



City of Harrisonburg, Virginia

Planning Commission Meeting

February 13, 2013

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 January 9, 2013 regular meeting.

2) New Business

Street and Alley Closing – Kin Group, LLC Undeveloped Portions of Streets and Alleys (North Collicello Project)

Consider a request from Kin Group, LLC to close a total of 33,058 +/- square feet of undeveloped, public street and alley right-of-ways. This area includes a 27,861 sq. ft. portion of undeveloped 6th Street between Virginia Avenue and Edom Road adjacent to 40-F-1 & 5, 40-H-8 & 16, 40-G-1 & 2, and 40-I-6 & 16; a 1,200 sq. ft. portion of undeveloped Collicello Street located south of the street's intersection with undeveloped 6th Street adjacent to 40-H-8 and 40-I-16; a 1,500 sq. ft. portion of an undeveloped public alley off of undeveloped 6th Street adjacent to 40-I-6, 14, 15, & 16; a 1,497 sq. ft. portion of undeveloped street right-of-way between undeveloped 6th Street and Edom Road adjacent to 40-G-1; and a 1,000 sq. ft. portion of an undeveloped public alley off of 5th Street adjacent to 40-H-1, 2, 9, & 10.

Rezoning – 126 & 128 West Bruce Street

Public hearing to consider a request from Bruce Street LLC with representative Barry Kelley to rezone one, 12,865 +/- sq. ft. parcel from M-1, General Industrial District to B-1, Central Business District. The property is located at 126 and 128 West Bruce Street and can be found on tax map 25-C-6.

Ordinance Amendment – Business Garden Proposal

Public hearing to consider a request to amend the Zoning Ordinance Section 10-3-24 Definitions by modifying the existing “home occupation” definition and by adding a definition for “business garden,” to amend Section 10-3-84 Uses Permitted By-Right in the B-1 district to add home occupations as a use permitted by-right, and to add Article BB—a new article to set forth regulations for “business gardens.”

3) Unfinished Business

4) Public Input

5) Report of secretary and committees

Proactive Zoning

6) Other Matters

7) Adjournment

Staff will be available Monday March 11, 2013 at 4:30 p.m. for those interested in going on a field trip to view the sites for the March 13, 2013 agenda.

MINUTES OF HARRISONBURG PLANNING COMMISSION

January 9, 2013

The Harrisonburg Planning Commission held its regular meeting on Wednesday, January 13, 2013 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

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

Members absent: None

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

Chair Fitzgerald called the meeting to order and welcomed new Planning Commission Members Jefferson Heatwole and Gil Colman, along with welcoming back Council Member Richard Baugh. She then determined there was a quorum with all members in attendance and asked if there were any corrections, comments or a motion regarding the minutes from the December 12, 2012 Planning Commission meeting.

Mr. Way moved to approve the minutes as presented from the December 12, 2012 regular Planning Commission meeting.

Dr. Dilts seconded the motion.

All members that were present at the December 12, 2012 voted in favor of approving the minutes (4-0).

New Business

Rezoning – 1310 Garbers Church Road R-1 to R-2

Chair Fitzgerald read the request and asked staff to review.

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

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

Site: First Assembly of God church and single family dwelling zoned R-1

North: Across Erickson Avenue, a single family dwelling and vacant lots, zoned R-1

East: Non-conforming single family dwelling and vacant lots, zoned B-2

South: Berea Christian School, zoned A-2 (Rockingham County)

West: Across Garbers Church Road, Whitesel Brothers Incorporated and vacant lot owned by the City, zoned R-1

The First Assembly of God church (the Church) is requesting to rezone their 4.86-acre parcel from R-1, Single Family Residential District to B-2, General Business District. The property is located at the corner of Garbers Church Road and Erickson Avenue; its southern parcel line is also a boundary between the City and Rockingham County. As noted by the document submitted with their

application, the Church's main purpose in wanting to rezone the property is to gain the ability to install an LED message board sign.

In 2009, the Church was compensated for property acquired by the City for the Erickson Avenue/Stone Spring Road improvement project. The compensation package included funds to relocate their existing advertising sign as the planned improvements to Erickson Avenue will eliminate the sign. (Note: The survey submitted by the Church was completed in 2002 and does not reflect the existing property boundaries.) Given this situation, they would like to take this opportunity to install a modern sign, one that includes LED message board technology. However, the Church's existing R-1 zoning district requires the illumination of signs to be in keeping with the intent and purpose of a residential district. LED signs are not in keeping with a residential district, and thus are not permitted. Generally, illumination regulations for signs on non-residentially zoned properties are not as restrictive as those that are residentially zoned and allow LED-type signs.

If rezoned to B-2, the Church would also gain the ability to install signage at a maximum height of 35 feet (29 feet higher than permitted in the R-1 district) and based upon their parcel's street frontage, the Church could erect a sign with the maximum permitted 240 square feet in area (216 square feet more than permitted in the R-1 district). Although there is no cost for review for non-profits, the Church must still submit a sign permit application to ensure their sign conforms to all applicable regulations. Regardless of the outcome of the rezoning, the Church should coordinate with the Department of Public Works with regard to the intended sign location to ensure it is in an appropriate location and not in conflict with the road improvement project.

The Church should be aware as noted by Section 11-7-3 (6), no flashing signs are permitted in any district, and as also defined by the Sign Ordinance, flashing signs include devices that have light that is not maintained stationary and constant in intensity and color at all times when in use. Nonetheless, a sign which has letters or numbers that change at intervals of not less than five seconds are not considered a flashing sign. In other words, if the property is rezoned and the Church installs an LED message board sign, the message must appear and remain in place for five seconds before the message can change to another.

If the property is rezoned, the Church would also gain more flexibility with setback regulations. Church buildings in the R-1 zoning district have 50-foot setbacks from all property lines whereas church buildings in the B-2 district have 30-foot front yard requirements and 10-foot requirements for all other yards. In the past, the City's R-1 setback regulations have caused building location issues for the Church as they were originally unable to build their planned additions for a gymnasium and larger sanctuary in the location desired by the Church. In 1997, the Board of Zoning Appeals (BZA) approved a sideyard setback variance for the Church's planned improvements. The BZA granted a 40-foot variance, essentially creating a 10-foot sideyard setback, which if the rezoning to the B-2 district is approved, is the standard sideyard setback for that district.

In 2009, after property acquisitions for the Erickson Avenue/Stone Spring Road improvement project were completed, a second setback variance was approved by the BZA making the church building conforming to setbacks along Garbers Church Road—now at 28.8 feet from the property line. That variance request did not make the existing single family dwelling conforming to setbacks. Unrelated to setback issues, if the property is rezoned, the Church should understand the single family dwelling can no longer be used residentially.

Overall, staff believes rezoning this property to B-2 is good planning and zoning practice and we do not have concern with the additional zoning and sign provisions afforded to this property. In fact, this parcel was one of a handful of properties along Erickson Avenue that received a new Land Use Guide designation during the 2011 Comprehensive Plan update. Prior to the 2011 update, the property was designated Low Density Mixed Residential but is now designated Commercial; therefore, rezoning the property to B-2 conforms to the Comprehensive Plan.

Staff recommends approving the rezoning from R-1 to B-2.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Way asked about a parcel located adjacent to the Church property.

Mr. Fletcher explained the parcel was a remnant parcel from right-of-way acquisitions and was owned by the City.

He continued by adding that he did not point out one item within the staff report; the strict regulations regarding flashing signs. These are often problematic signs and staff wanted to include this within the report to make certain that it is understood that flashing signs are not permitted; but a sign that holds an image for five seconds, or longer, is not considered flashing. I just wanted to make everyone aware of this issue.

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

Steve Parsons, 683 Silver Lake Road, Dayton, I am the Business Administrator for the church. I think our application is very straight forward and staff has done an excellent job with their report and we understand conditions regarding the type of sign we want. We would very much appreciate your favorable consideration of the application and if you have any questions for me I would be happy to answer them at this time.

Mr. Da'Mes asked what is your vision for the size of the sign.

Mr. Parsons said we are looking into that. We are looking at the LED portion being three feet by six feet or four feet by eight feet. Above the LED we would have our church name, which would also be illuminated and about two feet by whatever length ends up being. The height would depend upon where we end up locating the sign on the property; our property somewhat slopes downward from the road and we want it high enough so that it is visible to traffic driving past.

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

Mr. Da'Mes said what the church is considering for signage is about fifty square feet; I am trying to visualize a business district, or corridor, that is not there now, but may be in ten years or so. Is this an opportunity for us to set some parameters in terms of signage usage, size, and more, in an area that the City sees as a business area, but it is more of a gateway into our City. Maybe we do not want to have the same type of signage appearance like what is along East Market Street or South Main Street. What are the limitations once a sign is established and placed at this site; would future signage be allowed, what is the process for additional signage, what are the limitations within the B-2 for signage?

Mr. Fletcher said B-2 offers our most affording regulations for signage. This property has two street frontages and would be allowed to have two freestanding signs; however, only one could be within the thirty-foot setback. There is a tremendous amount of street frontage for this property and it would allow for maximum signage, if they so choose. Signs are allowed to be double-faced and we only count the square footage of one side.

If Planning Commission wants to set some type of standard or viewscape you could do so. Staff did not see the need for this; the area has been planned for commercial. It is a corridor into the City; yet, we want to promote some flexibility for the businesses that are out there. There are corridors where we have concerns regarding signage, such as Port Republic Road. Port Republic Road corridor is not designated commercial and that is why staff puts up a bigger fight regarding signs and sign height. This section of Erickson Avenue we had planned to be commercial and that is why we did not look at it from a perspective of restricting signage.

Mr. Way asked if it was within Planning Commissions per-view to look at things like the sign ordinance.

Mr. Fletcher replied yes. The sign regulations are part of the building code; but, it very much relies on the zoning code, because the regulations are determined based on what the zoning district is.

Mr. Way said I believe in this particular instance the sign suggested makes sense; but one day in the future I feel we should think more about sign strategy and how we look at entrance corridors into the City.

Mr. Baugh said we have not considered this previously, but there are other locations that have something called Corridor Overlay Districts. You are allowed by State law to have more restrictions on these aesthetic type issues in corridors. We do not have any such ordinance and we have not seriously debated doing such. I believe Staunton has one, but I have no idea whether they are happy or unhappy with it. That would be an option; it allows you to focus specifically on your access corridor roads.

