too small? Should it be a by-right use or special use? If setbacks are desirable, does that mean that only inedible vegetation can be planted up to the property line? It should also be understood that if almost any such provisions were established, the horticulture operations desired by Frere and Warren, possibly would not be permitted.

In conclusion, if Planning Commission or City Council believes there is merit in devoting more staff time to research and draft such an ordinance, staff will continue working and bring back another proposal.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked the applicants if they would like to speak.

Daniel Warren and Samuel Frere introduced themselves and said they reside at 438 Collicello Street. We would like to thank everyone who has worked with us on this and for allowing us to speak tonight.

Mr. Warren said we would like to start out by stating the definition of horticulture. Horticulture is an activity which involves the cultivation of fruits, vegetables, flowers, and ornamental plants. Ornamental plants could be considered grass; I would like to touch on that in a bit. By definition horticulture exists in a diverse amount of places; it exists anywhere there is a maintained green space. A resident in an R-1 or R-2 zoning district is allowed to practice horticulture throughout their property, as long as they are not selling the products of that horticulture practice. If a person had a landscaping business and they were to go to an R-1 or R-2 zoned property to mow the lawn, they could charge the R-1/R-2 owner a fee

for mowing the lawn. That fee could entail the upkeep of an ornamental plant. If the homeowner desires to sell the products they must obtain a business license and home occupation permit.

Mr. Frere said the catch to obtaining a business license is that you must obtain a home occupation permit if you are operating your business from a residential area. The big problem is that horticulture is not defined as an allowed use for a home occupation. The definition for home occupation clearly excludes any horticultural use because the only permitted uses are those limited to inside the structure or an accessory structure. Therefore, any home occupation you have must be clearly confined to inside a structure.

Horticulture uses are already allowed throughout the City. Anyone can perform a horticultural use on their property as long as they abide by the standards for “residential character” of the neighborhood. We actually have a clear standard of what a violation of residential character is within the tall grass and weed ordinance for the City. So conformance to residential character is already maintained by the tall grass and weed ordinance. If you are performing a horticultural use outside of your home and it is in violation of the tall grass and weed ordinance; then that ordinance is your regulating body.

We were looking into the language of the tall grass and weed ordinance, because it is super important to our issue. The language states that between April 1st and November 1st every owner must, at their own expense, cut and maintain grass and foreign growth from their property with certain exceptions. We were informed that within the Comprehensive Plan that agricultural uses were not allowed; however, clearly in the code it says the exceptions to the tall grass and weed regulations are for farm land on which crops are grown or which pastures livestock – agricultural uses. We believe the growing of grass and the use of farmland are both horticultural uses. What we want to point out is that the exceptions within the tall grass and weed ordinance are clearly for farmland on which crops are being grown or pasture of livestock.

Mr. Frere continued, why does the tall grass and weed ordinance matter and why are we trying to make this point that there is actually a farming or horticultural code already existing within the tall grass and weed exceptions? Because it does imply that farm uses are allowed within the City, which is kind of contradictory to the Comprehensive Plan. We also want to clarify that horticultural use and agricultural use are not defined within the City Code. When looking for the definitions within City Code you would not find them; you would just find that they are not an allowed use within any district.

If I were to grow a garden over my entire property and maintain that garden, I would not be in violation of the tall grass and weed ordinance and I could do that forever, as long as it is maintained. But, if I wanted to do that as an occupational use and sell my product, I would not be allowed to do so.

The home occupation states that the occupation must be carried on within the main building or an accessory building. The proposed exception inserts the language “unless associated with horticulture” at the end of this sentence. We do not see that this is vague; there already exists a regulation within the tall grass and weeds ordinance to regulate any violations of aesthetic or upkeep character.

