



City of Harrisonburg, Virginia

Planning Commission Meeting

December 12, 2012

7:00 p.m.

Regular Meeting
409 South Main Street

1) Call to order, roll call, determination of quorum, and review/approval of minutes from the November 14, 2012 regular meeting.

2) New Business

Capital Improvement Program

Consider recommendation to City Council.

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

Public hearing to consider a request from the D C and Twyla A. Heatwole Estate with representative Michael W. Pugh for a special use permit per Section 10-3-91 (9), which allows for the reduction in the required side yard setback to zero feet along the lot line of an adjoining lot or parcel zoned B-2 or M-1. The applicants are requesting the setbacks for the existing buildings be established as shown on the submitted plat ranging from 4.5 feet to 5.3 feet. The approximately 26,642 +/- sq. ft. property is located at 1042 West Market Street and can be found on tax map 37-B-2.

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

Public hearing to consider a request from Hoover Penrod PLC to rezone one parcel totaling 19,741 +/- sq. ft. from B-2, General Business District to B-1, Central Business District. The property is located at 342 South Main Street and can be found on tax map 26-K-3.

Rezoning – 305 North High Street (R-2 to R-3C)

Public hearing to consider a request from Delores K. Lamb with representative Mercy House, Inc. to rezone one, 4,200 +/- sq. ft. lot from R-2, Residential District to R-3C, Medium Density Residential District Conditional. The property is located at 305 North High Street and can be found on tax map 35-J-1.

Zoning Ordinance Amendment – Section 10-3-26 Charitable or Benevolent Institutional Uses Off-Street Parking Location Exception and Other Modifications To Section 10-3-26

Public hearing to consider amending the Zoning Ordinance Section 10-3-26 Location in Relation to Building or Use Served, which specifies that required parking spaces shall be located on the same lot as the use served or on adjoining lots within a zoning district permitting the same. This section also provides the provisions for shared parking arrangements. One of the changes would add the ability for charitable or benevolent institutional uses to locate required parking on parcels that are not the same parcel for the uses served including parcels across public street and alley right-of-ways. Other minor modifications would be made to this section to specify that the minimum sum of required parking spaces shall be provided when common or cooperative parking locations are utilized and to modify and clarify how reductions in required parking can occur.

Ordinance Amendment – Home Occupation Horticulture Exception

Public hearing to consider a request to amend the Zoning Ordinance Section 10-3-24 Definitions by modifying the definition of “Home Occupation.” Currently, home occupation defines, among other things, that occupations and activities clearly incidental to the use of the premises for dwelling purposes shall be carried on wholly within a main building or accessory building. The amendment would create an exception to this rule by allowing occupations associated with horticulture to be located outdoors. All other requirements of home occupations would remain in place.

3) Unfinished Business

4) Public Input

Staff will be available Monday January 7, 2013 at 4:30 p.m. for those interested in going on a field trip to view the sites for the January 9, 2013 agenda.

5) Report of secretary and committees

Proactive Zoning

6) Other Matters

Special Recognitions

Election of Officers for 2013

7) Adjournment

MINUTES OF HARRISONBURG PLANNING COMMISSION

November 14, 2012

The Harrisonburg Planning Commission held its regular meeting on Wednesday, November 14, 2012, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

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

Members absent: Judith Dilts and Alan Finks.

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

Chairman Jones called the meeting to order and determined there was a quorum with five of seven members in attendance. He then asked if there were any corrections, comments or a motion regarding the minutes from the October 10, 2012 Planning Commission meeting.

Mr. Way moved to approve the minutes as presented from the October 10, 2012 regular Planning Commission meeting.

Mrs. Fitzgerald seconded the motion.

All voted in favor of approving the minutes (4-0), with Chairman Jones abstaining from the vote.

New Business

Rezoning – 143 West Rock Street

Chairman Jones read the request and asked staff to review.

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

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

Site: Vacant, single family dwelling, zoned M-1

North: Across West Rock Street, single family and duplex dwellings, zoned R-2

East: Vacant parcels, zoned M-1

South: Vacant lot, zoned M-1

West: Apartment building, zoned R-3

The applicant is requesting to rezone one parcel, of approximately 3,680 square feet, from M-1, General Industrial District to R-3C, Medium Density Residential Conditional. The property is located along the southern side of West Rock Street, between North High Street and the Norfolk Southern rail line. The site

contains a single family dwelling built prior to the City's adoption of building code and zoning regulations. Furthermore, City records indicate this property was zoned B-2 Business, Manufacturing, and Industrial District upon the adoption of zoning regulations in 1939; making the single family dwelling a non-conforming use. As with any non-conforming use of land existing at the time of the enactment or amendment of the zoning regulations, it may continue, as long as the use is not discontinued for a period of twenty-four consecutive months.

In August of this year, the applicants submitted a building permit application to upgrade and renovate the house at 143 West Rock Street with the intent of renting to a family, or unrelated individuals. After much discussion with planning staff, it was determined that the property had been vacant for more than two years; therefore, the use would need to conform to the industrial zoning classification in which it was located. As a result, the applicants applied for a rezoning to R-3C, Medium Density Residential Conditional, with the following proffers:

- Single family dwelling unit with occupancy of a family or not more than three persons, with parking adequate for three parking spaces;
- Professional offices as defined by Article F;
- Charitable and benevolent institutions;
- The owner shall provide the minimum parking spaces necessary for actual use as a professional office or a charitable and benevolent institution.

The area where the site is located is comprised of a mixture of zoning classifications and, not only does the Comprehensive Plan call for Mixed Use Development in this area, the neighboring R-3 properties could also be professional office uses by right.

Staff has no concerns with the proposed rezoning to R-3C as it would make this site conforming to the use which it has always been – a single family dwelling. Staff recommends in favor of the request as presented.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if anyone would like to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Way asked if R-3C makes the most sense for this property in terms of what they are trying to do.

Mrs. Banks replied yes.

Mr. Da'Mes said staff stated that the applicant owns other properties; is it just the next property with the garage, or what?

Mrs. Banks outlined to the Commission the six parcels owned by the applicant.

Mr. Fletcher said the applicants have slowly acquired the lots along West Rock Street, which is something staff hoped they would do, since their original rezoning request to B-1C for the lots along West Wolfe Street. The R-3C zoning was somewhat staff's idea; the applicants would have preferred B-1. Staff, however, is not comfortable with B-1 at this time; therefore, we led them in the direction of R-3, which you find in the area.

Mr. Way asked why staff would be uncomfortable with B-1 at this location.

Mr. Fletcher replied we just were not comfortable with the idea of "leap frogging" the zoning; going from the downtown B-1 area and then skipping over several M-1 properties to this location for B-1 would not be

good practice. Anything that has been rezoned to B-1 in the City has been adjacent to or across the street from existing B-1. We just were not comfortable with putting a B-1 in the middle of non B-1 properties.

Mrs. Turner said and this site is adjacent to R-3. To support a B-1 zoning we would probably have wanted more proffers.

Mrs. Banks said this rezoning does not necessarily mean the applicants will not be back before this body at some point with a more comprehensive plan for the entire area as a B-1 classification.

Mr. Way asked if this was within the UDA.

Mrs. Banks replied yes.

Mr. Da'Mes asked why are the applicants not considering the other lots at this time.

Mr. Fletcher said it is probably related to financial reasons.

Mr. Way moved to recommend approval of the rezoning request with the submitted proffers.

Mr. Chenault seconded the motion.

Chairman Jones asked for a voice vote on the motion to recommend approval.

All voted in favor (5-0).

Chairman Jones said this request will move forward to City Council on December 11, 2012 with a favorable recommendation.

Zoning Ordinance Amendment – Section 10-3-50, 56.5, 57.5, & 58.5 (Contiguous or Across the Street From)

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

Mr. Fletcher said staff is proposing modifications to the Zoning Ordinance Sections 10-3-50, 56.5, 57.5 and 58.5 to clarify, for consistent interpretation purposes, how the minimum land area needed for the master planned communities within the R-4, R-6, R-7, and MX-U zoning districts should be applied. (Staff was also considering related modifications as was advertised to Article G. Off-Street Parking Section 10-3-26, however, we decided to remove those changes from consideration.)

Section 10-3-50 specifies the purpose of the R-4 zoning district and Sections 10-3-56.5, 57.5, and 58.5 regulate, among other things, the minimum district sizes of the R-6, R-7, and MX-U zoning districts, respectively. Each of the identified sections currently specify a minimum, contiguous acreage needed for property owners to develop a master planned community within the respective zoning districts. What has been interpreted for many years, but is not absolutely clear within the existing language, is that the contiguous acreage may include properties that are located across streets or alleys. Therefore, staff is proposing to add language to each of the identified sections stating that the contiguous property may include properties located directly across public or private street or alley right-of-ways from one another.

Staff recommends approving the proposed Zoning Ordinance amendments to Sections 10-3-50, 56.5, 57.5, and 58.5.

Chairman Jones asked if there were any questions for staff.

Mr. Way asked if the properties had to be owned by the same individual or developer.

Mr. Fletcher said it does not have to be owned by the same person. If someone is rezoning, it could be multiple property owners, as long as everyone is consenting to the same zoning classification.

Chairman Jones opened the public hearing and asked if anyone would like to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Chenault moved to approve the ordinance amendment.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a voice vote on the motion.

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

Chairman Jones said this will be heard at City Council on December 11, 2012.

Zoning Ordinance Amendment – Reduced Parking SUP (All Residential Districts & MX-U & U-R)

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

Mr. Fletcher said staff is proposing to amend the Zoning Ordinance by adding a special use within the R-1, R-2, R-3s, R-4, R-5, R-6, R-7, MX-U, and U-R zoning districts to allow application for reduced parking areas.

In early October, after staff and Planning Commission had recommended against two of four requests that would have allowed the Harrisonburg Redevelopment and Housing Authority (HRHA) the ability to build 29 multi-family units off of East Gay Street, HRHA withdrew all four of their applications from consideration before they were heard by City Council. One of those applications included an ordinance amendment that would have modified the Zoning Ordinance Section 10-3-48.4 (3), which currently allows reduced parking areas by special use permit (SUP) for professional office uses only, by proposing to allow all uses in the R-3, Medium Density Residential District the ability to apply for reduced parking areas. Although staff and Planning Commission recommended denial of the multi-family project, both groups recommended approval of the Zoning Ordinance Amendment that was part of the overall project request. When this application was withdrawn, staff decided to move forward with the request on its own initiative but also to extend this ability for many of the City's other zoning districts.