Mr. Fletcher said reviewing the sign ordinance would be quite an undertaking; it is quite complicated.

Mr. Da'Mes said it may be something we want to put on our "to-do" list for Planning Commission.

Mr. Fletcher said it is not a bad idea; we first must get through the business garden proposal and telecommunications, and then if desired take a look at it.

Chair Fitzgerald asked if there was further discussion on the rezoning request.

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

Dr. Dilts seconded the motion.

Chair Fitzgerald said there is a motion and a second, she then asked for a voice vote on the motion.

All voted in favor of the motion to recommend approval of the rezoning request (7-0)

Chair Fitzgerald said this item will move forward to City Council on February 12, 2013.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said Zoning Inspectors visited the Garbers Church Road area of the City where nine violations were found. These violations consisted of inoperable vehicles and discarded materials. Next month our inspectors will be in the Spotswood Acres area.

Other Matters

Chair Fitzgerald said the next item is under other matters – Horticultural Businesses on Residential Property. She then asked staff for a discussion.

Mr. Fletcher said after taking into consideration the comments from Planning Commission and the public last month regarding the issue of allowing horticulture-related businesses on residential property, and in performing more research on the matter, staff has prepared language to begin receiving additional feedback on how to address this use.

In brief, we are proposing identifying this practice as a “business garden” having a definition that includes being classified as a home occupation. The definition also includes a reference to Article BB, a proposed new article of the Zoning Ordinance that would outline the use regulations and requirements. In this proposal, since it would be classified as a home occupation, business gardens would be allowed by-right in every district that allows home occupations—essentially that would be all residentially zoned property, and as proposed, also in the B-1 district.

Mr. Fletcher said the proposed amendments are as follows for the Business Garden Proposal:

Note: Code additions are underlined.

Add and amend the following definitions in Section 10-3-24. Definitions:

Business Garden: A home occupation, where areas of a parcel are managed and maintained by individuals residing on the same parcel or adjoining parcels under the same ownership, used to cultivate fruits, vegetables, herbs, or flowers for sale purposes. This definition does not include cultivation only for personal consumption or use. (See Article BB. Business Gardens for operating regulations.)

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, other than business gardens as defined, 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.

Add Home Occupation in the B-1, Central Business District Section 10-3-84. – Uses Permitted By Right:

(13) Home Occupations.

Add a New Article as Shown Below:

Article BB. Business Gardens.

Sec. 10-3-189. – Purpose.

The regulations set forth in this article are to regulate Business Gardens as defined in Section 10-3-24. Definitions.

Sec. 10-3-190. General Use Regulations and Requirements.

- (1) Individuals operating business gardens shall apply for a home occupation permit.
- (2) The residential character of all parcels involved shall be maintained.
- (3) All transactions shall occur off-site.
- (4) No on-site advertising is permitted.
- (5) Apiculture or other animal husbandry is prohibited.
- (6) Areas shall be maintained in a healthy growing condition, free of refuse, debris, overgrown weeds, and dead or spent plant materials. Such areas are subject to Section 16-6-58 Weeds, etc. on Lots.
- (7) Compost shall be used only to support onsite operations.

Sec. 10-3-191. – Area and Yard Restrictions.

- (1) Land used for business gardens shall be no larger than fifty (50) percent of the area of the parcel involved including areas of multiple, adjacent parcels under the same ownership. Cultivation in accessory structures such as hoophouses, green houses, cold frames, etc. and areas used for exterior activities such as storage, compost and disposal areas shall be included in the allowable area. Activities on or within principal buildings including covered and uncovered porches and decks, enclosed accessory storage structures, upon rooftops, and vertical growth areas are exclusive of the allowable area.
- (2) All areas used for business gardens shall maintain at least a five (5) foot separation from all property lines unless such areas are enclosed with a wall or fence of at least three (3) feet in height.

Sec. 10-3-192. – Accessory Structures.

Accessory structures shall be governed by Section 10-3-114 Accessory Buildings of this chapter.

Sec. 10-3-193. – Storage and Screening.

Storage of equipment, materials, and compost and disposal areas shall be inside a primary or accessory structure or screened from general public view and adjoining properties.

Sec. 10-3-194. – Abandonment.

Business gardens which have ceased permanent operation or been abandoned shall be cleared, all structures removed and the area re-vegetated no more than thirty (30) days after the date of discontinued operations unless otherwise specified by the Zoning Administrator not to exceed ninety (90) days.

Amend subsection (a) of Section 16-6-58. – Weeds, etc., on Lots:

- (a) Between April first and November first of each year, every owner of real estate situate in the city shall, at his sole expense, cause to be cut therefrom all grass, weeds and foreign growth, with the following exceptions:
- (1) Farm land, not including business gardens, on which crops are being grown or land used to pasture livestock.
 - (2) Acreage not farmed or pastured but which is not subdivided and of which no subdivision plat has been recorded. However, on such unused acreage, the owner shall mow a strip twenty-five (25) feet wide adjacent to any street or adjoining property on which a residence is located.
 - (3) Subdivided and recorded residential lots fronting undeveloped public street right-of-ways.

Mr. Fletcher then asked Planning Commission for discussion, comments or questions.

Mrs. Turner said looking at this, even if every square foot of a lot was taken up with a business garden there would still be a large house on the property; so it still maintains a residential look. Even a property with two vacant adjoining lots and the lots are used as a business garden; it still has a lot with a house, a yard, and maintains a residential appearance. Once you fill up the both vacant lots and the remaining parcel with a business garden the appearance becomes more of a business garden that has a house on it.

Mr. Fletcher said I know there have been tall grass and weeds discussions mixed in with the business garden conversation and I want to point out that staff would like to keep these two issues separate. We believe they are two different things that are occurring and we do not want to complicate the matter.

Mr. Colman asked about the separate, non-adjacent, empty lots; if a lot is empty and not adjacent to the owners home, can it be used or counted as part of their property for a business garden?

Mr. Fletcher replied you would not be able to use it at all.

Mr. Way said back to the residential character issue; this is a phrase that you say is understood within the ordinance.

Mr. Fletcher agreed and said staff uses their best judgment when reviewing this type of thing.

Mr. Way said you do not feel we need to define residential character.

Mr. Fletcher replied I do not feel it needs to be defined.

Chair Fitzgerald said when we left the meeting in December one of the suggestions that we tossed around was the idea of looking at large and small urban gardens, making a set of rules based on the total lot size, and then dividing them into the small and large categories. Was there something in particular that moved staff away from starting with that approach?

Mr. Fletcher said honestly, we do not have that many properties that are “that” large. We decided this is the most simplistic approach and a good working document that we might get some strong consensus on.

Chair Fitzgerald asked why the fifty percent.

Mr. Fletcher replied that staff looked at other options like square footage of the garden or perhaps no regulation, allowing the entire yard to be garden; but once we started applying the rule we started to see what impacts these options would have. Even with the fifty percent many of the lots within the City could use their entire lot area. Fifty percent is just a control mechanism to keep scale in relation to what the surrounding properties are. If you have one acre it is possible that you reside in an area where the neighbors have one acre; so scale means something different in those circumstances.

Mr. Colman said when we are looking at combined lots that utilize just the back portion of the lots for their fifty percent garden, against the smaller one lot property that is utilizing their entire yard, the measure does not seem to be consistent when it comes to residential character; it is more in terms of how much you can garden.

Mrs. Turner said we talked about that; but we would have that same thing happen if we calculated it by square footage. If we allowed 7,000 square foot of garden area, then the smaller lot would have what appears to be much more garden area than the house with the double lot. You get the same type of thing happening. Anytime you put a number on something, there is always the question as to why are you using that number. The scale or the magnitude of it in relation to the use of the property as a residence is kind of why we went with the fifty percent. We would be open if everyone is in favor of going back to a square footage; but I do not think it would take care of the nature of this concern of residential character.

Mr. Colman said my concern is more from the standpoint of if I have a large property I can now use that property for a business. It is not a matter of competing with my neighbors to see who has the most property covered with a garden; but more the idea of using the potential that is there. If someone has a large lot do they now look at it as I can have a business here now, is that residential character. On a different note, the neighbors are limited to their smaller lot and cannot use the neighbor’s lot, even if the neighbor would allow for them to use it. I realize that is a different argument at this time.

Dr. Dilts said in terms of residential character did staff talk at all about limiting gardening to only in the back yard and not within the front yard.

Mr. Fletcher said yes, we discussed not allowing it in the front yard at all; but we agreed with the given scale and requiring the fencing it would be okay. Think about flower beds that are planted

along the base of homes or sidewalks, sometimes there are tomatoes or peppers planted in those beds. That is usually within a front yard. We wanted to make this flexible for folks.

Mr. Heatwole said I just want to make certain that I understand this correctly. The fifty percent rule applies to all the lots with the same owner that are adjacent to one another and also have a house located on them.

Mr. Fletcher replied yes that is correct.

Mrs. Turner said with the front yard issue I want to add that staff did talk about this and we knew if we proposed something that did not include the front yard it would generate a lot of opposition. So we just decided that was an area we could give on; it was not something we felt was a sticking point that we had to have.

Chair Fitzgerald said some localities restrict what you can plant in a market garden within the front yard. That is one way to get around it, allowing some things but not all.

Mr. Fletcher said this would be a use that other than obtaining a home occupation permit, and knowing that a business is being operated there, staff is not going out and asking to see that it meets all requirements. It is a self and community regulating ordinance. If I start my business garden at fifty percent, as allowed, and over time it begins to grow and becomes seventy percent, I can either cut it back to fifty percent or wait and let my neighbors complain about it. Staff will not know unless it is a complaint.

Mr. Colman said I have another question that may be a technicality. What if I have fifty percent that is my business garden; but this other twenty-five percent is my personal garden that I feed my family with.

Mrs. Turner replied that staff did discuss that issue and we decided once you enter into a business garden that is what you have. No longer do you have a personal garden, you are a business garden only.

Mr. Da'Mes asked about having a community garden. If I am a resident of a home and I obtain a home occupation for a business garden but I have more than one interest in the garden; how does this work? I am the primary owner, but I have five or six people who work with me on this.

