

MINUTES OF HARRISONBURG PLANNING COMMISSION
July 9, 2014

The Harrisonburg Planning Commission held its regular meeting on Wednesday, July 9, 2014 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Gil Colman, Deb Fitzgerald, Jefferson Heatwole and Henry Way.

Members absent: MuAwia Da'Mes and Judith Dilts.

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

Chair Fitzgerald called the meeting to order and determined there was a quorum with five members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the June 11, 2014 Planning Commission meeting.

Mr. Way moved to approve the minutes as presented from the June 11, 2014 regular Planning Commission meeting.

Mr. Heatwole seconded the motion.

All members voted in favor of approving the June 2014 minutes (5-0).

New Business

Streets and Alley Closing – JMU Street Closings (Portion of Chesapeake Avenue, East Grace Street, Portion of South Mason Street, and an Alley Located Between South Main Street and South Mason Street)

Chair Fitzgerald read the request and asked staff to review.

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

- Sites: Substandard Chesapeake Avenue ROW, publicly maintained East Grace Street and South Mason Street ROWs, and a partially paved and graveled public alley ROW
- North: 192 feet of Chesapeake Avenue ROW is north of the Chesapeake Avenue section, R-3 Institutional Overlay zoned property owned by JMU is north of East Grace Street, Martin Luther King Jr. Way is north of South Mason Street section, and R-3 zoned property owned by JMU is north of the alley
- East: M-1 zoned property owned by JMU is east of Chesapeake Avenue, R-3 zoned property owned by JMU is east of East Grace Street, R-3 Institutional Overlay zoned property owned by JMU is east of South Mason Street, and South Mason Street is east of the alley
- South: M-1 zoned property owned by JMU is south of Chesapeake Avenue, R-3 zoned property owned by JMU is south of East Grace Street and South Mason Street, and R-3 zoned property owned by JMU is south of the alley
- West: M-1 zoned property owned by JMU is west of Chesapeake Avenue, South Main Street is west of East Grace Street, R-3 and R-3 Institutional Overlay zoned property owned by JMU is west of South Mason Street, and South Main Street is west of the alley

James Madison University (JMU) is requesting to close and vacate three public street right-of-ways (ROWs) and one public alley. JMU is the adjacent property owner to all ROWs requested for closure.

The public street ROW closures include: portions of Chesapeake Avenue, East Grace Street, and portions of South Mason Street. Chesapeake Avenue consists of 24,176 +/- square feet of ROW located south of West Grace Street. The closure does not include the first 192.83 feet of this ROW because JMU does not own the property on the western side of this section of Chesapeake Avenue. East Grace Street would be closed in its entirety and includes 50,429 +/- square feet of ROW. South Mason Street, south of Martin Luther King Jr. Way would also be closed in its entirety and includes 28,575 +/- square feet of ROW.

The public alley requested for closure is a 10-foot wide by 670.7-foot long ROW located between South Main Street and South Mason Street and consists of 6,708 +/- square feet.

As explained within the letter submitted by the University, the purpose for closing East Grace Street and South Mason Street is to make these areas more pedestrian and bicycle friendly in association with their Grace Street corridor plans and to better accommodate these areas in connection with the Student Success Center. The intent for closing the public alley is to incorporate this ROW within their adjacent property to accommodate a planned parking deck to be located at the corner of Martin Luther King Jr. Way and South Mason Street, which would support the Student Success Center. The reasoning to close the identified portions of Chesapeake Avenue is to incorporate that ROW within their adjacent property to make way for a 20,000 square foot annex for Facilities Management.

There are utilities such as water, sewer, gas, and electric located within all portions of the subject street ROWs. There are no utilities within the alley. If approved, the City will reserve easements for all of these utilities. The locations for these easements must be determined and shown on surveyed plats prior to holding the City Council second reading of the closings so that such plats can be recorded with the ordinance prepared by the City Attorney. When redevelopment of the subject areas occurs and relocation of those utilities takes place, the reserved easements can be removed and new easements for the relocated utilities can be recorded.

With regard to water and sewer, there is infrastructure located within each of the street ROWs, except for the East Grace Street ROW, where only a water main is located within the street. Easements for these utilities must be in accordance with the City's current standards for new construction, where 20-foot wide easements are needed for individual water or sewer mains and 35-foot wide easements are needed for water and sewer mains that are parallel to one another and to be located within combined easements. Special consideration should be made for deep utilities or large separations between parallel utilities. These locations may require greater than 20 or 35 foot wide easements. The Department of Public Utilities specifically requested to review the proposed easement locations and widths once these areas are better located.

With regard to gas utilities, Columbia Gas noted there is a 2-inch plastic main within Chesapeake Avenue. This line is connected to lines located within West Grace Street. They also noted there are service lines within this area that are not mapped. They also have a 2-inch plastic main within South Mason Street, which is connected to infrastructure located in the ROW of Martin Luther King Jr. Way. Columbia Gas prefers to have 25-foot wide easements centered on their mains.

Harrisonburg Electric Commission (HEC) has overhead power lines that run along the edge of Chesapeake Avenue. They have requested that a 15-foot easement be reserved centered on the overhead power line through this area. HEC also has overhead power lines located within South Mason Street, which will also need the same width of easements reserved.