If approved, the above listed zoning districts would have the following use, which is the same SUP that currently exists for the B-2 and M-1 zoning districts, within their list of special uses:

Reducing required parking areas to permit fewer than the required number of parking spaces for any use, provided that an amount of open space equal to the amount of space that would have been used for the required number of parking spaces is left available for parking in the event that, at the discretion of the city council, it is needed at some time in the future. Open space used for this purpose shall be so noted in the deed and shall not be used to meet any conflicting requirements of the zoning ordinance.

Staff believes having reduced parking areas as a SUP is good planning and zoning practice as such requests can be evaluated on a case by case basis, where the result could allow property owners to save money on development costs while also increasing the amount of green space and reducing the amount of impervious surfaces in the City. As noted in the language, if problems arise regarding insufficient parking, the City retains the ability to require the property owner to install the minimum required parking.

If approved, the above described language would be in all existing zoning districts where off-street parking is required. Staff recommends approving the proposed Zoning Ordinance amendments.

Chairman Jones asked if there were any questions for staff.

Mr. Da'Mes asked how this might effect the recent landscape regulations.

Mr. Fletcher said it does not affect it at all. If anything, it adds more landscaping, because you cannot count the open space that would have been used for parking towards meeting the landscape requirement.

Chairman Jones opened the public hearing and asked if anyone would like to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Way said in this entire process is the applicant allowed, perhaps by special use permit, to not provide the open space. I am thinking if it is a tight lot or some situation where increased density means there may not be area to even leave open space available.

Mr. Fletcher replied that when uses go on properties they must take into consideration that there is a minimum parking requirement; therefore, they would not be able to go onto a site unless that parcel has enough area to provide the minimum parking. Also, keep in mind that we have recently provided additional flexibility in the zoning ordinance to count parking that is on adjacent parcels.

Mr. Da'Mes said I really like the concept of this amendment and I think it does create smart planning and zoning and I move to recommend approval of the ordinance amendment.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor of recommending approval of the ordinance amendment (5-0).

Chairman Jones said this will move forward to City Council with a favorable recommendation on December 11, 2012.

Zoning Ordinance Amendment – 10-3-180 U-R (SUP for Increased Fence Height)

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

Mr. Fletcher said staff is proposing to amend the Zoning Ordinance by adding a use to the list of special uses available in Section 10-3-180 of the U-R, Urban Residential District.

Recently staff became aware the U-R zoning district's list of special uses did not include the ability for property owners to request for walls and fences to exceed the height regulations as otherwise permitted by the Zoning Ordinance. In April 2011 the City amended the Zoning Ordinance with the intent to add this particular special use to every residential district's list of special uses. However, upon review staff realized that we neglected to include Section 10-3-180 in that proposed modification.

Therefore, staff recommends approving the proposed amendment that would allow property owners in the U-R district the ability to request for walls and fences to exceed the height regulations as is otherwise permitted as subsection (9) within Section 10-3-180.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if anyone would like to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Way moved to approve ordinance amendment.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a voice vote on the motion.

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

Chairman Jones said this request will move forward to City Council on December 11th, with a favorable recommendation from Planning Commission.

Mr. Da'Mes said before we move on I have a question about the mixed use area requiring three acres. What was the rationale behind that number? It seems to me there are many situations where the mixed use would be appropriate; but, three acres is not available.

Mr. Fletcher said there are arguments to be made for both sides of that issue. When we were considering adopting the MX-U District, there were Planning Commissioners that were interested in doing a separate classification that was similar, but had a smaller minimum requirement. Ultimately we decided against it with the rationale being that if you have one property owner that requests to go to MX-U and they have very small or no setbacks, it could be very burdensome on the surrounding property owners.

Mr. Da'Mes said I was just thinking about the WRockStreet property; it is not three acres, but it is adjacent to B-1 and would make a nice transition to a mixed use.

Mr. Fletcher said if there is a strong feeling to reduce the minimum area, it could be looked at. We do not have any property zoned MX-U at this time, it has not been available long enough to really say if it is working or not.

Mrs. Turner said when you have something that is a mixed use area you want it to have a little cohesion to it. You do not want it to be too spotty. You want it to have a comprehensive cohesion where you can walk from one place to another. To assure that you have pedestrian coordination between the two and that the parking lots are connected between the different uses. The three acres promotes a little cohesion to whatever the mixed use plan is and not make it just a spot commercial use with a bit of residential thrown in.

Mr. Da'Mes said about a year ago we saw one on Water Street, near the Runners Corner, and the MX-U was not even on their radar, they did not even consider it. It would have made a good location and transition from B-1.

Mr. Fletcher said those properties may have been rezoned before the MX-U zoning was even available. But they did rezone to B-1, which is a mixed use classification.

Mr. Way asked what the zoning was for the 865 development on Port Republic Road.

Mr. Fletcher said it is R-5 Conditional, which is the high density residential classification. It also received three special use permits; one to go taller, one to have more than twelve units per building, and one to allow a mixed use building.

Mr. Way said so there are other ways to get at this type of mixed use zoning. I too question whether the three acre minimum is a disincentive sometimes.

Mrs. Fitzgerald asked how long has the MX-U classification been in place.

Mr. Fletcher responded eighteen months to two years.

Mrs. Fitzgerald said therefore it has not had a whole lot of time yet.

Mr. Fletcher said true; I can only think of a few times that I have discussed this classification with someone.

Mrs. Fitzgerald asked do you have any sense that the three acres is a limiting factor, or is the inclination to go in other directions because of other things.

Mr. Fletcher replied I do not really know the answer to that. I remember having this conversation when we were working on the mixed use designation; but the consensus was to go with the three acres. I believe three acres was suggested several years ago by a consultant working with us on this and we just ended up going with that.

Mrs. Turner said I believe the consultant actually recommended more acreage, perhaps five acres. However, we have not had any developer come in and say "if it were just less acreage we would apply." I do not know if it is because they have looked at it and see that it is three acres and they do not bother. I feel it is perhaps that people have just not looked at it.

Mr. Way said there are some spots, for instance the corner of Neff Avenue and Reservoir Street, which are outside of the central area and are just two acres where it might be a good opportunity to have less of a minimum.

Mr. Fletcher said you need to remember what mixed use is, and perhaps it is different for different individuals. For me, mixed use is residential and something else. It is not a restaurant and a professional office.

Mrs. Turner said in answer to that I would say we have had people come in and ask about other lots in the general area behind the mall area. They have said "we would like to do an apartment building in this location with some shops underneath." We already have other undeveloped land that is appropriate for apartment type uses and at this point we have not felt that the area behind the mall is somewhere we would want to encourage apartments. Of course, Planning Commission and City Council may feel differently about that. There is a lot of traffic associated with an apartment use. We have not been encouraging of that type of development behind the mall, regardless if they wanted a Mixed Use classification or something else.

For the particular lot that you are talking about at the corner of Neff Avenue and Reservoir Street, I would just say I do not think we have ever felt that we wanted to open up the whole entire area behind the mall to apartments. I do not know that we would ever have a reason for picking a two acre site and say that one is appropriate; however, the entire rest of the area is not.

Mr. Way said if a developer really wanted to they could go through the process of rezoning to an R-5 zoning classification.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said City Inspectors visited the Liberty Street area of the City where they found eleven violations consisting of inoperable vehicles and discarded materials. Next month they will take a look at the Westover area.

Other Matters

Mr. Fletcher said you each have received a copy of the CIP. Staff is looking for guidance as to when you might like to review this. What we did last year was to attach the review onto the regular Planning Commission meeting in December; there are three items on our December agenda.

Mr. Way said just to be clear, our role for this review is we can ask questions regarding things like prioritization or anything like that.

Mr. Fletcher said yes, anything you would want to ask.

Mr. Da'Mes said perhaps I am confused as to what our role is. What is the expectation of the Planning Commission?

Mr. Fletcher said it is a procedural review, to make certain we are looking at capital projects in a way that is comprehensive with the planning concept of the Comprehensive Plan. Capital projects have been increased to \$50,000, up from \$30,000 last year.

Mr. Da'Mes said as the CIP relates to the overall planning aspect. Council is not just looking at our recommendation and approving it because we have recommended to.

Mr. Fletcher said I do not know how much weight is given to Planning Commission's recommendation; but, I do think Council appreciates the questions that you all bring to the Department Directors. Planning Commission has a different mindset than Council, so you are asking questions that they may not have thought of.

Mrs. Turner said I do not think City Council is looking to Planning Commission to have a whole lot of changes or questions about the fiscal soundness of the CIP. Planning Commission should be looking at things like prioritization.

Mrs. Fitzgerald said last year we had the opportunity to submit questions ahead of time; can we do the same this year?

Mr. Fletcher said yes, please do.

Mrs. Fitzgerald said is a week ahead of time good?

Mr. Fletcher said if we could get questions by the 5th of December, and we could forward them to the Department Directors before the end of the week, that should be sufficient.

Mr. Da'Mes said I for one am not looking to add to anyone's work load; but, I feel it is appropriate to have the Directors do some sort of presentations. That has always been my perspective on this.

Chairman Jones said we used to do that several years ago, where we met with Department Directors on a separate night and they each did a presentation.

Mr. Da'Mes asked if it was it fruitful and created further dialogue.

Chairman Jones said it is more of a requirement of code and not so much of a vetting vehicle for this before it goes to Council.

Mrs. Turner said that is correct, it is in the State Code.

Chairman Jones said we review the CIP so that we fulfill the necessary procedural requirement. These are all budget matters and the Council is going to decide the budget.

Mr. Way asked whether Council read Planning Commission's notes and reviewed our questions.

Mr. Fletcher replied yes.

Mrs. Turner said if you were to decide that you want some type of presentation, please clarify exactly what you are looking for in the presentation. Ages ago each Department did an overall presentation. Then we

just had the Directors present new projects or things that had changed in scope. Please let us know so that we can let the Directors know what to prepare for.

Mr. Way asked if a reminder email could be sent out to remind everyone to send in questions by the 5th.

Planning Commission was in agreement to review the CIP at the December regular meeting. We will have the Department Directors come and Planning Commission can submit questions prior to the meeting.