Mr. Fletcher said the short answer is you cannot do that. You must reside on the property to operate the business garden.

Mr. Da'Mes said how are community gardens addressed.

Mr. Fletcher said we are not addressing community gardens. If Planning Commission wants us to address them we can attempt to do so. We were asked to look at business gardens; but can look at community gardens if you feel the need.

Dr. Dilts said the community garden idea is not an occupation; it is for personal use and not for sale.

Mr. Fletcher said yes, and it is possible that folks are doing community gardens now.

Mrs. Turner said if a handful of neighbors who reside on adjacent lots, or within four or five lots of one another, and have a garden on one of the lots, we would probably not get a complaint about that type of community garden. Staff would never know that something like this was going on. If instead a non-profit organization from elsewhere in the City had a garden within a neighborhood where they were donating the food to somebody and three times a week multiple people, in multiple

cars, came into the neighborhood to work the garden, we would probably receive questions from the neighborhood about that. Staff would question that situation and honestly, I do not know where we would come down on that situation at this time. It could be that the lot owner was renting the lot out to that non-profit and that is a business of leasing land. It could be someone just donating their land for the use by the non-profit organization, who is then donating the food that is produced; therefore, is that a business? It is still a disruption to the neighborhood when all these folks drive in to work at the garden. Is it more of a disruption than the person who conducts a weekly bible study group in their home that has 15 or 20 participants? So we are not really sure what we would say about that type of use at this time.

Mr. Fletcher said we did think about it enough that we had working language, but there were way more questions than we had answers for in the short period of time we had to look at it.

Chair Fitzgerald said to the extent that they exist today, and we all know that they do, there have not been those types of issues that were just mentioned, have there?

Mrs. Turner said not that we are aware of.

Mr. Way said with the no on site transactions, did staff consider the pros and cons of allowing such?

Mr. Fletcher replied we did and decided not to allow it because we want to keep it on the same level as home occupations currently operate.

Mr. Way asked if there was a fee associated with a home occupation permit.

Mr. Fletcher said no fees.

Mr. Colman said I still see the fifty percent restrictive for some larger lots.

Mr. Way said could we go to seventy-five percent for larger lots.

Mr. Fletcher said I suppose we could; but remember if you go greater than fifty percent on these larger lots you begin to have a small operational farm.

Mr. Da'Mes said two things come to mind for me. The containment of compost and equipment; do we have thoughts about those items?

Mr. Fletcher said that is covered in the language. If you look at storage and screening under 10-3-93 you will see where that is covered.

Chair Fitzgerald said one of the things that I have read about while doing some research on this is about farming on soil that has a lot of history underneath; in particular, soils that may be contaminated. Is that an issue that we have to worry about?

Mr. Fletcher said I would suggest that is not an issue we would want to get involved with. It sounds very much like a DEQ issue and it is not something that we have training on.

Chair Fitzgerald said when the dead or spent garden needs to be re-vegetated there is nothing in here that says what it has to be re-vegetated with.

Mr. Fletcher said that is correct.

Chair Fitzgerald asked if there was any further discussion or comments as to direction moving forward from here.

Mr. Colman said I would like to look at the possibility of using lots that are not adjacent. I understand that perhaps it would be a business for the property owner as well as the person, or non-

profit, leasing the lot; but could we look into something like that. I realize more restrictions would need to come in to play with this.

Mr. Fletcher said I suppose we could look to see if other localities allow something like this. The community garden definition has a lot of different variations. Staff did discuss this and decided against it; but we can look at this again and come up with something to bring to you. It would essentially be a business where persons would have to travel to it, they do not reside there.

Dr. Dilts said it seems to me that one of the values of having it only on the lot where the residence is would be oversight. You are likely to have more oversight on the lot with the house than something that is multiple parcels down the way; you will care more about what is around your house.

Mr. Fletcher said when we get into parcels that are not where the user resides it takes it away from the home occupation concept. The very first clause of the business garden definition reads a home occupation.

Mr. Baugh agreed and said it really is different thing than what we are discussing tonight. What we are discussing tonight does fit under the rubric of existing home occupation and whatever happens with the lot down the block, across the road, is not a home occupation.

Mr. Colman asked if there was any zoning district within the City where something like that could be done.

Mr. Fletcher said no.

Mrs. Turner said that is kind of a whole different twist on this. Right now agriculture is not a permitted use within the City; therefore you cannot establish a commercial farm in the City unless it is a current non-conforming use that came into the City as such and has remained as such. If we start branching off too much from something that is kind of incidental to your home, then does it get to be grossly unfair to people who want to be commercial farmers within the City.

Chair Fitzgerald said please note for the record that Commissioner Da'Mes had to leave at this time for another appointment. We do still have a quorum.

Mr. Colman said do we see this as a new trend; community gardens or agriculture within the City. If that is the case should we try to look at a way of allowing this in certain areas of the City?

Chair Fitzgerald said aside from just the residential use.

Mr. Colman said yes.

Mr. Fletcher asked if that was a consensus among the Planning Commission.

Mr. Way said are we talking about a separate zoning category or within an existing zoning district.

Mrs. Turner said adding more agricultural uses back into our zoning ordinance, where we had previously removed them.

Chair Fitzgerald said this is a one thing at a time issue, especially since we have other items on our "to do" list. How would we like to proceed with the business garden home occupation proposal?

Mr. Way said he would like to thank staff for getting this together so quickly over the past month and I would be open to going ahead with a public hearing next month. I am not sure that a work session would be helpful and in terms of timing it would be nice to get it moving. There will be the option of discussing this further as people speak at the public hearing.

Planning Commission was in agreement to move this forward as a public hearing next month.

Mr. Fletcher said it will be advertised for public hearing next month. Do you want staff to look more at the community garden idea or the agriculture use as well?

Mr. Way asked if community garden was considered to be a subset of agriculture uses or not.

Chair Fitzgerald said we have personal gardens that are unregulated. We are proposing business gardens that fit into residential neighborhoods as a home occupation. Do we have the idea of community gardens in residential neighborhoods or maybe even more than just a residential use? But, community gardens, by definition, are not for business.

Mr. Fletcher said yes, I am hearing that as one thing, but Mr. Colman is proposing something a bit different.

Mr. Colman said I do not want to question community gardens; this is more looking for a commercial use for independent garden lots as a permitted use. Folks that may think that fifty percent is not enough for their business garden could then find a lot in a particular zoning classification and use it for that purpose. What we are proposing tonight should be limited to residential only. A commercial garden should be in a different zoning.

Mr. Fletcher replied yes, we can take a look at possibly having commercial or industrial zoned property having a permitted garden or farm type use. This would allow someone to set up a building to operate the retail portion of the farm sales; and we are talking horticulture only, not animal husbandry.

Chair Fitzgerald said next item under Other Matters is to appoint a representative to attend Rockingham County Planning Commission meetings.

Mr. Fletcher said Bill Jones held this position and he is no longer on Planning Commission.

Chair Fitzgerald asked when does the County meet.

Mr. Fletcher said I do not know, but I believe there is a County Representative in the audience tonight. The County is actually doing a bit different approach; rather than having one representative they rotate each month.

Chair Fitzgerald said I was going to suggest that. Perhaps each person could take a month that fits their schedule the best.

Mr. Brent Trumbo from Rockingham County Planning Commission said they meet the first Tuesday of every month at 6:30 p.m.

Chair Fitzgerald asked if everyone liked the idea of rotating each month.

Planning Commission agreed to that idea.

Chair Fitzgerald said she would take the February meeting.

Mr. Trumbo said actually the County will not be holding a meeting in February.

Chair Fitzgerald agreed to attend the March meeting. The next item under Other Matters is to consider amending the regularly scheduled site tour. We currently meet at 4:30 on Mondays.

Mr. Fletcher said for staff Monday and Tuesday before the meeting works best; going any earlier than that is just out of the question.

Chair Fitzgerald said does the existing day and time still work for everyone?

Planning Commission agreed that the regularly scheduled time would work.

At this time Dr. Dilts agreed to attend the April Rockingham Planning Commission meeting.

Mr. Fletcher said he would send around an email for sign-up of other dates.

Mr. Baugh said I just wanted to mention at City Council last night, everything that came from Planning Commission was approved unanimously. Those items were the Mercy House rezoning and amendment, the Hoover Penrod rezoning and the special use request on West Market Street. We did have a fair amount of discussion on the Mercy House issue and there were two items that came up. First, is it worth looking at parking in a more comprehensive sense; this is not something Council is thinking needs to be on Planning Commission's "to-do" list, it is just something to think about. The second item was with the Mercy House rezoning and the idea that it was not by Special Use Permit. By making the "fault line" of the rezoning be the fact that it is a non-profit organization, we have now said you can go do this, no matter the size. It was somewhat easy in this case because it is a popular non-profit organization that just needed a break; but not all non-profits always do things that are popular with everybody.