The Department of Public Works requested that easements be included for the maintenance of traffic signals, sidewalk, curb, and gutter facilities at the public street intersections. Furthermore, if gates are to be installed on East Grace Street and/or South Mason Street, or for any other planned areas for that matter, coordination of their placement should occur with the Department of Public Works to prevent vehicle queue spillover onto public streets.

The Fire Department noted that emergency vehicle access is an issue with which they have been successful in working with JMU on a regular basis; so long as adequate access is provided for apparatus responding to emergencies, they have no concerns with closing the subject ROWs.

If JMU is considering renaming any of these ROWs, the naming of the streets should be coordinated with the City and with the Emergency Communications Center (ECC).

In conclusion, staff recommends closing the identified ROWs with the condition that appropriate easements be reserved for all utilities.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she said this request does not require a public hearing; however, we generally allow anyone desiring to speak to do so at this time. Seeing no one, she asked Planning Commission if they had any discussion or a motion at this time.

Mr. Way asked if there was a representative from JMU present at the meeting tonight.

Seeing no one, Chair Fitzgerald asked Mr. Way if he had a general question to be answered.

Mr. Way said I have a few questions and I am somewhat surprised there is no one here from JMU to speak to this.

Mr. Fletcher said you can certainly ask the questions and we may know some of the answers.

Mr. Colman asked if there were comments regarding concerns about a citizen being against some of this request and the easements.

Mr. Fletcher said not to my knowledge. Are you referring to the easements that need to be reserved?

Mr. Colman replied no, someone opposed to the closure and the easements.

Chair Fitzgerald asked if there had been any citizen concern.

Staff said they had not received any comments or phone calls regarding this request.

Mr. Baugh said he did have one constituent contact him regarding the closure. The concern was particularly about the closure of the Mason and Grace Street portions. It was more of a general question of why is the City "giving up" the street(s). I would not mind hearing staff discuss more about that as well. Obviously, there is nothing within the staff report that raises a red flag against it.

Mr. Fletcher said until recently, there were still private property owners of which the public street was serving the public interest for. There is no longer that case. When you look at JMU's long

term comprehensive plan you can see Grace Street with the improvements of narrower streets and wider sidewalks, along with bus pull-offs for public transportation.

Mr. Baugh said the argument that this person was making was the perception that this was something that was just being done for JMU. I attempted to point out that JMU does own all the property around the public street; so I guess in theory anyone in the same situation could come to us and make the same request. I am just throwing this out for discussion. This was only one person who contacted me expressing any concern.

Mrs. Turner said it is really only unusual because JMU owns all the properties bordering those streets. We do not usually have an entire block of property on an existing, developed, used street that is owned by one party. It is not unique because it is JMU, it is unique because that situation does not exist for most private property owners. There has definitely been a case in the past where we have vacated a built street. You may not remember, but where Costco is now was a built street and the property on all sides was one owner and he wanted to vacate the street to sell the properties to Costco. The City vacated the street, it was torn out and Costco was built. It is not that it has never happened before; it is just very unusual because we do not have very many places where you have an existing street and one person owns all the surrounding properties.

Mr. Baugh said arguably it has similarities to what we just did off North Main Street with Wilson Avenue. What is different with that is it was part of a rezoning request; something we do not have here.

Mr. Colman said is there any impact on the traffic flow, given that some people use Grace Street and Mason Street. Has the closing of the streets been looked at with traffic studies?

Mrs. Turner said I do not believe that Public Works has done an actual study on that. I think their view is that there will not be an impact with the closing of the streets. For the most part, the only reason people would be using the street now is for a cut through to avoid the Main Street/Martin Luther King Jr Way intersection. That is probably not a valid enough reason to be in opposition of the request.

Mr. Baugh said I agree, but I think that is where any sentiment would be. No one would use that as a cut through, it does not work very well; but in some sense we are taking away the public's right to cut through.

Mr. Way said on the merits of the request, it fits in with the JMU plan and the surrounding properties. I think that it makes a lot of sense for this to happen. I do have questions about what the actual plans are for Mason and Grace Streets. I wonder how much the alleyway is needed, the letter talks about making it more pedestrian and bicycle friendly, so it seems a bit strange to remove an alleyway if you are trying to achieve that. We are closing two reasonably sized streets and it would seem like a good courtesy for JMU to come and answer some questions, or to speak on behalf of. I do hope they come to City Council to talk about their plans.

Mrs. Turner said to add to Mr. Colman's question about a traffic study; I do not think there was a traffic study done about the closure. However, Public Works has been working with JMU since before they acquired the old hospital property about impacts of JMU simply owning that property and the rest of the property to the corner and what effects it has on Martin Luther King Jr Way and on Main Street. They have been planning improvements to those areas as the plans have progressed.

Mr. Fletcher said Planning Commission was presented, by JMU, their Master Comprehensive Plan several years back; although many of you were probably not on the Planning Commission at that time. It reflected the Grace Street Corridor closure and improvements.

Mr. Way moved to recommend approval of the request, with the hope that JMU might come to the City Council hearing.

Mr. Heatwole seconded the motion.

Chair Fitzgerald called for a voice vote on the motion to recommend approval. All voted in favor (5-0). She then said this will move forward to Council on August 12th.