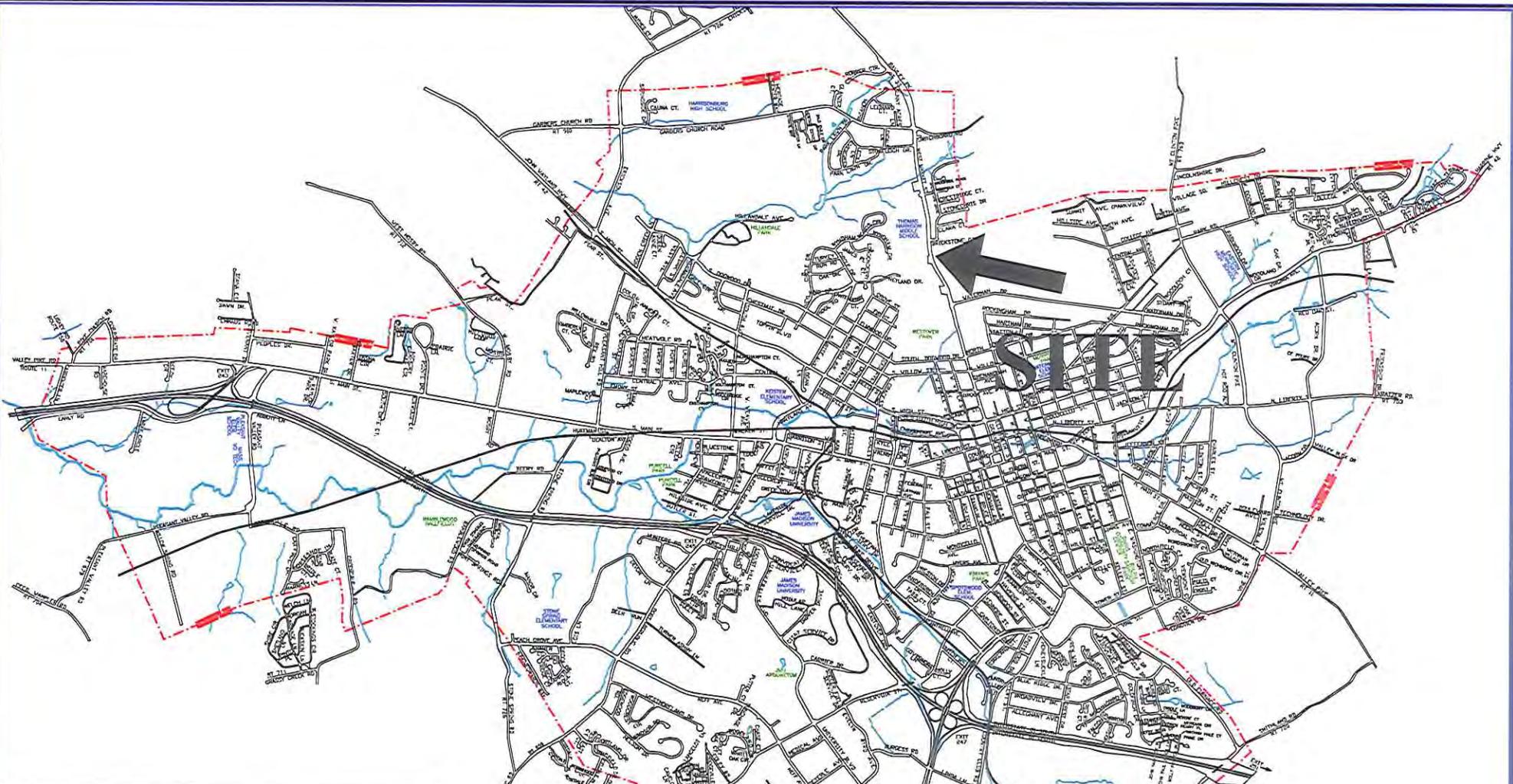
Chairman Jones asked if there was anything else.

Mr. Fletcher said there is one item. If you visit the City's homepage, under news and announcements, there is a post about the building permit review process. You may find it interesting about the attempts that City Staff has been making towards improvements to the building permit process. The site will provide you with the prerequisite questionnaire, which is essentially when someone wants to apply for a building permit they need to answer the questionnaire to make sure that they fully understand what they are applying for and to help curtail problems that could arise down the road.

Mrs. Turner said this is more for situations where someone is rehabbing an existing building and to get their building permit they do not necessarily have to go through a whole lot of explanation of what they might want to do as they rehab. This is to get someone to think up front about certain situations before applying for a permit.

Adjournment

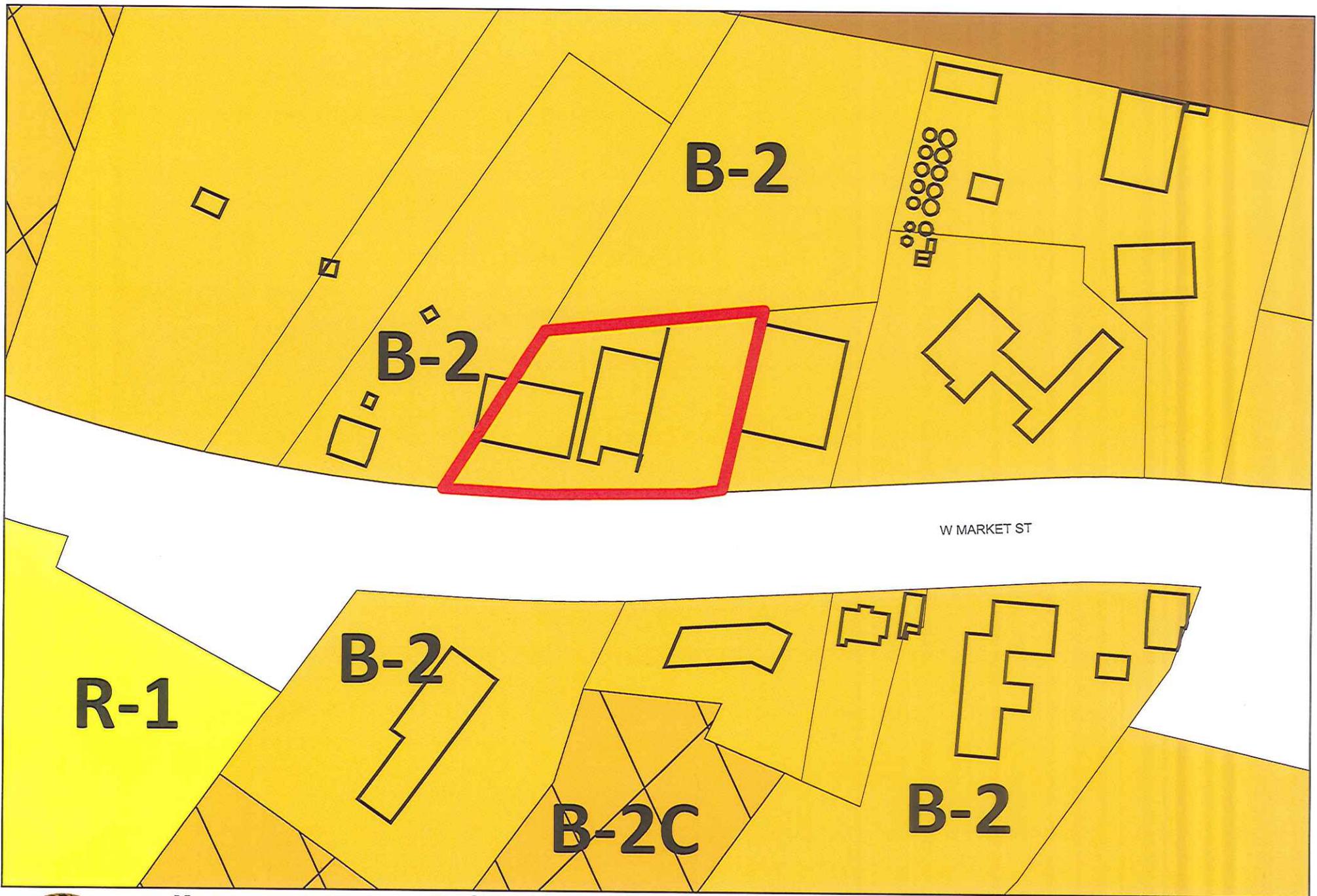
The meeting was adjourned at 7:50 p.m.



CITY OF HARRISONBURG
 Special Use Permit
 1042 West Market Street
 Section 10-3-91 (9) - Reduction in Required
 Side Yard Setbacks to Zero Feet
 D C and Twyla A. Heatwole Estate
 Tax Map: 37-B-2
 Approximately 26,642 +/- sq. ft.
LOCATION MAP



Planning and Community Development
 City of Harrisonburg, Virginia



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



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
December 12, 2012

SPECIAL USE PERMIT – 1042 WEST MARKET STREET (10-3-91 (9))

GENERAL INFORMATION

Applicant: D.C. Heatwole Estate and Twyla A. Heatwole with representative Mike Pugh
Tax Map: 37-B-2
Acreage: 26,642 +/- square feet
Location: 1042 West Market Street
Request: Public hearing to consider a request for a special use permit per Section 10-3-91 (9) of the B-2, General Business District, which allows for the reduction in the required 10-foot side yard setback to zero feet along the lot line of an adjoining lot or parcel zoned B-2 or M-1.

LAND USE, ZONING, AND SITE CHARACTERISTICS

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

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

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

EVALUATION

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

The site is located along the northern side of West Market Street, just west of the Waterman Drive and West Market Street intersection. Currently located on the parcel are two commercial buildings that sit within 9 feet of one another. The applicant desires to establish a new property line between the two existing buildings; thus placing each structure on a lot to itself. This would allow the applicant to sell

the newly created parcels and structures separately. At present, one of the structures located on the site has a property line running through it and therefore is positioned on the subject property and parcel 37-B-1, also owned by the applicants. Should the SUP be approved, the applicants will proceed with a minor subdivision to place the two commercial structures on separate parcels.

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

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

Date Application Received: 11-09-12

Application for Special Use Permit City of Harrisonburg, Virginia

Fee: \$375.00 plus \$30.00 per acre

Total Paid: \$ 405.⁰⁰ AF

Property Owner's Name: Heatwole D.C. Estate Twyla A.

Street Address: 111 Oak Meadow Dr Email: mheatwole@atd-us.com

City: Bridgewater State: VA. Zip: 22812

Telephone: Work 433-2416 Fax 877-744-8506 Mobile 746-0603

Owner's Representative: Michael W. Pugh

Street Address: 2040 S. Main St Email: Mike.pugh@OORVA.com

City: Harrisonburg State: Va Zip: 22801

Telephone: Work 433 2454 Fax 433-5846 Mobile 383-5116

Description of Property and Request

Location (Street Address): 1042 W. Market St

Tax Map Number Sheet: _____ Block: _____ Lot: _____ Lot Area: _____

Existing Zoning Classification: _____

Special Use being requested: Reduction side yard set backs for two buildings, to allow property to be subdivided.