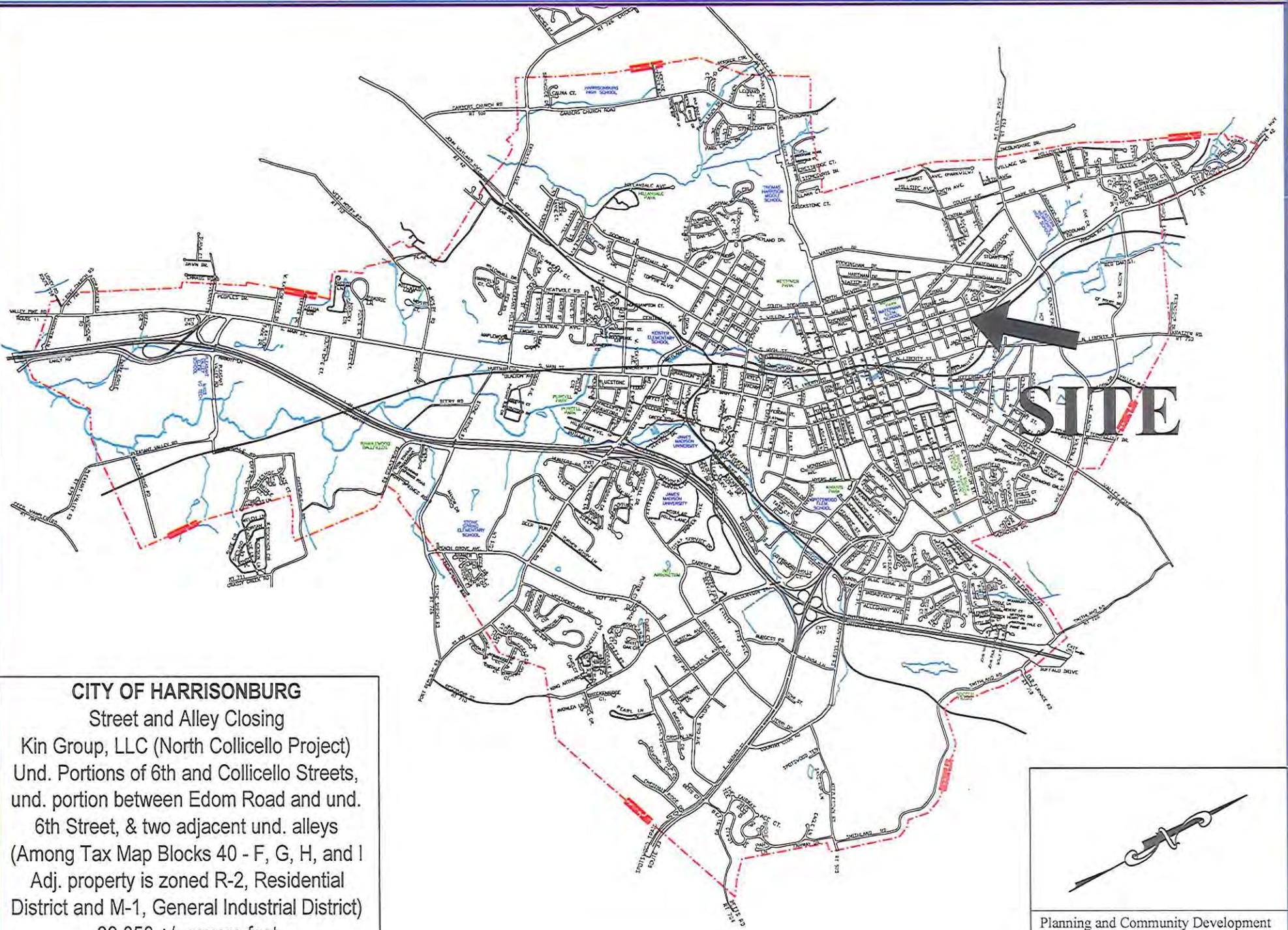
Chair Fitzgerald said I have the sense over the last several years that Council is generally not in favor of putting things up by way of Special Use Permit. I am thinking most recently of the portable restrooms.

Mr. Baugh said I believe that depends on the situation and certainly you hear that. My sense is that it depends on who your likely applicant pool is and I believe that is the thing with the portable restrooms. I personally would not say that it is fair to say that because it looked a certain way with that case that there is now a predisposition on Council not to do Special Use Permit items. I actually think it is just the opposite; I think there is the recognition that in the right case it does give us the opportunity to have the flexibility to review something on a case-by-case basis.

Chair Fitzgerald asked if there were any other comments. Hearing none, the meeting was adjourned.

Adjournment

The meeting was adjourned at 8:15 p.m.



CITY OF HARRISONBURG

Street and Alley Closing

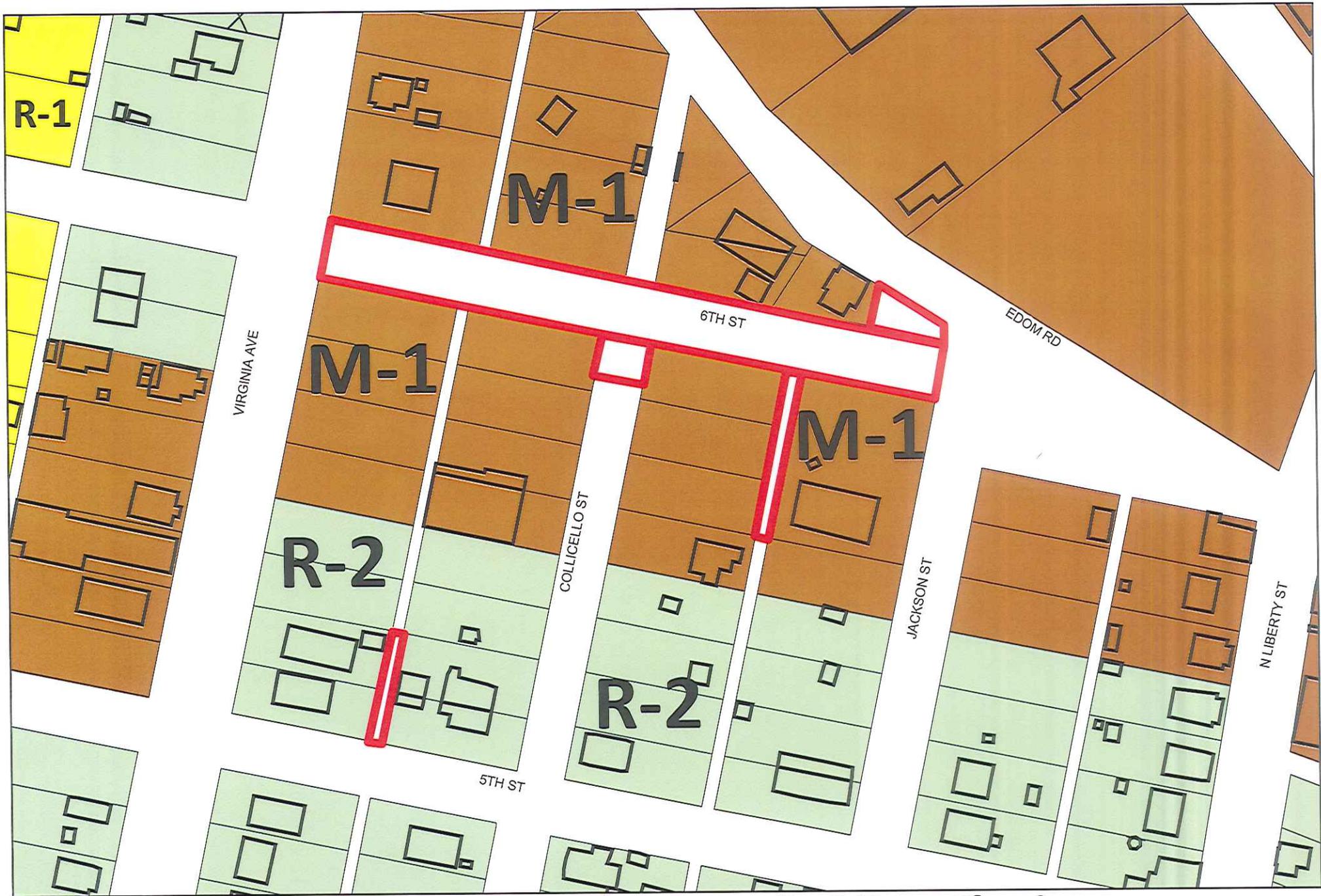
Kin Group, LLC (North Collicello Project)
 Und. Portions of 6th and Collicello Streets,
 und. portion between Edom Road and und.
 6th Street, & two adjacent und. alleys
 (Among Tax Map Blocks 40 - F, G, H, and I
 Adj. property is zoned R-2, Residential
 District and M-1, General Industrial District)

33,058 +/- square feet

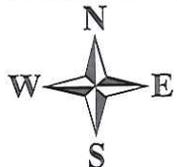
LOCATION MAP



Planning and Community Development
 City of Harrisonburg, Virginia



Undeveloped Street & Alley Closings Kin Group, LLC (North Collicello Project)





City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
February 13, 2013

STREET AND ALLEY CLOSINGS – KIN GROUP, LLC UNDEVELOPED PORTIONS OF STREETS AND ALLEYS (NORTH COLLICELLO PROJECT)

GENERAL INFORMATION

- Applicant:** Kin Group, LLC
- Tax Map:** Adjacent to 40-F-1 & 5; 40-H-1, 2, 8, 9, 10 & 16; 40-G-1 & 2; and 40-I-6, 14, 15, & 16.
- Acreage:** 33,058 +/- square feet
- Location:** Portions of: Undeveloped 6th Street, undeveloped Collicello Street, undeveloped right-of-way between undeveloped 6th Street and Edom Road, an undeveloped alley off of 5th Street, and an undeveloped alley off of undeveloped 6th Street.
- Request:** Consider a request to close multiple undeveloped public right-of-ways including: a 27,861 sq. ft. portion of undeveloped 6th Street between Virginia Avenue and Edom Road adjacent to 40-F-1 & 5, 40-H-8 & 16, 40-G-1 & 2, and 40-I-6 & 16; a 1,200 sq. ft. portion of undeveloped Collicello Street located south of the street's intersection with undeveloped 6th Street adjacent to 40-H-8 and 40-I-16; a 1,500 sq. ft. portion of an undeveloped public alley off of undeveloped 6th Street adjacent to 40-I-6, 14, 15, & 16; a 1,497 sq. ft. portion of undeveloped street right-of-way between undeveloped 6th Street and Edom Road adjacent to 40-G-1; and a 1,000 sq. ft. portion of an undeveloped public alley off of 5th Street adjacent to 40-H-1, 2, 9, & 10.