Horticulture is going on within every green space within the City. Everyone who takes care of their lawn, has a garden, or tends to plants, is performing a horticultural use. In order to maintain residential character, a horticulture business would have to comply with all regulations that are defined within the Comprehensive Plan and Zoning Ordinance. With existing regulations no visual differentiation would be allowed between a progressive garden friendly home and a horticulture business. With a home occupation permit you are not suppose to know that a business is going on at that site; but, once you step outside of the home and plants are growing everywhere, it may look as if a business is going on. You

may be growing food to sell at the Farmers Market or a CSA; but, you could also be growing plants throughout the yard for home consumption. We just want to highlight that if you were performing a horticultural use as a home business it would not be anything different visually and in character. It would not be any different than a progressive gardening home. Because of the laws of the home occupation there would be no issue with parking or signs, they are not allowed; the difference would be we are cultivating a garden outside, but a lot of people do that.

Mr. Frere said some of the final notes we want to highlight are that regulations change over time and the way this happens is through amendments. As we develop new ideas there is often a need to modify regulations in the form of amendments. Sometimes you may have a use that no one disagrees with what-so-ever; but, because there is no allowance within the code for such a use it is not considered an allowed use. We are only asking for a clarification within the code to define the word horticulture. The word horticulture is inclusive to the growing of plants, which is going on everywhere; but, it does not associate itself with other agricultural uses, such as livestock.

Mr. Warren said I had a conversation with a local chef at a restaurant today and he said to me “you guys could just do this and not comply with the code and it would be fine, no one would ever know about it.” We have heard this several times recently; but, we would like to create a pathway where it could be done legally and no one would have to have concerns. Thank you for your time this evening.

Mrs. Fitzgerald asked if they would talk a bit about their petition.

Mr. Frere replied certainly. We went around the past several days and canvassed city residents, some small businesses and restaurants. We told people about the proposed amendment to the home occupation permit and asked them to sign if they felt the amendment was worthwhile.

Mrs. Fitzgerald said your intent was to collect signatures not only in your neighborhood, but more generally City wide.

Mr. Frere replied yes. Our initial intention was to show that our neighborhood did not have any problem with the horticulture business; but, we also wanted to show that there is very little resistance to this throughout the City. It seems silly to us because horticultural uses are happening on any property within the City, unless you are trying to sell the produce that you are growing. There is no way to differentiate between someone growing food for home consumption or growing food for a business purpose.

Mr. Way said where in the tall grass and weeds ordinance does it say that this type of use is regulated? Where it talks about “farmed land?” Is that land that is farmed or land that is designated as farm?

Mr. Fletcher said it should be understood that this is exempted out because there are non-conforming farming practices within the City.

Mr. Chenault said I think it is important for everyone to understand that the farm use is singled out because it is a remnant of the annexation process within the City and it is intended to apply to grandfathered uses of farms that came into the City and not for any other purpose. I hope this helps you to understand why that is in the code. I would like to ask a question as well. Did you all go to every neighborhood in the City?

Mr. Frere said I spent a day and a half on a bicycle going through neighborhoods and knocking on doors, attempting to speak to as many people as possible, given the time constraints. I did not make it through all of the City; but, I think with more time we could have gotten a lot more signatures. Just to clarify, we are not really debating whether the farm land on which crops are being grown is an

exemption. If our use is not an exception, we would still have to comply with the tall grass and weed ordinance.

Mr. Jones said should you be allowed to continue with this as a home occupation, there would be no on-site sales on Collicello Street?

Mr. Frere said we could make sales by delivery to individual homes; but, due to the nature of the home occupation permit we could not make sales on our property.

Mr. Way asked what is the acreage of your property at Collicello Street.

Mr. Frere replied one-tenth of an acre.

Mr. Way said what is the largest piece of machinery or equipment you have at the property?

Mr. Frere replied a grubbing hoe.

Mr. Fletcher said probably the hoop house, which is considered an accessory structure.

Chairman Jones asked if there were any further questions for Mr. Frere and Mr. Warren. Hearing none, he asked if there was anyone wishing to speak in favor of the amendment.