Special Use Permit – 2477 Reservoir Street (Multi-Family Units – Campus View Apartments)

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Medium Density Mixed Residential. This designation states that these largely undeveloped areas continue the existing medium density character of adjacent areas, but in a different form. They are planned for small-lot single family detached and single family attached neighborhoods where green spaces are integral design features. Apartments could also be permitted under special circumstances. They should be planned communities that exhibit the same innovative features as described for the low density version of mixed residential development. The gross density of development in these areas should be in the range of 4 to 12 dwelling 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: Single-family dwelling, zoned R-3
- North: Vacant parcels, zoned R-3
- East: Campus View Condominiums and Apartments, zoned R-3 and R-5C
- South: Single-family dwellings, zoned R-3
- West: Across Reservoir Street, Dogwood Commons Apartments, zoned R-3

The applicant is requesting a special use permit per Section 10-3-48.4 (6) of the Zoning Ordinance to allow multiple-family dwellings within the R-3, Medium Density Residential District. The property is located in the southeastern portion of the City along Reservoir Street, approximately 550 feet north of the City/County boundary. Currently, there is a single-family dwelling on the subject property.

The proposed development is shown to contain three structures; two 12-unit apartment buildings and a 1,440+/- square foot clubhouse facility. The apartment buildings are described as three stories, with four bedrooms in each dwelling; for a total of 96 bedrooms. Parking is provided throughout the remainder of the property. The applicant has demonstrated that a TIA is not needed with this project.

Although addressed as Reservoir Street, the subject property has only a 15-foot wide pipe stem out to the street. The majority of the site is situated 100 feet back from Reservoir Street; with vacant

parcels between the site and street. At this time there are no plans to connect the proposed development to Reservoir Street, and as shown on the drawing all traffic would be routed into the existing Campus View complex which connects with Chestnut Ridge Drive. The applicant has expressed a desire to have a temporary construction entrance off Reservoir Street during the construction phase for this project and Reservoir Street widening; as well as a possible future gated, emergency access into the site from Reservoir Street. This can be worked out during the comprehensive site plan review phase.

The applicant has noted on the submitted plan that the property line between the existing Campus View Apartments and the proposed new apartments would be vacated during the comprehensive site plan review process. When the interior property line is vacated to create one lot the orientation of the front, side, and rear setbacks changes as well. Staff has discussed with the applicant that the setbacks should all conform to the existing phases of Campus View. Additionally, a shared parking agreement would not be necessary once the property line is vacated.

Per Section 10-3-48.6 (b), vegetative screening would be required along the southern property boundary where the parking lot is adjacent to single-family dwellings. The submitted drawing indicates the location of the screening which must be an evergreen hedge (six-foot ultimate height) or shrubs/trees planted a minimum of five feet on center so as to form a dense screen. As well, all required parking lot landscaping must be met; this will be reviewed during the comprehensive site plan review.

As part of the requirements for obtaining a special use permit to build multi-family units in the R-3 district, an applicant must substantiate that they have met several conditions to justify the development. Briefly, the conditions state that:

Existing multiple-family development, or land planned for multiple-family development according to the Land Use Guide, is located adjacent to, across the street from or in close proximity to the proposed development.

The applicant has demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities currently serve the site, are planned to serve the site according to a city or state plan, will be provided by the applicant at time of development, or are not needed because of the circumstances of the proposal.

The applicant has demonstrated that the proposed multiple-family development's design is compatible with adjacent existing and planned single-family, duplex and townhouse development;

The applicant has shown that the site is environmentally suitable for multiple-family development.

The applicant submitted a document to attempt to address these issues as numbered above; in general the applicant states that:

1. The proposed development is adjacent to Phases I and II of Campus View. The property line between Phase II and proposed Phase III will be abandoned during site plan development creating one unified parcel.
2. There are two entrances on Chestnut Ridge Drive serving the existing Campus View Complex that will serve this proposed Phase III. Sidewalks and bicycle facilities will be included with the site plan development. A connection to Reservoir Street is also being considered in discussions

with the City. However, actual construction of such a connection cannot be completed until the Reservoir Street widening project is completed.

3. Architectural design and landscaping will be similar to Campus View Phase I and II. In addition, screening shall be provided along the boundaries with two adjacent single-family detached home parcels.

4. The site has an average, existing grade, south-to-north slope of 8.4%. This slope is similar to or less than existing phases and there are no critical slopes.

Staff believes the proposed development meets the conditions set forth in Section 10-3-48.6 (e). Currently, there are apartment complexes along this portion of Reservoir Street as well as adjoining the site. Transit bus stops are located on Reservoir Street and Chestnut Ridge Drive adjacent to the development and pedestrian/bicycle facilities are planned for the widening of Reservoir Street. The gross density of the development is twelve units per acre, which does fall within the range of 4 to 12 dwelling units per acre suggested in the Medium Density Mixed Residential land use.

Staff does not have concerns with this proposed development and recommends in favor of the special use permit request.

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

Dick Blackwell with Blackwell Engineering, said he there to answer questions regarding the project. We have talked with the Public Works Department about the use of the entrance off of Reservoir Street, just for construction purposes. The City owns and is planning on using the two lots on either side of the entrance as staging lots while the work on Reservoir is going on. They will probably use the same construction entrance to access those lots as our project will. When complete we do want to have the capability of using that entrance for emergency purposes; it would be gated in some fashion.

If there are any questions I would be happy to answer them; as well, the owner is here with me tonight.