The following land uses are adjacent to the undeveloped 6th Street right-of-way (descriptions in parentheses are land uses adjacent to the 1,000 sq. ft. portion of the undeveloped alley off of 5th Street):

- Site:** Undeveloped public street and alley right-of-ways adjacent to property zoned M-1 (Undeveloped alley right-of-way adjacent to property zoned R-2)
- North:** Business office fronting Virginia Avenue, zoned M-1, undeveloped lots fronting undeveloped Collicello Street, zoned M-1, and an automotive repair shop and a non-conforming single family home, zoned M-1 (Undeveloped extension of the subject alley that was previously approved for closure to be purchased by the applicant)
- East:** Undeveloped Jackson Street right-of-way, and across Edom Road, graveled lot, zoned M-1 (Single family home fronting Collicello Street, zoned R-2)
- South:** Vacant property and automotive repair shop, zoned M-1 and undeveloped portions of Collicello Street (Across 5th Street, single family homes, zoned R-2)
- West:** Across Virginia Avenue, undeveloped portion of 6th Street right-of-way, a duplex, zoned

R-2, and a vacant parcel, zoned R-2 (Single family homes fronting Virginia Avenue, zoned R-2)

EVALUATION

The applicant is requesting to close a total of 33,058 +/- square feet of multiple, undeveloped public right-of-ways, all of which are located on sheet 40 of the City's tax map records as described above. The applicant intends to acquire this area to then incorporate it among their adjoining properties to later submit a rezoning proposal for an R-7, Medium Density Mixed Residential Planned Community. If the City approves the request, all property owners adjacent to the requested areas for closure will have the opportunity to purchase up to 50 percent of the right-of-way width along the entire length adjoining their property.

The applicant is the same entity that, last year, requested to close a 3,000 square foot portion of the public alley off of 5th Street. That portion is adjacent to tax map parcels 40-H-3 through 16, which is the remaining portion of the public alley that connects 5th Street to undeveloped 6th Street. Staff and Planning Commission recommended approving that request and City Council approved the application in June 2012. To date, the applicant has not purchased that portion of the undeveloped alley.

There are no public water or sewer lines within the subject areas, the areas are not used for trash pick-up, and the City has no plans to improve the right-of-ways for public streets.

Harrisonburg Electric Commission (HEC) and Columbia Gas of Virginia (Columbia Gas) either have infrastructure located in parts of the right-of-way or utilize parts of the right-of-way to access nearby infrastructure. HEC has a guyed power pole at the intersection of Virginia Avenue and the undeveloped 6th Street right-of-way and a power pole near the undeveloped alley off of 5th Street. Columbia Gas has an eight inch and a six inch pipeline located in portions of the undeveloped 6th Street and in the undeveloped portion of Collicello Street. The two pipelines extend from Edom Road southward within the undeveloped Collicello Street right-of-way to the intersection with 6th Street, where the eight inch pipeline goes west in the undeveloped 6th Street, extending across Virginia Avenue, and the six inch line continues south within Collicello Street. The eight inch high pressure pipeline is one of the main feeds to the City and must maintain its service, along with the six inch pipeline. As noted by the letter submitted by the applicant, they are aware of this situation and are already communicating with Columbia Gas regarding this matter.

If the request is approved, it will be the responsibility of the applicant or other purchaser to correctly identify the locations of the infrastructure and to work with HEC and Columbia Gas to identify on a plat where access areas shall be established so appropriate easements can be retained before deeding the property to the new owner.

With easements as described, staff supports the application to close the public street and alley right-of-ways.

February 5, 2013

To whom it may concern,

My goal in purchasing the proposed ROWs is multifaceted:

- 1) It will promote a connection between Collicello North and the neighboring communities
- 2) It will offer the flexibility needed to adapt to the challenging site topography
- 3) The additional acreage will allow for more units to be constructed, helping leverage the additional expenses incurred by the complicated infrastructure required at the site

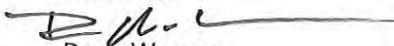
I have notified all 11 of the adjacent land owners in writing of my intentions and invited their comments. In the packet of information they were given, I included a description of my plans, a site plan and a few renderings of what the development may look like. I am currently in conversation with five of the 11.

I am working with Haidar Rasal specifically on the eastern most area of 6th Street, in order that both our needs may be met. Although Haidar and I are in agreement to help each other, we do not know exactly how much of the ROW each of us will be buying and whether any easements will be provided at this time. We can accurately say that we are working together and will have the ROW purchase agreement worked out between us when we know if any other parties have stepped forward. Haidar and I are also in agreement as to how we will divide the 10' alleyway between our properties. Haidar will purchase 2.5' – 3' and I will be purchasing the remainder.

I am working with Columbia Gas who has a significant gas line running down the ROW. I have proposed providing a 25' utility easement that includes the gas line if I am able to buy that portion of the ROW. The gas line does create difficulties in the layout of my development and it will depend on negotiations with Columbia Gas as to what makes sense for me to buy. At this time, I intend to purchase as much of 6th Street as I can, provided that I can satisfy Columbia Gas's needs.

I have not heard from 3 of the 4 adjacent land owners along the north boundary of 6th Street. I will plan on incorporating vacated acreage into my development plans and adjust, as best I can, to other parties stepping forward and buying part of the ROWs.

Sincerely,



Dean Weaver

Date application received: 01-11-13

Application for Street or Alley Closing City of Harrisonburg, Virginia

Review fee: \$50.00 Board of Viewers appointment (\$50.00 each): \$ Total Paid: \$ 0

previously paid

Applicant's name: Kin Group, LLC Attn: Dean Weaver

Street address: 5782 Greenhill Road Email: _____

City: Linville State: VA Zip: 22834

Telephone: Work _____ Fax _____ Mobile 540-810-7337

Representative (if any): Blackwell Engineering, LLC

Street address: 566 East Market St Email: _____

City: Harrisonburg State: VA Zip: 22801

Telephone: Work 432-9555 Fax 434-7604 Mobile _____

Description of Request

Location: 6th & Collicello Streets & Alley on Tax Map 40, Blocks F, G, H, & I
(see attached Street Closing Plan)

Square footage of area to be closed: 33,058 sf

Cost per square foot: \$ 3.75 to 4.00 Total cost: \$ 123,967.5.00 to \$132,232.00

Please provide a detailed description of the proposed closure (additional pages may be attached):
A portion of undeveloped 6th St., undeveloped Collicello St. & a 150' section of an alley. In addition, a further 100' of alley off of 5th. See attached plan)
Names and addresses of adjacent property owners (Use separate sheet for additional names)

North: See attached sheet.

South: _____

East: _____

West: _____

I hereby certify that it is my intention to have the above described Street(s) or Alley(s) closed and that the information contained herein is true and accurate. In addition, I understand that all required advertising and associated costs will be at the expense of the applicant.

Signature: *D.M. W.*
Applicant

1/11/13
Date

ITEMS REQUIRED FOR SUBMISSION

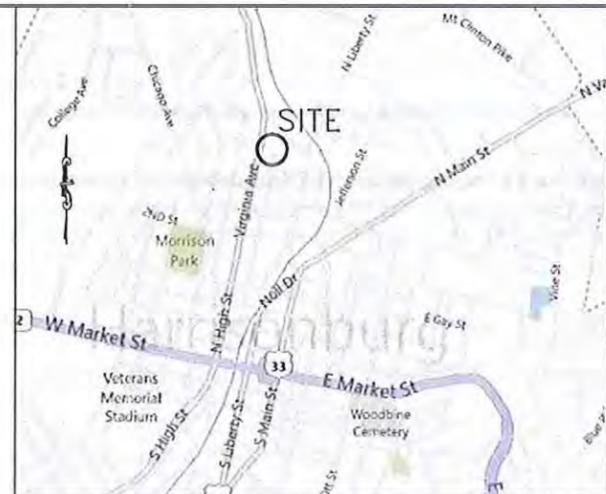
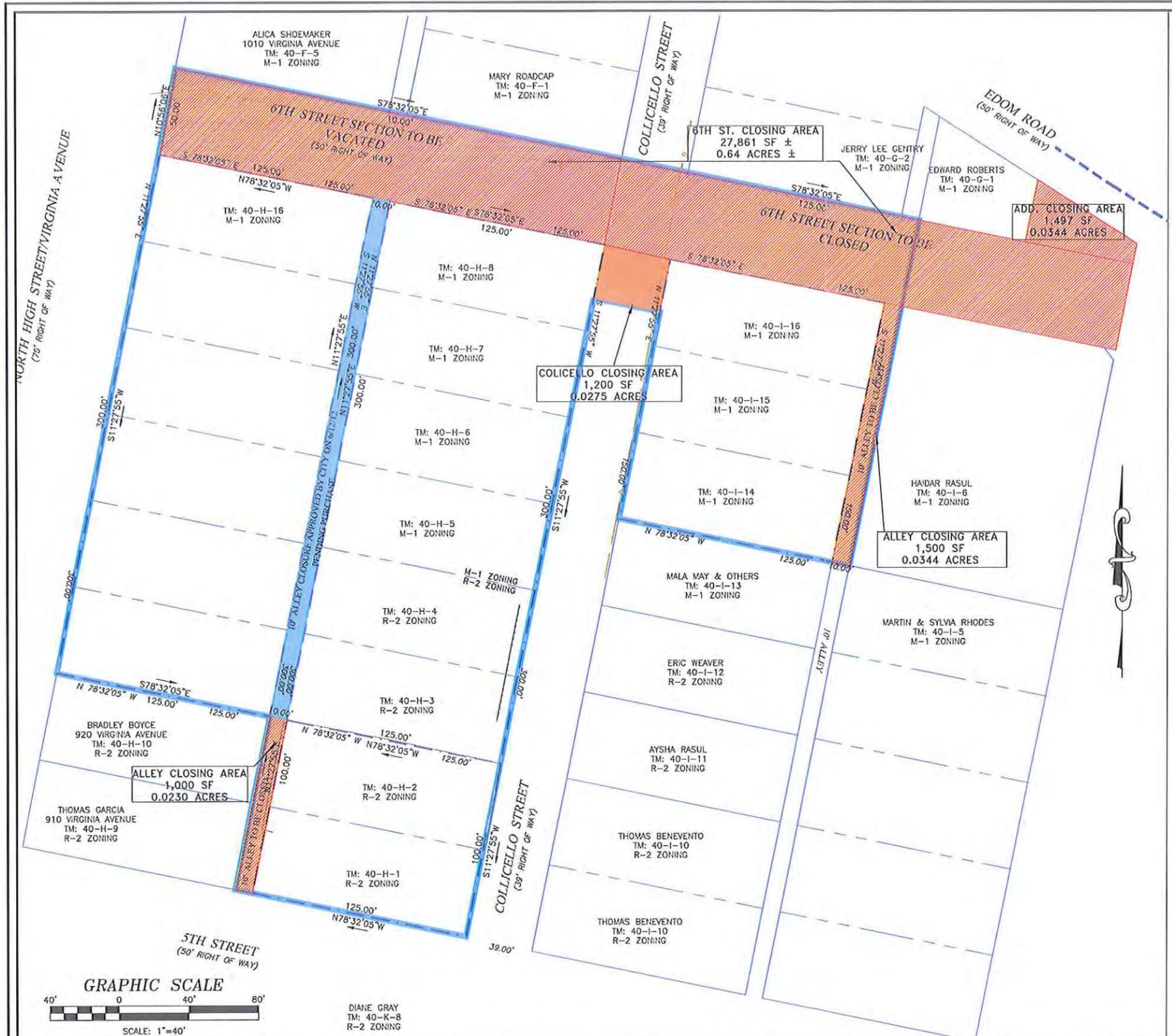
- | | |
|--|---|
| <input checked="" type="checkbox"/> Completed application | <input checked="" type="checkbox"/> Value per square foot of cost to purchase |
| <input type="checkbox"/> Letter describing proposed use | <input checked="" type="checkbox"/> Fees paid |
| <input checked="" type="checkbox"/> Adjacent property owners | <input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> Survey & metes and bounds description (prepared by a surveyor, engineer, or other person duly authorized by the State) | |

Please be advised, adjoining property owners shall be expected to buy that portion of the street/alley which abuts their property before second reading and final closing! The cost shall be at fair market value determined by the Commissioner of Revenue.



