

**MINUTES OF HARRISONBURG PLANNING COMMISSION**  
**June 12, 2013**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, June 12, 2013 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Gil Colman, MuAwia Da'Mes, Judith Dilts, Deb Fitzgerald, and Jefferson Heatwole.

Members absent: Henry Way.

Also present: Stacy Turner, Director of Planning and Community Development (periodically in and out of the meeting); Adam Fletcher, City Planner; Alison Banks, Senior Planner and Secretary.

Chair Fitzgerald called the meeting to order and determined there was a quorum with six members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the May 8, 2013 Planning Commission meeting.

Dr. Dilts moved to approve the minutes as presented from the May 8, 2013 regular Planning Commission meeting.

Mr. Heatwole seconded the motion.

All members voted in favor of approving the May 2013 minutes (6-0).

**New Business**

***Special Use Permit – 960 Acorn Drive (Section 10-3-97 (10))***

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development and related activities.

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

Site: Vacant warehouse building; zoned M-1

North: Acorn Enterprises & Acorn Mini-Storage; zoned M-1

East: Acorn Enterprises & Acorn Mini-Storage; zoned M-1

South: Across Acorn Drive, auto machine shop and businesses; zoned M-1

West: Across C&W Rail Road, Valley Church of Christ; zoned B-2 and Regency Park Townhomes; zoned R-3C

Mike Martin, the applicant, is requesting a special use permit per Section 10-3-97 (10) of the Zoning Ordinance to allow recreational and leisure time activities within the M-1, General Industrial District at 960 Acorn Drive. If approved, Next Level Athletic Development, LLC, a sports performance training facility for athletes, would utilize the property.

In December 2012 a special use permit was approved for Next Level Athletic Development, LLC at its present location – 1559 Red Oak Street. The applicant described his business as a facility offering training on an individual basis or in small groups, by appointment only; not a commercial

open gym. As part of the approval for the Red Oak Street site, a modification was granted from the City Building Official to operate the facility with just one restroom; however, occupancy was restricted to no more than 15 persons, and a time limit was placed on the modification. The business has grown substantially in the past year and the applicant would like to expand to a larger building in order to better serve clients, as well as open an indoor soccer facility.

Currently located on the site is a 9,500 (+/-) square foot warehouse building. The applicant has stated a desire to construct a 2,000 square foot training area inside the building, with separate interior and exterior entry doors, and an approximate 100-foot by 60-foot soccer field in a separate area of the building. The applicant would continue to operate his business by the same "appointment only" basis, as well as offer community adult and youth indoor soccer leagues throughout the fall and winter. A change of use permit would be required if the SUP is approved for the use. The applicant has been working with the Building Inspection Division regarding code requirements and necessary permits.

The property is approximately 2.578-acres and, along with the building on site, there is a gravel area for parking in front and paved areas along the east side and the rear of the building. At present, no parking spaces are marked with striping or parking blocks. Staff has informed the applicant that parking would be calculated on the total occupancy and all required spaces would need to be clearly delineated prior to occupancy of the building.

In 2004 the same special use permit was requested for a paint ball facility at this location. That request was unanimously approved; however, it was never established at the site and the SUP expired after two years.

Staff believes this is a good use of an otherwise vacant building and supports this request with the following condition:

- The permit shall be applicable only for the use, or a substantially similar use, as requested in this application.

Chair Fitzgerald said with this particular use, and in particular the soccer leagues that may utilize the facility, how does staff determine appropriate parking?

Mrs. Banks replied the parking is based on the total occupancy for the building. The architect working with the applicant will determine the occupancy level as part of the building permit process; and then, once determined, the applicant would need to provide one parking space for every ten persons.

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

Mike Martin, the applicant, said he lives on Clara Court in Harrisonburg, and stated that staff has generally summed up his request. I happen to currently rent from the same individuals that own the Acorn Drive facility and they were able to put me in touch with the tenants, Friendship Industries. We have had multiple conversations regarding my use of the facility and my taking over the lease from them. I would like to continue with my current training program and open an indoor soccer facility at the Acorn Drive facility. I would be happy to answer any questions you have for me.

Chair Fitzgerald said we are glad to hear things are going well for you. Are there any questions for Mr. Martin? Hearing none, she asked if there was anyone else wishing to speak in favor of the request.

Michael Zook, 408 Lee Avenue, said I just want to speak in favor of this request for two reasons. I played soccer with Mike Martin at EMU and I have a lot of respect for him. I have two sons, eight and ten, that participate in soccer and who would benefit from this. I think it is a great opportunity for Harrisonburg.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the request. Hearing none, she closed the public hearing and asked Planning Commission for discussion or a motion.

Dr. Dilts moved to recommend approval of the special use permit request with the added condition.

Mr. Colman seconded the motion.

Chair Fitzgerald said there is a motion to recommend approval and a second; she then asked for a voice vote on the motion.

All voted in favor of the motion (6-0).

Chair Fitzgerald said this will move forward to City Council on July 9<sup>th</sup>, with a favorable recommendation.

***Special Use Permit – 632 East Market Street (10-3-40 (7))***

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Professional. This designations states that these areas are for professional service oriented uses with consideration to the character of the area. These uses are found in the residential areas along major thoroughfares and adjacent to the Central Business District. Conversion of houses in these areas to office and professional service uses is permitted with appropriate attention to maintaining compatibility with adjacent residential areas in the same manner as described for Planned Business areas.

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

Site: Single-family dwelling; zoned R-2

North: Across undeveloped portion of East Elizabeth Street, single-family dwellings; zoned R-2

East: Vacant lot and single-family dwelling; zoned R-2

South: Across East Market Street, single-family dwelling; zoned R-2 and professional offices; zoned B-2 & R-3C

West: Professional offices; zoned R-3C and dwelling; zoned R-2

The applicant is requesting a special use permit per Section 10-3-40 (7) of the Zoning Ordinance to allow occupancy other than permitted by right within the R-2, Residential District. The property is located on the northern side of East Market Street; east of the intersection with Hill Street. The site is improved with a single-family dwelling and parking in the rear, which is accessible from East Market Street or from undeveloped East Elizabeth Street. If approved, the applicant desires to provide rental housing to four tenants.

The Comprehensive Land Use Guide designates this area as Professional; an area that is suitable for professional service oriented uses, usually found in residential areas along major thoroughfares. In the last twenty years, eight properties along this portion of the East Market Street corridor have been rezoned to R-3C, allowing for a dwelling to be converted to professional offices. With each rezoning it was obvious that residential dwelling occupancy was a very important issue; as proffers were submitted with each stating that only R-1 and R-2 uses, and medical/professional office uses would be permitted or clearly specifying that dwelling units could only be occupied by a family or not more than two unrelated individuals. Staff and Planning Commission recommended in favor of each of the eight rezoning requests for R-3C.

Adjacent properties to the north of the subject parcel include single-family dwellings fronting East Wolfe Street, where the area transitions into the northeast neighborhood. Staff believes that granting the special use permit would set a precedent for allowing increased densities within this area and neighborhood, which is a trend staff does not want to establish.

This is a very visible and highly traveled corridor of the City and although staff has been in favor of the conversion of single-family dwellings into professional offices along this portion of East Market Street, we do not support increasing in occupancy for residential uses. Allowing for greater occupancy would not be in keeping with the surrounding residential uses and staff feels the limitation on occupancy helps to maintain the attractive entryway to the downtown area of the City. The recommendations and actions of the previous rezonings along this portion of the East Market Street corridor is proof that the City's long-term plans for this area are achievable and being implemented as desired. Approving this request does not conform to the Comprehensive Plan.

Staff recommends denial of the SUP request.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Da'Mes asked if this area was shown as a Gateway Area on the Land Use Guide.

Mrs. Banks said it is designated as a Corridor Enhancement Area. The designated corridors connect specific gateways into the center of the City. When reviewing items in these corridors we look at aesthetics – landscaping, signage, parking, and so forth.

Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing and asked the applicant or the applicant's representative to speak.

Sharon Welch-Kessler said she is the owner of the property and I currently reside in Hampton, VA. We are currently building a home in Woodstock, VA, where we will reside once completed. I have prepared a brief PowerPoint presentation for you this evening, to elaborate on the request that I have made.

In my request I have specified that I want to provide housing for students; in particular I am interested in establishing substance free living space for what I consider to be young professionals, or those who are transitioning from college into a profession of some type. I am focusing on those students in their senior year of undergraduate school, graduate school, or perhaps engaged in some type of a work study program, even at a community college. The request for occupancy of up to four unrelated persons is to create a small group with a similar goal of living substance free, where they can offer encouragement and support to one another. The reason I am asking for this is that I made the choice to live substance free when I was 18 years of age, and I can recall that when I was an undergraduate there was tremendous peer pressure to drink and party. Now that I have raised

four children and watched them go through college, it would seem that a part of the college environment is actually about drinking and partying. There is a transition period, once they finish their undergraduate studies and where they actually become responsible citizens. The other thing I noticed is that James Madison University (JMU) has a perceived problem with student drinking; but, the problem with student drinking is not just JMU alone, it is the community as a whole. I think one way of dealing with this effectively is to come up with substance free living space that is not designated for those who may be recovering abusers.

