



# City of Harrisonburg, Virginia

## Planning Commission Meeting

November 11, 2015

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 October 14, 2015 regular meeting.**
- 2) **New Business**

*Special Use Permit – 685 East Wolfe Street (Section 10-3-91 (9) Zero Side Yard Setback)*

Public hearing to consider a request from Power Acceleration Inc. with representatives Saber Khoshnaw and Bashdar Azeez for a special use permit per Section 10-3-91 (9) of the B-2, General Business District to allow a reduction in the side yard setback to zero feet. Such permission is only permitted along the lot line of an adjoining parcel zoned B-2 or M-1. The 9,350 +/- square feet parcel is located at 685 East Wolfe Street at the intersection of East Wolfe Street and Old Furnace Road and is identified as tax map parcel 33-V-15.

*Special Use Permit – 73 Rex Road (Section 10-3-40 (6) MFDH)*

Public hearing to consider a request from Donna Ray Budzius and Adam J. Purcell for a special use permit per Section 10-3-40 (6) of the R-2, Residential District to allow for a Major Family Day Home. A Major Family Day Home is defined as “a child day care program offered in the residence of the provider or the home of any of the children in care for five (5) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.” The 9,048 square feet property is located at 73 Rex Road and is identified as tax map parcel 9-M-3A.

*Special Use Permit – 865 Port Republic Road (Section 10-3-55.4 (8) Wireless Telecommunications Facility)*

Public hearing to consider a request from 865 East, LLC with property representative Dain Hammond and application representative Josie Lodder of GDN Sites for a special use permit per Section 10-3-55.4 (8) of the R-5, High Density Residential District for a Wireless Telecommunications Facility. The R-5 district allows for many wireless telecommunications facilities, industrial microcells, distributed antenna systems, and macrocells; however, telecommunications towers are not permitted except for towers primarily erected for the use of the Harrisonburg-Rockingham Emergency Communications Center. The 5.47-acre property is located at 865 Port Republic Road and is identified as tax map parcel 92-F-1.

*Rezoning – 707 North Main Street (R-2 to M-1)*

Public hearing to consider a request from Edwin Joya to rezone a parcel containing 7,461 +/- square feet from R-2, Residential District to M-1, General Industrial District. The property is located at 707 North Main Street and is identified as tax map parcel 40-T-9.

Staff will be available Tuesday December 8, 2015 at 4:30 p.m. for those interested in going on a field trip to view the sites for the December 9, 2015 agenda.

*Rezoning – 137 West Water Street (M-1 to B-1C)*

Public hearing to consider a request from 137 Water, LLC, with representative Barry Kelley to rezone a parcel containing 2,460 +/- square feet from M-1, General Industrial District to B-1C, Central Business District Conditional. The property is located at 137 West Water Street and is identified as tax map parcel 25-C-7.

**3) Unfinished Business**

*None.*

**4) Public Input**

**5) Report of secretary and committees**

**6) Other Matters**

*None.*

**7) Adjournment**

Staff will be available Tuesday December 8, 2015 at 4:30 p.m. for those interested in going on a field trip to view the sites for the December 9, 2015 agenda.

**MINUTES OF HARRISONBURG PLANNING COMMISSION**  
**October 14, 2015**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, October 14, 2015 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: Adam Fletcher, Acting Director of Planning and Community Development/City Planner; and Alison Banks, Senior Planner/Secretary.

Chair Fitzgerald called the meeting to order and determined there was a quorum with all members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the September 2015 Planning Commission meeting.

Dr. Dilts moved to approve the minutes as presented.

Mr. Way seconded the motion.

All members voted in favor of approving the September 2015 minutes as presented (7-0).

**New Business**

***Private School Off-Street Parking Approval Request – Minnick School (1661 Virginia Avenue)***

Chair Fitzgerald read the request and asked staff to review.

Mr. Colman recused himself from the meeting at this time (7:01 p.m.).

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

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

**Site:** Vacant building, zoned B-2

**North:** Professional Offices, zoned B-2

**East:** Across Virginia Avenue, retail and commercial businesses, zoned B-2 and entrance to Park Rose Village, zoned R-3C

**South:** Independent/Assisted Living facility, zoned R-3

**West:** Townhouses, zoned R-3

Minnick School is seeking to relocate from their current location at 775 Massanutten Street to a 14,750 square foot facility at 1661 Virginia Avenue. In doing so, they must receive approval of their parking plan as required by Section 10-3-25(12) of the Zoning Ordinance (ZO) for the new facility. This section specifies that off-street parking for schools is programmed by the applicable school authorities as necessary to meet state standards for the proposed use and then shall be reviewed and approved by Planning Commission. Essentially, each school determines the amount of parking they feel is adequate for their site and their uses; for the parking to be in compliance with the ZO, Planning Commission must approve the off-street parking plan.

In May 2007, Minnick School requested a special use permit (SUP) per Section 10-3-97(9) of the ZO to operate their facility within the M-1, General Industrial District at 775 Massanutten Street. Along with the SUP request the school provided an off-street parking plan for Planning Commission approval. The 2007 parking layout projected 60 students and 40 employees within the 10,824 square foot facility, and provided 57 off-street parking spaces; staff had no concerns with their parking plan and recommended in favor of the request. In the end, the Department of Education (DOE) licensed the school for 50 students and 28 employees. Since opening at the current location the school has routinely had up to 20 available parking spaces during the school day, which has complicated the management of the school at this location due to the fact individuals from the surrounding businesses have consistently used the available spaces for their parking. Ultimately, the location along Massanutten Street has not worked out for Minnick School and they are hoping to relocate to the new site at 1661 Virginia Avenue.

Minnick School is intending to ask the DOE to license the new facility for up to nine classrooms with a projected 72 students and 32 staff (27 teachers/assistants and five administrative support staff). The applicants believe that 57 parking spaces are sufficient for parking and have provided a site plan showing the proposed parking layout. Students would arrive to and be picked up from the school either by regular or small buses, vans, or cars; only staff vehicles would be parked throughout the day. At the new location, with the estimated 72 students, the mix and number of vehicles would be projected at three regular buses, two small buses, and ten vans/cars.

Staff has discussed with the applicants that all queuing of vehicles from the parking lot must not extend in to the public right-of-way including the sidewalk. As well, vehicles turning into the site from Virginia Avenue need to be able to enter without stopping and waiting on vehicles already positioned on-site.

The applicants state that with 57 parking spaces, the vans and cars could park in spaces to load and unload students, while the buses would wait in line for pick-up. This scenario would not block traffic on Virginia Avenue, restrict right-of-way, or have vehicles waiting in the street. Lastly, the applicants plan to widen the entrance on the site to allow adequate space for vehicles to enter and exit at the same time.

Staff believes the requested 57 parking spaces are sufficient for the needs of the school. The provided parking layout, along with the proposed widening of the entrance, meets the requirements of the Design and Construction Standards for parking lots. Staff recommends approval of the parking plan.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she said we are not required to hold a public hearing for this request; however, we do typically ask the applicant or the applicant's representative if they would like to speak at this time.

Mr. David Pruett, Chief Financial Officer with Lutheran Family Services of Virginia, said he would be happy to answer any questions.

Mr. Da'Mes asked what age group would be served by the new school.

Mr. Pruett replied elementary and middle school students. This will be students with emotional disabilities, and behavioral issues, and also children with autism and children who are on the autism spectrum.

Mr. Da'Mes said we know this site was previously used for pre-school and day care. In terms of recreational and outdoor activities, what does the DOE require? I am just wondering how they might utilize outside space, which obviously would be the parking lot.

Mr. Pruett replied there is outdoor space behind the building and some space to the left of the building. We also hope to work out some partnerships with Eastern Mennonite School and possibly utilize some of their staff for some possible intern positions and perhaps using some of their facilities. This area may have a little bit less recreation space for the students than we currently have; but it is safer. We do have more educational space at this location.

Chair Fitzgerald asked if there were further questions. Hearing none, she asked if there was a motion.

Mr. Fletcher reminded the Planning Commission that this item would not move forward to City Council.

Dr. Dilts moved to approve the parking plan as shown for 1661 Virginia Avenue.

Mr. Heatwole seconded the motion.

Chair Fitzgerald called for a voice vote.

All voted in favor (6-0) of approving the parking plan as shown for the Minnick School at 1661 Virginia Avenue.

Mr. Colman returned to the chambers at this time (7:12 p.m.).

***Special Use Permit – 1214 Windsor Road (MFDH 2015 Amendment)***

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

Mrs. Banks said the Comprehensive Plan designates this area as Low Density Residential. This designation states that these areas consist of single-family detached dwellings with a maximum density of 1 to 4 units per acre. Low-density sections are found mainly in well-established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

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

Site: Single-family dwelling and major family day home operation, zoned R-1

North: Single-family dwelling, zoned R-1

East: Single-family dwellings fronting along Nelson Drive, zoned R-1

South: Single-family dwelling, zoned R-1

West: Across Windsor Road, Single-family dwellings, zoned R-1

The applicant is requesting to amend an existing special use permit (SUP) allowing a Major Family Day Home (MFDH) in the R-1, Single Family Residential District per Section 10-3-34 (6) of the Zoning Ordinance (ZO). A major family day home is described as providing care for five to 12 children under the age of 13, exclusive of any children who reside in the home. Major family day homes are limited as to the number children that receive care in the residence at any one time; however, they are not limited to the number of children they may have enrolled.

Tots 'N Toyland, a MFDH, received approval of a SUP in July 2014 to operate from the 21,444 +/- square foot parcel located at 1214 Windsor Road. The property is located on a narrow cul-de-sac road, which allows parking along the street right-of-way; however, the street is not improved with curb, gutter, or sidewalk. During the 2014 SUP process, staff expressed concerns regarding parking along the shoulder of the road, possibly impeding traffic; but ultimately recommended in favor of the SUP with a suggested condition that if parking became a nuisance, the SUP could be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit. Planning Commission recommended approval (7-0) of the request with the suggested condition. At the City Council public hearing, there were neighborhood concerns regarding traffic increases and safety with the proposed MFDH use. The request was tabled awaiting further information from the Harrisonburg Fire Department and Rescue Squad, before eventually being approved (3-2) with an additional condition that the number of children served is limited to ten.

The applicant currently has a total of 11 children enrolled, either full-time or part-time and one employee who has been with Tots 'N Toyland since opening. The facility encompasses approximately 714 square feet within the home and has a large fenced, outdoor play area that is located about 150-feet from the roadway. Since being licensed by the Department of Social Services (DSS) last year there have been a total of three unannounced inspections by DSS with no violations.

The hours of operation for the MFDH are 7:30 a.m. until 5:30 p.m., Monday through Friday. Parents are instructed to park at the top of the driveway when dropping off or picking up children throughout the day. There is ample room for three vehicles to maneuver on site without blocking vehicles in. The employee parking is also at the top of the driveway beside the house or in the garage.

The applicant is requesting to increase the number of children from ten to the maximum 12. This increase is to accommodate the forthcoming birth of the sole employee's child and the forthcoming birth of a child, who will be the sibling of a currently enrolled child.

Staff has received no concerns regarding the use, parking, or traffic since the 2014 SUP approval. Staff recommends in favor of the request to amend the SUP with the following condition:

If in the opinion of Planning Commission or City Council, parking becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chair Fitzgerald said if I understand correctly the number of cars that go in and out of this facility every day will likely not change, because it is two pregnancies of existing persons coming to the site.

Mrs. Banks said that is correct.

Mr. Baugh said in all fairness, that is the near term plan, not a restriction.

Mr. Way said for clarification, 12 is the maximum number allowed for a MFDH.

Mrs. Banks said yes, this would bring it to the maximum allowed by DSS.

Mr. Baugh said for whatever reason, as someone who supported this the first time the number of ten was somewhat of a trade-off that happened at Council. The third consenting vote was comfortable with the total being reduced to ten and that is where the number came from.

Mr. Colman said is the 12 a total number or is it a total of children on site.

Mrs. Banks said 12 is the maximum number of children being served in the facility at any one time. Of course this is exclusive of the applicant's children.

Mr. Baugh said that was actually the issue with City Council. It is exclusive of the applicant's children; but, her children have friends that regularly come over. Because of the regulations ten was the lowest number she could have on the premises; it is not that they are all actually enrolled in the day care.

Mr. Fletcher said these are the numbers that are regulated by the State; not a regulation of the City of Harrisonburg.

Mr. Colman said from that standpoint, traffic is not just limited to 12 parents and kids, it could be 24 kids enrolled.

Mr. Da'Mes said are you thinking instead of focusing on the number of children enrolled, we should be focusing on the number of vehicles coming and going.

Mr. Colman said the main concern is traffic.

Mr. Fletcher said remember at last year's public hearing, Planning Commission voted in favor of the maximum 12. Both staff and Planning Commission recommended in favor of the maximum students, it was not until it got to City Council that the number was reduced.

Chair Fitzgerald opened the public hearing and asked the applicant to come forward and speak.

Erica Dorsey, 1214 Windsor Road, said she is the applicant. She then introduced her neighbor Roger Jones, who lives next door. As it has already been stated, the need for the increase is my sole employee who is also my sister and has been there since the beginning of the program and will continue to be there, is expecting. Since we opened over a year ago we have had no complaints. As a matter of fact, I have spoken to each individual neighbor in person on my street, as well as Mr. Hopkins who lives behind on the other street. Mr. Hopkins had brought forward several concerns to City Council last year and he is completely in favor of this request.