Undeveloped Street & Alley Closings Kin Group, LLC (North Collicello Project)





VICINITY MAP
SCALE: 1" = 2,000'

LEGEND

- CENTER LINE
- ELECTRIC/TELEPHONE
- UTILITY POLE
- WATER LINES
- SANITARY LINES
- SANITARY SEWER CLEANOUT
- TRAFFIC RATED CLEANOUT
- STORM SYSTEM
- GAS LINES
- EXISTING PROPERTY LINE
- PROPERTY OWNED BY KIN GROUP, LLC
- CITY AREA TO BE PURCHASED
- SETBACK LINE
- EASEMENT LINE
- PROPOSED ROAD/EOP
- EXISTING ROAD
- CURBING: CG-2 OR CG-6
- WATER METER
- FIRE HYDRANT
- 6th STREET/ALLEY CLOSING
- SECTION OF COLLICELLO TO BE PURCHASED
- ALLEY CLOSURE APPROVED BY CITY APPROVED ON 6/12/12 (NOT YET PURCHASED)

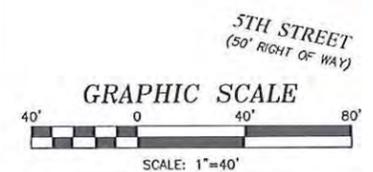
PURCHASER:
KIN GROUP, LLC
ATTN: DEAN WEAVER
5782 GREENHILL ROAD
LINVILLE, VA 22834
540-810-7337

PROPERTY INFO:
TAX MAP 40, BLOCK H
BLOCK I 14-16
6TH STREET/COLICELLO
STREET/ALLEY=
0.759 ACRES
ZONED: R-2 & M-1
USE: VACANT
FEMA FLOOD ZONE X

TAX MAP 40, BLOCK H
5TH STREET
ALLEY=.023 ACRES
USE: VACANT
FEMA FLOOD ZONE X

SITE SURVEY:
SIMMONS SURVEYING
JEFF SIMMONS
1061 S HIGH ST.
HARRISONBURG, VA 22801
540-432-0420

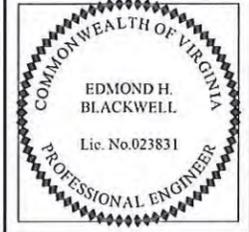
NOTES:
1. The Kin Group, LLC is in the process of planning a small housing community and a re-subdivision as shown. The streets and alley will be incorporated into this project.



BLACKWELL ENGINEERING, PLC
566 East Market Street
Harrisonburg, Virginia 22801
Phone: (540) 432-9555 BE@BlackwellEngineering.com Fax: (540) 434-7604

Date:	JAN 2013
Revision Date	

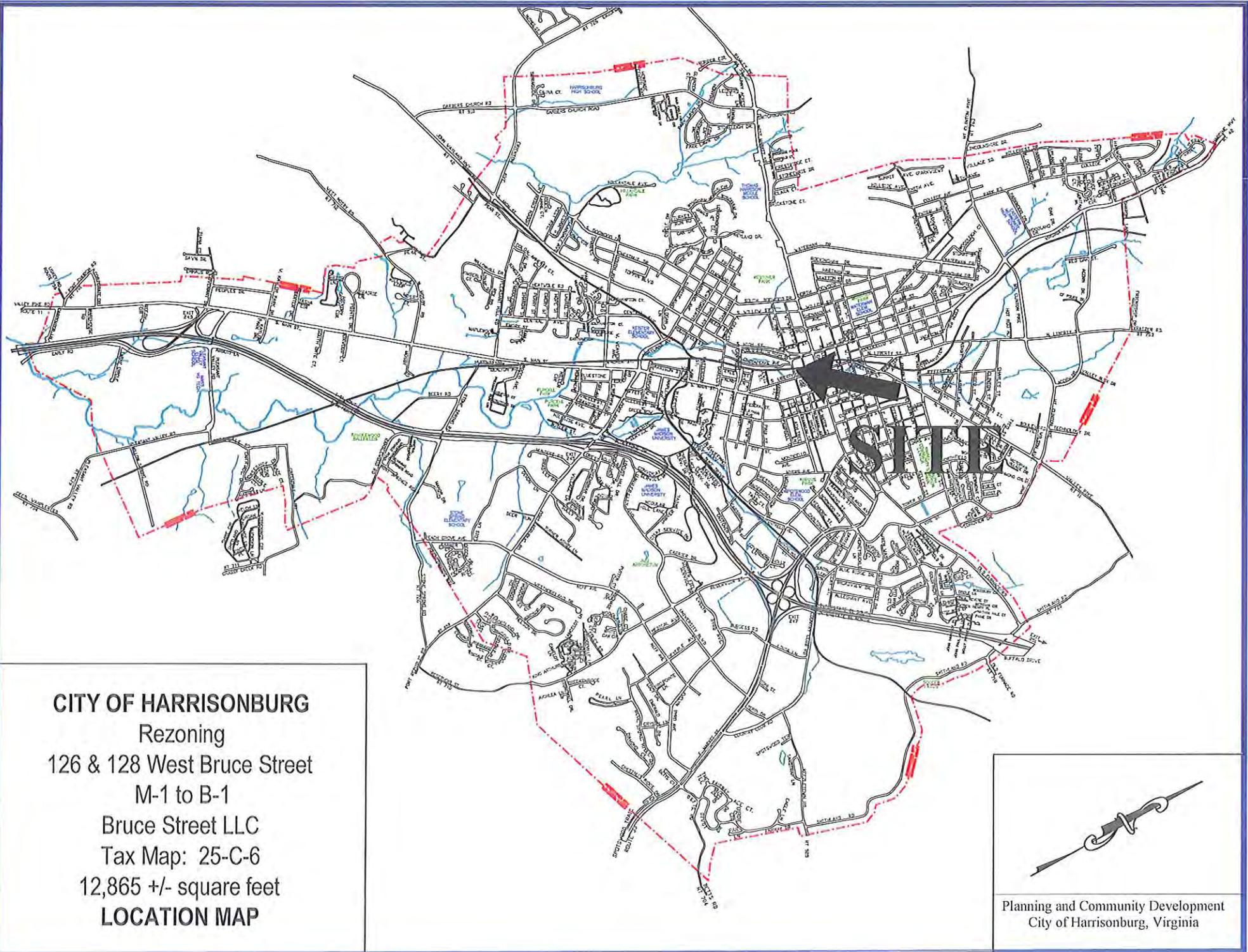
Designed by:	Scale:
---	AS SHOWN
Drawn by:	JRC
Job No.	2266