The plan is to make additional improvements at 632 East Market Street – finish building the parking area in the rear, install a privacy fence along the border of the adjacent lot, and finish the interior upgrades, such as painting and trim. The scheduled target date to have all the upgrades completed is the end of August. The house would be ready for tenants at that time.

That concludes my presentation and I would be glad to answer questions.

Dr. Dilts asked how the tenants will be monitored. What type of program would be in place if they abuse a substance? What is the plan?

Mrs. Welch-Kessler replied the plan is actually to have it stipulated in the lease agreement that they will live substance free. Substance free is actually more than just not having any substances on the property; they cannot come home under the influence of a substance. If a tenant violates this, then it is considered a violation of the lease agreement and they will be asked to live elsewhere. The idea is to have a small group that can support one another in this life style choice.

Chair Fitzgerald asked if there were any further questions for the applicant. Hearing none, she asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the proposal.

Glen Johnson, 649 East Wolfe Street, said my biggest concern is the parking situation and trash situation. I used to live across the street from two JMU students and they had parties and blocked our driveways. We operate a small business and the undeveloped East Elizabeth Street is necessary for us because we back our trailer and SUV into the rear. We need that access to remain open so we can get in and out; not blocked by vehicles.

Chair Fitzgerald asked if there was anyone else wishing to speak against the proposal.

Jerry Hollar, 640 East Market Street, said I am not necessarily opposed to the idea, but I am somewhat concerned about property values. Is something like this going to affect my property values? Where exactly would the privacy fence be located; along my property boundary and along East Elizabeth Street? Will a fence block access to adjoining properties? These are my biggest concerns right now.

Chair Fitzgerald asked if there was anyone else wishing to speak against the proposal. Hearing none, she asked the applicant if there was anything she wanted to add to the public hearing.

Mrs. Welch-Kessler said I have heard the concerns about access and we have had conversations with these neighbors recently about access, and I think we are arriving at a point where we have a better understanding of each other's needs. A privacy fence would not block access to East Elizabeth Street; that is a public-way. Although I cannot speak for tenants that currently do not occupy the house, I would assume that with substance free living there would not be wild parties or destruction of property.

Mr. Fletcher said before we close the public hearing it was mentioned earlier today by the applicant that there may be an interest in continuing this hearing so that further research could be done. If you desire to do so, now is the time; we do not want to close the public hearing if it is to be continued.

Mrs. Welch-Kessler said she was fine with closing the public hearing and moving forward.

Chair Fitzgerald asked if there were any further comments on the request. Hearing none, she closed the public hearing and asked for discussion or a motion on the request.

Mr. Colman asked how the property was currently being used.

Mrs. Welch-Kessler said as single-family. My son lived there this past year and my husband is staying there right now while we complete some renovations.

Mr. Da'Mes said under the R-2 regulations they are allowed to do what?

Mrs. Banks said in R-2 the house may be owner occupied by a family and the family could have two unrelated boarders; or the house could be rented to a family or individual and have one unrelated boarder.

Mr. Da'Mes said under R-3 Conditional, which several of the neighboring properties are zoned, those conditions always stipulated that they would not have greater occupancy?

Mrs. Banks said in all eight of the rezoning requests the applicants either proffered no residential uses or proffered occupancy as the R-1/R-2 regulations.

Mr. Da'Mes said the R-3C's were only requested for professional uses.

Mrs. Banks said that is correct.

Mr. Baugh said the professional office use is allowed in R-3 and not R-2.

Mrs. Banks said seven of the eight R-3C rezoning requests are now professional offices and not residential uses.

Mr. Baugh questioned whether the one that came before us several years ago was a special use permit request or a rezoning.

Mrs. Banks said that was a rezoning request and it was ultimately denied because the applicant wanted greater occupancy. It is currently being used as a single-family.

Dr. Dilts said I appreciate very much what the applicant is trying to do, but I am compelled by the corridor and our Comprehensive Plan to follow what we are wanting to do with the corridor.

Chair Fitzgerald said I agree, I am convinced by the idea that setting a precedent here would probably not be a good idea and am inclined to go with staff's recommendation.

Mr. Da'Mes said it is an investment property and you would like for someone to maximize their opportunity on an investment; however, I think the integrity of that corridor outweighs that personal ability to do that.

Dr. Dilts moved to recommend denial of the SUP for 632 East Market Street.

Mr. Colman seconded the motion.

Chair Fitzgerald asked if there was any further discussion. Hearing none, she asked for a voice vote on the motion.

All voted in favor of the motion to recommend denial of the SUP for 632 East Market Street (6-0).

Chair Fitzgerald said this item will move forward to City Council on July 9<sup>th</sup>.

***Special Use Permit – The Commons (Fence Height)***

Chair Fitzgerald read the request and asked staff for their review.

Mrs. Banks said the Comprehensive Plan designates this area as High Density Residential. This designation states that these areas are intended for high density residential use, mostly apartment buildings at densities ranging from 12 to 24 dwelling units per acre.

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

Site: Apartment complex; zoned R-3

North: Across Port Republic Road, single-family homes; zoned R-1 and University Fields  
Apartment Complex; zoned R-4

East: Across private driveway to Deer Run Apartments, vacant land, commercial businesses and  
Port Crossing Shopping Center; zoned B-2

South: Deer Run Apartment Complex; zoned R-3

West: 865 East Apartments and commercial businesses; zoned R-5C

The applicant is requesting a special use permit per Section 10-3-46 (7) to allow for a fence of eight-feet in height. The eight-foot fence would be constructed along the southern boundary line and portions of the eastern and western property lines.

The Commons II, LLC is a 132-unit apartment complex that generally provides housing to college students. It consists of 11 buildings with 12 dwelling units in each building and four bedrooms per unit. The applicant has stated that they are becoming a gated community and are requesting the higher fence along portions of the property for security purposes.

The proposed fence is shown as a black, picket-style fence and would be six-feet in height at the northern boundary of the property along Port Republic Road. Entrances to the property would be served by six-foot gates, styled like the fence. The applicant has been in contact with the Public Utilities Department and Emergency Services to coordinate access into the property once the project is completed.

Staff does not foresee any negative impact in approving this application. Staff supports approval of the special use permit with the following conditions:

1. The special use shall only be applicable to the proposed fence and location in this application.
2. There shall be no advertising on the fence.
3. If in the opinion of Planning Commission or City Council, the fence becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked the applicant or the applicant's representative if they would like to speak. Hearing none, she asked if there was anyone wishing to speak in favor of the request. Hearing

none, she asked if there was anyone wishing to speak in opposition of the proposal. Hearing none, she closed the public hearing and asked Planning Commission for discussion or a motion.

Mrs. Banks said can I add one thing that I meant to mention during my presentation. This does not have any bearing on the decision for the eight foot fence; but the applicants have been working closely with Fire, Rescue, Police, and the City's Public Utility Department as far as access into the property once it becomes gated.

Chair Fitzgerald said thank you and asked if there was a motion at this time.

Mr. Heatwole recommended approval of the SUP request with the suggested conditions.

Mr. Colman seconded the motion.

Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval of the SUP (6-0).

Chair Fitzgerald said this will be heard at City Council on July 9<sup>th</sup>.

***Alley Closing – D&B Investors, LLC (Adjacent to 25-C-10, 11, 13, & 14)***

Chair Fitzgerald read the request and asked staff for a review.

Mr. Fletcher said the following land uses are located on and adjacent to the property:

- Site: Public alley (predominantly paved with a private carport built within the public right-of-way)
- North: Across West Water Street, Community Mennonite Church, zoned M-1
- East: Non-conforming, single family detached dwelling, zoned M-1
- South: Predominantly vacant property and private parking lot, zoned M-1
- West: Single family detached structures, zoned R-3

The applicant is requesting to close 1,675 +/- square feet of public right-of-way (ROW) in the form of a 10-foot wide by 164 foot in length public alley. The alley is located off of and perpendicular to West Water Street within the block bounded by West Water Street, Old South High Street, the Norfolk and Southern Rail Line, and West Bruce Street. The alley is not a through alley but provides access to four separate parcels.

The applicant is the owner, or part owner, of three of the four parcels adjacent to the alley. The Trustees of the Community Mennonite Church is the other property owner that could purchase up to half the width of the alley along the entire length of their property boundary they share with the City ROW. If the church chooses not to purchase portions of the alley, the applicants may purchase the entire ROW. In conversation with representatives of the church, the church is interested in maintaining access to the rear and side of their property within the area now part of the public ROW. If the City chooses to close and sell the alley, it will be a matter between the applicants and the church to decide how to divide the property or to provide private access to adjacent properties within this area.