Please provide a detailed description of the proposed (use additional pages may be attached):

Request side yard set back at common property boundary as proposed to be redacted as shown on plat.

Names and Addresses of Adjacent Property Owners (Use separate sheet for additional names)

North: LOVAT Holdings, LLC

South: _____

East: Perry Schultz

West: _____

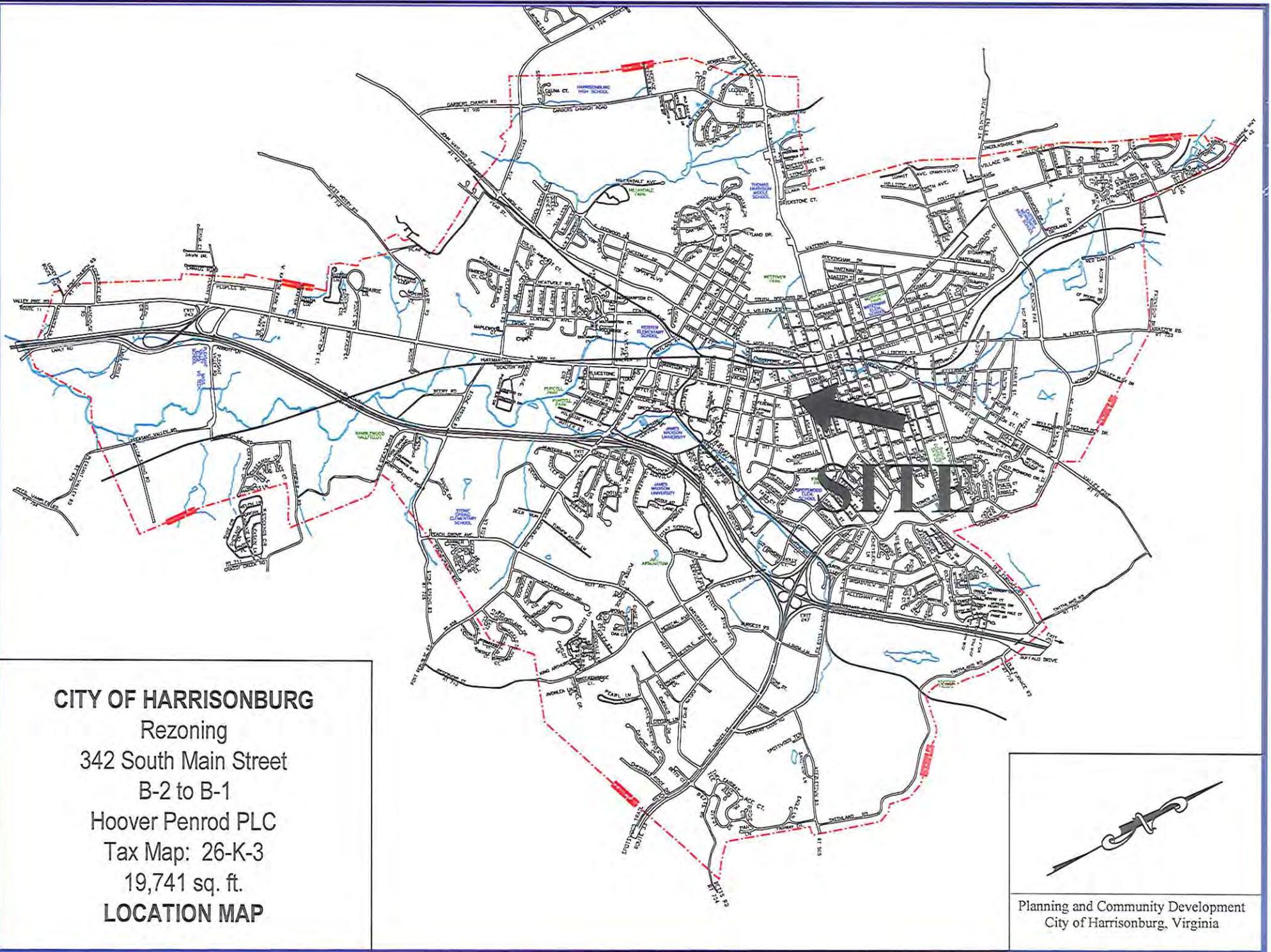
Certification: I certify that the information contained herein is true and accurate.

Signature: Mike Heatwole DCH Partnership
Property Owner

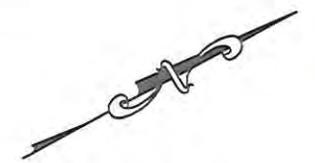
ITEMS REQUIRED FOR SUBMISSION

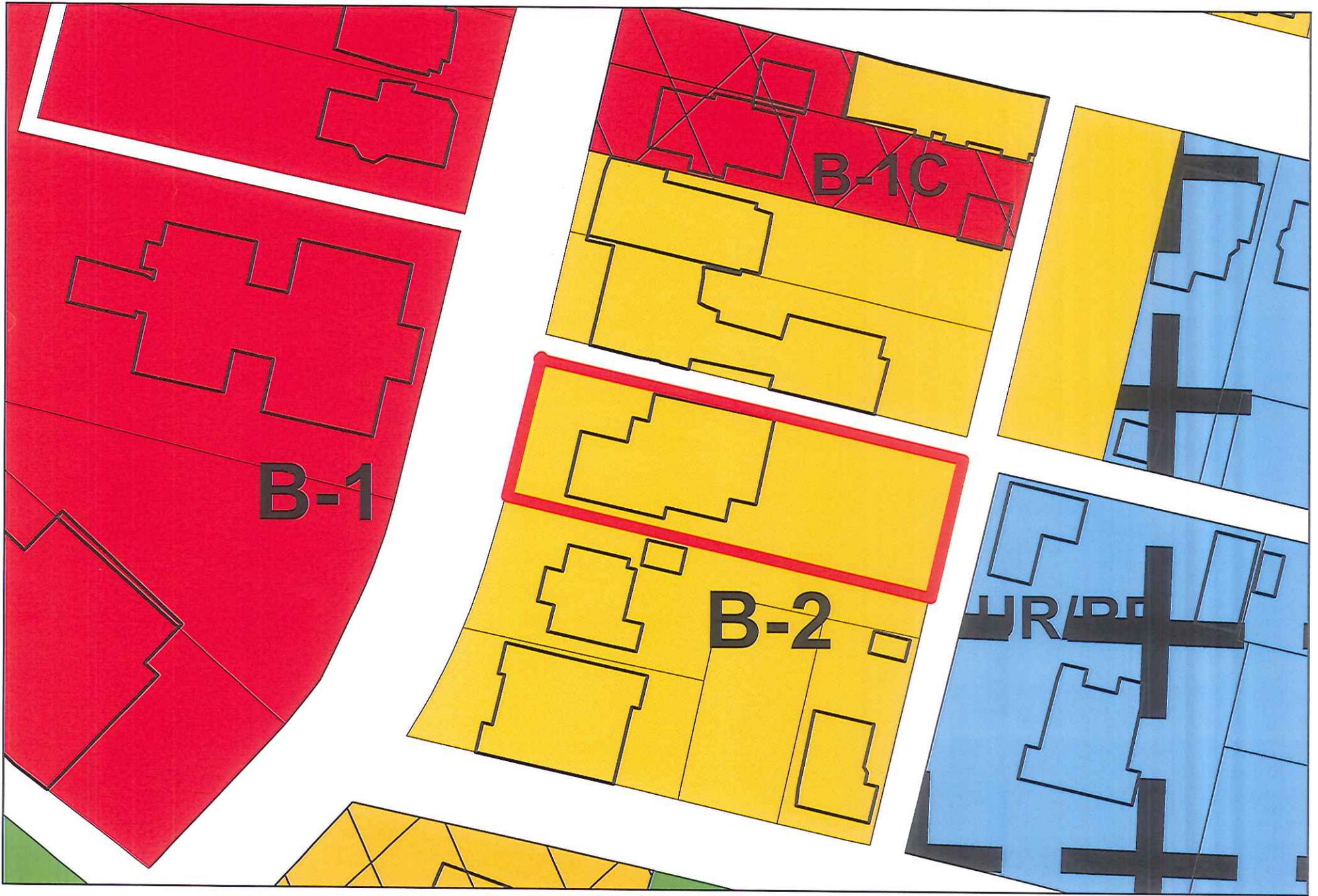
- Completed Application
- Site Plan
- Description of Proposed Use
- Adjacent Property Owners

- Fees Paid
- Property Located on Tax Map
- _____
- _____



CITY OF HARRISONBURG
Rezoning
342 South Main Street
B-2 to B-1
Hoover Penrod PLC
Tax Map: 26-K-3
19,741 sq. ft.
LOCATION MAP


Planning and Community Development
City of Harrisonburg, Virginia



**Rezoning -- B-2 to B-1
342 South Main Street**





City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
December 12, 2012

REZONING – 342 SOUTH MAIN STREET (B-2 TO B-1C)

GENERAL INFORMATION

Applicant: Hoover Penrod, PLC with representative David Penrod
Tax Map: 26-K-3
Acreage: 19,741 +/- square feet
Location: 342 South Main Street
Request: Public hearing to consider a request to rezone one parcel totaling 19,741 +/- sq. ft. from B-2, General Business District to B-1C, Central Business District Conditional.

LAND USE, ZONING, AND SITE CHARACTERISTICS

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

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

Site: Professional office, zoned B-2
North: Commercial complex, zoned B-2
East: Apartment building, zoned U-R
South: Professional office building, zoned B-2
West: Across South Main Street, City Municipal Building, zoned B-1

HISTORY

In January 1979 the single-family home at 342 South Main Street was purchased for use by the law firm of Hoover, Hoover, and Penrod to house their offices. The following month, the parcel was granted a variance from the Board of Zoning Appeals for a reduction in off-street parking

requirements. A condition of the variance was that the applicants (Hoover, Hoover, and Penrod) would provide 8-10 parking spaces on the site for clients. In October 2004 the property received approval for a special use permit to allow a reduction to the side yard setback to construct an addition at 2'3" from the northern property line. In October 2012, Hoover Penrod, PLC applied for a building permit to construct an addition along the southern facing side of the building. The permit was denied after zoning review because the addition would encroach into the required setback. In a conversation with the applicants, staff suggested they consider rezoning the property to B-1, as such a rezoning would be in conformance with the Comprehensive Plan, and would allow for a zero setback.