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

Steve Bender said I am the Treasurer of the Campus View Condominium Unit Owners Association. Campus View JMU borders the property in question. It is our understanding that the applicant plans to sell the land, once the special use permit is obtained, to Davis Mill, LLC, the current owner of the property commonly known as Campus View Apartments. The subject parcel abuts both their property and ours. There are several problems with their application that we would like to correct for the record.

First, the application still fails to list all adjacent owners, and incorrectly lists Davis Mill as an owner of Parcel 081-E-1. Until 2012, E-1 represented the entire parcel that was to be Campus View JMU Condominium. In 2012, when Davis Mill bought the 7 acres of additional land not yet added to the condominium, 081-E-1 ceased to exist in the Harrisonburg Real Estate Information System (REIS) and the additional land was designated 081-E-7. Within the last month, 081-E-1 was added back into the REIS, but once the parcel is selected, pages related to that parcel will not properly

display any information—just “error on page” warnings. All it lists is Campus View JMU Condominium Unit Owners Association Inc. Incidentally, this, too, is an error as the Association does not own the land. Each of the 59 condominium units own an undivided interest in the property and each of those unit owners should be listed among the adjacent owners. We appreciate the effort that went in to notifying our members, but for many of them, the mailing address of record is the condominium unit, and with most students now home, it is likely that they never received their notices.

The apartment complex was originally planned to be additional units in the Campus View JMU Condominiums, but due to the Declarant abandoning its project construction schedule, the construction begun in 2008 was never finished and the later phases of our condominium complex were never even begun, resulting in a 168 unit condominium being reduced to only 59 units. Without complying with the law requiring that the existing unit owners be notified, the Declarant amended the declaration and sold off all additional land to Davis Mill along with the 12 unconstructed units, which were then built by Davis Mill while building the apartments.

Second, the letter from Blackwell Engineering answering staff questions about Sec. 10-3-48.6 (e) contains errors. In item (1) it refers to Phases I and II of Campus View Apartments. We are not aware that Campus View Apartments was built in two phases. Staff has advised us that their understanding is that Phase I refers to the Condos. We want to clarify that if that was their intent, it is wrong. Page 4 of the attachment identifies the building, but the Phase Lines are from the original Declaration. In actuality, Building 2, 4, & 5 constituted Phase I of the Condominiums, built in 2008. Buildings 3 and 6 were added as Phase II to the ownership table in May 2009, even though Building 3 did not physically exist beyond the slab until 2013. Pages 6-8 show the progressive development. The amended declaration identified each planned additional building as a separate legal and real property entities and should not be lumped together in this manner. At best, it should be described as an arranged marriage.

In Item (2) the letter states that there are two entrances on Chestnut Ridge Drive serving the existing Campus View Apartments. This is technically true, but very misleading. The south entrance closest to Reservoir is the Condominium entrance. Under a use easement entered into by the Declarant, Campus View Apartments were given the right to use the roads. However, this agreement would not extend automatically to the subject property. Residents of those units would not have access to the Condominium streets without an additional agreement.

Davis Mill has indicated that they may want to include the planned additional units in their current easement agreement with us. This easement goes well beyond the roads. It includes parking access, stormwater facilities and sediment pond, and our recreational amenities. It also requires them to pay a monthly fee for this service and a one-time per unit capital fee once certificates of occupancy are received. While it may be possible to add the subject property to this agreement, until that occurs the new units are not entitled to the same rights as the other units, including road use. The Condominium would have no way to distinguish between tenants with and without access rights. If you refer to Page 5, you can see the two alternatives for the subject property to ingress and egress. Those residents would in all likelihood use our roads and recreational amenities without our permission, leaving us with no way to enforce our rights and effectively putting us in the position of giving it away for free if we cannot agree to extend the agreement to the additional units.

Please understand that the Condominium project has been a nightmare for our owners for the last six years. We have faced liens from unpaid subcontractors, our clubhouse was placed in receivership because the City did not properly record it as a common element and the Declarant has failed to pay more than \$125, 000 in assessments against units under his control. The bond company holding the Declarant assessment bond denied payment, and we have been forced to bring suit to recover our assessments. Additionally, despite the fact that they never finished the parking lot, the Declarant certified to the State, as far back as 2008, that all common elements were complete.

Last year we spent \$31,000, simply to make the roads passable where they had sunk as much as nine inches. At the time of the 2012 sale to Davis Mill, the two parties escrowed only \$56,000, to be released to the Declarant only upon completion of the lot. It should have been clear that \$56,000 was not nearly enough and we strongly suspect that the Declarant never intended to complete the lot. Davis Mill has notified us and the Declarant that if the lot is not completed by the 17th of next, month, then the money will pass to Davis Mill and they would not be required to finish the lot. Completion costs would fall to the owners, who were entitled to and have already paid for a completed lot by virtue of their sales agreements and the provisions of the Condominium Act.

It is our understanding from counsel that since the City will not permit access from Reservoir Street, the special use permit should be denied, since the residents of the proposed units would have no access to public roads and are not, by right, entitled to access over our properties. While the stated intent to erase the lot line between the current Apartment parcel and the subject property would partially address that issue, it would not protect our rights. As I said earlier, the most direct access is through our development.

Given the current condition of the roads, resulting both from substandard construction and from excessive wear and tear of the Apartment construction vehicles, we have concerns over the ability of fire and emergency vehicles to navigate some of the roads to access these new units. We also have concerns that occupants of the units to be built under the special use permit could potentially bring suit against the Condominium Owner's Association for damage to vehicles, even if using the roads without permission. Pages 9-16 of the handout contain photos and Google Earth images of the condition of the parking lot.