During the same agenda timeline of this request, but through separate applications, the applicant and other property owners are undergoing a rezoning review to rezone their adjacent and nearby properties to the B-1, Central Business District, while also requesting a special use permit to allow

parking lots and parking garages as principle uses. The applicant is hoping to purchase the public alley and to incorporate the area into this project.

Although the alley is predominantly paved, to the best of staff's knowledge, this alley was not paved by the City. It is not known when exactly the alley was paved, but it appears possible that a past owner of 110 Old South High Street paved the alley to provide access to their accessory storage building and to their carport, which encroaches the public ROW.

The alley is not used for providing any public services and there are no public or private utilities within the right-of-way, and thus no easements would be needed if the City chooses to approve the request.

On March 12, 2013, a report on unused alleys was presented to City Council. In that report, this alley is shown as an alley to retain ownership of for a potential pedestrian or bicycle connection from West Water Street to West Bruce Street. Regardless of the recommendation, staff is okay with closing and selling this ROW. The report on unused alleys is a good reference tool for the City in deciding whether or not such ROWs should be retained or sold, but given the fact that this alley is not a through alley and that to build a pedestrian or bicycle connection as is hoped for by the Bicycle and Pedestrian Subcommittee—a subcommittee of the Transportation Safety and Advisory Commission—who recommended the City retain this alley, the City would have to purchase private property or an easement, to build such a connection. Furthermore, the private property that would have to be utilized to make this connection a reality is already being planned and designed for private development. As described above, the immediate development plan for the private property is to construct a surface parking lot, and in the spirit of trying to connect West Water Street to West Bruce Street for pedestrians, at this time, the property owners have designed the private parking lot to include a sidewalk along that property's eastern boundary, adjacent to the Norfolk Southern rail line, to connect West Water Street to West Bruce Street even though such a connection is not required.

Staff recommends closing the public alley.

Chair Fitzgerald asked if the street and alley sub-committee had been brought into the loop regarding this decision to recommend for closing this alley.

Mr. Fletcher said no they have not.

Chair Fitzgerald asked if there were questions for staff at this point. Hearing none, she said this is not a public hearing; however, we generally invite the applicant to speak regarding the request.

Andrew Forward said he resides on Massanetta Springs Road and is representing for the applicant with this request. The use of the alley is really to give more leeway in the design of the proposed parking facility. The parking facility would be used for the Cassco redevelopment, which is currently on going across West Bruce Street from this request. We have met several times with the Church and we are willing to work with them as far as accommodating them in some manner. I can answer any questions if you wish.

Mr. Da'Mes said what type of sidewalk do you envision for the proposed project?

Mr. Forward replied this is just schematic and we have not developed a plan for it yet.

Chair Fitzgerald asked if there was anyone else wishing to comment on the request.

John Byrne, 116 Old South High Street, said I own the property directly adjacent to the Dean property. My backyard goes right back to the alley, so I do have concerns about what will happen to my property values if this is turned into a parking lot and more what will it do to the aesthetic serenity of my backyard.

Mr. Da'Mes asked if the applicants had been in discussion with Mr. Byrne regarding any type of accommodations such as a retaining wall or buffer.

Mr. Byrne replied no I have not heard from the applicant.

Mr. Da'Mes asked if he would be willing to engage in a conversation with the applicants.

Mr. Byrne said yes, I do not know what is within my power to do. I just want to maintain the integrity of my home. A big parking lot makes me a bit nervous.

Mr. Da'Mes asked if a fence or trees would satisfy your concerns.

Mr. Byrne asked how pretty the fence would be.

Mr. Baugh said it never hurts to communicate and if you have some concerns we encourage you to communicate. I would like to point out that this is not the only spot in town where we have this issue. One of the difficulties we have with these decisions is the fact that you have property around you that is zoned industrial; you are not the property in the middle of a neighborhood with residential zoning and houses all around you, where it is easy to say no to the request for something different. This area has industrial zoning; all the nasty industrial uses could go on this property by right.

Mr. Byrne said you are telling me that there are worse uses that could be done than what is proposed.

Mr. Baugh said I was trying to open up your mind to all the possibilities.

Chair Fitzgerald said this does not preclude you from talking to the folks that are proposing this request.

Mr. Fletcher said since we are discussing technicalities, Mr. Byrne's property does not technically touch the adjacent public alley.

Mr. Colman said we visited the site on Monday, and given the terrain and the way it drops down, you probably would not see any cars from this property, especially if there is landscaping.

Michael Schwartzinger, 116 Old South High Street, said I just want to second what John Byrne said. I share equal concerns about what that would do to our backyard; but, I do understand that it actually may not be as intrusive as it seems when looking at the plans and terrain.

Michael Zook said he is representing Community Mennonite Church, the only adjoining property owner to the alley request. Our church does a lot for the community and when we purchased the Dean property we did not really have any plans for that property and house. The alley is our only off-street access to the backside of the Dean house and the parking along Old South High Street is not very good. Our only concern is that if the alley disappears and the plans that you see before you tonight change, we could possibly lose our only access to the rear of the property. That is our only concern. The applicants have been working with us and we do appreciate it.

Mr. Fletcher said I also wanted to point out that there are no public utilities within the alley and it is not used for trash collection; there are no public services within the area. These are all primary reasons why we are willing to vacate it.

Mr. Colman said clearly this alley is the access to the storage building in the rear of the property. How would the church access the rear of their property if the alley is no longer there and they do not have an easement. Would the alley be turned into an access easement for the church?

Scott Sellers with Engineering Solutions said he is the engineer for the applicant and said there will have to be a retaining wall along this area of the site. It will be high enough that it will warrant some type of railing. We could work with the church with some type of access easement in the area too.

Mr. Fletcher said let me clarify that when the applicants engage with the church it does not have to be a perfect split. It could be a private, perpetual easement placed in the area that allows the church private access to their property.

Dr. Dilts said by closing the alley we are simply saying the City can sell the alley.

Mr. Fletcher said that is correct.

Dr. Dilts said could the City sell it to anyone.

Mr. Fletcher said the surrounding property owners get the first right of refusal. In this particular case the applicants could purchase the entire alley if the church does not want to buy half.

Dr. Dilts said the point I was trying to get at was that just because you close an alley does not automatically mean it will be sold only to the applicant.

Mr. Fletcher said correct, the church definitely gets the opportunity to purchase some of it.

Chair Fitzgerald asked if there were further questions for staff or further discussion.

Mr. Da'Mes said connectivity is very important to me and I visualize a lot of pedestrian traffic through the area to downtown. Also there are the railroad tracks running along the site which concerns me regarding pedestrians. I do not know if it is appropriate at this time to proffer in the sidewalk along the parking lot, joining the two streets.

Mr. Fletcher said please remember this is just the alley closing, so there is nothing that can be proffered at this time.

Mr. Colman said if the applicants are having conversations with the church at this time to help resolve the access issue, then it is in their court to resolve that issue and not ours. I will make a motion to recommend in favor of the alley closing.

Mr. Heatwole seconded the motion.

Chair Fitzgerald asked if there was any further discussion. Hearing none, she called for a voice vote on the motion.

All voted in favor of the motion to approve the alley closing request (6-0).

Chair Fitzgerald said this request moves forward to City Council on July 9<sup>th</sup>.

***Rezoning –D&B Investors, LLC and Hess & Allen Properties, LLC; Special Use Permit – D&B Investors, LLC and Hess & Allen Properties, LLC, and Stephan and Allyson Hess (Section 10-3-85(8))***

Chair Fitzgerald read the request and asked staff to comment.

Mr. Fletcher said the Comprehensive Plan designates this area as Mixed Use Development. This designation includes both existing and proposed new mixed use areas. These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for “live-work” and traditional neighborhood developments. Live-work developments combine residential and office/service uses allowing people to both live and work in the same area, which could be combined in the same building or on the same street. The gross residential density in areas outside downtown should not exceed an average of 15 units per acre, though all types of residential units are permitted: single family detached, single family attached and apartments. Apartments are permitted only if single family detached and/or attached units are also provided and together cover a greater percentage of the project site. Residential densities in downtown may be higher than an average of 15 units per acre, and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

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

- Site: Predominantly vacant property with private parking lot, zoned M-1, non-conforming single family dwelling, zoned M-1, single family detached structures and associated parking, zoned B-1C, and public alley
- North: Across West Water Street, Community Mennonite Church, zoned M-1, and Rosetta Stone zoned B-1
- East: Across the Norfolk Southern rail line, Rosetta Stone and other building (currently being renovated), zoned B-1
- South: Across West Bruce Street, industrial uses and buildings (including the old train depot), zoned M-1
- West: Single family detached structures, and across Old South High Street, single family detached structures, all zoned R-3

The applicants are requesting to rezone 65,344 +/- square feet of property, which includes four parcels, along with the adjoining public alley that they are hoping to close and purchase through a separate application, all to B-1C, Central Business District Conditional. The properties make up a majority of the block bordered by West Water Street, the Norfolk Southern rail line, West Bruce Street, and Old South High Street. Concurrently with the rezoning request, the applicants are also requesting a special use permit per Section 10-3-85 (8) of the Zoning Ordinance to allow parking lots and parking garages as principle uses within the B-1 zoning district. Both requests are described herein.