EVALUATION

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

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

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

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

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

HOOVER PENROD PLC

ATTORNEYS AT LAW

342 SOUTH MAIN STREET

HARRISONBURG, VIRGINIA 22801

www.hooverpenrod.com

LAWRENCE H. HOOVER, JR.
OF COUNSEL

FACSIMILE
540-433-3916

TELEPHONE
540-433-2444

M. BRUCE WALLINGER
DAVID A. PENROD
JOHN N. CRIST
DALE A. DAVENPORT
RICHARD A. BAUGH
DILLINA W. STICKLEY
LAURA S. EVICK
GRANT D. PENROD
JACOB T. PENROD

November 8, 2012

City of Harrisonburg Planning Commission

Attn: Adam Fletcher

409 South Main Street

Harrisonburg, VA 22801

**Re: Application of Hoover Penrod PLC to rezone 342 South Main Street
From B-2 to B-1**

Dear Commissioners:

The law firm of Hoover Penrod PLC wishes to add a one-story addition of approximately 586 square feet at the southeast corner of its existing office building.

When we last added an addition in 2005 we sought and obtained a special use permit and a variance so that we could build closer to our property line and not add additional parking. We had assumed that we would follow the same procedure with this expansion, but the planning staff suggested instead that we request a rezoning because many of the surrounding properties are already zoned B-1.

Please contact me if you have any questions.

Sincerely,

HOOVER PENROD PLC



David A. Penrod

DAP/psw

HOOVER PENROD PLC

ATTORNEYS AT LAW

342 SOUTH MAIN STREET

HARRISONBURG, VIRGINIA 22801

www.hooverpenrod.com

LAWRENCE H. HOOVER, JR.
OF COUNSEL

FACSIMILE
540-433-3916

TELEPHONE
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RICHARD A. BAUGH
DILLINA W. STICKLEY
LAURA S. EVICK
GRANT D. PENROD
JACOB T. PENROD

December 6, 2012

City of Harrisonburg Planning Commission

Attn: Alison Banks

409 South Main Street

Harrisonburg, VA 22801

**Re: Application of Hoover Penrod PLC to rezone 342 South Main Street
From B-2 to B-1**

Dear Commissioners:

At your staff's request, we are willing to amend our request for rezoning to include the following proffers:

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

Sincerely,

HOOVER PENROD PLC



David A. Penrod

DAP/psw

¹ Note we currently have 21 spaces, some of which are close to the anticipated construction site and some of which will be used temporarily for storage of construction materials, or otherwise for construction activities. We should be able to maintain at least 10 parking spaces during the three months or so of construction.

Date Application Received: _____

Total Paid: 405⁰⁰ ✓ 03 11/7/12

Application for Change of Zoning District City of Harrisonburg, Virginia

Section 1: Property Owner's Information

Name: HOOVERPENROD, LLC
Street Address: 342 S. MAIN ST Email: _____
City/State/Zip: HARRISONBURG, VA 22801
Telephone (work): _____ (home or cellular): _____ (fax): _____

Section 2: Owner's Representative Information

Name: DAVID A. PENROD
Street Address: SAME Email: DOPENROD@HOOVERPENROD.COM
City/State/Zip: AS ABOVE
Telephone (work): 433-2444 (home or cellular): 434-8335 (fax): _____

Section 3: Description of Property

Location (street address): 342 S. MAIN ST
Tax Map Number: Sheet: 26 Block: K Lot: 3 Total Land Area (acres or square feet): _____
Existing Zoning District: B-2 Proposed Zoning District * : B-1
Existing Comprehensive Plan Designation: _____

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

Section 4: Application Fee

\$375.00 plus \$30.00 per acre, and if applicable, Fees for a Traffic Impact Analysis (TIA) Review (see below)

- (a). Would the development from this rezoning require a Traffic Impact Analysis by VDOT?
Yes _____ No

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

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

- (b). Would the development from this rezoning require a Traffic Impact Analysis review by the City?
Yes _____ No

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

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

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

North:	<u>5 HOMO & LINDWEAVER INS, INC</u>	<u>328 S. MAIN</u>	<u>26-K-4</u>
East:	<u>B SIDE LLC</u>	<u>130 CAMPBELL</u>	<u>26-K-13, 18, 19</u>
South:	<u>356 PROP. MAN. GRP, LLC</u>	<u>356 S. MAIN</u>	<u>26-K-2</u>
West:	<u>CITY OF HARRISONBURG</u>	<u>345 S. MAIN</u>	<u>25-J-9-12</u>

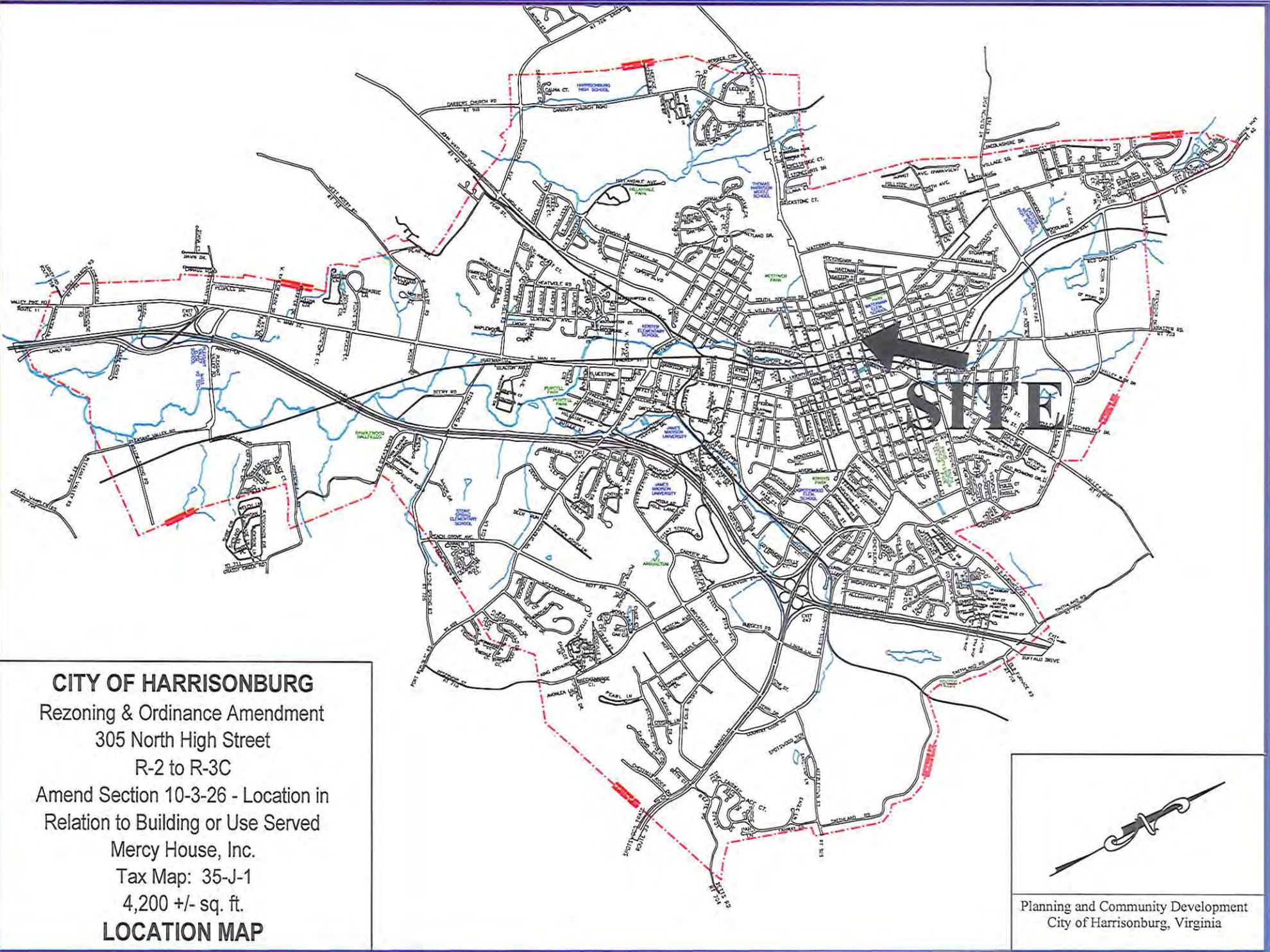
Section 6: Certification

I certify that the information contained herein is true and accurate. Signature: _____

David A Penrod

Property Owner

See Back for Items Required for Submission



CITY OF HARRISONBURG

Rezoning & Ordinance Amendment
 305 North High Street
 R-2 to R-3C
 Amend Section 10-3-26 - Location in
 Relation to Building or Use Served
 Mercy House, Inc.
 Tax Map: 35-J-1
 4,200 +/- sq. ft.
LOCATION MAP


 Planning and Community Development
 City of Harrisonburg, Virginia



**Rezoning R-2 to R-3C & Zoning Ordinance Amendment to
Section 10-3-26 - Mercy House, Inc.**



**Rezoning R-2 to R-3C & Zoning Ordinance Amendment to
Section 10-3-26 - Mercy House, Inc.**



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
December 12, 2012

The following staff report contains the evaluation for the proposed ordinance amendments to Section 10-3-26, and the rezoning requested by Mercy House.

ORDINANCE AMENDMENT – Charitable and Benevolent Institutional Parking Exception REZONING – 305 North High Street (R-2 to R-3C)

GENERAL INFORMATION

Ordinance

Amendment Applicant: Mercy House, Inc. with representative Todd C. Rhea, Esquire

Rezoning Applicant: Delores K. Lamb with representative Mercy House, Inc. and Todd C. Rhea, Esquire

Tax Map: 35-J-1

Acreage: 4,200 +/- square feet

Location: 305 North High Street

Requests: Public hearing to consider amending the Zoning Ordinance Section 10-3-26 Location in Relation to Building or Use Served to add the ability for charitable or benevolent institutional uses to locate required parking on parcels that are not the same parcel for the uses served including parcels across public street and alley right-of-ways and to modify other parts of this section to specify that the minimum sum of required parking spaces shall be provided when common or cooperative parking locations are utilized and to modify and clarify how reductions in required parking can occur.

Public hearing to consider a request to rezone one parcel from R-2, Residential District to R-3C, Medium Density Residential District Conditional.

LAND USE, ZONING, AND SITE CHARACTERISTICS

The Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. These are older neighborhoods, which can be characterized by large housing units on small lots.