Although we believe we are nearing settlement with the Declarant and other defendants, the two developers involved in the negotiations have dragged settlement discussions out for nearly six months with continual questions and changes to the language of the agreement. Even if the agreement is reached, it will be far less than satisfactory, with the owners receiving none of the unpaid assessments, no attorney fees, and only a small part of the amount necessary to complete the roads and parking areas.

Additionally, Davis Mill is avoiding, as part of the settlement agreement, responsibility for 8 months of assessments on their 12 condo units that they built on the slab. Also, they have yet to deliver occupancy permits, or the \$160 initial capital payment they were required to pay as part of their agreement related to their previous purchase.

We were told that it is the prerogative of the Planning Commission to place conditions on a special use permit request; one of which would be that you could require that the applicant guarantee that the roads are complete, by paying for the completion of the project. In talking with our attorney today, she informed us that is only if the applicant has the right to use the road; therefore, the

Planning Commission cannot make the applicants enter into an agreement with the Condominium Owners to get the roads complete. We understand that you cannot make the applicant enter into an easement agreement with us, or force the applicants to pay for the completion of roads; but, according to our attorney you could require them to place a barricade to insure that our road is not used by those 24 units. If a gate or barricade existed, that allowed access by only those units that currently exist there now it would be the only way to protect our rights from people using our roads without permission to do so. We would like to make certain that before this is approved there are protections in place for the Condominium Owners from the new units using our roads without having the right to do so.

Chair Fitzgerald asked the developer if he would like to speak now regarding the comments.

Mr. Guy Blunden, 407 South Cherry Street, Richmond, VA, said he is the largest owner in the Home Owners Association for the Condominium Owners. What I heard of importance from Mr. Bender is that there would be the ability of people in the two new units to travel through the land that is owned by the HOA. It is true, the 108 existing units we have, have an easement. We have cross easements for parking and access between the apartments and the HOA. It is true that people from the new units could go across the HOA property; but, they do not have to. We have our own roads and entrance on the apartment property.

I think to recommend denial of this application because the people that would live in the buildings might drive across someone else's property is a bit preemptive. I would be very happy to instruct the people in those units not to use the HOA property. We would like to enter into an agreement with the HOA to extend the cross easements to the two new buildings. I think there are some people on the HOA who would like to force us to do so in order to construct the new buildings because it would put the HOA in a very strong position. We would not like for that to happen; especially since we have a perfectly legal and accessible entrance for the new buildings.

I would be happy to answer any questions you may have of me.

Mr. Way asked what is the possibility for placing signage around that area to let people know.

Mr. Blunden said it is very, very possible. I think it would be bit silly to say "persons in building such and such do not use this exit/entrance;" but it is perfectly possible. I do not think people in the HOA are telling guests not to use their entrance; so it seems a bit of a stretch to say the persons in the new buildings would ruin their roads.

Mr. Heatwole said one suggestion would be to put a construction entrance sign at the preferred entrance.

Mr. Blunden agreed and said I am absolutely in favor of all trucks using the apartment entrance/exit. That has been my intent all along.

Mr. Colman asked if there was a current access easement for the new units to drive across the apartment property.

Mr. Blunden said that would be me giving myself an easement and it should not be needed if subdivided.

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

Mr. Bender said let me just clarify that we do not really have objections to the buildings being built, our concern is that once they are in we want to see to it that certain things are dealt with properly. To date, dealing with our developer has been a nightmare, dealing with Davis Mills has at times been tedious, and I suspect that we can get the easements in place for the additional 24-units. My thinking behind asking for the condition, before our attorney said we could not ask for such, would be that those cross easements be in place before approval of the special use. Our attorney said the one restriction you could put in would be to ask for the gate, and obviously, the cost of the gate would be so much more than just going into an easement agreement.

Chair Fitzgerald asked if there was anyone else wishing to speak regarding the request. Hearing no one, she closed the public hearing and asked for discussion or a motion from Planning Commission.

Mr. Way moved to recommend approval of the special use permit request.

Mr. Heatwole said is there a way to put a condition or to recommend that clear direction (signage) is at the road frontage to direct construction traffic so as not to impede on the HOA property. I do not know if we can recommend that; but, I just want it to be on record that we suggest it.

Mr. Fletcher asked if the suggested condition could be repeated.

Mr. Heatwole said is there any language that we could add to the SUP requesting that the applicant place clear directions as to where the construction entrance is located.

Mr. Fletcher said are you essentially saying construction vehicles cannot enter onto the condominium property.

Mr. Heatwole replied yes.

Mr. Fletcher said a condition could be added to the SUP, but it is somewhat redundant since they do not own the property and they should not be driving across it any way. I see no reason why you cannot make it a condition of the SUP.

Mr. Heatwole said even if it is not a condition of the SUP, I just wanted it to be part of the record.

Mrs. Turner said my concern of making it a condition would be that we would have a hard time enforcing that as a zoning requirement. Also, who would we be taking to court for a Class 1 Misdemeanor for that? Would we be taking the developer of the apartments, the construction company, or the driver of the vehicle? I really do not know how we would enforce that. I appreciate the sentiment and maybe it could be a suggestion rather than a condition.

Mr. Heatwole agreed and seconded the motion to recommend approval.