Two parcels (tax maps 25-C-10 & 14) are currently zoned M-1, General Industrial District and are owned by D&B Investors, LLC. The public alley that D&B Investors, LLC has requested to be closed is adjacent to these two parcels. The other two parcels (tax maps 25-C-8 & 9) are currently zoned B-1C, Central Business District Conditional and are owned by two separate entities including Hess and Allen Properties, LLC and Stephan and Allyson Hess. These two parcels were most recently rezoned in May 2010 with proffers that require not less than 10 parking spaces among the two properties and further that any residential uses on either property would be limited to two units.

Other than these two conditions, both properties could operate any by-right use, apply for any special use, and would be afforded the privilege of having no building setbacks.

With the current rezoning request, the applicants have submitted the following proffer:

- All uses shall comply with the requirements of Article G Off-Street Parking except that residential dwelling units shall provide one parking space per dwelling unit.

Therefore, if approved, all four properties would become zoned B-1C and be bound by the above proffer. (The existing proffers on the two B-1C properties would no longer exist). The implications of the submitted proffer means the properties would be permitted to operate any of the B-1's by-right uses, apply to operate any of its special uses, and would be permitted to utilize the district's zero building setbacks. However, unlike standard B-1 properties that have the benefit of having no minimum parking requirements, the submitted proffer would require any use to meet all provisions of the Zoning Ordinance's off-street parking requirements, except that residential uses shall only be required to provide one parking space per dwelling unit regardless of the number of bedrooms in any particular unit.

The applicants offered the above proffer after staff explained we were not as comfortable with a standard B-1 rezoning with the subject properties, with no conditions, as we were with the recently rezoned Cassco Ice property, as there are less assurances of exactly how the subject properties could develop if granted all of the flexible provisions of the B-1 district and how such unknown development could impact the City's downtown.

At the current time, the applicants are not trying to operate any of the by-right B-1 uses, but rather are specifically interested in constructing a parking facility, which, as of October 2012, requires B-1 property owners desiring to construct parking lots and parking garages as principle uses to obtain a special use permit. (B-1 property owners operating any other use permitted by the district may build and supply any number of parking spaces to support the principle use and are not required to apply for a special use permit.) Thus, the applicants are simultaneously applying for the ability to build a parking lot or parking garage as a principle use per Section 10-3-85 (8).

Staff requested for the applicant to submit a layout of their planned parking facility so that we could evaluate if there would be any issues with the functionality of the public streets. The submitted surface parking lot layout is only a representation of what a surface parking lot could look like and it may or may not be permitted as shown as the travel lane widths do not meet the minimums specified by the Design and Construction Standards Manual. It should be understood that approving the special use permit as requested would grant the property owners the ability to build a surface parking lot or a parking garage. As shown in the example surface parking lot layout, the subject properties may be able to sustain as many as 151 parking spaces; and more, if the site were to ever contain a parking garage.

The reason the applicants want to build a parking facility is, and some may recall from the March 12, 2013 joint public hearing with City Council to rezone the Cassco Ice property, that a majority of the subject property (specifically tax map 25-C-14) was intended to contain a parking lot to support the uses that would operate within the soon-to-be-renovated Cassco Ice industrial building. Some may also recall that a comprehensive site plan had already been submitted to construct a 104-space surface parking lot on that parcel.

This information brings to attention the fact that 75 percent (the combined total area of the two M-1 zoned parcels) of the subject properties can already construct a parking facility as a principle use

by-right. The main reason the applicants are going through both of the processes described herein, is that although for the time being they are planning to construct a surface parking lot, at some point in time, they may be interested in constructing a parking garage. If they were to build a parking garage on the portions of the property that are currently zoned M-1, a 30-foot setback must be provided along all public street right-of-way lines and along the adjacent property boundaries of the neighboring parcels to the northwest because those lots are residentially zoned.

Furthermore, it should be understood that regardless of the zoning district in which a surface parking lot is built, the design standards and the parking lot landscaping regulations are the same. In addition, as described within the parking lot landscaping regulations Section 10-3-30.1 (3) (a), parking garages built within the B-1 district are exempt from parking lot landscaping regulations because they are considered structures and can be built with no building setbacks. Specifically with regard to landscaping of the site for the proposed SUP uses, staff is comfortable with what the parking lot landscaping requirements already stipulate for surface parking lots. In this particular situation, we are also comfortable with suggesting no additional conditions or requirements for landscaping associated with a parking garage. The main reasons for the latter is since the parking garage would be a structure, and given the site's physical characteristics and its location, which is not directly adjacent to or within a larger established single family home neighborhood, we believe it can be afforded the same flexibility as other buildings and structures in B-1, which allows zero lot line construction, and therefore having no landscaping obligation.

The Comprehensive Plan designates the subject properties, and the remaining properties within this block, as Mixed Use Development Areas (MUDA). Generally, the MUDA Land Use Guide designation most closely resembles the characteristics of the B-1 zoning district. Having such a designation, however, does not automatically mean that all rezoning requests to the B-1 district conform to the Comprehensive Plan, but in this particular case, staff believes it helps. The properties within this block have been designated MUDA since the 2004 Comprehensive Plan update when the designation was created and added to the Comprehensive Plan. This block of properties also represents portions of the western edge of where the City is promoting mixed-use-type development in the downtown. In general, rezoning these properties and eliminating the ability to operate the intense industrial uses permitted by the existing M-1 zoning district is a good thing for this area of the City's downtown. Development allowed by the B-1 district, at this location, would be a positive as it provides economic and social vitality for the City's core.

The submitted proffer solidifies staff's affirmative opinion to rezone these properties to the Central Business District with those specific conditions. Staff also recommends in favor of the applicants SUP to be able to build a parking lot or parking garage as a principle use. Although for the time being the property may only serve as a parking facility, the proffer indicates the applicants are considering other development for the future that could lend itself to becoming a development that promotes traditional neighborhood development, where such space is pedestrian friendly, near mass transportation options, and focuses on live-work-type environments.

Staff supports rezoning these properties to B-1C and approving the SUP to allow a parking lot or parking garage as a principle use in the Central Business District.

In addition to our recommendations herein, staff also recommends the SUP to be valid for five years from the date of approval by City Council, rather than the default timeframe of establishing the SUP within 12 months of the date of approval (See Section 10-3-130 (c) of the Zoning Ordinance). This

is the same timeframe that was suggested for HRHA's SUPs reviewed by Planning Commission last month.

Chair Fitzgerald asked if there were any questions for staff.

Dr. Dilts said I have a question regarding runoff. Half of the current M-1 lot is wooded and much of the other parcels are grass; but if you put in a parking lot such as shown, you take away all of the natural ability to capture the rain and keep significant runoff from happening. Has this been discussed and what is the outcome of this discussion?

Mr. Fletcher said yes, it has been discussed. It was actually discussed early on when the applicant submitted a comprehensive site plan for the first proposed surface parking lot. There are several different ways they can meet the minimum standards for stormwater management; these are standards that are outside of zoning regulations, but within our Design and Construction Standards Manual and State requirements as well. They have to meet stormwater quality and quantity. Quality is a new provision that they have to meet and some of the ways they can do so is with bio-filtration and things like that.

Mr. Fletcher diagramed where the retention area for stormwater management would be for the site.

He then continued saying in conversations with the engineer for the project they are also interested in potentially having smaller filtration within each of the landscaping islands. Of course most of this is going to be underground and piped to the lower area. The stormwater cannot be released off site any quicker, or in any worse conditions, than it already does.

Dr. Dilts said if they were to build a parking structure over the entire area, what would happen then.

Mr. Fletcher said it would be the same requirements. All the minimum design standards would have to be met. I am relatively certain that they have not looked that far into a design.

Dr. Dilts said if they build a structure that covered the entire area in question, how it would compare in footprint to the other parking garages in town.

Mr. Fletcher said it would be a bit smaller. He then demonstrated, via PowerPoint, of the difference in size compared to the City's public parking garages.

Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing for the rezoning request and asked the applicant or the applicant's representative to speak.

Scott Sellers, engineer for the applicant, said I can answer the stormwater concerns that Dr. Dilts has. The islands you see within the parking lot are actually bio-retention areas.

Dr. Dilts said are the plants appropriate for the bio-retention areas.

Mr. Sellers replied yes. The Department of Conservation and Recreation (DCR) has planting requirements and they have suggestions as to which plants to use in those areas. There were also questions regarding the sidewalk for this project. The one that is designed on the proposed plan before you is six feet in width and it is concrete. I do not know if that will be what is done, it could be asphalt which would allow us to take the curb a little further out. The sidewalk is definitely something that the developer wants to do. I feel this is a good use for this area, and I would be happy to answer any questions you have about this project's engineering.