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

Site: Single family dwelling, zoned R-2

- North: Single family dwelling at the corner of North High Street and Park Place, zoned R-2
- East: Across North High Street, single family structures converted to multiple dwelling units fronting North High Street and West Rock Street, zoned R-2 and R-3
- South: Across Green Street, Mercy House, Inc. operations, zoned R-3
- West: Single family dwelling fronting Park Place, zoned R-2

EVALUATION

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

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

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

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

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

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

- (a) All parking spaces required herein shall be located on the same lot with the building or use served or on adjoining lots ~~within a zoning district permitting the same.~~ located on property zoned where such parking is permitted. A common or cooperative location shall be in the ownership of all of the participating property owners, or shall have easement and maintenance agreements between the participating property owners for a period of at least ten (10) years following the date of city approval and shall ~~have parking space equal~~

~~to the sum required by subsection 10-3-26(b). provide the minimum sum of required parking spaces for all uses. The amount of space may be further reduced by the planning commission subject to its determination that fewer spaces are needed due to different hours of activity among the various uses, a guarantee of the permanent availability of such space, or other such factors.~~ When assembly uses propose borrowing parking from other public or private parking facilities which are properly zoned and in reasonable proximity, the planning commission, upon site plan review, may modify the number of on-site parking spaces.

(1) Notwithstanding the requirements set forth above:

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

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

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

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

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

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

~~(4)~~(b) Reductions in required parking for two (2) or more uses may be approved by the zoning administrator, at the request of the applicant, where a shared parking calculation and agreement, if applicable, shall be submitted to and approved by the zoning administrator. Such agreements shall be binding on the current and future property owners as long as the permitted uses remain substantially the same. Reductions shall be in accordance with the following calculation provided by the applicant:

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

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

The issues involving these applications began at the end of August when Sallye Trobaugh, a real estate broker and member of the Board of Directors for Mercy House, inquired with staff about the ability of Mercy House to use 305 North High Street as office space for the non-profit. Staff informed Ms. Trobaugh that Mercy House would have to rezone the property to a zoning district that permitted such a use and that if they were interested they should consider rezoning the

property to R-3—the least intensive zoning district permitting the desired use. Staff also informed them that using the 1,800 +/- square foot building would require, at minimum, six off-street parking spaces and that it appeared physically impossible to meet that requirement on such a small lot. To make it work, staff explained that Mercy House could propose an ordinance amendment to the parking regulations. Staff also stated that we recognized there could be favorable arguments made in Mercy House's favor to rezone the property for a charitable and benevolent institutional use, but doubted that staff would positively recommend for the Zoning Ordinance amendment.

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

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

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

Nevertheless, Mercy House returned with their own Zoning Ordinance amendment proposal this month, which is narrowly tailored to their exact situation. Their proposed language is shown above as 10-3-26 (a) (1) b. If approved, charitable/benevolent institutional uses, regardless of the zoning district in which they are permitted, could meet the required minimum parking spaces by locating parking spaces on lots directly across "local" public or private streets or alleys. The term "local" is important for the intent of the proposed provision because streets such as Main Street, Market Street, High Street (Virginia Avenue), Port Republic Road, Reservoir Street, and a few

others are not classified as “local,” and therefore, parking would not be permitted across those streets. Oddly, the narrowed policy approach would also not permit locating required parking on a parcel that is on the same side of the street as the use served that might be one lot separated from the use served by a narrow strip of property.

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

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

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

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

Notwithstanding the minimum requirements as demonstrated in the table above, the applicant may choose to request a reduction in required parking spaces per the proposed Section 10-3-26 (b). Based upon the table within 10-3-26 (b), the Weekday Daytime time period requires the

highest number of parking spaces, which would be 18 spaces. Thus, at a minimum, Mercy House shall provide 18 parking spaces, two of which shall be handicapped accessible.

It should be further understood that if the 305 North High Street property is used as office space for the non-profit, it appears impossible for parking to be established on the subject property as there is not enough space available to meet the dimensional requirements of the Design and Construction Standards Manual (required via the Zoning Ordinance (Section 10-3-29 (b)) or the Zoning Ordinance's landscaping requirements. The onsite parking spaces that currently exist for the single family residential use that currently use the public street right-of-way for maneuvering, can only be used if the property is used as a single family dwelling. In other words, if the property is rezoned and used as an "other use," these existing parking spaces cannot be used.

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

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

ORDINANCE AMENDMENT

**Zoning Ordinance
Section 10-3-26
(Charitable and Benevolent Institutional
Parking Provision)**

ORDINANCE AMENDING AND RE-ENACTING SECTION

10-3-26

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

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

That Section 10-3-26 Location in Relation to Building or Use Served is amended as shown:

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

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

- (1) Notwithstanding the requirements set forth above:

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

property owners for a period of at least ten (10) years following the date of city approval.

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

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

- ~~(1) The uses are contiguous uses.~~
- ~~(2) Parking areas of the respective uses are connected by safe and convenient pedestrian access, as well as by automobile access.~~
- ~~(3) A shared parking agreement is submitted and approved by the zoning administrator. The agreement will be binding on the current and future property owners as long as the permitted uses remain substantially the same.~~

~~(4)(b) Reductions in required parking for two (2) or more uses may be approved by the zoning administrator, at the request of the applicant, where a shared parking calculation and agreement, if applicable, shall be submitted to and approved by the zoning administrator. Such agreements shall be binding on the current and future property owners as long as the permitted uses remain substantially the same. Reductions shall be in accordance with the following calculation provided by the applicant:~~

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

Shared Parking Calculations for Contiguous Uses		
Use	Weekday	Weekend

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

The remainder of Section 10-3-26 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the _____ day of _____, 2013.
Adopted and approved this _____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK OF THE COUNCIL

CLARK & BRADSHAW, P. C.

ATTORNEYS AT LAW

92 NORTH LIBERTY STREET

P. O. BOX 71

HARRISONBURG, VIRGINIA 22803-0071

TELEPHONE (540) 433-2601

FACSIMILE (540) 433-5528

V. STEPHEN BRADSHAW
RETIRED

ELLEN H. BRODERSEN, C.P.A.
AMY L. RUSH, C.P.A.
(NOT ATTORNEYS)

HENRY C. CLARK
M. STEVEN WEAVER
MARK B. CALLAHAN
TODD C. RHEA
MATTHEW C. SUNDERLIN
BRADLEY J. MOYERS
DAVID C. NAHM

December 5, 2012

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

RE: 305 North High Street Rezoning Request – Mercy House, Inc.

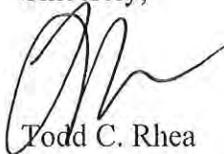
Dear Adam:

This letter will provide supplemental information relative to the planned uses to be made by Mercy House for both of their existing properties located at 243 and 247 North High Street as well as the proposed rezoned structure at 305 North High Street in the City of Harrisonburg.

Mercy House is seeking to rezone the 305 North High Street parcel in order to house their administrative staff in furtherance of their charitable and benevolent purposes mission. This staff would include their executive director, administrative assistant, and several counselors. The requested charitable and benevolent office use would allow the relocation of these current uses from their current location in the structure located at 247 North High Street. 247 North High Street could then house one (1) additional shelter unit increasing that number from one (1) to two (2) shelter units. The relocation would also enable Mercy House to expand shelter related services space at 247 North High Street for individuals and families housed at 243 North High Street and 247 North High Street. For purposes of Staff calculations, the breakdown of uses of those three (3) properties would be as generally outlined in the current Staff Report for the rezoning request. Mercy House will provide at least the minimum parking spaces allowed by ordinance.

We appreciate, again, the opportunity to cooperatively discuss the challenges and opportunities presented by Mercy House's Ordinance Amendment and Rezoning Request. Please feel free to contact me should staff require additional information.

Sincerely,



Todd C. Rhea

TCR/rmm

cc: Mercy House, Inc. – via email only

CLARK & BRADSHAW, P. C.

ATTORNEYS AT LAW

92 NORTH LIBERTY STREET

P. O. BOX 71

HARRISONBURG, VIRGINIA 22803-0071

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BRADLEY J. MOYERS
DAVID C. NAHM

December 5, 2012

Ms. Stacey Turner, Director of Community Development
City of Harrisonburg
345 S. Main Street
Harrisonburg, VA 22801

RE: Rezoning Application for 305 North High Street, Harrisonburg, VA 22802

Dear Ms. Turner:

On behalf of the applicant, Mercy House, Inc., relating to the requested rezoning of the 305 North High Street parcel, we would respectfully request the following amended proffer to the referenced R-3 zoning request.

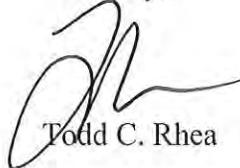
The applicant hereby proffers of that the development of the subject property on this application shall be in strict accordance with the conditions set forth in this submission. Specifically, the applicant proffers that residential occupancy shall be limited to the occupancy restrictions of the R-1, Single Family Residential District.

This proffer shall be limited to residential uses only and shall not be deemed to limit any permitted non-residential uses allowed under the R-3 district.

This amended proffer shall be deemed to replace any previous proffers, including that submitted to the City on a letter dated October 11, 2012. All previous proffers for the referenced rezoning are hereby withdrawn.

Thank you for accepting this proffer relating to the above referenced Rezoning Application. Please feel free to contact me with any questions or concerns.

Sincerely,



Todd C. Rhea

TCR/rrm
cc: Mercy House, Inc.

Proposed Amendments Requested by Mercy House, Inc.

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

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

(1) ~~(1)~~ —Notwithstanding the requirements set forth above:

- (a) industrial operations for the manufacturing, processing, storage, or treatment of products which are not customarily found in retail centers as permitted by the M-1, General Industrial District may also locate required parking on parcels that are not on the same or adjoining parcels from the uses served. Such parcels shall be zoned B-2, General Business District or M-1, General Industrial District, located in reasonable proximity to the property in which the parking serves, and may be located across public streets and/or alleys. A common or cooperative location shall be in the ownership of all of the participating property owners or shall have easement and maintenance agreements between the participating property owners for a period of at least ten (10) years following the date of city approval.
- (b) charitable or benevolent institutional uses may also locate required parking on parcels that are not on the same or adjoining parcels from the uses served. Such parcels shall be zoned where such parking is permitted and shall be located directly across local public and private streets and/or alleys (as depicted on the Comprehensive Plan's Street Network Map) from one another. A common or cooperative location shall be in the ownership of all of the participating property owners or shall have easement and maintenance agreements between the participating property owners for a period of at least ten (10) years following the date of city approval.