We are the only Family Day Home that has not had any violations from the DSS. Safety is a huge concern of ours. There would not be an increase in traffic. We have 58 children on our waiting list since opening last year. I cannot operate without my employee because of the ratio required by DSS; therefore, if this request gets turned down, we will have to release one of our enrolled children to make room for her child. We do not want to do that, but it would be our only choice because the employee is vital to the entire operation. That is why we are here tonight and we would appreciate your support.

Mr. Roger Jones, 1216 Windsor Road, said he is the closest neighbor to the MFDH. Since the original permission was granted in July 2014, there has been no noise from the children that I am aware of. There has also been no problem with traffic; the only time I see traffic is when a parent is picking up a child. On Windsor Road there is not much traffic so you would notice.

Mr. Da'Mes said are you able to see all the traffic flow into and out of the day care facility?

Mr. Jones said there is not any traffic flow; there is just the occasional vehicle. There is no additional traffic on the road at all.

Mrs. Dorsey said of our current 11 children, there are two sets of siblings, so there are only maybe eight cars.

Mr. Heatwole said these vehicles are not parking on Windsor Road they are actually coming into the driveway to drop-off and turn around.

Mrs. Dorsey said correct, there are actually cars parked on Windsor Road, but they are not coming to my home or facility.

Chair Fitzgerald asked if there were any further questions for Mrs. Dorsey or Mr. Jones. Hearing none, she asked if there was anyone else wanting to speak in favor of or opposed to the request. Hearing none, she closed the public hearing and asked for discussion.

Mr. Colman moved to recommend approval of the request with the same condition as imposed by Planning Commission in 2014.

Mr. Heatwole seconded the motion.

Chair Fitzgerald called for a voice vote on the motion to recommend approval with the condition.

All voted in favor of the motion (7-0).

Chair Fitzgerald said this item will go to City Council on November 10<sup>th</sup> with a favorable recommendation.

***Zoning Ordinance Amendment – Section 10-3-26 (To Allow Required Parking for Business and Professional Office Uses to be Off-Site within Specified Downtown Locations)***

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher said Staff is proposing to amend the Zoning Ordinance's Article G Off-Street Parking regulations Section 10-3-26 titled Location in Relation to Building or Use Served. The proposed amendment would modify subsection (a) (1) by adding the ability for business and professional office uses located within a specified downtown boundary to meet minimum off-street parking requirements by locating parking spaces on properties that are not on the same or adjoining parcels from the use served.

Currently, Section 10-3-26 has two subsections: (a) and (b). Subsection (a) regulates where minimum parking spaces shall be located and requires them on the same lot with the building or use served or on adjoining lots, where the use of parking must be allowed by the adjoining property's zoning district. When parking is located on an adjacent property, a shared parking agreement must be established among all of the participating property owners, where the agreement must be effective for at least 10 years following the date of City approval. Subsection (a) further grants Planning Commission the ability to allow, by request, assembly uses (i.e. religious places of worship, theaters, etc.) to borrow parking from other public or private parking facilities, which are properly zoned and in reasonable proximity to the assembly use. Subsection (b) was added to the Zoning Ordinance in March 2012 creating flexibility in allowing uses located on contiguous but separate lots to reduce the number of required parking spaces based upon the ordinance's shared parking calculations table for particular uses. Unless a reduction in required parking is approved by the Zoning Administrator as allowed by subsection (b), the minimum sum of required parking spaces for all uses must be provided on the parking lot (or lots) used.

Before getting into the details of the proposed amendment, it should be understood that this is not the first instance of allowing particular uses to locate required parking spaces as otherwise regulated by Section 10-3-26 (a).

In April 2012, staff proposed an amendment to afford industrial operations for the manufacturing, processing, storage, or treatment of products—allowed in the M-1 district—to locate required parking on M-1 or B-2 properties within “reasonable proximity” of the use served. Staff had recognized that such uses often operated in a “campus-like” setting, where it created opportunities for industrial operations to create more jobs without the concern of needing additional space on-site for required parking. That amendment also opened the door for smaller, industrially zoned properties that may have been overlooked for such uses the opportunity to be utilized for these types of industries. The amendment was recommended for approval unanimously by Planning Commission (7-0) and approved by City Council (4-0).

Then in December 2012, along with requesting to rezone 305 North High Street from R-2 to R-3C to allow that property to be used as a charitable and benevolent institutional use, Mercy House, Inc. proposed an amendment to Section 10-3-26 (a) to allow charitable and benevolent institutional uses the ability to locate parking on parcels that are not on the same or adjoining parcel as the organization served. Unlike the industrial parking off-site accommodation as described in the previous paragraph, this amendment was very narrowly tailored to their exact situation, where along with ensuring the parcel used for parking was permitted by zoning, the parking lot had to 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.” Staff recommended denial of this amendment believing it was too narrowly tailored to their exact situation. Planning Commission recommended approval of the request (5-1) and City Council approved the amendment unanimously (5-0).

With regard to the currently proposed amendment, staff is recommending allowing business and professional office uses flexibility to meet off-street parking requirements, similar to the previous two amendments, but only when the specified uses are located within the described downtown boundary. The proposed modification includes adding an additional subsection to Section 10-3-26 (a) (1) as follows:

- c. Business and professional office uses located on any parcel within the area bounded by Gay Street to the north, Mason Street to the east, Martin Luther King Jr. Way to the south, and High Street to the west 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, may be located across public or private streets and/or alleys, and shall be no more than one quarter (1/4) mile from the use served. 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.

(A map illustrating the proposed boundary is included within the packet.)

Note that the building or professional office use must be located within the boundary to take advantage of this accommodation, but that the off-site parking may be located within or outside of the boundary so long as the parcel’s zoning permits parking and the site is no more than one quarter

mile from the use served. Like the previous two off-site parking allowances, operators of the noted uses would be required to secure a shared parking agreement with property owners of parking lots, where the agreement must last for at least 10 years.

The prompting of staff's evaluation and decision to prepare the proposed amendment on our own initiative originally came from a citizen's desire to convert the residential property at 37 Paul Street to a professional office. At first glance, the Paul Street property appeared to fit the bill for a residential use to professional office conversion. The property is zoned R-3, Medium Density Residential District, which allows professional offices by right; it has more than the minimum 6,000 square feet of lot area to operate a non-residential use in the R-3 district with approximately 7,200 square feet of lot area (about 60 feet wide by 120 feet in depth). The site is improved with a very well maintained, historical residential structure containing almost 2,600 square feet. The Comprehensive Plan's Land Use Guide designates the property as Professional, thus the desired use would be conforming to the long term plans for the property; and the property is within the Plan's illustrated Downtown Revitalization Area, which seeks to continue efforts for the downtown to be "an economic engine."

Although there would be significant and potentially costly issues to address with regard to the Building Code to convert the residential structure to a professional office, once those issues are rectified, the professional office still has to provide nine off-street parking spaces. Unfortunately, the site proved to be too small to accommodate all nine spaces and the citizen desiring to operate the professional office was unsuccessful in utilizing the existing flexibility offered by the Zoning Ordinance by securing a shared parking agreement with either of the two adjacent property owners that have existing parking lots. The citizen is, however, likely able to obtain an agreement with the Elks Lodge, which is located across the street from 37 Paul Street; but, the Zoning Ordinance does not allow counting locations across the street toward meeting minimum parking requirements.

After many conversations were had with the citizen desiring to use the property as a professional office, and in knowing the desired use was in line with the Comprehensive Plan, staff began investigating how an amendment might allow a professional office at this location to meet off-street parking regulations. Staff did not, however, want to create a very narrowly tailored amendment to simply satisfy this particular situation as we recognized this same issue could likely occur within the fringe of the downtown area, where the Comprehensive Plan promoted non-residential uses.

Staff believes the proposed amendment will be successful not only for R-3 or UR/R-P properties that allow professional offices, but also for other small, downtown properties that could be zoned B-2 (where in addition to professional offices, business offices are permitted), but are not likely to be rezoned to B-1, where the City would have to absorb the parking demand. Staff proposed the amendment for professional and business offices because the Zoning Ordinance requires the same off-street parking requirement ratio at 1 space per 300 square feet of gross floor area. The proposed boundary was chosen because of its overlap among much of the area that the Comprehensive Plan designates as Mixed Use Development Areas, the overlap of the Plan's Downtown Revitalization Area, and for areas that are on the "fringe" of downtown, where many parcels are designated for Professional or Planned Business use.

Staff believes the modification is good practice and recommends approving the proposed amendment.

Mr. Da'Mes said why not include churches and benevolent uses within this ordinance amendment. It appears the boundary incorporates quite a few churches which are in need of extra space.

Mr. Fletcher said in this particular case for business and professional office uses the parking ratio is the same, it is one parking space for every 300 square feet of gross floor area of the use. Charitable and benevolent office would be one per 300 as well; whereas parking for churches is a different ratio based upon one parking space for every ten fixed seats in the largest assembly. Churches also have a relief mechanism for shared parking already built into the Zoning Ordinance.

Mr. Way asked about the reasoning for the quarter mile limit rather than just across the street.

Mr. Fletcher said I know this body has discussed what a quarter mile radius means when discussing a walkable neighborhood, and I did research this further. The quarter mile is not arbitrary; there is definitely a designation in planning theory that it is a distance of a neighborhood. When we started with this idea we looked at blocks and streets and it just did not make as much sense as the quarter mile.

Mr. Way said with the charitable and benevolent uses it is limited to just across the street; is there a reason why this was not just limited to that as well.

Mr. Fletcher said we wanted to create more flexibility.

Mr. Way said the boundary for this is somewhat contiguous with the Urban Development Area (UDA) downtown. What is going to be the future of the UDA? Will it be revisited and will there be revisions?

Mr. Fletcher said that would actually be a good question for Planning Commission because it is really up to this body and the Community to tell us what they want that to be. It is a question for the Comprehensive Plan (CP) review.

Mr. Way said I just worried that this might put a little pressure and growth on the UDA area, and are we okay with that?

Mr. Fletcher said the UDA terminology was definitely designed more for counties than it was for us as a city; our densities already meet, and surpass, the minimum requirements of a UDA. What we did with our UDAs, if you recall from the last CP review, is that we designated three UDAs and demonstrated that each one could independently sustain the growth, commercially and residentially, over the next 20 years. We went beyond the call of what was required with the UDA designation. Actually, the state no longer requires localities to designate UDAs.

Mr. Baugh said the Rockingham County just recently amended their area and expanded it greatly. The driving force for that was due to revised state funding mechanisms for roads; which do not apply to us because we do not get a funding through the state.

Mr. Fletcher said what Mr. Baugh is referring to is House Bill 2. If you follow state legislation it is specifically associated with developments that are meeting certain criteria that also fall within the UDA, you get higher scoring for your funding. There has also been discussion about whether or not we want to amend our UDA before the CP review; we have had positive input regarding our applications for House Bill 2 funding.

Mr. Way said is there any danger that this may entrench a lot of the parking in the surface lots that currently exist and perhaps preclude potential for infill development within the outlined area. People may get into these arrangements of having this shared parking use of a period of ten years and it would keep some of the surface lots that we may not really want.

Mr. Fletcher said there could be some pressure to keep them because people are making money off of the parking lot; that is just going to be part of its nature. Remember, if someone wants to build a parking lot in the downtown B-1 zoning, they have to obtain a special use permit for it. I have a hard time believing that people are going to build a new parking lot specifically to use for this situation.

With the shared parking arrangement, the use that is in need of the parking has to go find the parking and create the shared parking agreement; it is not a free for all with parking. There is still some responsibility on the part of the applicant needing the parking. Some businesses do not want to have the parking located off site. For the situation that triggered the evaluation for this amendment, it is going to work out quite well for them because they will go across the street where there is an abundance of parking that is not in use.

Chair Fitzgerald said to the extent that it really is within one quarter mile and it is unused, like in this situation, we get a lot of extra efficiencies by passing this; but, there is not enough of a monetary incentive to provoke people to put in parking lots just to make money.

Mr. Way said it is not just the incentive to create the parking lot, but the idea of not converting the existing parking lot into an infill building. I just want to make certain there are not unintended consequences from this proposal.

Mr. Fletcher said when you actually breakdown the opportunity of people who will have to take advantage of it within the boundary, it is a small percentage. This ability gives them the option to not provide any parking on their site. For example, the You Made It art facility SUP on Paul Street that was approved by this body last year, that property has a beautiful landscaped yard, where some of it will have to be converted to parking. This proposed amendment could offer some relief for business or professional office uses that want to locate on properties that have beautiful green spaces, where they can meet the minimum parking requirement without having to remove the well-kept yard.

Mr. Way said the bigger question is parking minimums – is that another thing that needs to be looked at.

Mr. Colman said I have questions related to the time frame of the parking agreement. Ten years, is that tied to the property or to the business?

Mr. Fletcher said it is tied to the use. For example, 37 Paul Street, zoned R-3, it has enough lot area to be used as a single-family home or as a professional office.

Mr. Colman said given that, what happens when it is a professional office for five years with the parking accommodated off-site and then it changes to a multi-family use – what happens with the ten year off-site parking agreement?

Mrs. Banks replied a change of use such as that would come through zoning for permit approval and would have to provide for parking.

Mr. Fletcher said when you are entering into the agreement it is a legal document that is recorded at the courthouse and copied to our office. When someone wants to change the agreement, it is a civil matter between the property owners. I hate to use the phrase “it will work out” but, if they do not work it out it will become a zoning violation.

Mrs. Banks said the shared parking agreements can be tailored to the specific uses and if one of the uses is no longer there, it becomes void.

Mr. Fletcher said the shared parking arrangements we have on file right now are very specific. Some even go as far as to say where you can park within the parking lot.

Mr. Colman said I would like for us to discuss the parking minimums at some point. Also, can public parking be used for shared agreements?