Mr. Fletcher said perhaps you could give a little bit of explanation regarding the elevation change in this area.

Mr. Sellers said there is quite a bit of elevation change, we are going to try and keep the parking lot at about five percent slope from West Water Street to West Bruce Street. There will be a bit of water coming in and off the property; but we will meet all of the City standards. I did a rough grading plan and the slope is from the western corner along West Water Street and falls to the eastern corner at West Bruce Street. There is an existing storm system and when the previous site plan for a parking lot was submitted we proved adequacy for stormwater management.

Mr. Fletcher said it appears the entrance from West Water Street would drop significantly and then the area around West Bruce Street would be much lower.

Mr. Sellers replied yes. There will be some retaining walls with this project.

Chair Fitzgerald asked if there were any further questions. Hearing none, she asked if there was anyone else with the applicant wishing to speak.

Andrew Forward, one of the applicants, said as the Cassco Ice property redevelops into a mixed use there is an importance of providing parking for the facility and not relying on public parking. We definitely do need the parking here to provide for the office and residential components. The parking lot is crucial to the revitalization of the Cassco Ice building. The by-right use of the M-1 property would allow us to go ahead and build parking right now and have a parking facility; but, we would like to increase the number of parking bays and not have to put any burden on public parking facilities. By having the application approved we feel that we would have a fine development with the ancillary parking and will also help the downtown grow itself. We believe what we have planned for the Cassco site will be a good draw with tourist attractions, office space, and simply bringing additional people to the downtown area to spend money. As I said, we have the by-right use currently to build some type of parking there. At this time we are not choosing to build structure parking, we feel that the open parking lot would provide enough bays for what we envision for the Cassco Ice building.

Mr. Colman said this parking lot is not proffered as part of the Cassco building.

Mr. Forward said we do not need to provide parking for the Cassco building, it is a B-1 zoning; but for that type of facility you really need to put in parking to make it accessible. It is like the City Exchange building, we really did not need to put parking in; but, as developers we realize in order to be successful it needed parking. We feel this is a good thing to do and not burden the public parking facilities.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the request.

Steven Blatt, attorney, said he is representing BISAPACA, which owns two of the properties impacted by this project; the properties are 127 and 143 Old South High Street. The basis for our opposition is the impact that this project will have on our properties. This is a bit awkward, because we are at the proffer stage and the applicant at this point has not come in with any proffers that would exclude by-right uses that would impact how this property would develop in the future; that is unusual. Most of my comments are going to be directed to the proposed parking garage and ameliorating some collateral impact to our properties.

These properties that my client owns are higher in elevation than the parking lot. One of the concerns that my client has is lighting. If lighting is put into the parking lot, in a structure or just an open lot, that light will come in to the residences that we rent. This issue is not addressed here. Old South High Street is a very narrow street. Of the two structures my client has, only one of them has any off-street parking available. I can tell you from travelling that street that there are times when that street is bumper-to-bumper with parked cars. What we are interested in is why is there a necessity to build a structure that is not planned yet. It is one thing to ameliorate the impact on my client's property by making some suggested changes to the layout primarily on lighting and considering the traffic volume with the narrow street that has extensive parking on it. How big is this parking garage going to be? Three stories, four stories, five stories? Will that have more lighting coming into these residential houses that my client owns? None of those issues are addressed.

One of our primary concerns here is that there is no necessity to give approval to a structure that is not even planned yet. In other words a parking lot, as proposed here, is a completely different animal that may be built in the future. My client proposes that the City grant the SUP for the parking lot. Your Zoning Ordinance does not define what a parking garage is. You can save that SUP for another day and let the applicant come back with a more concrete plan to build this un-yet planned parking garage. When those plans are finalized, then that would be appropriate for this board and City Council to address the issues. This is a very important legal distinction. On a SUP City Council has the ability to impose any conditions that it chooses on the permit. That would be things like lighting, height, how many stories, and the impact on Old South High Street. If that is addressed here now, with no plan before you, then you will cut off my clients right in the future to come back and say – “no one envisioned this big of a parking garage.” What we are proposing is that if they want to build a parking lot that ameliorates the impact to my client's property, then fine; but, you should not take the other step of approving of a project that would be far greater in scope and we would not be able to come back then with the ability to have any impact. So why not let the applicants move forward with the traditional parking lot, leaving the question of a parking garage to another day when that is right for decision. If you do not do it that way you will never be able to readdress concerns with a building that would have impact for my clients or anyone else in the area. We are not saying this is not a good use of this land use; but, we are not at the position of having any by-right uses excluded by the proffer, which is normal, and there is no necessity to build a parking garage that is conceded that there is no plan for.

In the SUP process with City Council, they can impose conditions that cannot be specified now to ameliorate the concerns of my client. Let the parking lot go forward and only approve what has to be approved now, so that we can come back another day and actually see what is going to be built there and we can respond to it at that time. Thank you.

Chair Fitzgerald asked if there was anyone else wishing to speak in opposition to the proposal.

Nate Berstine, 415 Virginia Avenue, said I am not sure that I want to say I am against this proposal; but, the thing that concerns me is just walking around downtown I see a lot of asphalt and empty parking lots. This to me feels like another, big expansive asphalt being added and in some ways I am leaning the opposite way from the gentleman who just spoke and would feel more comfortable if someone was proposing to put up a parking garage that would take care of parking for downtown so that downtown could continue to expand without having big, expansive asphalts here and there. That is basically my concern; so perhaps we could take an overall view of downtown and ask where can we get to a place where there is enough parking and not all these empty asphalt areas.

Mr. Baugh said it is very interesting that you say this. The comment that was made about this particular applicant having to get this as a SUP item actually is part of a recognition by the City of a lot of the things you are talking about. There was actually a change in the ordinance, driven by some situations of people just throwing down asphalt; now you have to come before Planning Commission and Council and make your case for it.

Mr. Berstine said the reason why I would not come out and say this is a terrible idea and I am totally against it, is that I know next to nothing about the overall development that they are proposing. Seeing more of that might sway me one way or another.

Chair Fitzgerald asked if there was anyone else wishing to speak against the request.

John Byrne, 116 Old South High Street, said when you previously showed the entire area covered by a parking garage – that was very disconcerting. Even though I do not directly touch the property in question, that does not mean that a giant, engulfing parking garage does not directly affect my property value, my sense of well being, and perhaps a number of strange people wandering into my back yard from the parking garage. It is terrifying to think what it could be and the noise associated with it. What will happen along the front of my house, will it be cars all the time on the street. I would say that I am opposed to this request.

Michael Zook, with Community Mennonite Church, said this is an industrial area and I think our church made a very wise purchase at the time when we purchased the Dean property. I am also a part of the downtown landscaping committee and I recognize that there is a huge need for parking in the downtown area. I agree with the gentleman who said that a parking lot here is probably the best solution in terms of the downtown. When you take a look at the existing parking garages in the City, they encompass the entire block; this site is “L” shaped. It does not take a genius to figure out there are two properties missing to this piece. As disheartening as it is for me to see a friend lose a house or for our church to lose a piece of property, I am also a citizen of downtown Harrisonburg and I want to do what is best for our downtown. I just wanted to point out that there can be positives with this situation. I think the developers have shown that they are going to do the proper things in terms of runoff and pedestrian facilities.

Chair Fitzgerald asked if there was anyone else wishing to speak. Hearing none, she closed the public hearing for the rezoning request. She then opened the public hearing for the SUP request and asked the applicants or their representative if they would like to speak.

Andrew Forward, an applicant, said we are not intending to do a parking garage at this time. If we were going to do a parking garage, obviously the plans would have to go through Comprehensive Site Plan and building permit review processes and I would assume lighting and height would be addressed at that time. Therefore, those issues do have a forum where they can be addressed.

Mr. Colman said is the planned parking lot going to be private parking only at this time.

Mr. Forward replied yes. The majority of the parking will be the parking for the office use and the residences would utilize about sixty spaces. The rest would be open parking for the commercial uses.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the SUP request.

Steve Blatt, attorney for adjacent property owners, said he would like to clarify a comment made by Mr. Forward. City Council and the SUP process could add additional considerations that had to be

met by the developer, such as I have pointed out, so there would be a point to come back with the SUP process for that to be considered. What is being proposed here, and this is unusual, is to get SUP approval without the building coming in. A parking lot, traditional parking lot, is a completely different animal from a parking garage. If we are cut off because this blanket approval includes both the parking lot and the unanticipated parking garage, we will not be able to come back in two or three years and have any standing before City Council. That is why it is important to grant the approval for the parking lot and not the parking garage. Let the garage come back on its time and its day so City Council can then examine what should be done for the community that lives with the consequences. That is the important legal distinction with this request.

Chair Fitzgerald asked if there was anyone else wishing to speak against this request. Hearing none, she closed the public hearing and asked Planning Commission for discussion on the rezoning and SUP.