STREET/ALLEY CLOSING PLAN

COLLICELLO NORTH
KIN GROUP, LLC
5782 GREENHILL ROAD
LINVILLE, VA 22834

Drawing No.
1
of 1 Sheets



CITY OF HARRISONBURG

Rezoning

126 & 128 West Bruce Street

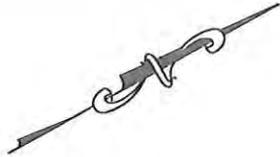
M-1 to B-1

Bruce Street LLC

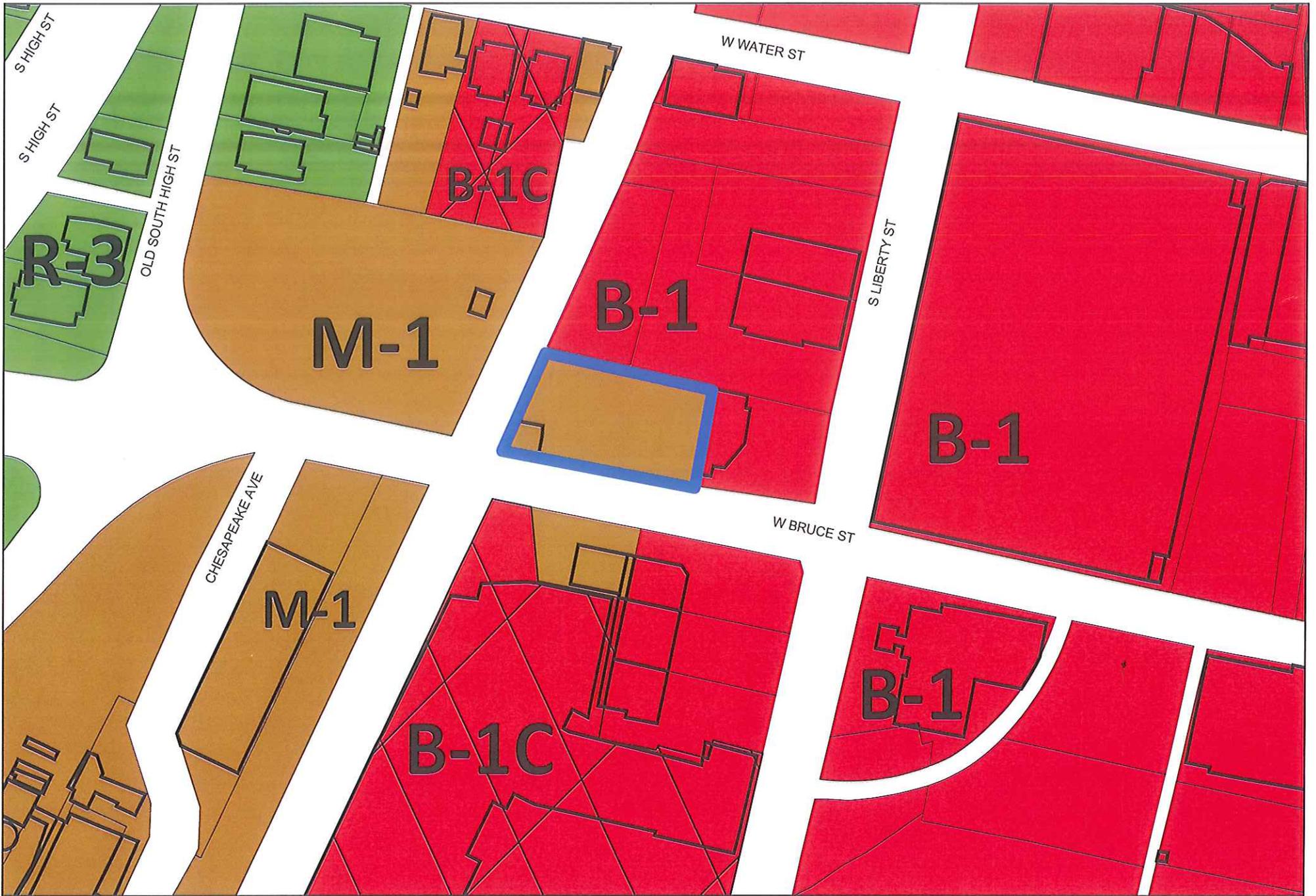
Tax Map: 25-C-6

12,865 +/- square feet

LOCATION MAP



Planning and Community Development
City of Harrisonburg, Virginia



**126 & 128 West Bruce Street
Rezoning from M-1 to B-1**



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
February 13, 2013

REZONING – 126 & 128 WEST BRUCE STREET (M-1 TO B-1)

GENERAL INFORMATION

Applicant: Bruce Street LLC with representative Barry Kelley.
Tax Map: 25-C-6
Acreage: 12,865+/- square feet
Location: 126 & 128 West Bruce Street
Request: Public hearing to consider a request to rezone one, 12,865 +/- sq. ft. parcel from M-1, General Industrial District to B-1, Central Business District.

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: Vacant building, zoned M-1
North: Office building, zoned B-1
East: Commercial building, zoned B-1
South: Across West Bruce Street, office building and vacant building, zoned B-1, B-1C and M-1
West: Across C&W railroad tracks, parking lot, zoned M-1

EVALUATION

This is a request to rezone a 12,865 +/- square foot parcel from M-1, General Industrial to B-1, Central Business District. The applicant recently purchased the subject property with the intent to repurpose the existing structure for office and/or retail use. In earlier years the property had been used similarly; however, the building has been vacant for more than 24 consecutive months and any non-conformancy it had has since been lost. The site is located downtown, just west of the intersection of West Bruce Street and South Liberty Street. The building on the site basically covers every square inch of the property; thus making it a prime candidate to utilize the B-1 flexibility of no setbacks and no parking requirements.

Usually, when a property owner requests to rezone to the Central Business District classification staff would have some concern regarding parking for the site; especially if the property would be relying completely on public parking. It is apparent this site has mainly relied on public parking and staff has no concerns with continuing this practice for this property. Businesses that rely on on-site parking to operate typically are not attracted to sites with the characteristics of the subject property. There is on-street parking available in front of the building, as well as a public parking deck and a public parking lot within a short walking distance of the site. Staff believes that future tenants will know that no on-site parking exists and therefore, the location will continue to self-regulate what uses operate from the site.

Since 2004 the Comprehensive Plan has designated this entire area along West Bruce Street, east of the rail road tracks, as Mixed Use Development Area which most closely resembles the characteristics of the B-1 zoning district. The proposed redevelopment at this location is very encouraging for the downtown area and helps to provide an economic and social strength for the City's core.

Staff recommends in favor of the requested rezoning to B-1, Central Business District.

1.08.13

To whom it may concern,

The purpose of the request to change the zoning at 126 & 128 W. Bruce St is to re-purpose the building to office/retail.

Thanks

Bany K. Kelly
Bruce Street LLC manager

Date Application Received: 01-10-13

Total Paid: 405.00
AF

Application for Change of Zoning District City of Harrisonburg, Virginia

Section 1: Property Owner's Information

Name: Bruce Street LLC
Street Address: 1531 Hillcrest Drive Email: Barry @ matchboxrealty.com
City/State/Zip: Harrisonburg VA 22802
Telephone (work): 540.421.2878 (home or cellular): 421-2878 (fax): _____

Section 2: Owner's Representative Information

Name: Barry Kelley
Street Address: "same as above" Email: barry@matchboxrealty.com
City/State/Zip: _____
Telephone (work): _____ (home or cellular): _____ (fax): _____

Section 3: Description of Property

Location (street address): 126 & 128 W. Bruce St.
Tax Map Number: Sheet: 25 Block: C Lot: 6 Total Land Area (acres or square feet): 12,865 sq. ft.
Existing Zoning District: M-1 Proposed Zoning District * : B-1
Existing Comprehensive Plan Designation: Mixed Use Development Area

**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: _____
East: _____
South: _____
West: _____

Section 6: Certification

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

See Back for Items Required for Submission

City of Harrisonburg, Virginia
Parcel No: 025 - C - 6

Doc Bk Vol Ps #ofPgs
00017788 OR 4071 119 4
Jun 29, 2012

**This document prepared by
and should be returned to:**

Glenn M. Hodge, Esq.
VSB No: 12159
Wharton Aldhizer & Weaver, PLC
100 South Mason Street
Harrisonburg, Virginia 22801

Consideration: \$320,000.00

actual value

**Title Insurance is underwritten by:
Investors Title Insurance Company**

THIS DEED, made this 18th day of June, 2012, by and between **VH COMPANY, L.L.C.**, a Virginia limited liability company (formerly Valley Hardware Company, a Virginia general partnership), Grantor, and **BRUCE STREET, LLC**, a Virginia limited liability company, Grantee,

WITNESSETH:

That for and in consideration of the sum of Three Hundred Twenty Thousand Dollars (\$320,000) cash in hand paid by the Grantee to the Grantor, and other good and valuable consideration, the receipt whereof is hereby acknowledged at and before the sealing and delivery of this deed, the Grantor does hereby grant and convey with General Warranty and English Covenants of Title, subject to all easements, restrictions, and reservations of record, unto BRUCE STREET, LLC, a Virginia limited liability company, Grantee, all that certain lot or parcel of land, containing 0.28 acre, more or less, situate on the north side of and commonly known as 126 W. Bruce Street, in the City of Harrisonburg, Rockingham County, Virginia, together with the improvements thereon, and all the rights, privileges, appurtenances, easements

and rights of way thereunto belonging or in anywise appertaining, and more particularly described by metes and bounds dated November 15, 1937, by A. R. Myers, S.R.C., said metes and bounds being set out in PARCEL SIX of the below-mentioned Deed.

The parcel herein conveyed is one of the tracts or parcels of real estate conveyed to Valley Hardware Company, a Virginia general partnership, by deed dated December 30, 1986, of record in the Clerk's Office of the Circuit Court of Rockingham County in Deed Book 827, page 68, and therein identified as PARCEL SIX. Valley Hardware Company, a Virginia general partnership converted to VH Company, L.L.C., as evidenced by the Virginia State Corporation Commission, Certificate of Organization to VH Company, L.L.C., a copy of which certificate is of record in the aforesaid Clerk's Office in Deed Book 1999, Page 294.

WITNESS the following signature and seal.

VH COMPANY, L.L.C.
a Virginia limited liability company
formerly Valley Hardware Company,
a Virginia general partnership

Sallie E. Funkhouser (SEAL)
Sallie E. Funkhouser, Member

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Harrisonburg, to-wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this 28th day of June, 2012, by Sallie E. Funkhouser, Member of VH Company, L.L.C., a Virginia limited liability company.,

My commission expires: 3/31/13.
Notary Registration No.: 303273.

Jennifer L. Pace
Notary Public

2



I was originally commissioned as
Jennifer L. Pace, Notary Public

Notch at back of walk

Chesapeake Western Railway
(40' & variable Right-of-Way)



Scale: 1" = 20'
June 29, 2012

N24°39'03"E
88.85'

Iron Pin found

0.5'

0.9'

12,865 sq.ft.

Notes:
Address: 126 & 128 West Bruce Street
Tax Map: 25 - C - 6
Owner: Valley Hardware Company
See D.B. 827/68, Parcel Six for Title Reference.

T.M. 25-C-2,3,4,5,15
Rosetta Stone, Ltd.
D.B. 3455/33

West Bruce Street

face of building on property line

0.4'

N78°28'18"W
161.21'

0.8'

S77°06'30"E
141.67'

brick building

1.6'

0.4'

S11°56'12"W
83.16'

1.8'

1.5'

Iron Pipe found

Iron Pin set

100' to Liberty Street

concrete light base

0.9'

building

0.9'

T.M. 25-C-1
Bruce Properties, L.L.C.
D.B. 1433/3

S77°06'30"E
101.18'

to Iron Pin found

N76°21'02"E
119.90'
to City Monument

**Boundary Survey Of A 12,865 sq.ft. Lot
Standing In The Name Of
Valley Hardware Company
City of Harrisonburg, Virginia**

INGRAM - HAGEN & CO., P.L.C.

Surveyors - Engineers - Planners

140 OLD BRIDGEWATER ROAD
MOUNT CRAWFORD, VIRGINIA 22841
Telephone (540) 828-2778

Note: Survey based on a current field survey.
A current title report was not provided for this survey.
Job #20009



This is not a true, certified copy unless the signature hereon is an original signing.