Mr. Justin Van Kleeck said he lives in Harrisonburg (632 Roosevelt Street) and is the assistant manager for the Harrisonburg Farmers Market and on the steering committee for the Harrisonburg-Rockingham Green Network and the Staunton Food Policy Task Force. I am doing a lot with local foods and trying to think about increasing access for our local residents to fresh and healthy food. One of the things that I think is very important is getting more people the ability to grow their own food and have access to locally grown food. As mentioned earlier there is a nationwide and worldwide trend to increase the amount of urban space that is used for agriculture. Urban areas take up about six percent of the earth's surface, which is not a lot; but, if all those were used to grow food in some way it would solve many of the problems of hunger and food access issues.

I think that the horticulture amendment to the home occupation permit would be helpful. By definition it would keep businesses outside of the visibility of the residential neighborhood; but would allow for growing some vegetables or flowers in your yard without having a line of machinery throughout your yard. The benefits of allowing people to grow food on their property far outweigh any kind of potential perceived blight on residential character of the neighborhood.

The problem is that the tall grass and weed ordinance is so general that it can be enforced on people trying to grow food on their property; not that people growing food could potentially violate the tall grass and weed ordinance. There are people throughout the Country being persecuted for growing food in their front yard. As a person growing food on my own property and with plans to use as much of the property for growing as I can, it makes me very uncomfortable that the tall grass and weed ordinance is so broad that I could be in violation. I would rather see the exception made in the home occupation permit with the understanding that these exceptions, even though they are outside, are not a blight on the residential character.

Mrs. Fitzgerald said in the packet of information you provided us this evening are there examples of how other communities have gone about regulating this?

Mr. Van Kleeck replied yes, please follow the links I have provided for Seattle and Baltimore, these are Cities that not only allow for urban agriculture, but they allow for on-site sales as well.

Mrs. Fitzgerald said I would imagine that the path that some localities took to get to this have many zigs and zags; that things have been tried and did not work out so well.

Mr. Van Kleeck said those sites are not just to the codes for those localities, but also to some journalism about the process of getting to this point.

Mr. Chenault said would you consider it reasonable if the local government were to say we embrace urban agriculture, we do not necessarily think this definition process is the way to work it, but feel we could come up with some type of ordinance that would allow an orderly process of it. Are you opposed to starting a dialogue on this in order to come up with an ordinance on this?

Mr. Van Kleeck said I would be very happy with an ordinance that was very clear about promoting urban horticulture. I have already had some dialogue with some Council members and City staff and I am happy to do that along with the folks from Collicello Gardens. My concern is that not passing this exception tonight will end the dialogue.

Mr. Chenault said I do not think that would happen, because I do not think we have a history of doing things that way. However, if it did, or if we fail you in any way, you can always come back to this.

Mr. Van Kleeck said I would like to say that I like the exception within the home occupation because that allows someone to get a license and move through some of the roadblocks. Otherwise, they are completely illegal.

Dr. Dilts said the size of the lot at Collicello Gardens is very small so the visual impact is very small; but, there are some properties within the City limits that are quite large are you extending this horticulture piece to those properties as well?

Mr. Van Kleeck said yes. If someone had large flower beds throughout their property there would not be complaints about that. All of the plants that would be grown for food may not be as pretty, but they are not ugly, they are still plants.

Dr. Dilts said is there a matter of scale in terms of making something a business or not a business and taking care of the plants. Does scale need to be looked at for this?

Mr. Van Kleeck replied that would depend, as stated before, if I wanted to do this for my own personal use and not a business I could legally do so. If I were operating a business I would want to keep my garden and plants healthy, I would not want to show or sell blighted plants.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Matt Trost said he resides at 485 Collicello Street and wanted to mention that we may want to consider horticulture for the intent of bringing produce to market and not just horticulture in a vague or general manner. As far as increasing traffic on streets, most City lots are small and would not increase traffic. There are residences within the City that are not operating as a CSA and have much more traffic than what we see at Collicello Gardens. The difference between my vegetable garden and a CSA is I am feeding myself and my family, whereas the CSA is doing that and helping to feed other families as well. I would see that as a valuable contribution to any neighborhood.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Andrew Jenner said he resides at 613 Collicello Street and I would like to make three quick points. There is a lot of discussion about how this may diminish residential character or a concern that it may have a negative impact. I believe there are three reasons why this may enhance the neighborhood character – this is somewhat the opposite of the “broken window” theory of neighborhoods. You have