Mr. Baugh said let me make some observations. This has been a really interesting discussion and a number of points made. One of the largely, unchallenged assumptions in our planning has been related to our downtown business district expansion. During a Council worksession this year, two council members were being vigorous advocates for how our planning needs to be looking more toward making it easier for expansion of our B-1, downtown business area. I needed to remind them to look at the Land Use Guide, because we have already done that. While I think Mr. Blatt makes very good and interesting points, one thing that is a little different about this is that this area is on the fringe of our Mixed Use; but it is an area that has been identified as a B-1 area. With that regard, to allow the parking garage in the B-1, as a general rule, is very well taken. The unfetteredness of this idea is one of the main characteristics of the B-1 zoning. Much of our planning and discussions over the past decade had, as almost a given, that the expansion of our B-1 area in ways that are consistent with what is on the core side of the B-1, have been looked favorably on by us. In that regard this proposal is consistent with that.

The other piece I find interesting is the whole business of the M-1 zoning; the fact that we have all this industrial zoning throughout here. Many of the uses that we are hearing objections to tonight could be done right now. Maybe not to the same extent, but done without asking for special permission; they are by right uses in the M-1.

Lastly, is the general issue of downtown parking and there have been lots of discussions about this in recent years. As I have said before regarding Harrisonburg, for half of our citizens it is the largest place they have ever lived and for half it is the smallest place they have ever lived. You get these conflicting polls where half the people decry the loss of the small town identity and half the people expect big services that they are used to getting in larger areas. Are we in a crisis with our downtown parking situation; I do not think we are. There is a sense that something needs to be done, sometime; but, there is no consensus as to what that should be.

I do think that this discussion has been interesting, particularly as it suggests that maybe as we move forward in this direction, not just here specifically, but maybe in some other areas, that perhaps the expansion of the B-1 concept may not be as universally beloved a notion as we assumed.

Mr. Da'Mes said what are the BISCIPACA properties across Old South High Street zoned?

Mr. Fletcher replied R-3.

Mr. Baugh said when speaking of the Land Use Guide, is that where the line is drawn between the core downtown business and residential?

Mr. Fletcher said Old South High Street is the boundary of planned Mixed Use. Once you cross that, it becomes the neighborhood residential area.

Mr. Baugh said I guess that is why we are having this issue; we have had this expansion of B-1 in areas that are contiguous to B-1. Now you have an inter phase with something that is developed and planned differently and maybe it does raise the specter of transitional issues between boundaries.

Mr. Da'Mes said as someone who was part of the 2004 Comprehensive Plan, the proximity to the downtown area made sense when we said we envisioned this area as B-1. But now, when it is put into the context of giving a blanket check to someone to do what they would like; no setbacks, no parking restrictions... Obviously a good developer would say we need adequate parking. I came in here thinking this is part of our plan and that is what we should go with. I do feel Mr. Blatt has brought up some valid points by saying we should take this step-by-step; why give the entire piece now.

Another reason for my thought process is transition. I always like to see where you go from B-1 and transition to another; what is our transition with this.

Mr. Fletcher said there are existing control mechanisms for height and such within the B-1 zoning. In B-1 you can go up to 75 feet in height, just like you can in M-1. Surprisingly, in M-1 you can ask for a SUP to go up to 125 feet in height; but in B-1, you can ask for a SUP to go as high as you can engineer. Lighting was another concern brought up tonight. It is controlled within the City's Design and Construction Standards Manual and it does require that lighting be directed away from adjacent properties. There was also a question regarding the definition of a parking garage and it is defined within our Zoning Ordinance as: *Garage, Storage, or Parking is a building or portion thereof designed or used exclusively for storage of motor driven vehicles.*

Mr. Da'Mes said usually if someone were to come before us with a plan for a parking garage they would have proffers, or limits, or restrictions placed on them. At least, to Mr. Blatt's point, City Council would have some controls over this. I think that is prudent.

Dr. Dilts moved to recommend approval of the rezoning request to B-1 with the one proffer.

Mr. Colman seconded the motion.

Chair Fitzgerald asked for any further discussion. Hearing none, she called for a voice vote.

Commissioners Baugh, Colman, Dilts, Heatwole, and Chair Fitzgerald voted in favor of the motion. Commissioner Da'Mes voted in opposition.

Chair Fitzgerald said the motion to recommend approval passes with a 5-1 vote. She then called for a motion on the SUP.

Dr. Dilts moved for approval of the SUP as stated.

Mr. Da'Mes asked if she were limiting this to just the parking lot or including the parking garage.

Dr. Dilts said the motion is for approval as stated.

Mr. Heatwole seconded the motion.

Chair Fitzgerald asked for any further discussion.

Mr. Baugh said I am going to vote for the motion; but as the one person here who gets to vote for this twice, I do think some excellent points have been raised. I just want to make the point that I intend to keep an open mind and I am certainly willing to listen. I came in here tonight, prepared to vote for this and I have not been convinced not to vote for it; but, I do think some points that are worth further thought have been raised. I am certainly open to further communication with anybody who thinks I would benefit from it.

Chair Fitzgerald asked if there was anything further. Hearing none, she called for a voice vote on the motion.

All voted in favor of the motion to recommend approval of the SUP (6-0).

Chair Fitzgerald said both requests move forward to City Council on July 9<sup>th</sup> with favorable recommendations.

### ***Rezoning – Collicello North R-7 Development***

Chair Fitzgerald read the request and asked staff for a review.

Mr. Fletcher said 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: Vacant commercial building and undeveloped lots and property, zoned R-2 and M-1

North: Business office fronting Virginia Avenue, zoned M-1, undeveloped lots fronting undeveloped Collicello Street, zoned M-1, and an automobile repair shop and a non-conforming single family home, zoned M-1

East: Automobile repair shop, and across Edom Road, parking lot, zoned M-1

South: Nonconforming single family home fronting Collicello Street, zoned M-1, and a single family home fronting Collicello Street, and across 5<sup>th</sup> Street single homes, zoned R-2

West: Single family homes fronting Virginia Avenue, zoned R-2, and across Virginia Avenue, a repair shop and non-conforming single family homes, zoned M-1, and a duplex structure, zoned R-2

The applicant is requesting to rezone six parcels, zoned R-2 Residential District, and 11 parcels, zoned M-1, General Industrial District, along with adjacent undeveloped public street and alley right-of-way (ROW) that will soon be in their ownership, all to the R-7, Medium Density Mixed Residential Planned Community District. The property is located at the north end of the developed section of Collicello Street, bounded by 5<sup>th</sup> Street, Virginia Avenue, portions of undeveloped Collicello Street, and Edom Road. The subject area totals 127,195 +/- square feet (2.92 +/- acres) in area and would contain at least 35 residential dwelling units. The proposed master planned neighborhood has been named “Collicello North.”

The applicant is the same entity that over the past year received approval from City Council to close and purchase the adjacent public street and alley ROWs including: the majority of undeveloped 6<sup>th</sup> Street between Virginia Avenue and Edom Road, portions of undeveloped ROW near Edom Road, portions of undeveloped Collicello Street to the south of its intersection with undeveloped 6<sup>th</sup> Street, and portions of two undeveloped alleys off of and perpendicular to undeveloped 6<sup>th</sup> Street. As shown on the master plan layout, the applicant will also soon be requesting to close more undeveloped Collicello Street ROW; a 1,557 +/- square foot area that is entirely encompassed by this proposed development. If this area is closed and purchased by the developer, and if the developer purchases additional undeveloped 6<sup>th</sup> Street ROW that was originally planned to be bought by the adjacent property owner of tax map 40-I-6, then additional residential units could be built within Collicello North because both of the mentioned areas would become zoned R-7 and added to the overall development. The planning for this scenario has been incorporated into the regulatory control of the Collicello North master plan.

To fully understand the proposed rezoning, one must understand the R-7 zoning district, which was added to the City Code in October 2005. The adoption of this district put into practice listed strategies of the 2004 Comprehensive Plan including, among other things, providing incentives for neighborhoods that contain a mix of housing types and for providing open space or cluster development to preserve green space within subdivisions. The 2004 plan also strategized to address traffic calming measures and to create flexibility with building setbacks that could enhance social interaction among neighbors. These strategies led to the creation of the R-6 and R-7 zoning districts. In brief, these districts have the same intent except that R-6 allows only detached single family homes at a maximum of six units per acre, while the R-7 allows detached, attached, and multi-family units at a maximum of 12 units per acre. The R-6 district allows five percent non-residential uses, while the R-7 district allows 10 percent non-residential uses. The non-residential uses permitted by these districts that cannot exceed the specified percentages include: retail stores, convenience shops, personal service establishments, restaurants, food and drug stores, and governmental, business, professional, and financial institutions. Other non-residential uses of this district include places of worship and child and adult day care centers, however, such uses are not limited in the amount of area they may take up within such developments.