Mr. Fletcher replied no, public parking cannot be used to meet the minimum required parking.

Mr. Heatwole said this type of thing is used in larger cities. You have parking arrangements for businesses, because you have to share space in order to meet the needs.

Chair Fitzgerald said this amendment is formalizing that type of arrangement.

Mr. Fletcher said there are other properties that could utilize the proposed parking accommodation than just R-3 properties. Within the proposed boundary there are small parcels zoned B-2, where business and professional office use is allowed by right. Some might argue these parcels could rezone to the B-1 district and then there would be no issue; however, we do not necessarily want to rezone all of these parcels to B-1 and then have the City absorb the parking demands.

Mr. Da'Mes said in terms of the border itself, for instance Mason Street, does that include both sides of Mason Street?

Mr. Fletcher replied it does not, the description reads "within the boundary." The parking can reach out beyond the boundary, but the use must be within it.

Mr. Colman said why does the boundary stay along Mason Street and not reach out along Broad Street.

Mr. Fletcher said we looked at the long term plan of what those particular areas were. When you look at Broad Street we questioned if there is enough argument to be made for it to be commercial; if there was a good argument, then we need to look at rezoning those areas to the B-1 district. We considered extending it northward; but Gay Street made the most sense.

I did have one person contact me, asking to extend this boundary to their property. I informed them that they could certainly come and ask. I also said that staff would likely not look at extending the boundary favorably, which was a certain distance into Newman Avenue, because those parcels are designated as Mixed Use Development Areas by the CP; thus if they really want the flexibility, they could rezone to the B-1 district.

Mr. Way said this boundary does not trump the land use guide in terms of rezoning requests and things like that.

Mr. Fletcher said this is somewhat like an overlay, it does nothing but provide a benefit. It does not undercut the underlying zoning or the land use guide.

Mr. Colman said I think this is a great idea. I assume that staff did look at opportunity areas with this. My concern is that I do not want to alienate any properties with this.

Chair Fitzgerald asked if there were further questions for staff. Hearing none, she opened the public hearing and asked if there was anyone desiring to speak regarding the ordinance amendment. Hearing none, she closed the public hearing and asked if there was any further discussion or a motion.

Mr. Way moved to recommend approval of the zoning ordinance amendment as presented.

Mr. Heatwole seconded the motion.

Chair Fitzgerald called for a roll call vote on the motion.

All voted in favor (7-0) of the motion to recommend approval of the Zoning Ordinance amendment.

### **Unfinished Business**

None.

### **Public Input**

None.

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

Mrs. Banks said proactive zoning is still on hiatus because we are still one person down within our division. We are just about to begin interviews for that position. Also, no one has signed up for the November 3<sup>rd</sup> Rockingham County Planning Commission Meeting.

Mr. Colman volunteered to attend on that date.

Mr. Baugh said City Council took up three matters from this body last night and approved all three. Those items were the rezoning on Lucy Drive/Reservoir Street, the South Avenue special use permit, and the alley closing off East Johnson Street. The alley closing had some vigorous debate because some of the adjoining property owners were present and said they were opposed to the alley closing. Ultimately, it was approved and I believe Mr. Fletcher will be meeting all parties at the site to explain the alley situation to all parties involved.

### **Other Matters**

Chair Fitzgerald said when Planning Commission held the 2232 hearing for the new school on Garbers Church Road, one of the issues that we raised was the fact that Planning Commission was last in line with our review of the location. Everyone had already voted up that location – two different School Boards voted it up, City Council voted it up, etc. Planning Commission felt it would have been nice to have a little more input, a bit earlier in the process. As many of you are aware, the School Board is in the middle of a three month open input process where in October, November, and December they are holding open public input sessions during their meetings and basically asking the public to weigh-in on the three options. In conversations I recently had with the School Board Chair, I asked whether it would be helpful to them if Planning Commission had conversation about the project during one of our upcoming meetings; perhaps December. We will likely have a 2232 hearing on it and get to formally weigh-in on it then, but this allows us to hear about it and talk about it before then. This will allow us to deliver input to the School Board and ask questions. I am not suggesting a formal meeting regarding this. If you think this is a good idea then I would re-contact the School Board Chair and let them know that Planning Commission would like to have a conversation with them during the City wide public input window – most likely in December.

All members of Planning Commission agreed this was a good idea and Chair Fitzgerald should move forward with this.

Mr. Fletcher said at City Council's September 22, 2015 regular meeting, City Council briefly discussed whether the regulations within City Code Section 15-2-24 Fowl, Chicken and other Domestic Birds—commonly referred to as the “chicken ordinance”—should be revisited and

potentially amended. At the end of the discussion, City Council decided to refer this matter to Community Development and Planning Commission for review.

Issues that City Council noted they would like to explore include: whether the lot size threshold should be reduced; if there should be a “neighbor’s approval” added to the permit process; to explore whether a certain number of permits should be allowed within an implemented trial period; and other options that might not have been discussed during the 2009 debate on this matter.

Included within your packet are the minutes from the City Council and Planning Commission meetings in 2009, the existing adopted ordinance (adopted in 2009), and the recent minutes from the September 22, 2015 City Council meeting.

Our four bullet points for our conversation tonight are:

- Whether the lot size threshold of 2 acres should be reduced,
- If there should be a “neighbor’s approval added to the permit process,
- Whether a certain number of permits should be issued within an implemented trial period
- Any other issues not discussed in 2009

My guess is that we are not “reinventing the wheel” with this, but to take these bullet points and focus on adding these items or not to what is already existing. I have had some suggestions offered to me from a citizen representative, as well, staff has talked internally regarding this and the topics suggested were: lot sizes based upon the minimum square footage as to the district in which chickens would be located (i.e. R-3 would be 6,000 square feet, R-2 would be 7,000...); or, lot sizes having no minimum requirement, but limiting it to the factor of whether setbacks can be met. If you do restrict it to the lot sizes of zoning districts, and just for single-family homes, there are still many parcels which do not meet that requirement. So the theory of no lot sizes is not a bad one. The existing required setbacks are 25-feet from all property lines.

Dr. Dilts asked why the City has this limit on chickens.

Mr. Baugh said until the ordinance was adopted in 2009, there was a blanket prohibition, it simply was not allowed.

Mr. Da’Mes asked what was prohibited, the agricultural use or just chickens in general.

Mrs. Banks said agricultural animals in general.

Dr. Dilts said my point is that we allow other animals that can be more of a disturbance problem than chickens.

Mr. Da’Mes said I think the biggest argument is the poultry industry being such an economic factor in our community and the concern of the avian flu.

Mr. Heatwole said working in the industry it does cause concern, but if they are caged it cannot be spread. I would like to hear from veterinarians regarding this.

Mr. Baugh said the poultry industry will probably oppose this – they take a stance of zero tolerance. If you are going to take a zero tolerance on this issue that makes you a “no” vote on this matter.

Chair Fitzgerald asked does Planning Commission accept the charge from Council to look at this matter again. Is there anyone here that does not want to look at this?

There was a consensus among Planning Commission to look at the Chicken Ordinance.

Chair Fitzgerald asked how Planning Commission wants to approach this.

Mr. Heatwole said I would like to hear from someone with the USDA just to make certain that it would not cause any major issues.

Mr. Way asked if there was a time frame at which this needed to be accomplished.

Mr. Baugh said no, there is no time frame or direction as to when a report back is needed.

Mr. Fletcher said please do not think that staff is in any way an expert on this matter. But as the Commission discusses it we (staff) are going to be more of your resource to answer the “what ifs” and “what does this mean” for implementation. Therefore, we definitely need to know how you are thinking about doing this before we can move forward. I do not want Planning Commission to get lost in what the objective is; I think the ordinance we have is very good, we just need to touch on these (bullet) points.

Mr. Baugh said the ordinance we have really reflects the thinking of the advocates for keeping chickens, except for the lot size.

Chair Fitzgerald said I understand that, but, in order to answer the bullet points I think we need a bit more information. Especially, for those of us who have not previously been involved in this matter.

(Mr. Way left the Planning Commission meeting at this time 8:30 p.m.)

Mr. Fletcher said one thing that staff can get for Planning Commission to look at is the original packet that was reviewed in 2009. What else do you want in the near term?

Dr. Dilts said I think Mr. Heatwole’s point is a valid one and we should get some sense of whether the avian outbreak is significant or not.

Mr. Colman asked whether there were any statistics from other areas regarding the risks of keeping birds.

Chair Fitzgerald said if I am hearing everything correctly, we are asking staff to get the 2009 packet information for us and we are hopefully going to have some conversations with different people about coming in to speak to Planning Commission regarding avian flu and the impact on the industry versus domestic chickens.

Mr. Heatwole offered some suggestions as to contacts within the poultry industry that could be contacted.

Mr. Fletcher said what if we cannot get this person to come in and speak with Planning Commission.

Dr. Dilts said we can research other literature, there appears to be plenty out there. We want citizens to know we have looked at it, we understand the risks, and that it looks minimal, (or not).

Mr. Fletcher said staff will definitely get the 2009 packet to Planning Commission next month, we will continue to work to on research; but, I do not want to make promises that cannot be kept for next month. We are very busy within our division right now with employee time allotments.

There was a consensus that the 2009 packet would be enough for the November 11<sup>th</sup> meeting and Mr. Heatwole would look into getting a name of someone in the industry that could talk with Planning Commission regarding concerns.

Mr. Colman said do not forget that if we are hearing from someone in the industry, we need to have a speaker come to advocate for the movement.

Chair Fitzgerald said we need to be cognizant of the fact that staff is down two persons right now and Council has said there is not a real time pressure with this.

Mr. Fletcher said next month's agenda has five public hearings – three special uses and two rezonings.

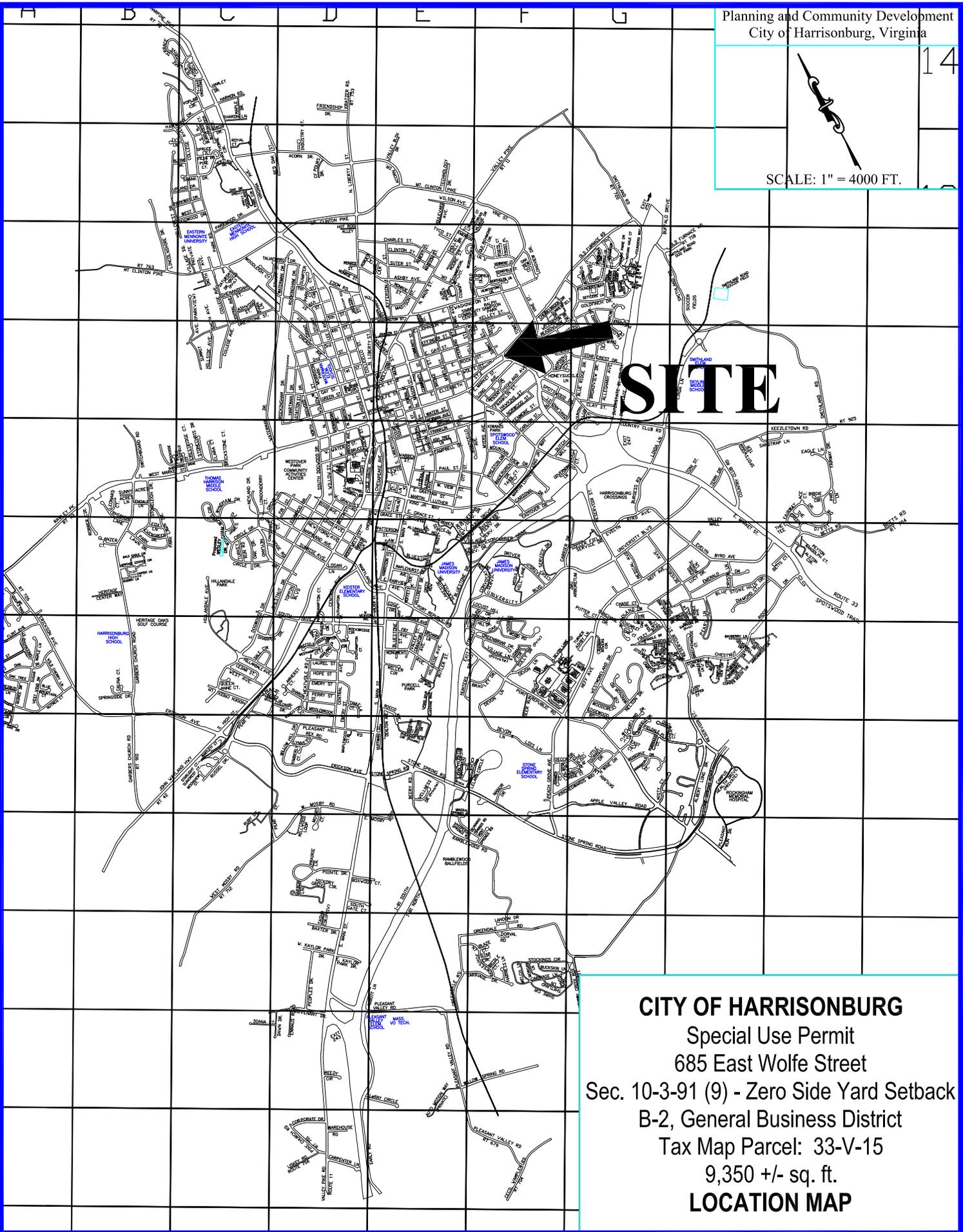
**Adjournment**

Planning Commission adjourned at 9:05 p.m.