EXAMINED *Del. cl to
Shapley and Ray*
JUN 15 1976 *W. Moffatt*

BOOK 473 PAGE 882

THIS DEED, made and entered into this 2nd day of June, 1976, by and between R. H. SHEPHERD and LOUISE B. SHEPHERD, husband and wife, parties of the first part, and MELVIN E. LAMB and DELORES K. LAMB, husband and wife, parties of the second part.

W I T N E S S E T H :

That for and in consideration of the sum of Ten (\$10.00 Dollars, cash in hand paid, and other sufficient and valuable consideration, the receipt of all of which is hereby acknowledged by the parties of the first part from the parties of the second part, they, the said parties of the first part do hereby grant and convey with English Covenants of Title, unto the said MELVIN E. LAMB and DELORES K. LAMB, husband and wife, as tenants by the entirety with the right of survivorship as at common law, all that certain lot or parcel of land, together with the improvements thereon, situate and fronting on the western side of North High Street, immediately north of Green Street, which is described in a prior deed as follows:

Beginning at a point on High Street 63 feet from the northern line of the intersection of Green and High Streets and corner to a lot conveyed to Lynn L. Mundy and wife, and running thence westwardly with the southern line of said Mundy lot to the eastern line of Lot No. 5, as shown on the plat of Park Place Addition, at a point midway between Park and Green Streets; thence, with said eastern line of Lot No. 5, about 60.1 feet to the northern line of Green Street; thence, with said line of Green Street eastwardly 118.5 feet to the western line of High Street at the intersection of Green and High Streets; thence, with said line of High Street 63 feet to the point of Beginning,

and being the same real estate which was acquired by the grantors

BOOK 473 PAGE 683

herein by deed dated October 26, 1955, from Laird L. Conrad, Executor of the Estate of A. P. Sumption, deceased, which deed is of record in the Clerk's Office of Rockingham County, Virginia in Deed Book 251, at Page 439.

LESS AND EXCEPT, HOWEVER, that certain parcel of land containing approximately 3000 square feet taken by the Commonwealth of Virginia in a condemnation proceeding for the widening of North High Street, an order confirming said taking and vesting title in the Commonwealth of Virginia dated May 8, 1968, being of record in the Clerk's Office of Rockingham County, Virginia in Deed Book 359, at Page 550.

WITNESS the following signatures and seals the day, month and year first above written.

R. H. Shepherd (SEAL)
R. H. Shepherd

Louise B. Shepherd (SEAL)
Louise B. Shepherd

STATE OF VIRGINIA,
COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me this 4th day of June, 1976, by R. H. Shepherd and Louise B. Shepherd, husband and wife.

My commission expires September 10, 1976.

George W. Klumper
Notary Public

WITNESSE: In the Clerk's Office of the Circuit Court of Rockingham County, Virginia, the foregoing instrument was this day presented at the office of the Clerk, and together with the requisite fee of 15.00 dollars, was filed to record this 4th day of June, 1976, at 11:50 P.M. I certify that taxes were paid with the same.
Sec. 52-51 - State 15.00 City 15.00
Sec. 52-51.1 - State 15.00 County 15.00 Transfer 100
Received 8.00 TESTE: GEORGE W. KLUMPER, CLERK.

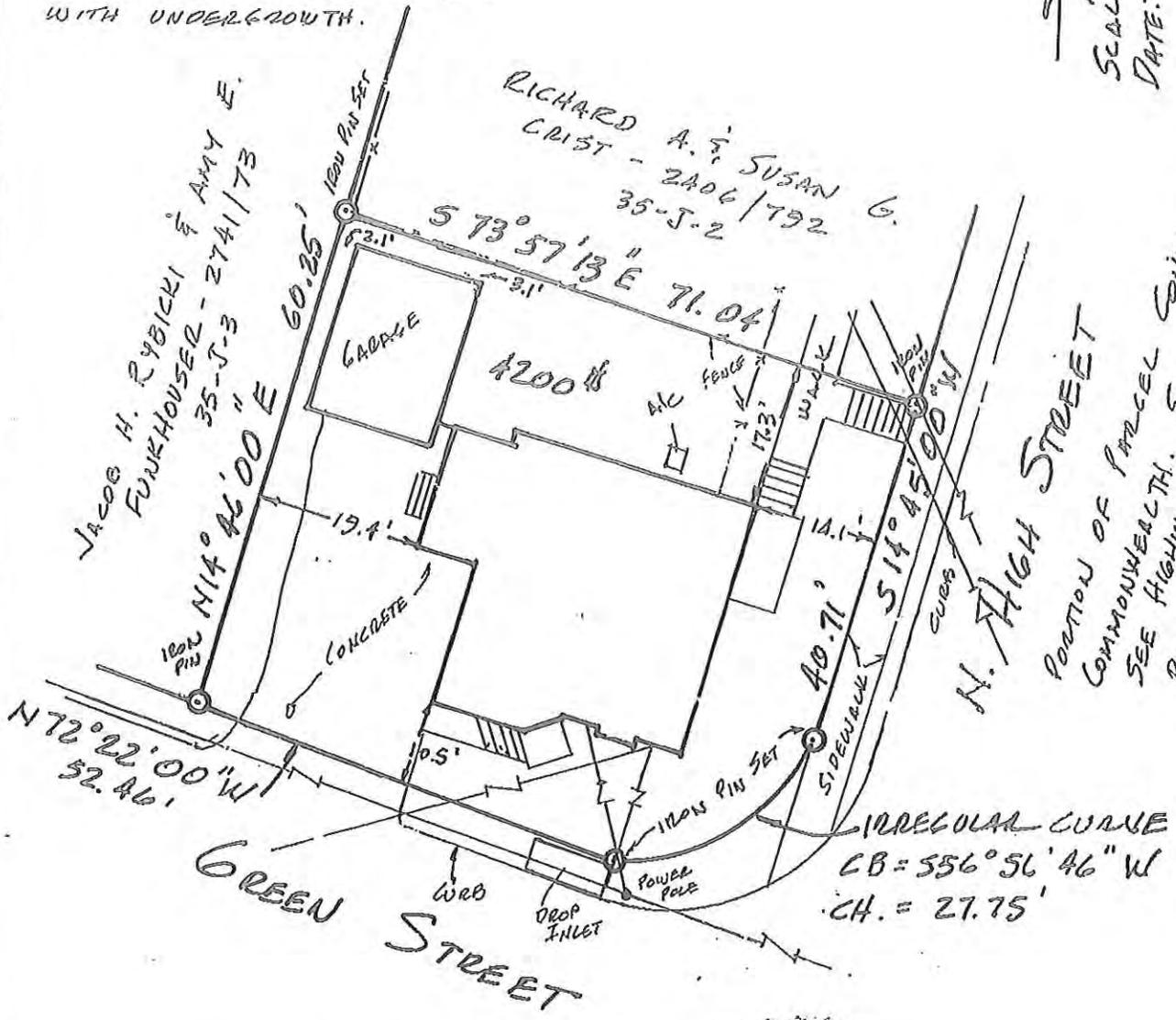
Deed Book No. 473 Page 682 2 -

TITLE SURVEY

305 N. HIGH STREET
HARRISONBURG, VIRGINIA

SCALE: 1"=20'
DATE: 11 SEP 12

LOT 13 UNKEMPT & COVERED
WITH UNDERGROWTH.



N. HIGH STREET
 PORTION OF PARCEL CONVEYED TO
 COMMONWEALTH. SEE HIGHWAY PLAT BOOK 3
 PAGE 497

OVERHEAD
UTILITY LINES

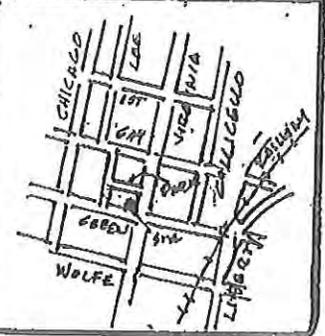
SURVEYED LOT 13 IN ZONE X
 ACCORDING TO F.E.M.A. MAP
 DATED 3 NOV 89.

SURVEYED LOT STANDING IN
 NAME OF DELORES K. LAMB
 473/682 35-J-1

PURCHASE: MERCY HOUSE

ROBERT F. JELUM
 CERTIFICATE NO.
 61-17-3 (1) 1143
 11 SEP 12

VICINITY SKETCH



Application received: 10-11-12

Total Paid: 405⁰⁰ *AF*

Application for Change of Zoning District
City of Harrisonburg, Virginia

Section 1: Property Owner's Information

Name: DELORES K. LAMB
Street Address: 1609 Michigan Ave NE Email: NONE
City/State/Zip: WASHINGTON, D.C. 200193132
Telephone (work): _____ (home or cellular): _____ (fax): _____

Section 2: Owner's Representative Information MERCY HOUSE, INC.
C/O TODD RHEA, CLARK AND BRADSHAW TRNER@clark-bradshaw.com
Name: SALLIE TRIDBAUGH, KLINE MAY REALTY
Street Address: 1962 Evelyn Byrd Email: sallie.tridbaugh@kline-may.com
City/State/Zip: HARRISONBURG, VA
Telephone (work): 540 433-2601 (STAD) (home or cellular): 540 476-1216 (fax): 540 437-3576
Sallye

Section 3: Description of Property

Location (street address): 305 N. HIGH STREET, HARRISONBURG, VA 27802
Tax Map Number: Sheet: D35 Block: J Lot: 1 Total Land Area (acres or square feet): 4200 SF
Existing Zoning District: R-2 Proposed Zoning District*: R-3
Existing Comprehensive Plan Designation: NEIGHBORHOOD RESIDENTIAL

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

Section 4: Application Fee

\$375.00 plus \$30.00 per acre, and if applicable, Fees for a Traffic Impact Analysis (TIA) Review (see below)

(a) Would the development from this rezoning require a Traffic Impact Analysis by VDOT?
Yes _____ No ✓

If yes, then fees must be made payable to VDOT to cover costs associated with the TIA review.
PLEASE NOTE - If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.

(b) Would the development from this rezoning require a Traffic Impact Analysis review by the City?
Yes _____ No ✓

If yes, then an additional \$1,000.00 must be made payable to the City to cover costs associated with the TIA review.
PLEASE NOTE - If a TIA is required, this application shall not be considered accepted until the TIA has been reviewed.