As explained by the Zoning Ordinance, the purpose of the R-7 district is intended to provide opportunities for the development of planned residential communities offering a mix of single family detached units, single family attached units, and in certain circumstances, multi-family units. R-7 neighborhoods are developed under an approved master development plan that incorporates regulatory text and a master layout of the neighborhood. In other words, aside from particular provisions of the Zoning Ordinance that must be met, the approved master plan is the “zoning” by which all development must abide. The R-7 zoning district requires a minimum of two contiguous acres, a minimum of 15 percent open/green usable space, and at least two types of residential housing types, where no one type can exceed 70 percent of all residential units. If multi-family units are built, they cannot exceed 30 percent of the total number of units. The master plan must also identify the required areas, widths, depths, and building setback requirements of all lots and it may also incorporate provisions that are typically regulated by Article T of the Zoning Ordinance, which among other things includes the regulations for walls and fences; terraces, patios, and decks; and accessory buildings.

To date, the City has approved two R-7 master planned communities: Brookside Park and the Quarry. Aside from Collicello North, these are the only two R-7 applications to ever be submitted.

The Brookside Park master plan was originally approved in June 2006, but has been amended twice; once in 2007 and then again in 2011. This development has not been completed but has gradually developed over the past few years. It is located off of Suter Street and includes over 7 acres of property and is master planned to include single family detached and attached homes at about 82 percent of the maximum permitted density. The Quarry was approved in September 2007 and includes about 118 acres of property located off of Linda Lane and Smithland Road and is master planned to include non-residential uses along with all housing types allowing up to 744 residential units, which is a little over half of the permitted density. This development never materialized but has received attention from potential developers since its approval.

With regard to the subject request, Collicello North has met or exceeded all of the minimum required provisions to construct an R-7 development. The property is almost three acres in size; the master plan text defines all of the area and dimensional requirements for all lots; the master plan layout illustrates the general arrangement and location of the types of residential units, roads, sidewalks, and landscaping; the neighborhood will have at minimum just over 15 percent usable open/green space; and they have addressed the regulatory matters of Article T. As is necessary when proposing a rezoning in any of the City's master planned districts, the developer has worked closely with staff to ensure the provisions of the master plan can be practically applied. The master plan text and layout have been thoroughly reviewed and edited, where necessary, by City staff. The master plan text and the governing layout sufficiently explain the details of Collicello North, and therefore such information does not need to be repeated in this report. However, there are several matters that need to be clarified herein.

First, the project would maximize the permitted density of 12 units per acre in providing at least 35 dwelling units—15 single family detached units, one duplex structure (two units), and 18 townhouse units—all made up among six different housing types. All buildings, including community buildings and non-residential structures, would have zero building setbacks. Note that although zero setbacks are afforded to the single family detached units, this provision is more about offering flexibility in design as these dwelling units could never physically touch another unit because they would then be considered attached units, which would not be permitted by the master plan.

A majority of the residential lots would not have public street frontage; therefore, a variance to the Subdivision Ordinance Section 10-2-42 (c) would be required during the platting of this project. As described earlier, if additional density is achieved by purchasing more property, then extra units could be built. The additional units could take the form of any of the permitted types as indicated in the master plan, the existing single family home, or multi-family units. If multi-family units are constructed, they would be incorporated within the area delineated for mixed-use at the corner of the intersection of Collicello Street and 5<sup>th</sup> Street and would be designed and built in conformity to the vision and intent of the rest of Collicello North. If density permits, the multi-family units may be incorporated into a mixed-use building that might house any of the non-residential uses allowed by the district. Collicello North will allow any of the non-residential uses up to the maximum 10 percent of the development, which at this time is about 12,720 square feet. As required by the R-7 zoning district, the 10 percent includes all land area associated with the non-residential uses (i.e. streets, parking, landscaping, etc.). Buildings containing non-residential uses cannot exceed floorplates of 7,500 square feet, while mixed use buildings allow the entire first floor of the building to include the non-residential uses.

What is not obvious when looking at the master plan layout with regard to residential unit parking spaces, is that the developer has uniquely designed the driveways leading into the garages of the Type B, C, and E units as parallel parking spaces. The parallel spaces for the Type B and C units offer additional parking spaces for the property owner, or to be available to offer parking spaces for neighbors if they are having a family event or if there is a community event. The parallel spaces for the Type E units are provided to meet the minimum parking spaces necessary for those townhome units.

With regard to the public street layout, the designed road does not meet the typical requirements of public streets pursuant to the Design and Construction Standards Manual (DCSM). It is already known that some of these issues will include deviations to street and ROW width requirements, curve designs, and to the standards for street classifications. Because of these issues, a variance to the Subdivision Ordinance for the design standards of the street would be required during the platting of the project. As is specified with the Subdivision Ordinance Section 10-2-41 (a), variances may be approved by City Council on a case-by-case basis when:

- the proposed alternative would better achieve the walkable, pedestrian and bicycle-oriented environment the city desires;
- the particular conditions of the site and surrounding street network would allow the proposed alternative without causing undue inefficiencies for service vehicles, nor an excessive reduction in pedestrian safety due to pedestrian-vehicle movement conflicts; and
- the proposed alternative would better balance the needs of pedestrians and vehicles, and better achieve the goals of the comprehensive plan.

Staff believes the proposed street layout meets the criterion above and is prepared to support the necessary variances during the platting phase. The intent behind Collicello North's street layout is to utilize narrow street widths combined with streetscape planting to create traffic calming measures for a safer environment for automobiles, pedestrians, and bicyclists.

The Collicello North master plan also indicates the extension of Collicello Street will either be a public or private street. At this point, the most likely scenario, and also the hope of the developer, is that the entire road will be a public street. The road section to be built within the existing undeveloped Collicello Street ROW can be accepted as a public street as such a design meets specific criterion for the City to be able to receive maintenance funds from the Virginia Department of Transportation. The remaining road section that would connect the existing ROW westward to Virginia Avenue is the part of the road that could still be a private street. Regardless of that section being public or private, the physical road would be built as shown. All other roads shown on the master plan will be private streets. Any section of a street that is not public will not be maintained by the City, and therefore, will not receive City trash services or receive public snow removal services. Public school bus services would be provided as is determined necessary.

Regarding the phasing of the project as shown within Appendix B, pursuant to the requirements of the Zoning Ordinance Section 10-3-11 (c) concerning certificates of occupancy, no certificates of occupancy shall be issued for any building within any phase, unless the phase is completed or the developer has posted an approved surety to the City, to complete any particular phase. A note on the phasing layout sheet indicates the developer's preference to build phases 1 and 2 in immediate sequence, which would complete the through street. However, if there is a gap between these two phases, a temporary, public turnaround will be provided.

The Collicello North master plan also indicates that if the City approves of its location, a transit bus stop area would be provided within the mixed use area near the intersection of Collicello Street and 5<sup>th</sup> Street. The Director of the Department of Public Transportation has already commented that at the present time, such a stop at the desired location would most likely not be accommodated as there is a transit stop near the intersection of 3<sup>rd</sup> and Collicello Streets. The City's goal is to be within  $\frac{3}{4}$  of a mile of everyone, thus the residents of Collicello North would be serviced by the stop on 3<sup>rd</sup> Street.

As discussed above, the development would require variances from the Subdivision Ordinance. These variances should be considered when making a recommendation for this project as approving an R-7 plan of development could be perceived as also providing an endorsement for variances that would be requested during the platting phase.

The Comprehensive Plan designates the entire subject area and the majority of the surrounding area as Neighborhood Residential. This designation is characterized by large housing units on small lots, where existing conditions should dictate the types and densities of future residential development, and where infill development and redevelopment should be compatible with the existing neighborhood. Given the site's location within the overall neighborhood, the physical characteristics (i.e. slope and grade) of the project site, and the general design and philosophy of Collicello North, staff believes the intent of the Neighborhood Residential land use designation would be fulfilled.

Much of the subject property is zoned M-1, therefore rezoning these industrially zoned properties to a residential district is more in line with the long term plans of the City. As one travels north, up the hill of Collicello Street, single family detached homes would be the first types of residential units visible to the rest of the existing single family and duplex neighborhood to the south. The majority of Collicello North's attached units would be built beyond the crest of the knoll, not visible from the existing neighborhood, and predominately accessible only from Edom Road, lessening the overall traffic impact of this development to the existing neighborhood. Staff also appreciates that the first two phases of the project would build all of the detached single family homes—the later phases would incorporate the attached residential units. Often times, detached single family homes are built in later phases of development projects.

Although the unit density of Collicello North and the utilization of townhome units is closer to an R-3-type development than an R-2-type development, which is what the majority of the neighborhood to the south is zoned and what is traditionally thought of as a Neighborhood Residential development, Collicello North is quite different from a medium to high density R-3 development because R-7 dwelling units must be occupied by a single family or not more than 2 persons, which is similar to R-1 and R-2 occupancy restrictions. The R-7 zoning district is not a multi-tenant zoning district. It was designed to promote home ownership within a cohesive single family neighborhood. Furthermore, the flexibility afforded through reduced setbacks and the required open space also sets it apart from other developments that achieve similar unit density.