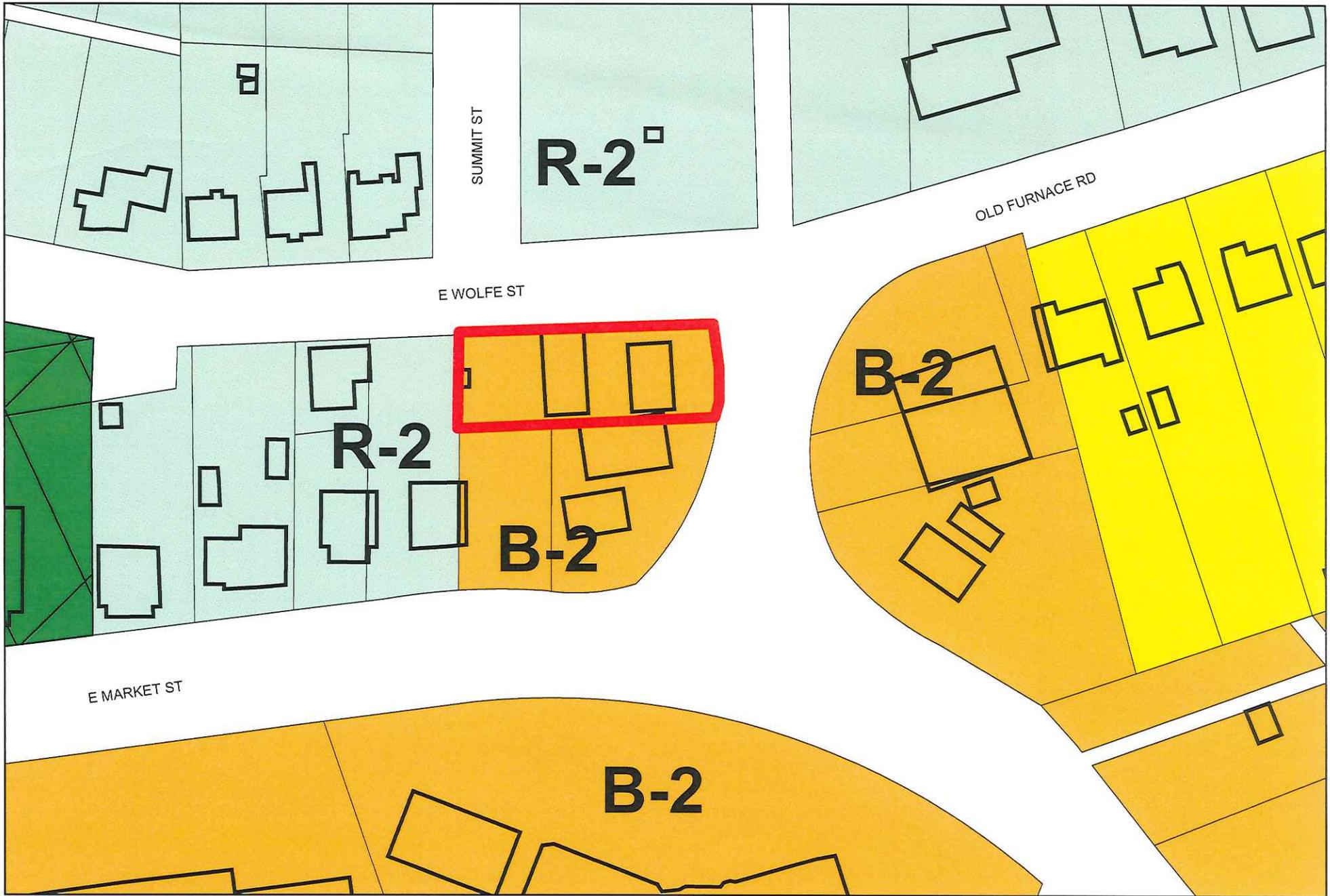
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SCALE: 1" = 4000 FT.



**CITY OF HARRISONBURG**  
Special Use Permit  
685 East Wolfe Street  
Sec. 10-3-91 (9) - Zero Side Yard Setback  
B-2, General Business District  
Tax Map Parcel: 33-V-15  
9,350 +/- sq. ft.  
**LOCATION MAP**



**SUP - 685 East Wolfe Street  
10-3-91 (9) - Zero Side Yard Setback in B-2**



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT  
November 11, 2015

## SPECIAL USE PERMIT– 685 EAST WOLFE STREET (SECTION 10-3-91 (9))

### GENERAL INFORMATION

- Applicant:** Power Acceleration, Inc. with representatives Saber Khoshnaw and Bashdar Azeez
- Tax Map:** 33-V-15
- Acreage:** 9,350 square feet
- Location:** 685 East Wolfe Street
- Request:** Public hearing to consider a special use permit request per Section 10-3-91 (9) of the B-2, General Business District to allow a reduction in the side yard setback to zero feet. Such permission is only permitted along the lot line of an adjoining parcel zoned B-2 or M-1.

### LAND USE, ZONING, AND SITE CHARACTERISTICS

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

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

- Site:** Car wash, zoned B-2
- North:** Across East Wolfe Street, Beth El Cemetery, zoned R-2
- East:** Across Old Furnace Road, vehicle repair shop, zoned B-2
- South:** Vehicle repair shop, zoned B-2
- West:** Residential dwelling, zoned R-2

### EVAULATION

The applicants are requesting a special use permit (SUP) per Section 10-3-91 (9) of the Zoning Ordinance, which allows B-2 property owners the ability to request a zero side yard setback along adjoining properties zoned B-2 or M-1. The applicants hope to utilize the SUP to renovate the existing principle buildings, which are non-conforming to setback regulations, and to change the property's use to a vehicle repair shop, which is a use permitted by right.

The standard side yard setback in the B-2 district is 10 feet, unless the adjoining property is zoned residentially and then the setback increases to 30 feet. The subject property is located at the

southwestern corner of the East Wolfe Street/Old Furnace Road intersection, where a car wash has operated for many years. In this particular case, the southern parcel boundary is the property line they are requesting the ability for a zero lot line setback, and in fact is the only internal line the applied for SUP can be utilized because the western property line is considered the rear line and the adjacent western property is zoned R-2.

The site is improved with two principle structures and an accessory building, all three of which are non-conforming to setback regulations. With regard to the two principle buildings, the easternmost building does not meet the required 30-foot setback along East Wolfe Street nor does it meet the side yard setback along the southern boundary as the structure is about 20-feet from the front line along East Wolfe Street and one-foot from the southern side line. The westernmost building also does not meet the required setback along East Wolfe Street nor the southern side boundary as this building is just over 10 feet from the front line along East Wolfe Street and 0.7 feet from the southern lot line. The structures do, however, meet the required minimum setbacks from the front line along Old Furnace Road and the western rear boundary.

Improving the property by either renovating the existing principle buildings or demolishing all structures and constructing on a vacant lot would be challenging for anyone owning the subject property. This is because the property is a corner parcel, where 30-foot setbacks are required along both street frontages; it adjoins a residentially zoned property, which requires increased setbacks; the structures are non-conforming to setback regulations, where Section 10-3-20 (2) of the Zoning Ordinance prohibits the existing buildings from being extended, enlarged, reconstructed or structurally altered except in conformity with the Zoning Ordinance; and lastly, because the parcel is relatively narrow at just over 60-feet wide.

With regard to setback regulations, the Zoning Ordinance has existing, accommodating provisions that affords some relief to the required setbacks for corner parcels. Section 10-3-112 (2) states that “[c]orner lots shall provide a setback equal to the required front setback for all yards adjoining a public street; provided, however, that the setback regulations shall not reduce the buildable width of a lot to less than fifty (50) percent of lot width and measured at the point of required setback line.” In applying this code section, at the required 30-foot setback from Old Furnace Road, the subject parcel is 60.38 feet wide and thus the parcel shall have a buildable width of 30.19 feet. After subtracting the required 10-foot setback along the side line, at first glance one would compute the setback off of East Wolfe Street to be 20.19 feet. However, because the front lot line along Old Furnace Road is a non-perpendicular line, when the setback line is extended the length of the lot and measured at a right angle, staff computes the setback distance at 19.92 feet, which happens to be more accommodating for the property owner. Once all setback regulations are applied, the 9,350-square foot parcel is limited to a buildable area of 2,864 square feet.

As described above, the applicants plan to change the use of the site from an operating car wash to an automotive repair shop. Their plan is to renovate the existing principle structures and to connect the two buildings by constructing an addition between the two buildings, where the end result would be one structure. However, because the buildings are non-conforming to setback regulations, renovations to the buildings can only occur on the portions of the structures that fall within the buildable area. After discussing different options over several months with the applicants, the option of applying for the requested SUP appeared to be the most useful for their plans because if approved, larger portions of the buildings could be improved.

If the SUP is approved, improvements to the principle buildings could be made entirely to the southern side of the buildings, and as is planned by the applicants, they could connect the buildings with an addition between the structures in line with the existing southern walls. The northern side of both existing buildings, however, would still be in question as to where and how much of the buildings can be renovated. As noted above, staff believes the required setback along East Wolfe Street is 19.92 feet; it is clear that the existing westernmost building will not be able to be completely renovated as this building is located just over 10 feet from the front property line along East Wolfe Street. This means any portion of the building that encroaches the minimum required setback cannot be extended, enlarged, reconstructed or structurally altered. The current location of the easternmost building might however fit just within the buildable area of the site. The physical survey of the property scales this structure at 20 feet or just less than 20 feet from the front lot line. If approved, when the applicants submit their building permit application, their submission must include an exact surveyed measurement of the easternmost building from the front property line along East Wolfe Street. The surveyor should also confirm what staff believes would be the required setback along East Wolfe Street. In addition, the building permit application must demonstrate where the setback is located within the westernmost building so staff and the property owners understand where improvements are permitted to occur.

During this application's review, the Fire Department noted that generally speaking they are opposed to zero yard setbacks due to the associated fire spread danger when buildings are constructed so close together and the difficulty that occurs in fighting the fire. However, in understanding the applicants' plan to renovate the existing principle buildings and to add an addition to connect the two buildings, they consented to the idea, but only if the permit was granted to the stated plan of development.

As noted by the Zoning Ordinance's review standards for SUPs, Section 10-3-125 states, among other things, that "[t]he proposed use shall be consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted in the district." In this particular case, staff does not believe the proposed use would have an adverse effect on the health, safety or comfort of persons living or working in the area nor be injurious to property or improvements in the surrounding area. The subject site's principle buildings have been established for several years at one foot and less than a foot from the adjacent property; approving the SUP does not change the general characteristics of how the site has been improved. Furthermore, the adjacent property—the property most impacted by the SUP—is also improved with a principle building that is non-conforming to setback regulations and at its closest point is likely less than one foot from the shared property boundary.

Staff is recommending approval of the SUP, but only with the following condition:

- The special use permit shall only be applicable for the renovation of the existing principle buildings, where the zero side yard setback shall be applied along the location of those buildings and in the space between the buildings so that the two buildings may be connected to create one structure.

The above condition means that a zero side yard setback shall not be applied for any new building to the west of the westernmost principle building or the east of the easternmost principle building. Further, if the existing principle buildings are substantially demolished, where for all intents and purposes the site is being redeveloped, the standard side yard setback must be applied.

If the SUP is approved, at the time of building permit review, the applicants must still ensure the site can accommodate the required minimum off-street parking spaces. Given that the site is paved to the northeastern corner at the intersection of the public streets, staff is concerned that parked vehicles at this corner could block sight distance for vehicles stopped on East Wolfe Street. Staff recommends the property owner devise a parking layout to prevent this situation. Furthermore, it would be advantageous to the public if parking spaces were located at least five feet off of the back of curb along East Wolfe Street to provide a clear pedestrian pathway along the public street.

As noted above, vehicle repair shops are permitted by right in the B-2 district per Section 10-3-90 (7). Specifically within this section it states that "all activities and storage of inoperable vehicles must be completely enclosed within a permitted structure." These provisions are stricter than those specifying how vehicle repair shops shall operate in the M-1, General Industrial District, where the Zoning Ordinance states that "[a]ny outside storage or repair shall be located within a designated area and screened." Since the planned use of the site is to convert the car wash, which has pipes draining to the sanitary sewer system, to a vehicle repair shop, the site must comply with all applicable City Codes and Building Codes pertaining to grit chambers and oil/water separators. Lastly, the applicant must understand that building in close proximity to property lines triggers restrictive Building Code requirements that can lead to significant construction costs.

Staff recommends approving the SUP to allow a zero side yard setback along the southern property line with the condition as noted above that it shall only be applicable for the renovation of the existing principle buildings, where the zero side yard setback shall be applied along the location of those buildings and in the space between the buildings so that the two buildings may be connected to create one structure.

To whom it may concern

Property owner: Power Acceleration INC.

We are requesting to remodel Hill Top car wash on 685 E Wolfe St. Harrisonburg, Va 22802 to a professional modern Auto repair facility, and are requesting not to have a ten feet setback according to code.

The property is very small, as recorded on the original subdivision plat in 1980. The property is currently outdated. The size of the lot requires a very large openings on all sides if the full setback is to be followed according to code, much smaller than the lots in the neighborhood. The size of the lot is beyond my control, as it was platted more than 25 years ago.

I am requesting not to have a set back on the left side of the building, which would actually not affect anything from the traffic or pedestrians. The front face would be a minimum of 30 feet from the front property line and 20 feet from the right side, preserving the ability to park a car in the sides without protruding into the right-of-way. Approval of a variance to the minimum left setback of 10 feet would allow me to maximize the development potential of the lot and the building without having a negative impact on traffic safety or the ability of pedestrians to use the sidewalk due to parked vehicles extending beyond the property line. Approval of the request would permit me to remodel the bulding on the property reasonably consistent in size and character with other properties in the vicinity and same zone.