Mr. Colman said he would like to mention that the use of gates or fencing could possibly block parking and the Fire Department may have issues with gating the area between the apartments and condominiums.

Mr. Baugh said if they choose to put up some type of gate, they would be required to work with the Fire Department on that. We recently approved an ordinance to make certain that if an access gate is in place the emergency services personnel are aware of it.

Chair Fitzgerald if there were any further questions or are we ready to vote. Hearing nothing, she called for a voice vote on the motion.

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

Chair Fitzgerald said the special use permit request will go before City Council on August 12th with a favorable recommendation.

Special Use Permit – 206 Charles Street (Section 10-3-97(9) Religious Use in M-1)

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: Mercantile building, zoned M-1
- North: Vacant parcel and tire business, zoned M-1
- East: Vacant parcel and empty building, zoned M-1
- South: Across Charles Street, vehicle repair business, zoned M-1
- West: Mercantile building and farm supply business, zoned M-1

The applicant is requesting a special use permit (SUP) per Section 10-3-97 (9) of the Zoning Ordinance to allow a religious, educational, charitable or benevolent institutional use within the M-1, General Industrial District. The property is situated on the northern side of Charles Street, near the intersection of Charles and Jefferson Streets. If approved, Iglesia Cristiana Monte de Horeb Pentecostes Church would continue to utilize the building on site for worship service. The building would not provide housing facilities for the church.

City staff became aware of the church when they applied for a sign permit for the subject property. Staff informed them that a SUP would be required for the church to continue operating at the site as such a use is not permitted by right. If approved, they could obtain a sign permit.

The applicant has stated that the church has seating for forty-eight members. Based on that number, 10 on-site parking spaces would be required. Currently, there are only four parking spaces located on the property. Section 10-3-25 (11), off-street parking regulations for churches, funeral homes, auditoriums, theaters and similar uses of public assembly, allows Planning Commission, upon site plan review, to modify these requirements when the assembly use requests borrowing parking from other public or private parking facilities in close proximity. The applicant has permission to borrow parking spaces from Valley Implement Sales, located approximately 70 feet west of the church property, along the same side of Charles Street, should Planning Commission consent. The church conducts services on Sunday mornings and two evenings during the week; whereas Valley Implement Sales is open until 5:00 pm on Monday thru Friday and noon on Saturday.

Staff has also discussed with the applicant that the existing four, on-site parking spaces, which back out directly into Charles Street, create an unsafe maneuver and that the applicants would be responsible for any issues that arise from this use of the parking area.

The applicant has been informed by staff that if they receive approval of the request, they would need to apply for a change of use permit from the Building Inspection Division. This would require that all Building Code regulations be met for the proposed use. The applicants have met with

personnel from the Building Inspection Division to discuss the necessary requirements such as needing a plan showing overall usage of the building and a seating plan chart; handicap accessible restrooms and door sizes; and marking the handicap accessible parking space with a wall or pole sign.

During a visit to the site staff observed that a convenience store was located directly adjacent to the subject property. Convenience stores are allowed within the M-1 zoning district as a special use permit; there is no record of a convenience store SUP for this site. Staff is currently working to determine if the use is a non-conforming use. If it is concluded that the use is not, the property owner could be cited in violation of zoning regulations and given 30 days to rectify the non-compliance; which may lead to applying for a SUP for a convenience store use.

Staff does not have any concerns with a religious use at this location. The uses found along this street are not intensive enough that a church at this location would be incompatible with the surrounding uses. Staff supports the special use permit request.

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

Stephanie Floros said she was speaking on behalf of Evaristo Perez-Thomas and wanted to thank Planning Commission for considering this on behalf of the church.

Chair Fitzgerald asked if there were any other persons wishing to speak in favor of, or in opposition of the request. Hearing none, she closed the public hearing and asked Planning Commission for comments or a motion.

Mr. Heatwole said given our consideration to the parking agreement already being worked out, I move to recommend approval of the special use request.

Mr. Colman seconded the motion.

Chair Fitzgerald called for a voice vote. All voted in favor of the motion to recommend approval of the special use request with the parking arrangement (5-0).

Chair Fitzgerald said this will move forward to City Council on August 12th.

Special Use Permit – 130 Mt. Clinton Pike (Section 10-3-97 (4) Financial Institutions and Offices)

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher 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: Undeveloped property, zoned M-1

North: Undeveloped property, zoned M-1

East: Undeveloped property, zoned M-1

South: Across Mt. Clinton Pike, non-conforming agricultural operations, zoned M-1

West: Across Acorn Drive, undeveloped property, zoned B-2C and M-1

The applicant is requesting a special use permit (SUP) per Section 10-3-97 (4) of the Zoning Ordinance to allow financial institutions and offices on a three acre tract of land located at the northeastern corner of the Mt. Clinton Pike/Acorn Drive intersection. If approved, it is planned that DuPont Community Credit Union (DCCU) would locate operations at this corner. Per Section 10-3-130 (c), when a SUP is approved by City Council, the property owner has one year to establish the use, or to commence or diligently pursue construction for the authorized use, unless at the time of permit approval Council allots a different time period to do the same. The applicant has specifically requested to have up to five years to begin construction.

The applicant's submitted letter (prepared by Blackwell Engineering) describes several details related to the SUP plan of development; the submissions expressed in the letter are part of the SUP, which if approved, must be adhered to.