someone investing so much into a property, especially one they do not even own, it is inspiring and it makes you feel good about your neighborhood. Also, knowing your neighbors is important to a neighborhood and because of the happenings at Collicello Gardens I have gotten to know my neighbors through the CSA. I get to know my neighbors better when I am outside doing things in my yard and this is a great example. So anything we do to encourage people to be outside and interacting with their neighbors enhances a neighborhood. Lastly, I have a home occupation from my house on Collicello Street, I am one of those invisible businesses, and I think safety is an important benefit with this. It is unintended, but it is a side benefit of the home occupation; I am pretty much at home all the time and when there are people working from their homes it is good for a neighborhood. You could consider it free community policing. I support this home occupation amendment and I feel that this is generally a good thing. I would encourage you to support this because it enhances the character of my neighborhood and I believe it would in many neighborhoods.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Tom Benevento, 910 Collicello Street, said I do not have much to add to what has already been said. I do appreciate the work that staff has done and the dialogue that is going on; I have worked with you in the past on some of these issues. I do want to emphasize that we have been focused a lot on the visual part of this and the concern for blight; but this kind of potential ordinance would enhance the neighborhood in many other ways. The idea of working outside in gardens is very powerful for a person; it really increases their health and their lifestyle. Safety as well, the more people you have working outside in gardens is going to make your neighborhood much safer. Enhancing the City at large by growing local food and having good quality food at hand is really a benefit. So I hope we can look beyond the question of visual concerns and think about these other components that are also important.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Eliza Hoover, 335 Hill Street, said I do have a perspective that I want to add to encourage this type of business within the City. As you all know I live in an area that has a lot of lower income residents and obesity is a huge problem in this country, particularly in low income. If we could get a CSA in northeast Harrisonburg and people who do not have a lot of income could see these beautiful vegetables growing, I think it could make a huge difference in the eating habits of people in a lower income area. I just wanted to bring that point to your attention.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Valerie Ramsey, 506 Collicello Street, said the reason I moved to the neighborhood is because I was babysitting at several of the different homes along Collicello Street and Virginia Avenue in this area and every time I would walk past this property I would notice the gardens. After meeting the residents and talking about what they were doing it made me feel really good about the neighborhood. I noticed too, that other neighbors were following them by starting to garden at their homes. This is part of the reason why we ended up renting a home on Collicello Street.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Panayotis Giannakouros, 98 Emery Street, said he would like to point out a couple of pieces of logic that have been used in this argument. The first is in a 2006 Daily News Record article describing the City clearing an apparently abandoned section of property of weeds that included poison ivy, the City took a stand by stating they were not interested in regulating aesthetics. Mr. Fletcher reaffirmed that tonight in his opening remarks. With that in mind, the mention of tall grass and weeds in connection with this item provides no specific reason as to why the use is undesirable.

With regard to questions that have been raised about how a municipality could make a weed ordinance compatible with desired uses, I feel Mr. Van Kleeck mentioned several municipalities that have done so. We have Cities neighboring us that do not have problematic tall grass and weed ordinances. The adjacent City of Bridgewater has a very specific code that applies only to abandoned property. The City of Charlottesville has an even more comprehensive ordinance that takes into account setback and other considerations based upon the degree to which there is consensus among neighboring houses. I would like to point out that doing horticulture in a person's lawn takes a lot of work. We have had the experience of remediating a lawn that had been a rental for a long time and removing nearly half the surface cover which consisted of a variety of noxious plants. In the process of doing that remediation, there were times when it did not look like an ordinary yard, but I think come next spring neighbors will be surprised in the transformation of the property. Finally, if this is the way to achieve positive goals, I think that giving the City's support to people who are trying to do something positive, will maintain the momentum and the activity on the people's side with the Council.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment. Hearing none, he asked if there was anyone wishing to speak in opposition to the amendment.