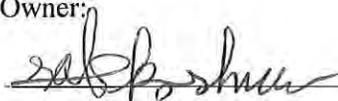
The property is B-2 zone development; a business structure is the most appropriate development for the property. The code requirements from E Wolfe Street side and the Old Furnace Rd are met and have no issues. If the request is approved, my building will be a minimum of 20 feet away from E Wolfe St at its closest point and 39 feet from Old Furnace rd.

I am aware that the request is not the absolute minimum necessary in order to alleviate the hardship. It would not be possible to remodel the building on the lot while meeting the ten foot setback. However, this would provide for virtually no use between the neighboring building, which I personally believe to be equally, if not more undesirable, than a reduced right side setback. I have requested a variance to allow me not to move the wall from the left side of the building. Approval of the request will allow me to remodel the building which is more desirable to do business in for myself and my family, and also for future potential. The alternative is to either come in ten feet from the left of the building and virtually have no room to work or have no useful space.

Thank you.

Power Acceleration INC. Owner:

Saber Khoshnaw



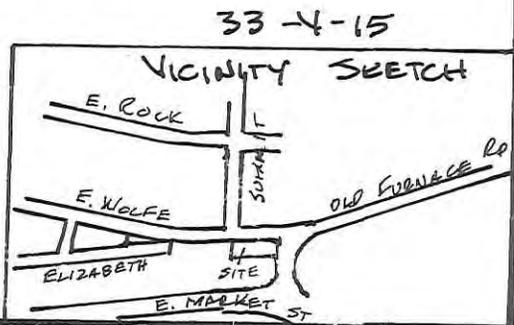
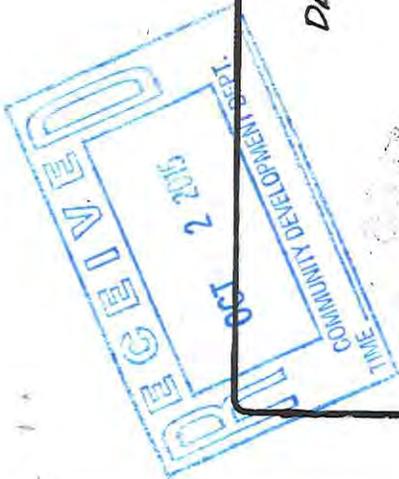
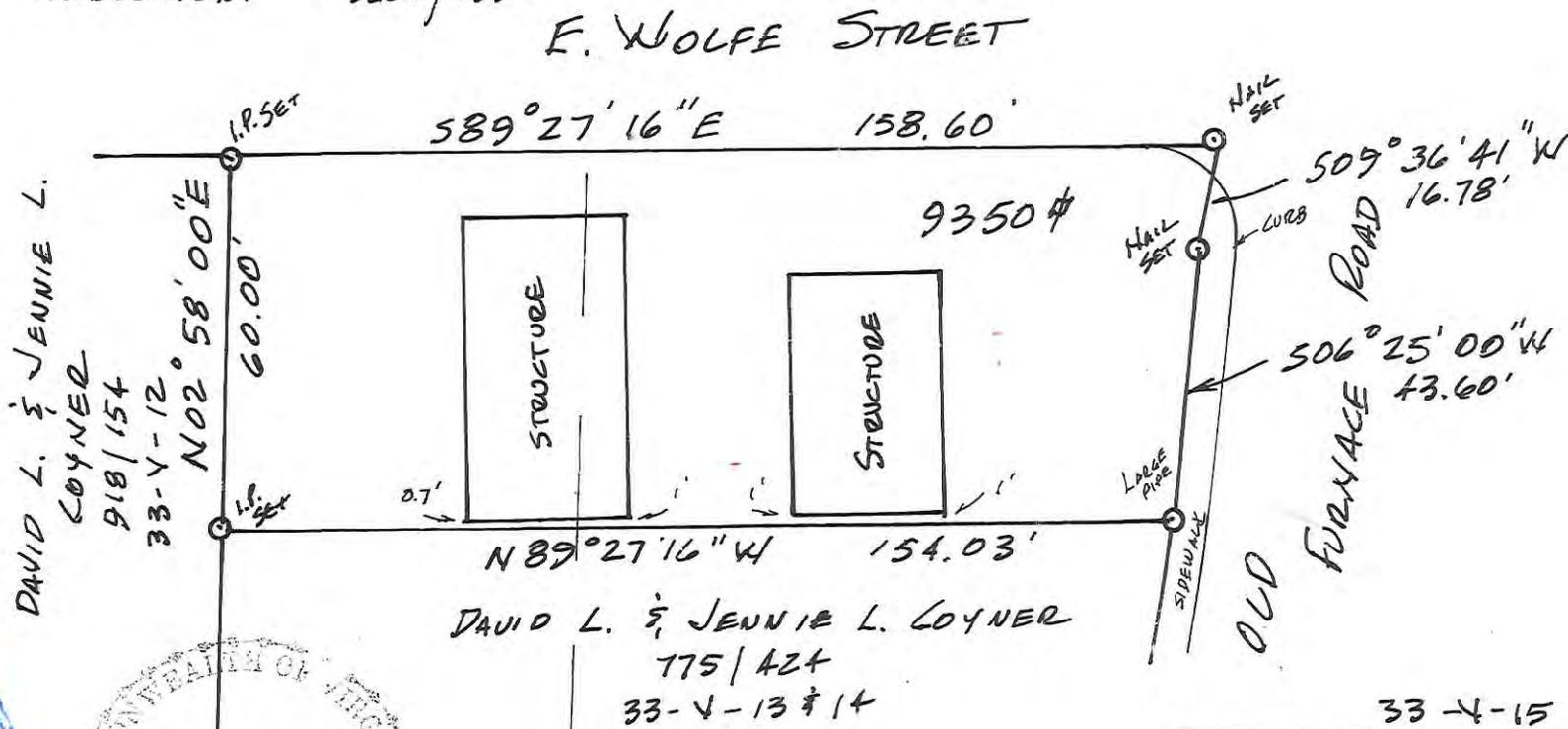
Date 10/13/15

# BOUNDARY SURVEY

685 E. WOLFE STREET  
HARRISONBURG, VIRGINIA

SURVEYED LOT STANDING IN NAME OF  
GALEN E. SIMMONS & ALAN L. MILLER,  
TRUSTEES OF THE GALLEN E. SIMMONS TRUST  
AGREEMENT - 3206/139

SCALE: 1" = 30'  
DATE: 2 JUL 15



The following is the metes and bounds description of a 9,350 Square Foot Parcel located on the south side of E. Wolfe Street and on the west side of Old Furnace Road in Harrisonburg, Virginia.

Beginning at a large pipe, a corner with David Coyner in the west line of Old Furnace Road, thence with said Coyner the following 2 courses

N 89° 27' 16" W 154.03'

to an iron pin set, thence

N 02° 58' 00" E 60.00'

to an iron pin set in the south line of E. Wolfe Street, thence with said street

S 89° 27' 16" E 158.60'

to a nail set in the west line of Old Furnace Road, thence with said road the following 2 courses

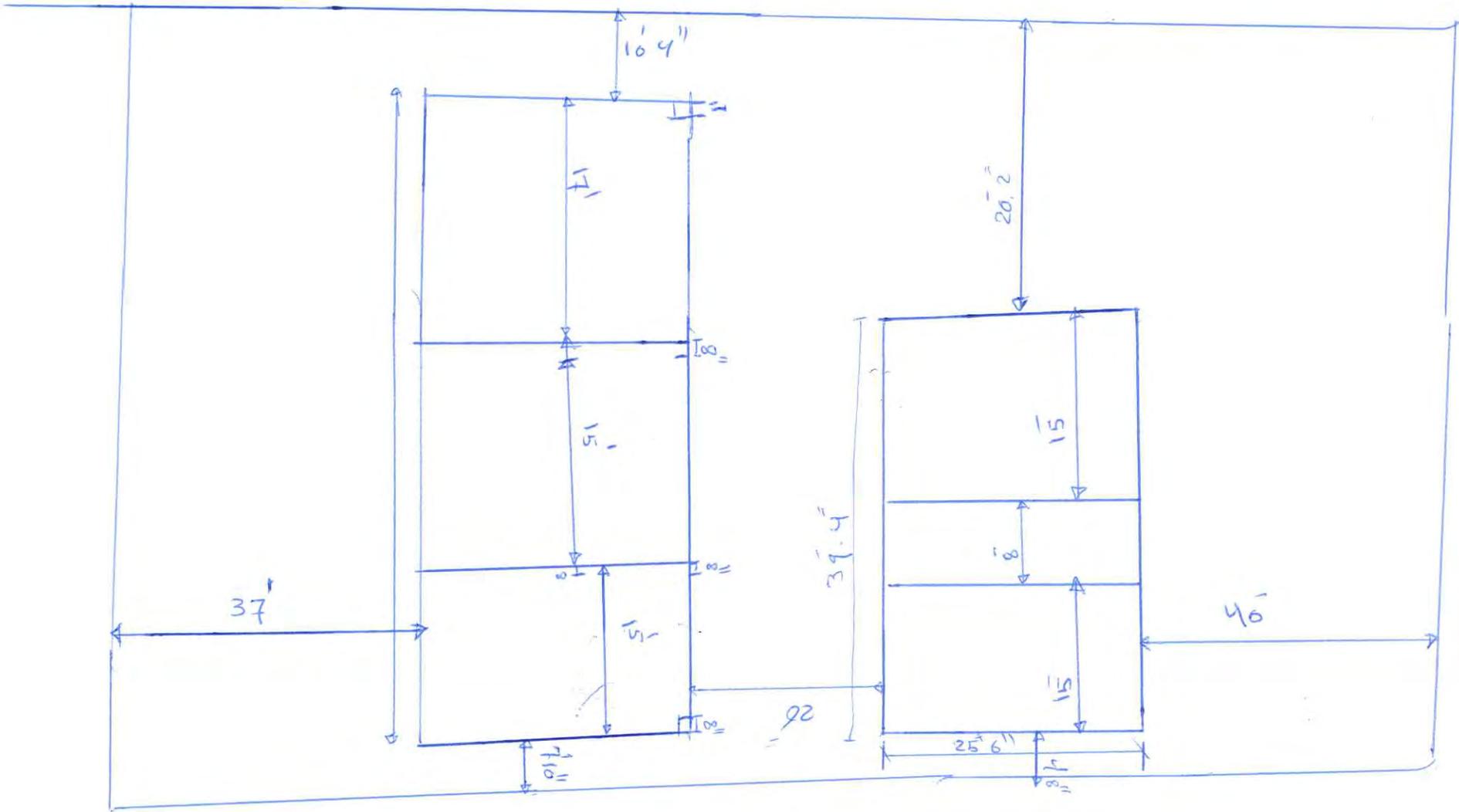
S 09° 36' 41" W 16.78'

to a nail set, thence

S 06° 25' 00" W 43.60'

to the beginning and enclosing an area of 9,350 Square Feet.

2292-2  
685 E. Wolfe



Date Application Received: 10/14/15

Total Paid: 405<sup>00</sup> - painful  
AB

### Application for Special Use Permit City of Harrisonburg, Virginia

Fee: \$375.00 plus \$30.00 per acre NOTE: If applying for a Wireless Telecommunications Facility allowed only by SUP, then also submit a wireless telecommunications facility application.

Property Owner's Name: POWER ACCELERATION LLC  
Street Address: 685 E. WOLF ST Email: Saber-VA@Yahoo.com  
City: Harrisonburg State: VA Zip: 22807  
Telephone: Work 972 809 3687 Fax 540 208 7502 Mobile 469 554 6909

Owner's Representative: Saber Khoshnaw & Bashdar AZEER  
Street Address: 1206 Tulip Terrace Email: BashdarSP@Yahoo.com  
City: Harrisonburg State: VA Zip: 22807  
Telephone: Work 972 809 3687 Fax 540 208 7502 Mobile 469 554 6909

#### Description of Property and Request

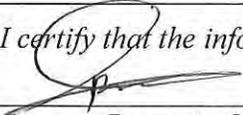
Location (Street Address): 685 E. WOLF ST HARRISONBURG, VA 22802  
Tax Map Number Sheet: 33 Block: V Lot: 15 Lot Area: 9,350 sq. ft.  
Existing Zoning Classification: B-2  
Special Use being requested: 10-3-91(9)