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

North: SEE ATTACHED LIST
East: _____
South: _____
West: _____

Section 6: Certification

I certify that the information contained herein is true and accurate. Signature: [Signature]
Property Owner

By: Lori Gene L. Moller POA for
Delores K. Lamb
Last Updated: 7/12/2011

See Back for Items Required for Submission

Tax Map Property Address	Owner's Name and Mailing Address
35-J-2 315 N. High St.	Richard A. and Susan G. Crist 8729 Chesterfield Lane Bridgewater, Virginia 22812
35-J-3 251 Park Place	Jacob H. Rybicki and Amy E. Funkhouser 251 Park Place Harrisonburg VA 22802
35-N-3 235 N. High St.	Mercy House 247 North High Street Harrisonburg VA 22802
35-K-12 304 N. High St.	Galen R. and Gloria Lehman 11157 Morning View Rd. Singers Glen VA 22850
35-O-9 270 N. High St.	Leon E. & Joan M. Shank c/o Ralph Kiser 1910 Erickson Ave. Suite 15 Harrisonburg VA 22801
35-O-10 262 N. High St.	Roger D. and Patricia Simmons 221 Loewner Lane Hinton VA 22831

Date Application Received: 11-16-12

**Application for Ordinance Amendment
City of Harrisonburg, Virginia**

Fee: \$375.00

Total Paid: \$375.00 *AR*

Applicant's Name: Mercy House, Inc.

Street Address: 247 North High Street Email: twila@themercyhouse.org

City: Harrisonburg State: Virginia Zip: 22802

Telephone: Work 540 432 1812 Fax 540 564 0325 Mobile _____

Applicant's Representative: Todd C. Rhea, Esquire

Street Address: 92 North Liberty Street Email: tcrhea@clark-bradshaw.com

City: Harrisonburg State: Virginia Zip: 22802

Telephone: Work 540 433 2601 Fax 540 564 1169 Mobile _____

Description of Amendment

Zoning Ordinance Section: 10-3-26

Proposed Text: Please see text attached

Certification: I certify that the information contained herein is true and accurate.

Signature: *Twila W Lee*
Applicant Signature

ITEMS REQUIRED FOR SUBMISSION

- Completed Application
- Ordinance Text
- Letter of description

- Fees Paid
- _____

ORDINANCE AMENDMENT

**Zoning Ordinance
Section 10-3-24
(Horticulture Exception)**



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
December 12, 2012

ZONING ORDINANCE AMENDMENT **Section 10-3-24**

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

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

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

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

Frere and Warren were recently featured in a Daily News Record (DNR) article drawing attention to their business. (The article is attached as an addendum to the staff report.) Before the article was published, Frere and Warren attempted to obtain a business license from the City.

Generally, when someone attempts to obtain a business license using their home address (on residentially zoned property), the Commissioner of Revenue requires the applicant to obtain a home occupation permit, which is free of charge, from the Department of Planning and Community Development to ensure the use is permitted. Because the business is not carried on in the main or accessory building they were unable to be classified as a home occupation and were unable to obtain their business license. This also meant the business could not be operated in the R-2 residential classification. Staff met with them and discussed their options, which involved the idea of amending the Zoning Ordinance to allow their desired use. After all of this occurred, and before Frere and Warren communicated with staff about how they wanted to proceed, the article was published. The DNR article refers to them being able to operate their business through a “pricey special-use permit,” however there is no such special use permit available to make their business legal.

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

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

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

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

1. A primary intent of a home occupation permit is that no one should know through visual observation that the property is being used for anything other than a residential use. The definition states that “no advertising... display or storage or variation from the residential character of the premises” should occur. A horticultural use with equipment and materials stored outside is in conflict with this intent. In addition, noises and odors could be in conflict with the residential character.
2. Staff recognized upfront that “excepting” the intended use as “horticulture” was a vague approach to characterize the desired business. During the review staff talked about other

terminology such as “gardening business” and “small-scale gardening” but decided those terms were equally vague. Any of these terms would be inclusive of practices where large scale equipment could be used such as a landscaping business which keeps/stores equipment outside on their property, the keeping of other materials such as fertilizers, and others. Staff also discussed proposing an additional amendment to the Zoning Ordinance by defining “horticulture,” but decided otherwise because reason #1 above was still a main issue of concern.

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

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

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

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

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

ORDINANCE AMENDING AND RE-ENACTING SECTION

10-3-24

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

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

That Section 10-3-24 Definitions is amended by modifying the definition as shown:

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

The remainder of Section 10-3-24 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the ____ day of _____, 2013.
Adopted and approved this ____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK OF THE COUNCIL

DNRonline.com

HARRISONBURG, VIRGINIA

ARCHIVES EASY PRINTING

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

The article you requested is displayed below.

The Green `Micro' Revolution

Author(s): CANDACE SIPOS Date: October 13, 2012
Section: News (Local)

HARRISONBURG - Four years ago, Sam Frere and Dan Warren met randomly. Or serendipitously, some might argue.

The James Madison University freshmen were assigned to the same suite on campus and quickly realized they held a common passion for healthy food and gardening.

Fast forward to August 2011, and Frere and Warren are moving into a large, off-white house on **Collicello Street**. They soon start interning as gardeners with A Bowl of Good restaurant, quickly picking up on the tricks of the sustainable-agriculture trade.

A year later finds the students, now seniors, feeding 14 families in the city with plants grown in the yard of less than an acre that surrounds their rental.

Well, they've got plants sprouting in recycled tin cans hanging from their fence and in their basement, too.

"We like to push boundaries," Frere says.

The Garden

To the untrained eye, the students' backyard might look unsophisticated, wild even.

"Our idea was, 'let's never have to cut grass,'" Frere said, and it's worked. "We finally have turned almost everything in this yard into a garden."

But everything has its place and a distinct purpose.

The tall tomato plants, twisted around bamboo stakes, stand strategically located so their shadows won't deny nearby plants sunshine.

As part of their adherence to companion planting, Frere, 21, and Warren, 22, both in JMU's Department of Integrated

Science and Technology, have marigolds blooming in the center of the sprawl to keep away destructive bugs.

With worm castings and rainwater runoff, they've created their own worm tea, lauded for its ability to enrich soil and repel pests.

They use sprays but only homemade, plant-based ones, such as tomato leaf tea, which kills aphids.

To Frere and Warren, this "experiment" is nowhere near completion. Talk to them for just a few minutes about their plans, and you'll hear a rundown of ideas, including creating enough energy with a bicycle to keep their basement lights, which have been warming thousands of seedlings since a recent frost scare, off the electrical grid.

They're very concerned about staying eco-friendly, evidenced in part by using no-till practices, homemade compost derived from downtown restaurant scraps and a bike trailer to deliver produce when weather allows.

The jungle, tucked neatly into its urban landscape, has had its struggles, and the gardeners aren't afraid to admit it.

"There's small failures all over the place," Frere half-joked, explaining that many of their 50 tomato plants succumbed to blight in late August. "It was almost a tearful day."

But what outnumbers the small failures are the major successes: namely, the newfound ability to pay rent with what's officially been called **Collicello Gardens**.

The students only decided to become full-time farmers in June, when they quit their jobs.

Since then, they've picked up 14 "donors" for their community-supported agriculture program, with packages ranging from \$30 to \$75 each month. They're hoping to keep the goods coming throughout the winter, which would make their program the only year-round one in the area.

The **CSA** is donation-based for now, though, because it has to be. The two have fought a months-long battle to acquire a business license, and it doesn't look to be over anytime soon.

"We, the city, are interpreting what they are doing as an agriculture use, which is not a permitted use within any district in Harrisonburg," said Alison Banks, Harrisonburg zoning administrator.

The students could apply for a pricey special-use permit, but that would only make a difference in their specific situation. Their scope is much broader.

"We'd like to be a foundation for a push," Frere said, explaining that the guys want to see an amendment to the zoning ordinance, adding language that would sanction business

licenses for horticulture land uses citywide.

The microfarmers are deciding on the best route to reach their goal and know they're supported by the local community. Their property manager, for one, is very impressed with their "landscaping."

"They keep the yard in great shape and they're great tenants," said Brian Twiddy with Matchbox Realty. "If they want to stay the rest of their lives, we'll be good with that."

The guys exchange jalapenos for fresh homemade salsa with neighbors across the street and swap produce for massages from a city masseuse. People stop by the house often to donate recyclable materials, plants and other items.

"Everyone on this street is OK with what we're doing," Frere said. "We just want to grow food and sell it to people."

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November 2012 Proactive-Zoning Report

For the month of November 2012 the proactive-zoning program targeted the **Westover** section of the city. During the proactive inspections a total of thirteen violations were found. The violations consisted of inoperable vehicles and discarded materials.

MONTH	SECTOR	4 th CYCLE VIOLATIONS	CORRECTED	1 st CYCLE	2 nd CYCLE	3 rd CYCLE
December 2011	Wyndham Woods	2	2	2	0	4
January 2012	Northfield	13	13	21	6	19
February 2012	Purcell Park	8	8	7	6	5
March 2012	Parkview	5	5	19	7	16
April 2012	Ind./Tech Park	0	0	0	1	0
May 2012	Northeast	29	29	80	45	63
June 2012	Exit 243	1	1	10	0	1
July 2012	Fairway Hills	2	2	1	0	0
August 2012	Smithland Rd.	2	2	0	4	0
September 2012	N. Main St.	10	10	13	4	4
October 2012	Liberty St.	11	9	6	4	18
November 2012	Westover	13	n/a	18	8	17
December 2012	Garbers Church			1	2	1
January 2013	Spotswood Acres			6	4	1
February 2013	Jefferson St.			26	22	35
March 2013	Forest Hills/JMU			6	1	1
April 2013	S. Main St.			1	0	2
May 2013	Hillandale			7	5	17
June 2013	Maplehurst/JMU			6	5	2
July 2013	Long Ave/Norwood			12	28	17
August 2013	Greystone			13	10	13
September 2013	Greendale/SE			3	2	5
October 2013	Ramblewood			4	8	1
November 2013	Stone Spring Village/JMU			2	10	0
December 2013	Sunset Heights			7	29	10
January 2014	Reherd Acres			10	12	9
February 2014	RT 33 West			0	16	6
March 2014	Chicago Ave			16	22	29
April 2014	Pleasant Hill			4	13	17
May 2014	Avalon Woods			7	26	11
June 2014	Waterman Elementary			6	61	18
July 2014	Keister Elem			6	5	8
August 2014	500-600 S. Main			7	30	16
September 2014	Court Square			0	3	2
October 2014	Bluestone Hills & Valley Mall			3	33	31
November 2014	Preston Heights			8	3	1

The proactive-zoning program for December 2012 will be directed towards the enforcement of the Zoning Ordinance in the **Garbers Church** section of the City.