Anthony Bopp said he lives on Sharon Street in Harrisonburg and is opposed to the proposal for the following reasons. I get nervous when I hear about trends and this has been referred to as a trend. It was fifteen years ago when there was a trend about composting that kind of hit the City and I welcome anybody to come to my back yard and see two unused compost piles that my neighbors have abandoned. One of the things that concerns me about gardening for businesses is I am sure there will be intensive composting and it is all fine while it is working. However, once it stops it does not smell too nice. Secondly, there has been a lot of discussion about the weed ordinance and staff can tell you that there is a property in my neighborhood on South Avenue and Central Avenue that, thank goodness, we have a weed ordinance for. Maybe there is a better way to take care of weeds, but at least we have the ordinance and periodically the City can get it mowed for us. Fifty to sixty percent of the folks in my neighborhood garden and I am pro gardening. The part that I have an objection to is the business side of it. I think the idea that we have zoning in place so that we can have residential and commercial and industrial in different parts of the City works. There is a feeling of quiet that you get in a residential area that does not have businesses. I think the reason we limit businesses to inside the house is a privacy issue; once you start taking business outside I feel it changes the complexion of the area. Some say it changes it for the better, I am not sure; but I would rather live in an area where there is not businesses in that area. Maybe the long term way to solve this is to have a zoning classification for R-1 residential that is pristine and business free and one for the residential district where you can also do business such as this if you wish. Many of the things that are being done at this garden I am in favor of, until the point that it becomes a business.

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

Mr. Way said with the question of the vague definition of horticulture; rather than saying horticulture why not spell-out the definition of it, which is the growing of fruits, vegetables, flowers, or ornamental plants. Then you avoid the problem of landscape businesses and that sort of thing, it keeps things rather specific. You could even put in there not for sale on premises to make it more specific.

Mr. Fletcher said it is a starting point. Some of what has been discussed and many of the points that folks have made tonight we have talked about internally. Regardless of the definition, it is still a problem of always being a question of what type of equipment can be used, what are you growing and what is the intensity of that?

Mrs. Turner said even with what is suggested as a definition, it might get rid of some of the concerns about a landscape business, but it still could be a landscaping business where someone is growing flowers or shrubs for sale. With that is going to come a certain amount of equipment that is going to be stored on site, probably other materials stored on site that are not compatible with a neighborhood.

Mr. Way said I understand. The other problem staff brought up regards the tall grass and weed ordinance. It strikes me there are some gaps, vagueness and problems with the tall grass and weed ordinance. Could something be added under subsection A, about the growing of fruits, vegetables, flowers, and ornamental plants; would it make sense to put in another exception within this subsection?

Mr. Fletcher said there is no reason why you could not put something in like that.

Mrs. Turner said are you saying it would exempt people who have horticultural uses from being told they were in violation of the tall grass and weed ordinance?

Mr. Way replied yes; if they are growing fruits, vegetables, flowers and ornamental plants, but not for sale on premises. It would be an extra exemption. Another thing I am thinking regards the home occupation permit where it states that the primary intent of the home occupation permit is that no one should know through visual observation that the property is being used for anything other than residential use. There is one discussion we had which is the distinction between home occupations and using this as a special use as a way to regulate. In the R-1 zoning you are allowed to have a 200-foot public safety cell tower or a golf course; what are the potential impacts of those versus a vegetable garden. Can a special use permit be a way to get at this?

Mr. Fletcher said yes, it is absolutely something to be considered. If that is a direction you would like us to go we can certainly do so.

Mr. Way said is there a problem with a special use that you would not get the same restrictions as you do with the home occupation.

Mr. Fletcher said you could make those conditions of the special use. Staff did talk about that. We have discussed much of what we have heard tonight. I very much appreciate Mr. Van Kleeck sending us the links and information. We are aware of much of this. We have brought this issue up to make certain we were headed in the right direction for everyone. I do not think we can sit here tonight and figure this all out. If this is headed in the direction of a special use permit, staff can do that; we can get a definition, guidelines, and more.