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

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

North: \_\_\_\_\_  
South: \_\_\_\_\_  
East: \_\_\_\_\_  
West: \_\_\_\_\_

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

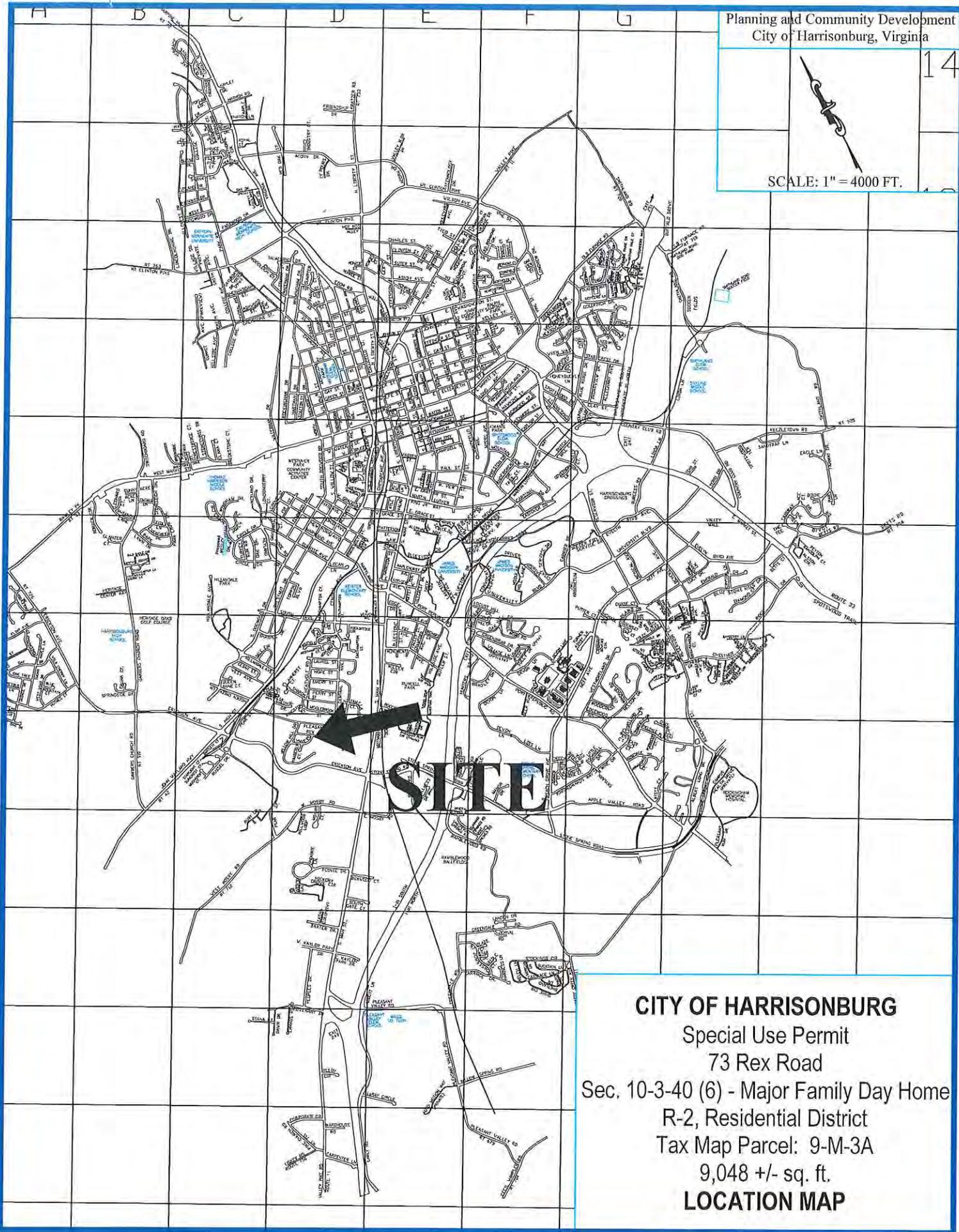
Signature:   
Property Owner

#### ITEMS REQUIRED FOR SUBMISSION

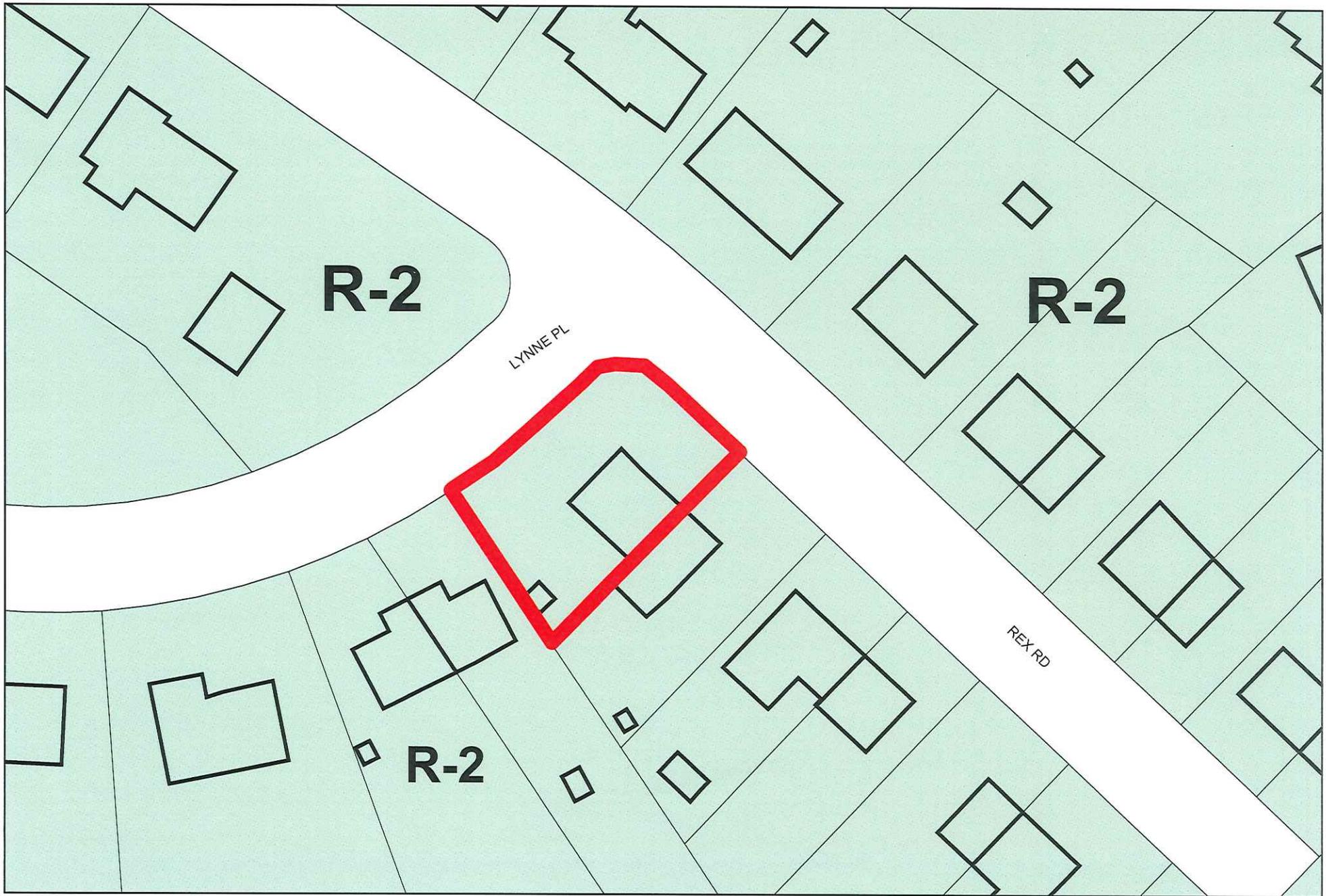
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Completed Application | <input checked="" type="checkbox"/> Fees Paid        |
| <input checked="" type="checkbox"/> Site Plan (Survey)    | <input type="checkbox"/> Property Located on Tax Map |
| <input type="checkbox"/> Description of Proposed Use      | _____  |
| <input type="checkbox"/> Adjacent Property Owners         | _____  |



SCALE: 1" = 4000 FT.



**CITY OF HARRISONBURG**  
Special Use Permit  
73 Rex Road  
Sec. 10-3-40 (6) - Major Family Day Home  
R-2, Residential District  
Tax Map Parcel: 9-M-3A  
9,048 +/- sq. ft.  
**LOCATION MAP**



**Special Use Permit - 73 Rex Road  
10-3-40 (6) Major Family Day Home in R-2 Residential**



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT  
November 11, 2015

## SPECIAL USE PERMIT – 73 REX ROAD (SECTION 10-3-40 (6) MFDH)

### GENERAL INFORMATION

**Applicant:** Donna Ray Budzius

**Tax Map:** 9-M-3A

**Acreage:** 9,048 square feet

**Location:** 73 Rex Road

**Request:** Public hearing to consider a request for a special use permit per Section 10-3-40 (6) of the Zoning Ordinance to allow a major family day home within the R-2, Residential District.

### LAND USE, ZONING, AND SITE CHARACTERISTICS

The Comprehensive Plan designates this area as Medium Density Residential. This designation states that these areas are designated in areas near major thoroughfares or commercial areas. Most of these areas have been developed or are approved for development of a variety of housing types such as single-family, duplex, and in special circumstances, apartments. Depending on the specific site characteristics, densities in these areas may range from 1 to 15 units per acre.

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

**Site:** Duplex dwelling, zoned R-2

**North:** Across Rex Road, single-family dwellings and duplex dwellings, zoned R-2

**East:** Duplex dwellings, zoned R-2

**South:** Duplex dwellings and single-family dwellings, zoned R-2

**West:** Across Lynne Place, single-family dwellings, zoned R-2

### EVAULATION

The applicant is requesting a special use permit per Section 10-3-40 (6) of the Zoning Ordinance to allow a “major family day home” (MFDH) within the R-2, Residential District. MFDHs are defined in the Zoning Ordinance as: *A child day care program offered in the residence of the provider or the home of any of the children in care for five (5) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.* The property is located on the southeast corner of Rex Road and Lynne Place, within the Willow Hills Subdivision.

The applicant currently provides care for four (4) full time children in the home, and is working with the Virginia Department of Social Services (VDSS) to become licensed as a MFDH provider in order

to expand the enrollment. The VDSS application is for the maximum number of children, which is twelve (12); however, the applicant states it is likely only five to eight children would be provided care at any one time.

The facility is described as a clean, organized environment for children with an indoor activity area, large outdoor activity area, and a designated sleeping area. Off-street parking is available for drop-off and pick-up of children within the sizeable driveway on site. Hours of operation are 7:00 am until 5:00 pm with a staggered drop-off/pick-up schedule provided between 7:00 – 9:00 am and 4:30 – 5:00 pm, respectively. The size of the facility and the hours of operation are not conditions of the SUP and may change at times.

As previously detailed, the property is on the corner of Rex Road and Lynne Place, where there is a “STOP” sign for traffic entering Rex Road from Lynne Place. City Code Section 13-1-72 states “on street parking is not permitted within 30-feet of a “STOP” sign. Consequently, as discussed with the applicant, vehicles would not be allowed to park in front of the subject property, along Lynne Place between the “STOP” sign and the driveway entrance.

Staff does not foresee any negative impact in approving this application. Staff supports approval of the requested special use permit.

Date Application Received: 10-13-15

Total Paid: 405.00 PAID

### Application for Special Use Permit City of Harrisonburg, Virginia

Fee: \$375.00 plus \$30.00 per acre NOTE: If applying for a Wireless Telecommunications Facility allowed only by SUP, then also submit a wireless telecommunications facility application.

Property Owner's Name: Donna Ray Budzius  
Street Address: 73 Rex Rd. Email: dbudz02@verizon.net  
City: Harrisonburg State: VA Zip: 22801  
Telephone: Work 540 438-5811 Fax N/A Mobile 540 810-2992

Owner's Representative: N/A  
Street Address: \_\_\_\_\_ Email: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: Work \_\_\_\_\_ Fax \_\_\_\_\_ Mobile \_\_\_\_\_

#### Description of Property and Request

Location (Street Address): 73 Rex Rd.  
Tax Map Number Sheet: 9 Block: M Lot: 3-A Lot Area: 9,048 sq. ft.  
Existing Zoning Classification: R2  
Special Use being requested: Family Day Home

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

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

North: Helene and Alvin Pettus 78 Rex Rd. Harrisonburg, VA 22801  
South: Sarah Whitmore 71 Rex Rd. Harrisonburg, VA 22801  
East: Linda and Ed Solomon 72 Rex Rd. Harrisonburg, VA 22801  
West: Kim and Jason Shiflett 1908 Lynae Place Harrisonburg, VA 22801

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

Signature: Donna R. Budzius  
Property Owner

#### ITEMS REQUIRED FOR SUBMISSION

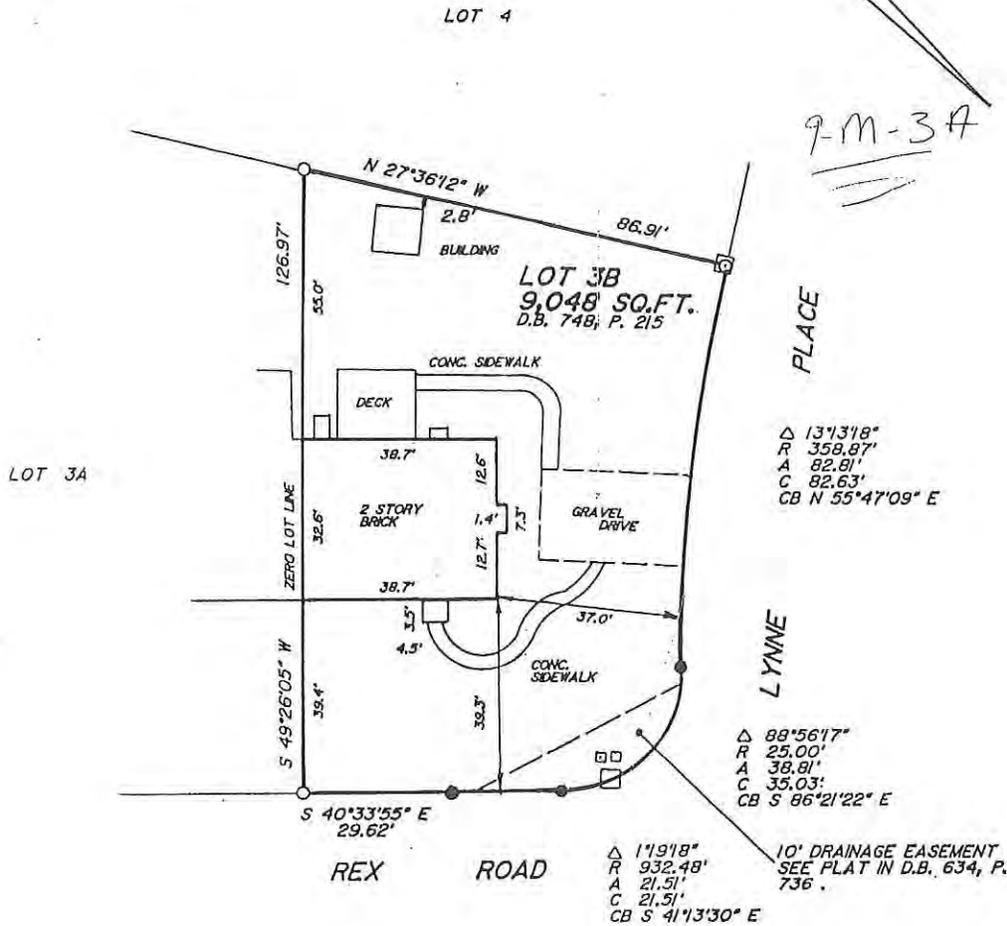
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Completed Application       | <input checked="" type="checkbox"/> Fees Paid                   |
| <input checked="" type="checkbox"/> Site Plan                   | <input checked="" type="checkbox"/> Property Located on Tax Map |
| <input checked="" type="checkbox"/> Description of Proposed Use | <input type="checkbox"/> _____                                  |
| <input checked="" type="checkbox"/> Adjacent Property Owners    | <input type="checkbox"/> _____                                  |

**LEGEND**

- POINT
- ⊗ POINT ON POWER BOX
- IRON PIN FOUND
- POWER BOX
- ▣ TELEPHONE PEDESTAL
- TELEVISION PEDESTAL
- IRON PIN SET

**NOTES:**

- 1) THIS PROPERTY IS NOT IN THE 100 YEAR FLOOD PLAIN.
- 2) DATUM AS SHOWN HEREON IS ACCORDING TO RECORDED INFORMATION AND A CURRENT FIELD SURVEY.
- 3) FOR SUBDIVISION OF LOT 3 SEE D.B. 652, P. 768.