Staff believes Collicello North embodies the intent of the R-7 zoning district and is master planned in a way that creates an excellent transition from the existing neighborhood toward the existing industrial uses along Edom Road.

Staff recommends approving the request to rezone the properties from R-2 and M-1 to the R-7 Medium Density Mixed Residential Planned Community District.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she asked if the applicant or the applicant's representative would like to speak.

Dean Weaver from Linville and one of the partners with Kin Group, LLC, said it is a privilege to be here. I was previously before you regarding alley closings and vacating properties; I am learning to appreciate the procedures of this process. I have been working closely with planning staff and I am here tonight to answer your questions as best as I can. Adam has very specifically spoken to the specifics of the development; but there is a lot of feel to this plan as well. We are really trying to design a community, not just a subdivision, or a half acre lot with a large backyard. We are creating an environment for different economic scenarios to interact, not just placing them in the same development, but creating space for these individuals to cross paths. We call it the third space. It is pedestrian, buses, bikes, that idea of people crossing paths; perhaps at a café.

I really want to have a café in the mixed use area of this development. It is part of a community, a meeting place, the third place if you think about it. You stop by and have a cup of coffee and talk with your neighbor; it is safer to know your neighbor than to not know your neighbor. With that said, I am here to answer your questions.

Mr. Heatwole said between phase 1 and phase 2, the large green area that is shown, is that more or less a courtyard or playing field?

Mr. Weaver said we are calling it the upper green, we have two greens with the smaller of the two closer to Edom Road. This is your immediate area right outside your home. It is envisioned that you could sit on your front porch with the kids playing on the green. A landscaping plan has not been evolved yet. This is a common space controlled by the homeowners association and is part of the master plan.

I would like to make a point too, regarding the reference to the eight foot fencing, is not designed for a gated community. The eight foot is just something we needed to specify. I do not want to give the impression that this would be a gated community.

Chair Fitzgerald asked if there were any further questions for the applicant. Hearing none, she asked if there was anyone else wishing to speak in favor of the request.

Michael Zook said he worked for Dean Weaver many years ago and more importantly I own a rental property at 808 Virginia Avenue, adjacent to the site. I am familiar with the area and I think this is a great layout and I am a big fan of keeping this small and keeping it a community. I believe it is a great plan and I am very excited to see what happens.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the request.

Diane Gray said I live at the corner of 5<sup>th</sup> and Collicello Streets and therefore I am strongly impacted by this development. In conversations with the neighbors, one of our major concerns is the increased traffic there will be at the corner of 5<sup>th</sup> Street and Collicello Street. It is already a busy intersection with many children playing in the street, on the sidewalks, and in that area. The second concern is the change in this to R-7 rather than keeping this as the R-2; which the surrounding neighborhood is. This is overcrowding; that is a lot of persons to put into such a small area. Waterman Elementary School, which this would draw upon, is already adding their fourth mobile classroom. You have to think that this housing is going to add a couple of children per household.

I never considered the bus stop until it was spoken of tonight. The idea of looking out my front door and having to look straight at a bus stop would put me over the edge. When I purchased my home I chose to be one street short of being in the County; of course the City has annexed since then. The double lots beside of me have been developed with single-family homes, the double lots across the street have been developed with single-family homes; only one lot behind me remains open. All of this is just a little overwhelming.

You speak of 35 houses in the development and another speaks of at least 35 houses; this does not leave us as neighbors with a whole lot of information as to what we are really dealing with. I believe it was commented that only 30 percent could be multiple housing units. Seventeen single-family homes and 18 multiple units do not add up to 30 percent. You are talking about less than three acres with 35 or more families; that is pretty tight. When we were originally looking at this we were told it would be 17 houses and now we are looking at 35. Obviously this has doubled in just the year.

I have heard about the smaller streets and that it is supposed to slow traffic down. I do not know if it will slow traffic down; but I do have a concern about the issues of fire, police and rescue in the area.

The exit onto Virginia Avenue and relieving some traffic on Collicello Street really does not do much. You can only exit north; there is not a whole lot of traffic that goes out from that area and travels north. To me this is not relieving the traffic in and out of the area. I do appreciate the fact that we are now looking at twelve of the units exiting onto Edom Road. However, there is still a lot of traffic coming out at our corner.

I am concerned about the house on the corner, immediately across 5<sup>th</sup> Street from me. I bought into an R-2 residential area and now I am looking at possible commercial or retail use situation. I feel as if I have been moved into the middle of Washington, DC. I have put 38 years into the house across the street from this and I am not sure that I will be able to stay in the area now. I do have concerns about the value of my home too. The impact of the volume of the people, traffic, retail, commercial and a possible bus stop situation.

I do know that this development has negatively impacted the way I feel about living in the community. We are a community, Collicello Street and the people around here have been with each other for years and years; we do not need someone to come in and make a community of us.

I am opposed to the rezoning to R-7 to make the area denser. I realize that change is going to happen, but I do not see this as a positive.

Mr. Fletcher clarified the attached units shown on the proposed master plan are considered townhomes and not multi-family dwellings. They would be individually subdivided and are not defined as multi-family units.

Mrs. Gray said that is still dense for the amount of property.

Chair Fitzgerald asked if there was anyone else wishing to speak in opposition to the request. Hearing none, she closed the public hearing and asked Planning Commission for further discussion, questions, or a motion.

Mr. Da'Mes asked if there were any other calls or letters of opposition to this request.

Mr. Fletcher said we did receive a letter that was included in your packet. I did not receive any other calls.

Mrs. Banks and Mrs. Turner said they had not received any calls in opposition to the request.

Mr. Da'Mes said this was discussed as a year in the making, it feels more like five to seven years from what I can recall. As far as the concept I know this has been a long process for the developers. I do recall the original plan being far less dense than this proposal; but, I like this entire concept. I believe this is well thought out. The transition from one zoning classification to another is clearly visible here with the Edom Road industrial area. The single-family homes are adjoining the Collicello Street neighborhood with the townhomes closer to the Edom Road area. I think the idea of affordable housing is clear with the single-family homes being afforded to those who can, and then for those that are perhaps a starter, there are the townhomes. This plan is well thought out and I cannot think of anything else better served for this area. For these reasons I am going to support this request.

Chair Fitzgerald said I think it is interesting that on the evening when we have discussed the transitioning from one zoning classification to another with the parking lot along Old South High, it is nice to see this plan as it takes the geography and topography of the area and goes from single-family to the denser townhomes almost up and over the hill and out of sight from the existing neighborhood.

Mr. Colman said I like the open space right there in the highest point of the property. Typically you would consider this prime property; but it is perfect for recreation and will have great views.

Chair Fitzgerald said the fact that in many developments we often see the open space as "throw-away" area. This does not appear to be that at all.

Mr. Weaver said there is much more than 15 percent open space; that is just the usable area. There are actually small pockets all over the development that could be counted and we chose not to apply them.

Mr. Da'Mes moved to recommend approval of the Master Plan as presented for the Collicello North project.

Dr. Dilts seconded the motion.

Chair Fitzgerald asked if there was any further discussion. Hearing none, she called for a voice vote on the motion.

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

Chair Fitzgerald said this will move forward to City Council with a favorable recommendation on July 9<sup>th</sup>.

### **Unfinished Business**

None.

### **Public Input**

None.

### **Report of secretary and committees**

Mrs. Banks said staff visited the Hillandale area of the City where a total of eleven violations were found. The violations were a combination of discarded materials and inoperable vehicles. For the month of June, inspectors will be in the Maplehurst/JMU area of the City.

Mr. Baugh said last night at City Council everything that was recommended for was approved by Council with one exception. The Harrisonburg Redevelopment and Housing Authority rezoning and SUP project we voted to table. What came up was some community opposition that was not in attendance at the Planning Commission meeting and that was a piece of it; but, the general sense was there was an existing zoning in place that would allow 29 units. I think everyone was on board with the rezoning with no proffers until we got to the potential density issue.

**Other Matters**

Mrs. Banks said there is one matter that was brought up at the Board of Zoning Appeals (BZA) hearing last week. Over the past 18 months the BZA has heard three variance cases dealing with accessory buildings on through lots. A through lot has public street frontage along both its front and rear yards and the Zoning Ordinance specifies that an accessory building cannot be placed between a principle building and a public street. The BZA feels this is a hardship that is generally shared by several neighborhoods and perhaps a change is necessary to the Zoning Ordinance in regard to this regulation. They have asked Planning Commission and Planning staff to look at amending the ordinance at this time and actually, staff has already started this process. We will be bringing language to Planning Commission next month regarding this amendment.

Mr. Fletcher said along with the amendment we have two other items: a preliminary plat and a rezoning request along Chicago Avenue for a Family Dollar.

**Adjournment**

The meeting was adjourned at 10:15 pm.

---

Chair Deb Fitzgerald

---

Secretary, Alison Banks