Mrs. Fitzgerald said is this not a question of scale. At the Collicello Street site you are not working with a lot of ground and so it makes sense to produce the way you are. But, if you are talking about five acres, then you are not talking about what they are doing at Collicello Street; with five acres you are talking about equipment, noise, and working all different times of the day. The visual thing in that case is not just front yard versus back yard; it is big versus what they are doing. It looks like a farm if you are talking about an area of five acres.

Mr. Fletcher said we are not just discussing the Collicello Street site. We are not saying that farming is bad; we just need to define what we want.

Mrs. Fitzgerald asked what does the definition of residential character mean for us.

Mr. Way said I am very supportive of this in principle, I think from a future, urban standpoint it is fantastic; we just need to find a way through this legal framework.

Chairman Jones said through part of the discussion one of the issues that came up was how we approached something similar to this previously. The Council ruled a two acre minimum on chickens with that particular regulation. The discussion of five acres just came up because of the visual aspect, but do we have any R-1 or R-2 parcels that large?

Mr. Fletcher said we do, they are few and far between, but they are out there.

Chairman Jones agreed and said however; most of those parcels are on outlying areas. When I travel out to those areas I see mostly pasture fields as it is. In the context of what I am hearing with this request I am thinking of just those areas most densely populated within the heart of the City and I cannot think of any parcels that large.

Mrs. Turner said we do not have many that are that large, but we do have a lot of people in residential neighborhoods who own a vacant lot next to them and we already have concerns when someone does something with their vacant lot. So I imagine that if someone were to cover the entire vacant lot with some type of crops growing, we would probably get some people who were not pleased with that. They may question things like amounts of fertilizer being applied, tilling, or noise going on.

Mr. Chenault said when I was growing up there was a three quarter acre parcel at the intersection of Gay and Liberty Street that was used for gardening, it was there through the 1960's. We can learn from history to see what can be done and sometimes people tend to ignore that. There was a communal garden along Roosevelt Street near Ohio Avenue where about twenty neighbors farmed communally and distributed their produce to their friends and each other. So it has been done here in the past, so why is it an issue now and not then. I think the reason is that generations have passed and we got into the convenience generation; now we are kind of moving back into a more sustainable mode. This is somewhat of a new thing for a lot of people. I just think that this is something we can deal with. Zoning is a concept that is designed to protect not only you, by the absence of it, but your neighbor as well, because of it. It is a flux, a balancing act, and like it or not aesthetics is a legitimate zoning concept. What we need to do is balance what you want to do with our community as a whole and what their aims are. I think this absence of a definition is not the way to do this. The way to do this is to adopt an ordinance that works for as many people as possible and we can work diligently to work as quickly as possible. Some things that I think need to be considered are the interest of adjoining landowners, protecting adjoining landowners if protection is needed, runoff, and wildlife. In my neighborhood people who try to garden deal with deer on a regular basis.

I would like to see us move forward on this cooperatively and try to develop an ordinance that will allow this to happen, while protecting everyone. I believe there is a way to make it co-exist. I do not think what we have before us tonight is an answer that is in the best interest of the entire City.

Mr. Way said could we take care of all concerns through a special use.

Mr. Da'Mes added perhaps we should make a differential for scale. I cannot imagine imposing a "pricey SUP" for a parcel this size; however, there are other parcels at a different scale that would warrant a SUP. Then we would be able to put certain restrictions on different situations. Therefore, if we do a SUP, scale matters, appearance matters, back yard versus front yard and so forth.

Mr. Chenault said I believe the size analogy is well taken; on most residential lots it may not matter, but if you are doing two, three, or even four acres, your scale brings about different issues for adjoining property owners. That is where the SUP could come in to play.

Mr. Way said I believe the issue of definition is very important as well and I again advocate for spelling out exactly what it is.