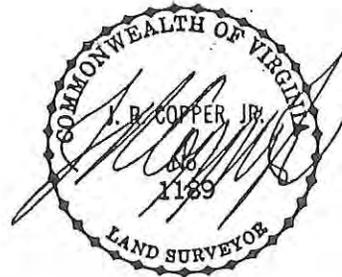
PHYSICAL SURVEY OF  
 LOT 3B OF THE DIVISION OF LOT 3,  
 BLOCK C, WILLOW HILLS, UNIT 1 FOR  
 JAMES P. HOAGLAND

CITY OF HARRISONBURG, VIRGINIA

SCALE 1" = 30'

MAY 11, 1987

COPPER & SMITH P.C.  
 SURVEYORS ENGINEERS PLANNERS  
 1041 SOUTH HIGH STREET  
 HARRISONBURG, VIRGINIA 22801



The home sets on a corner lot located at 73 Rex Road in Harrisonburg, Virginia. Large trees provide shaded areas around the two story duplex which has 2,112 square feet of living space. The downstairs bedroom has been converted into a play area with many toys, puzzles and books appropriate for children ages 1-5. Donna Budzius, the caregiver and homeowner, has 31 years' experience caring for and nurturing children. She offers a very organized and clean environment where children feel safe. She currently cares for four full time children.

The play area offers designated areas which include practical living, arts, blocks/building, manipulatives and a quiet corner where children may read or enjoy quiet activities. There is a bathroom next to the play area which will accommodate older children as well as younger children being potty trained. The living room/hallway is used as an additional play area. The living room is also used for drop off and pick up as well as conferencing with parents. Individual cubbies are provided for each child's belongings located in the hallway. Designated sleeping areas are equipped with toddler beds, mats or cots and a crib for a younger child all meeting Virginia Department of Social Services licensing requirements. The kitchen, conveniently located, enables monitoring the children during snack and lunch preparation.

The outdoor play area has riding toys, a water/sand table, a teeter-totter and other assorted outdoor toys and games. Much of the play area is shaded and includes a hardtop driveway where children can safely enjoy large motor play.

The flexible daily schedule consists of activities which focus on gross and fine motor skills, social/emotional development, expressive language, participation, transitioning, tolerance, sharing and child exploration play as I believe children learn best through play. There is adequate outdoor play, rest time and nutritionally prepared meals and snacks.

Safety is a top priority. Parents have easy access to parking for drop off and pick up. An evacuation plan is posted and smoke alarms are installed and working properly. Fire extinguishers and a first aid kit are readily available. Gates are installed at the top and bottom of the stairway. Rooms have been child proofed, clean and sanitized. Hand washing procedures will be followed by children and caregiver before each meal or snack is served, after bathroom use and diaper changes.

Health and immunization records will be required and any suspected child abuse will be reported immediately. Any substitute needed will have all appropriate back ground checks as required by licensing.

All policies, including discipline, fees, hours of operation, closings, illness/communicable diseases, holidays etc. are addressed in a handbook given to each parent. A contract will be required stating parents have read and agreed to all policies, as well as drop off and pick up times for their child.

I am requesting this Special Use Permit so I am able to care for more than the allowed four children and become licensed by the state of Virginia as a family day home. I feel I offer a valued service to many families looking for quality child care.

### CONTACT WITH LOCAL ZONING ADMINISTRATOR

THE FOLLOWING INDIVIDUAL PLANS TO SUBMIT AN APPLICATION FOR A LICENSE TO OPERATE A FAMILY DAY HOME PURSUANT TO § 63.2-100 OF THE CODE OF VIRGINIA

---

**To Be Completed by Operator of Family Day Home**

NAME OF APPLICANT Donna Budzius

PHYSICAL ADDRESS 73 Bee Rd. Harrisonburg VA 22801  
STREET OR ROUTE NO. CITY STATE ZIP

APPLICANT'S TELEPHONE NUMBER: 540-438-5811 EMAIL ADDRESS: dbudz02@verizon.net

THE HOME IS LOCATED IN THE COUNTY OR CITY OF Harrisonburg

APPLICANT IS REQUESTING A LICENSE TO CARE FOR THE FOLLOWING NUMBER OF CHILDREN (NOT INCLUDING CHILDREN WHO RESIDE IN THE HOME): 12

---

**To Be Completed by Local Zoning Administrator**

THE ZONING ADMINISTRATOR'S SIGNATURE ON THIS FORM VERIFIES THAT THE APPLICANT HAS INFORMED THE ZONING ADMINISTRATOR OF HIS/HER PLANS TO APPLY FOR A LICENSE TO OPERATE A FAMILY DAY HOME AT THE ADDRESS ABOVE.

Tax Map #	Parcel #	Zoning District
-----------	----------	-----------------

Printed Name of Zoning Administrator \_\_\_\_\_

Signature of Zoning Administrator \_\_\_\_\_ Date \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Comments:

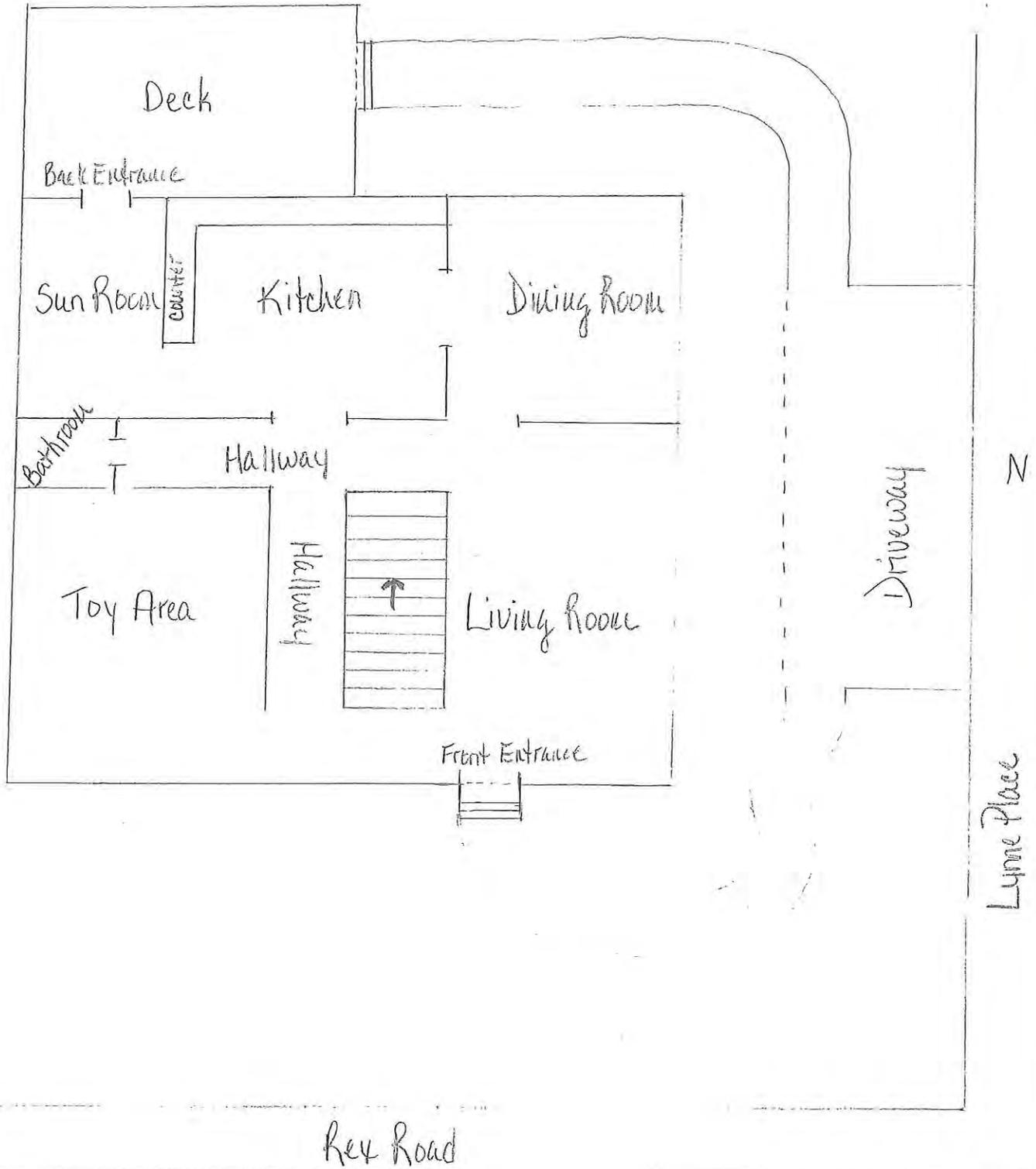
**For questions, please contact your Area Licensing Office (Information Attached)**