ORDINANCE AMENDMENT

**Business Garden Proposal:
Modify the Zoning Ordinance Sections
10-3-24, 10-3-84, and Add Article BB.
Business Gardens
&
Modify Title 16. Offenses Section 16-6-58**



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
February 13, 2013

ZONING ORDINANCE AMENDMENT

Modify Sections 10-3-24 and 10-3-84 and Add Article BB. and Amend Section 16-6-58

Staff is proposing to modify the Zoning Ordinance Sections 10-3-24 and 10-3-84 and to add Article BB. Business Gardens, which would include multiple sections regulating horticulture-related businesses on residential property. Other than a minor addition to the proposed regulations, the amendments described herein are the same as those previewed by Planning Commission during their regular meeting in January.

The first change necessary within Section 10-3-24 Definitions includes adding and defining “business garden;” the proposed terminology for the horticulture-related business practice. In brief, the definition includes being classified as a home occupation and that only individuals residing on the property may operate the business. Among other defining details, the definition also contains a reference to a proposed new governing article for further regulations and requirements. Section 10-3-24 would be further modified by amending the existing “home occupation” definition by adding text that would allow business gardens to operate outside of a main or accessory building. As currently defined and regulated, all other home occupations must take place wholly within a main building or accessory building.

As mentioned above, the proposed business garden definition refers the reader to “see Article BB. Business Gardens for operating regulations.” The new article contains six new sections titled: Purpose, General Use Regulations and Requirements, Area and Yard Restrictions, Accessory Structures, Storage and Screening, and Abandonment.

The General Use Regulations and Requirements section mandates residents to apply for a home occupation permit prior to operating a business garden. This section also requires the residential character of all parcels involved to be maintained, that compost can only be used to support onsite operations and that onsite transactions, advertising signage, and apiculture and other animal husbandry are prohibited. Furthermore, all business gardens must be maintained in a healthy growing condition, free of refuse, debris, overgrown weeds, and dead or spent plant materials. A statement is included clearly specifying that business gardens would be subject to the tall grass and weeds ordinance.

The Area and Yard Restrictions section specifies that individuals residing on the property may use as much as 50 percent of the total area of the parcel involved including the total area of all adjoining parcels under the same ownership. Cultivation in accessory structures such as hoopouses, green houses, cold frames, and related structures and areas used for exterior activities such as storage, compost and disposal areas must be included in the allowable area. On the other hand, activities on or within principal buildings including covered and uncovered

porches and decks, enclosed accessory storage structures, upon rooftops, and vertical growth areas are exclusive of the allowable area. With regard to setback regulations, business garden operations must be setback at least five feet from all property lines unless the operations are enclosed with a wall or fence of at least three feet in height, which does not have to be opaque.

The proposed area and yard restrictions will affect properties differently based upon the characteristics of the parcels involved. For example, it would be possible to have business garden operations in every yard area of a property if such areas are fenced and the parcel is improved with a dwelling that occupies 50 percent or more of the lot area. Conversely, individuals residing on parcels improved with dwellings that consume much less than 50 percent of a parcel's lot area would still have what some consider a traditional yard. For consistency and to be able to equitably implement the 50 percent rule, once a property has an established business garden, staff would calculate all garden areas, whether for personal or business garden use, toward the parcel's allowable 50 percent business garden space.

The Accessory Structures section mandates that all accessory structures associated with business gardens would be governed by Section 10-3-114; the section of the Zoning Ordinance that provides the standard regulations for accessory buildings. Since last month, the Building Official has confirmed with Planning staff that building permits and sub-trade permits would not be required for work associated with business gardens because the State prohibits localities from requiring permits for farm buildings and structures. The Virginia Construction Code considers many activities within the definition of farm buildings and structures, and as proposed, buildings associated with business gardens would be included. With this in mind, staff has proposed an additional subsection within Accessory Structures that would simply require all structures to be securely affixed to the ground. Although there will be no inspection of these structures, it is hoped the regulation will be a reminder to those using these structures to secure them.

The Storage and Screening section specifies that equipment, materials, and compost and disposal areas shall be inside a principal or accessory building or screened from general public view and adjoining properties. For all intents and purposes, the screens referred to in this section shall be opaque and the areas shall not be generally seen by the public and shall not be seen from the ground level of adjacent properties.

The last section of the business garden regulations addresses abandonment of such areas and stipulates that if business gardens cease permanent operation, then the areas must be cleared, all structures removed, and the area re-vegetated in no less than 30 days or no less than 90 days if an extension is granted by the Zoning Administrator.

To be inclusive of all areas in the City where individuals can reside by-right, staff is also proposing to amend Section 10-3-84 Uses Permitted By-Right of the B-1, Central Business District by adding "home occupations" as a use permitted by-right. It may seem odd to add home occupations to a zoning district that allows many other businesses by-right, but because individuals can live in the B-1 district, and because business gardens would be defined as a home occupation, this amendment is necessary to allow those residents the ability to operate a business garden. If an individual or entity wanted to operate something like a business garden but wanted to be able to operate like other business in the B-1 district such as having on-site transactions, advertising signage, and employing individuals that do not reside on the parcel, then they would be desiring to operate something that is not currently defined or allowed by the Zoning

Ordinance. As advised by Planning Commission in January, staff will soon be investigating allowing farming/horticulture-type businesses in the B-1, B-2, and M-1 zoning districts.

Staff supports approving the proposed amendments to Section 10-3-24 and 10-3-84 and in creating Article BB. Business Gardens in the Zoning Ordinance.

Along with the Zoning Ordinance amendments, staff is also proposing to modify the City Code Title 16 Offenses, specifically Section 16-6-58 Weeds, etc. on Lots, commonly known as the tall grass and weeds ordinance. This modification would work in unison with the proposed business garden regulations to clarify that business gardens would be subject to the tall grass and weeds ordinance. Unlike amendments to the Zoning Ordinance, no public hearing is required by Planning Commission to amend Section 16-6-58. However, the Commission should offer a recommendation to City Council regarding this proposed modification.

Staff also supports the necessary changes to the tall grass and weeds ordinance Section 16-6-58 Weeds, etc. on Lots.

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 adding and modifying the definitions as shown:

Business Garden: A home occupation, where areas of a parcel are managed and maintained by individuals residing on the same parcel or adjoining parcels under the same ownership, used to cultivate fruits, vegetables, herbs, or flowers for sale purposes. This definition does not include cultivation only for personal consumption or use. (See Article BB. Business Gardens for operating regulations.)

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, other than business gardens as defined, 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

ORDINANCE AMENDING AND RE-ENACTING SECTION
10-3-84

OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

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

That Section 10-3-84 Uses Permitted By-Right of the B-1, Central Business District shall be amended by adding subsection (13) as shown:

(13) Home Occupations.

The remainder of Section 10-3-84 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

ORDINANCE AMENDING AND RE-ENACTING SECTION
TITLE 10 CHAPTER 3
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

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

That Article BB. Business Gardens be added as a new article as shown:

Article BB. Business Gardens.

Sec. 10-3-189. – Purpose.

The regulations set forth in this article are to regulate Business Gardens as defined in Section 10-3-24. Definitions.

Sec. 10-3-190. General Use Regulations and Requirements.

- (1) Individuals operating business gardens shall apply for a home occupation permit.
- (2) The residential character of all parcels involved shall be maintained.
- (3) All transactions shall occur off-site.
- (4) No on-site advertising is permitted.
- (5) Apiculture or other animal husbandry is prohibited.
- (6) Areas shall be maintained in a healthy growing condition, free of refuse, debris, overgrown weeds, and dead or spent plant materials. Such areas are subject to Section 16-6-58 Weeds, etc. on Lots.
- (7) Compost shall be used only to support onsite operations.

Sec. 10-3-191. – Area and Yard Restrictions.

- (1) Land used for business gardens shall be no larger than fifty (50) percent of the area of the parcel involved including areas of multiple, adjacent parcels under the same ownership. Cultivation in accessory structures such as hoophouses, green houses, cold frames, etc. and areas used for exterior activities such as storage, compost and disposal areas shall be included in the allowable area. Activities on or within principal buildings including covered and uncovered porches and decks, enclosed accessory storage structures, upon rooftops, and vertical growth areas are exclusive of the allowable area.

- (2) All areas used for business gardens shall maintain at least a five (5) foot separation from all property lines unless such areas are enclosed with a wall or fence of at least three (3) feet in height.

Sec. 10-3-192. – Accessory Structures.

- (1) Accessory structures shall be governed by Section 10-3-114 Accessory Buildings of this chapter.
(2) All structures shall be securely affixed to the ground.

Sec. 10-3-193. – Storage and Screening.

Storage of equipment, materials, and compost and disposal areas shall be inside a principal or accessory structure or screened from general public view and adjoining properties.

Sec. 10-3-194. – Abandonment.

Business gardens which have ceased permanent operation or been abandoned shall be cleared, all structures removed and the area re-vegetated no more than thirty (30) days after the date of discontinued operations unless otherwise specified by the Zoning Administrator not to exceed ninety (90) days.

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

MAYOR

ATTESTE:

CLERK OF THE COUNCIL

ORDINANCE AMENDING AND RE-ENACTING SECTION

16-6-58

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

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

That Section 16-6-58 Weeds, Etc., on Lots be modified by amending subsection (a) as shown:

- (a) Between April first and November first of each year, every owner of real estate situate in the city shall, at his sole expense, cause to be cut therefrom all grass, weeds and foreign growth, with the following exceptions:
- (1) Farm land, not including business gardens, on which crops are being grown or land used to pasture livestock.
 - (2) Acreage not farmed or pastured but which is not subdivided and of which no subdivision plat has been recorded. However, on such unused acreage, the owner shall mow a strip twenty-five (25) feet wide adjacent to any street or adjoining property on which a residence is located.
 - (3) Subdivided and recorded residential lots fronting undeveloped public street right-of-ways.

The remainder of Section 16-6-58 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

January 2013 Proactive-Zoning Report

For the month of January 2013 the proactive-zoning program targeted the **Spotswood Acres** section of the city. During the proactive inspections a total of eight 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	11	6	4	18
November 2012	Westover	13	11	18	8	17
December 2012	Garbers Church	9	5	1	2	1
January 2013	Spotswood Acres	8	n/a	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 February 2013 will be directed towards the enforcement of the Zoning Ordinance in the **Jefferson Street** section of the City.