The submitted details first describe that the financial institution and office uses will be restricted to utilizing no more than 8,000 square feet of building space, which could be made up within one or more buildings. They noted that traffic trip generation numbers are not projected to exceed 99 in the peak hour. Capping the size of the financial institution uses at 8,000 square feet should help in not generating 100 vehicle trips in the peak hour. (When proposed developments are projected to generate 100 vehicle trips in the peak hour, the City has the authority to require the property owner to perform a Traffic Impact Analysis (TIA).) With this detail of the application, however, the applicant should understand that any additional square footage for any other permitted use on the property may require the performance of a TIA.

In addition to the above details, the property owner would construct, and if necessary dedicate right-of-way for, a right turn lane along Mt. Clinton Pike for vehicles turning onto Acorn Drive. With regard to entrances for the proposed use, there would be two. One will be an entrance off of a shared ingress/egress between the subject property and the adjacent property to the east (part of the large tract of land identified as tax map parcel 44-C-2). The second entrance will be provided along Acorn Drive located no closer than 300 feet to the Mt. Clinton Pike/Acorn Drive intersection.

Moreover, the applicant is also reserving an area that is 30 feet in width along the entire length of the subject property's eastern boundary line for a potential public street. The reserved 30 feet is half the width needed for a public street serving an industrial area. Ultimately, an additional 30 feet would be needed from the eastern adjacent property if and when the construction of a public street is to occur. Although the Comprehensive Plan's Street Improvement Plan does not indicate a planned public street within this area, staff believes another public street may be needed to alleviate the pressure on Acorn Drive and to preserve its capacity as an industrial street. With respect to staff's concern, the applicant has provided they will dedicate, at no cost, 30 feet of public street ROW along their eastern property boundary if and when the City deems a public street is necessary. As noted by the applicant's letter, this area shall be reserved only for a period of 10 years. The applicant should understand that if the reserved area is to be taken advantage of, the property owner may need to be involved in the platting/dedication of public street ROW for the creation of a public street.

While the submitted sketch of the layout is simply an example of how DCCU could configure an entrance to the shared ingress/egress along Mt. Clinton Pike, staff suggested for them to consider locating this entrance further to the north (a distance creating at least a 100-foot tangent between the entrance and Mt. Clinton Pike) along the eastern boundary line so that if a public street is built within this area, their entrance would be located far enough from Mt. Clinton Pike to function properly. Doing so at this time would, although increase the length of the shared private drive they would have to construct, allow them to internally design their site to accommodate a more northern entrance so they would not have to deal with redesigning and relocating their entrance at a later date. The applicant acknowledged this situation and noted that if they do not accommodate an entrance further to the north at this time, they would be financially responsible for relocating their entrance along the potential future public street.

Although not a matter associated with the SUP, regardless of how this property develops, the property owner will be required to construct sidewalk along the property's Mt. Clinton Pike and Acorn Drive street frontage. In addition, development of the property will likely require extension of a public sanitary sewer main as the closest mains are located about 400 feet to the east and roughly 500 feet to the west of the property.

With respect to the Comprehensive Plan, the subject property currently aligns with the City's Land Use Guide—the property is zoned M-1 and is designated General Industrial by the Land Use Guide. All of the adjacent property and much of the surrounding area also aligns with the Land Use Guide as the majority of the Mt. Clinton Pike and Acorn Drive area is zoned M-1 and is designated General Industrial. With that noted however, much of this area does not include the intense manufacturing and processing uses that are permitted by-right in the M-1 district. Rather, the nearby properties include undeveloped lots, non-conforming agriculturally used property, the Virginia Department of Agriculture and Consumer Services building, Rockingham County's School Board office building, and the technology oriented uses located along Mt. Clinton Pike and Technology Drive.

Staff is supportive of the requested SUP and does not believe allowing financial institutions and offices at this corner would have an undue impact on the other uses in this area or negatively impact the City's long term plans for industrial operations for this area. Furthermore, at this time, the proposed use would be compatible with the existing surrounding uses. The applicant should understand, however, that because the property is surrounded by M-1 zoned lots, the financial use could be adjacent to intense industrial operations, which they may deem as undesirable neighbors.

Staff appreciates the applicant's willingness to construct a shared entrance along Mt. Clinton Pike as doing so will cut back on the number of entrances needed along this corridor. We also appreciate the applicant's submission to build a right turn lane along Mt. Clinton Pike and to reserve a 30-foot strip of property along their eastern boundary for potential dedication for a public street.

Staff recommends in favor of the special use permit and further recommends granting the property owner the ability to have five years from the date of approval to begin construction for the authorized use.

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

Mr. Dick Blackwell of Blackwell Engineering said Adam has explained everything quite well. It has been a working situation with the City; particularly with the Public Works Department as far as turn lanes and entrances. We have done basically everything that was asked of us. I would like to go on record as saying that we went to Public Works to do a traffic impact analysis for input since we are not using an entire parcel for one use. When you do a traffic impact analysis, the reviewing agency, the City in this case, takes a look at the scope of work that they are going to require to be studied. In this case we just met with Jim Baker and his staff and they worked with us to determine what they would need. So everything that we have offered is something that they felt was needed by the traffic impact analysis. I do question if the 30-foot reserved area for a future road is a good location; it is only 300 feet from a proposed signalized intersection.