Mr. Fletcher said in an effort to move us along, it sounds like Planning Commission has a consensus that you do not like the way it is presented here. If Planning Commission so wishes we can table this and come back to you at a later date with something more along the lines of what we have heard here tonight.

Mr. Chenault said I would like to try and set-up some meetings to try and get this dialogue started.

Mr. Way said when could we get some type of firm proposal from staff.

Mr. Fletcher said we could prepare something to bring to discuss further or to put out for public discussion and then bring it back here for a public hearing the following month.

Mr. Way said I was thinking we should provide a deadline.

Mrs. Fitzgerald agreed and said if for no other reason there is the actual issue of a planting and growing season for these folks. If we are going to go forward with something relatively soon, then we need to be sensitive as to when we get this decided by.

Mr. Chenault said can we at least see where we stand with this in January?

Mrs. Fitzgerald asked if this should be a work session.

Mr. Fletcher said it can be, but you would need to give us some time to get that ready. We have a relatively complicated month in January, plus with holiday schedules of staff; I think February would be the earliest we could have something ready for discussion.

Mr. Way said what should we expect from you in February?

Mr. Fletcher replied some type of proposal that would be put out for public discussion how this could be regulated or allowed. We honestly have looked at the SUP approach.

Mrs. Turner asked if Planning Commission was looking for the public hearing proposal to come in February or just some language for discussion.

Mrs. Fitzgerald said I am just sensitive to the fact that if we are going to allow this soon, we are in December now and February may be too late, for the planting and the growing.

Mr. Fletcher said do not forget, they can plant. This just deals with the business aspect of the use.

Mr. Chenault said can we schedule a work session for the first week in February.

Mr. Fletcher said we could if that is Planning Commission's desire. The first Wednesday of the month would be February 6th; our regular meeting would be on the 13th. The work session could be held next door in the classroom, it would be open to the public; but, we would not necessarily take public comment.

Mrs. Fitzgerald said would it make more sense to schedule a work session during the January meeting so we can see how far along everybody is after the holiday season.

There was a consensus among Planning Commission that this is what should be done.

Mrs. Fitzgerald moved to remove this particular issue from discussion at this time.

Dr. Dilts seconded the motion.

Chairman Jones called for a voice vote on the motion. All voted in favor (6-0) of the motion.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mr. Fletcher said proactive zoning inspectors visited the Westover area of the City this month where they found thirteen violations. The violations consisted of inoperable vehicles and discarded materials. Next month zoning inspectors will be in the Garbers Church Road area.

Other Matters

Special Recognitions

Mr. Fletcher said we have a certificate of appreciation for Chairman Jones who will be leaving us as of tonight. We thank you for your dedicated service to the City over the past eight years and nine months. Unfortunately, Mr. Finks could not be with us tonight, but he too, will be leaving us this year. Staff then presented Mr. Jones with a signed, 2009 version of the Downtown Renaissance Poster for the City of Harrisonburg.

Chairman Jones said it has been my pleasure to serve with all of you, and the ones that are not here. I remember the first night sitting in the Council chamber thinking I haven't got a clue as to what was being discussed.

Election of Officers

Chairman Jones said the floor is open for nomination of officers for 2013.

Mr. Chenault nominated Deb Fitzgerald for Planning Commission Chair.

Mrs. Fitzgerald accepted the nomination.

There were no further nominations and all members voted in favor of Deb Fitzgerald serving as Chair of the Planning Commission for 2013.

Mr. Chenault nominated MuAwia Da'Mes for Vice Chair.

Mr. Da'Mes accepted the nomination.

There were no further nominations and all members voted in favor of MuAwia Da'Mes serving as Vice Chair of the Planning Commission for 2013.

Dr. Dilts nominated Alison Banks for the office of secretary.

All members voted in favor of Alison Banks serving as secretary of the Planning Commission for 2013.

Adjournment

The meeting was adjourned at 10:25 p.m.

Chairman William L. Jones, Jr.

Secretary, Alison Banks