I believe you have seen other buildings that DuPont Credit has done; they are all very attractive. Through studies DuPont has done, they feel there is the need for an institution in this area along Mt. Clinton Pike; particularly if the M-1 land is developed in the future as industrial, with the employee pool.

If there are any questions I would be happy to answer them.

Mr. Colman said I have a concern about that entrance or reserved road being there as well; but I am fine if that is what Public Works wants.

Mr. Blackwell said I think there is a slim chance that the road would go through; therefore we believe it is wise not to construct the entire 100-feet of the reserved road to nowhere.

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

Mr. Way said I actually have a wide range of questions for staff. Last month we saw a rezoning request in this same area for a change from the M-1 classification. Are there any concerns about the reduction in the amount of M-1 land or fragmentation of M-1 land?

Mr. Fletcher said at this stage no. As with the previous rezoning this SUP was discussed with the Economic Development Director and he was in favor of recommending in favor of the type of SUP for this parcel.

Mr. Colman said that is true, this is not a rezoning.

Mr. Fletcher said remember any special use that is approved on any parcel, still allows for all the underlying by-right uses.

Mr. Colman moved to recommend approval of the special use permit with the extension of five years.

Mr. Way seconded the motion.

Mr. Baugh said I do not believe I have a conflict on this; but out of an abundance of caution I want to note on the record that I have not participated in the discussion and I intend to abstain on this vote. I will discuss this further with the City Attorney as for coming before the City Council.

Chair Fitzgerald called for a voice vote on the motion. All voted in favor of the SUP request with the five year extension (4-0). Chair Fitzgerald said this will move forward to City Council on August 12th with a favorable recommendation.

Unfinished Business

None.

Public Input

None.

Report of Secretary and Committees

Mr. Baugh said at City Council last night the rezoning on North Main Street was approved just as before this body; the same for the approval of the Downtown Streetscape Plan. The M-1 zoning amendments were postponed and I believe we are going to discuss those again in just a minute at this meeting. The Major Family Day Home application was tabled. One of the Council Members seemed to have some public safety concerns and there were some other neighbors that came forward with concerns. Staff is getting more detailed and affirmative information from the Fire Department and the Rescue Squad.

Mr. Fletcher said there is no proactive zoning report this month.

Other Matters

Mr. Fletcher said after listening to last month's minutes, we think it is best that this body go back and amend the motion regarding the zoning ordinance amendments for junkyards. The way the motion was presented was specifically for only three sections of the zoning ordinance and not all of the sections listed for changes. Therefore, we think it needs to be redone including all of the five sections that were proposed for amendments. Perhaps the best way to do this is if someone moves to approve the zoning ordinance amendments as presented by staff.

Mr. Heatwole moved to recommend approval of the zoning ordinance amendments for the junkyard special use permit as presented by staff.

Mr. Colman seconded the motion.

Mr. Way asked if it was ethical to vote a different way this time. I was very on the fence last time and did not know if it would be appropriate.

Chair Fitzgerald asked Mr. Baugh if he had ever changed his mind on a vote from Planning Commission to City Council.

Mr. Baugh replied not very often, but I reserve the right to do so.

Chair Fitzgerald called for a voice vote.

All voted in favor (5-0) of the motion to recommend approval of the zoning ordinance amendments for the junkyard special use permit as presented by staff.

Chair Fitzgerald said this will move forward to Council on August 12th as well.

Mr. Fletcher said the second matter, not listed on the agenda, but something we wanted to discuss with Planning Commission is regarding the way public uses or governmental agencies apply or conform to the zoning ordinance. There was a time in the past that it was interpreted that the City would follow its own zoning regulations; that is why you see public uses listed as a by-right use in all zoning classifications. The City then went through a period where we said we do not have to follow our regulations. We have come full circle on this now, back to the reality that it is good

policy and practice to follow our zoning regulations. However, there are going to be certain situations where there could be issues where public uses cannot abide by every single zoning regulation in the best interest of the City. For example, the new water tank that is going to be built on the EMU Campus is permitted by right; but, it does not meet the height regulations that are regulated within the R-3 zoning district. What we are asking for on this is your input on the idea of having a special use permit added to every zoning district that gives public uses the ability to deviate from the zoning ordinance. This would allow for public hearings on issues, such as I have described, where the City, in the best interests of providing a service, cannot abide by all the regulations.

Mr. Way said this would allow for some type of a process when those things occur.

Mr. Fletcher said yes, a documented process to allow those things to occur.

Chair Fitzgerald said I like that idea.

Mr. Colman said it makes perfectly good sense.

There was some discussion among Planning Commission regarding the variance process through the Board of Zoning Appeals and this proposed Special Use allowance. Ultimately, Planning Commission agreed that staff should move forward with such an amendment to the zoning regulations.

Mr. Fletcher said next month's agenda has an alley closing tabled from tonight, a 2232 hearing for the water tower at EMU, possibly the zoning ordinance amendments for public uses SUP's, and lastly a rezoning request for a split-zoned parcel at North Main Street and Ashby Avenue. There is also the possibility of a SUP request for a Junkyard in M-1.

Mrs. Turner said we want to note that the water tower does not conform to the regulated height, possibly setbacks, etc, of the zoning ordinance. But we are moving forward on the previous idea that we did not have to conform to our zoning regulations.

Chair Fitzgerald asked if there was anything further.

Adjournment

Planning Commission adjourned at 8:45 p.m.

Chair Deb Fitzgerald

Secretary, Alison Banks