73, Rex Road Harrisonburg, VA 22801

W

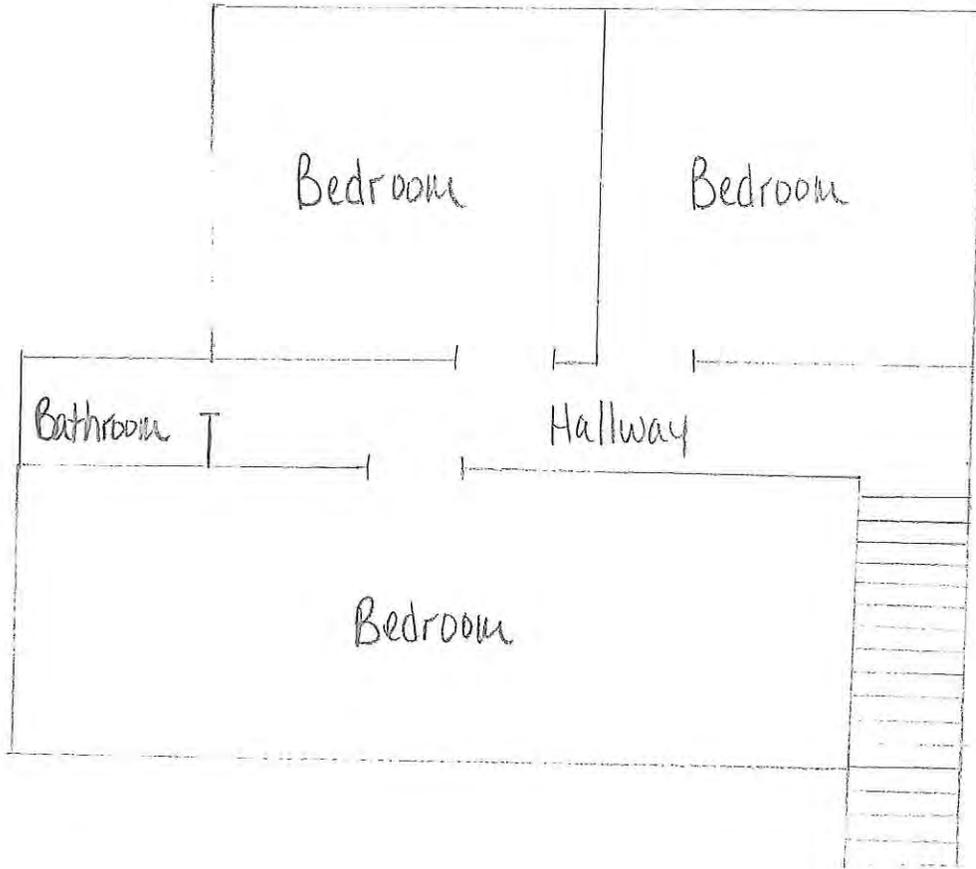
First Level

Indoor Family Day Home



W

Second Level



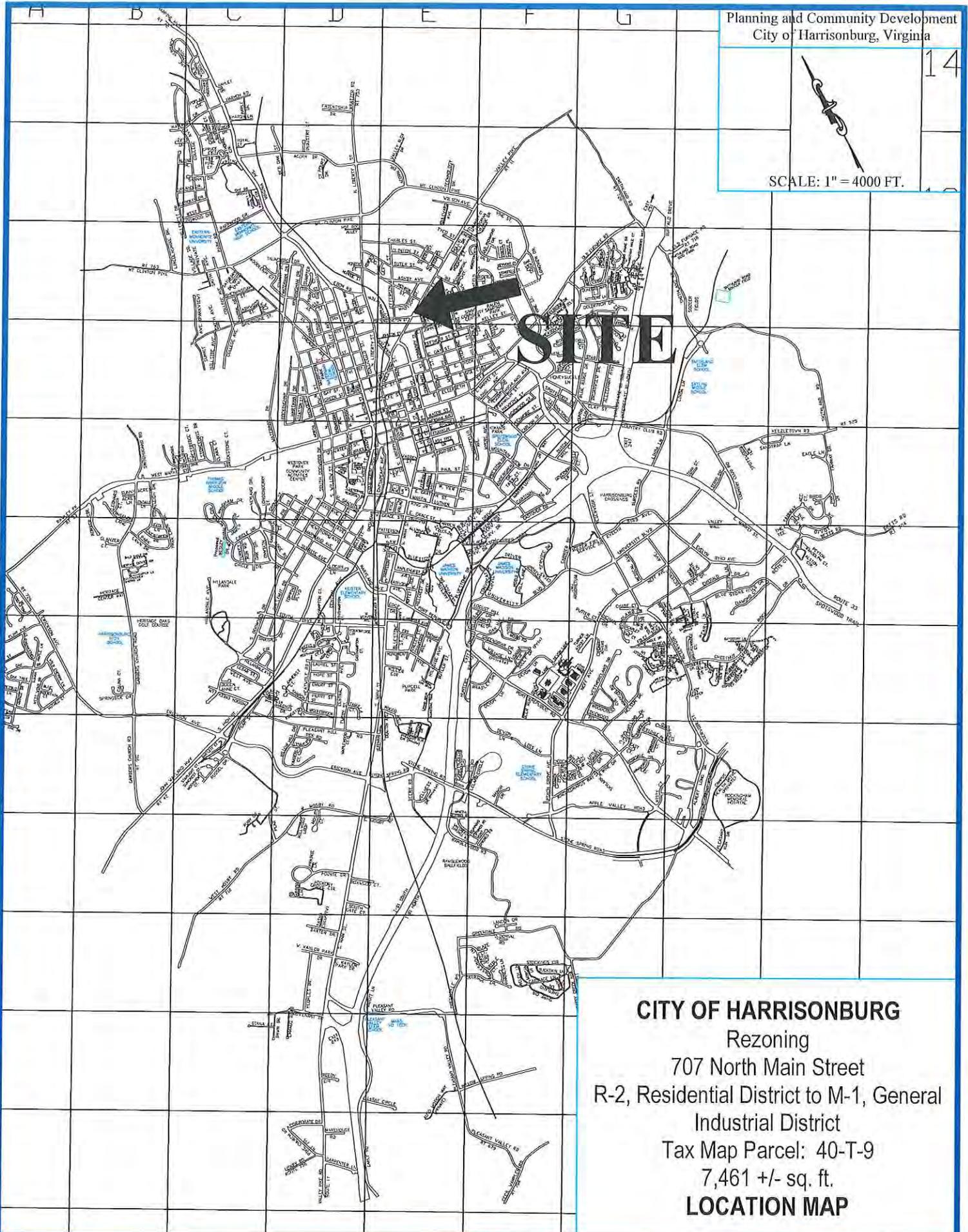
S

N

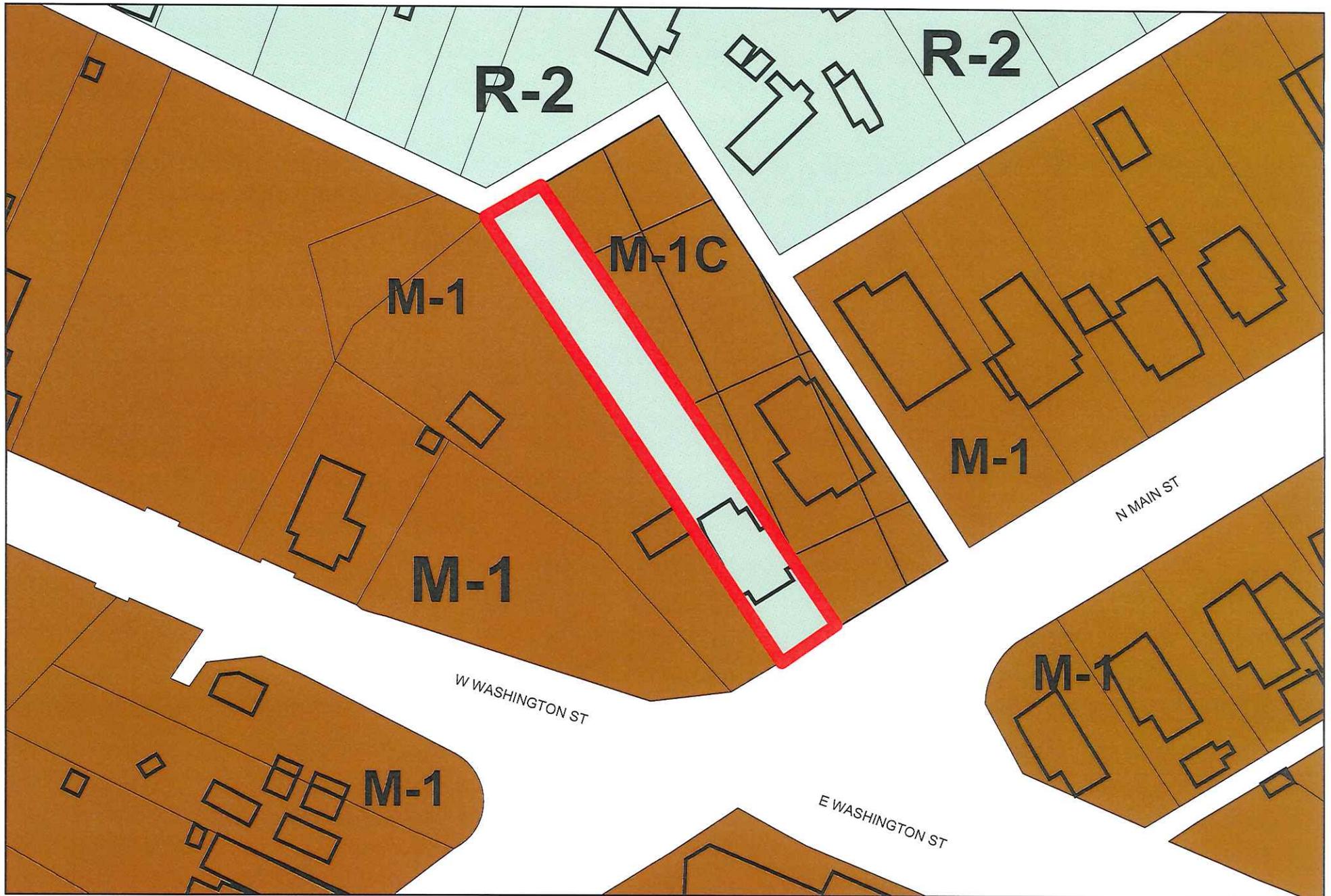
E



SCALE: 1" = 4000 FT.



**CITY OF HARRISONBURG**  
Rezoning  
707 North Main Street  
R-2, Residential District to M-1, General  
Industrial District  
Tax Map Parcel: 40-T-9  
7,461 +/- sq. ft.  
**LOCATION MAP**



**Rezoning - 707 North Main Street  
R-2, Residential to M-1, General Industrial**



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

**STAFF REPORT**  
**November 11, 2015**

## **REZONING – 707 NORTH MAIN STREET (R-2 TO M-1)**

### **GENERAL INFORMATION**

**Applicant:** Edwin Joya

**Tax Map:** 40-T-9

**Acreage:** 7,461 +/- square feet

**Location:** 707 North Main Street

**Request:** Public hearing to consider a request to rezone a parcel containing 7,461 +/- square feet from the R-2, Residential District to the M-1, General Industrial District.

### **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:** Non-conforming residential dwelling, zoned M-1

**North:** Rooming/Boarding house, commercial uses, and non-conforming residential dwellings, zoned M-1

**East:** Across North Main Street, commercial uses and non-conforming residential dwellings, zoned M-1

**South:** Vehicle sales lot, zoned M-1

**West:** Non-conforming residential dwellings, zoned M-1

### **EVAULATION**

The applicant is requesting to rezone a 7,461 +/- square foot parcel from R-2, Residential District to M-1, General Industrial District. If approved, the applicant desires to expand his existing vehicle sales use, which is located on the adjacent property to the south at 705 North Main Street, by constructing an automotive repair garage and office on a portion of the rezoned parcel. The non-conforming dwelling that is currently on the property would remain; however, it would no longer be occupied residentially and would be used as storage for the vehicle sales/repair use.

The parcel is located along the western side of North Main Street, approximately 60-feet north of the intersection of Washington and North Main Streets. Interestingly, the parcel was once zoned M-1. In April 2002, the subject property, along with the adjacent parcel to the north at 715 North Main Street were rezoned from M-1 to R-2, in order to alleviate non-conforming issues and allow the existing single-family homes to be renovated. Staff and Planning Commission recommended against the 2002

rezoning, citing possible conflicts with the existing adjacent commercial uses and the fact that it was not supported by the Comprehensive Plan. City Council unanimously approved the rezoning request.

Subsequently, the adjacent parcel (715 North Main Street) was purchased by Harrisonburg Redevelopment and Housing Authority and rezoned back to M-1 with proffers, so as to apply for special use permits to allow religious, educational, charitable, and benevolent institutional uses, a rooming/boarding house, and a reduction in parking. Staff and Planning Commission supported this request citing the rezoning was more in-line with the future plans for this section of North Main Street.

The parcel under review is a small, narrow lot, approximately 30' X 250' and lies completely within the flood plain, with a portion of it in the floodway; thus placing constraints on the redevelopment of the site. If successfully rezoned, the applicant plans to vacate the property line between the subject parcel and his adjacent property at 705 North Main Street, in order to construct a two or three bay automotive repair garage with associated offices.

At the time of subdivision, to meet the requirements of the Subdivision Ordinance, the property owner would need to dedicate right-of-way (ROW) along the frontage of both the subject parcel requested for rezoning, as well as along the adjacent parcel to the south. As identified within the Master Transportation Plan, North Main Street, from Noll Drive to Charles Street, is planned to be improved by removing on-street parking, creating a center turn lane, and providing better pedestrian and bicycle improvements. The applicant has been informed he would need to hire a surveyor to work with City staff in order to establish the exact amount of required property dedication to provide the needed street improvements as stated above. The ROW dedication can be shown on the same subdivision plat that illustrates the property line vacation. It should be further understood that once the dedication of ROW occurs, the existing structure on the subject parcel could become non-conforming to front yard setback requirements.

The Comprehensive Plan designates this property as Commercial. This designation means that the property is planned for uses such as retail, office, wholesale, or service functions. These areas are generally found along the City's major travel corridors and in the Central Business District. The applicant's intended use of automotive sales and repair is a use that is permitted within both, the B-2, General Business and the M-1, General Industrial Districts; however, in the B-2 district, all vehicle repair and storage must be located within a permitted structure, whereas the M-1 district allows vehicle repair and storage to be located outside of buildings, but shall be within a designated area and screened. The applicant's existing automotive sales lot is directly adjacent to the subject parcel and is already zoned M-1, as well, all the surrounding properties along North Main Street are zoned M-1; thus the logical request for the applicant was to rezone back to the M-1 zoning.

In addition, the subject parcel lies within one of the Comprehensive Plan's designated Corridor Enhancement Areas; therefore, items such as land use; vehicle, pedestrian, and bicycle circulation; access management; development, redevelopment, and reuse opportunities; conservation of special features; and signage should be considered. Staff has discussed with the applicant the need to be mindful of items such as signage, street access, and storage of materials for the subject property as well as his larger operation.

As previously noted the parcel lies completely within the floodplain. City staff has had numerous conversations with the applicant regarding the requirements of constructing within the floodplain and the applicant is aware that all floodplain regulations must be complied with.

Although staff would much rather the area along this portion of North Main Street be rezoned to the B-2 district, we understand the constraints of rezoning this one narrow parcel to fit with the existing uses. Staff believes returning the property to the M-1 zoning district is better than maintaining the existing R-2 residential zoning for the long term goals of this section of the City. Staff recommends in favor of the requested rezoning.

Date Application Received: 10/1/2015

Total Paid: \$405<sup>00</sup> CB.

### Application for Change of Zoning District City of Harrisonburg, Virginia

#### Section 1: Property Owner's Information

Name: Edwin Joya  
Street Address: 960 Confederacy Dr. Email: edwinauto sales@gmail.com  
City/State/Zip: Penn Laird VA 22846  
Telephone (work): 540-437-0017 (home or cellular): 540-560-2640 (fax): 540-564-0017

#### Section 2: Owner's Representative Information

Name: Same  
Street Address: \_\_\_\_\_ Email: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone (work): \_\_\_\_\_ (home or cellular): \_\_\_\_\_ (fax): \_\_\_\_\_

#### Section 3: Description of Property

Location (street address): 707 North Main St  
Tax Map Number: Sheet: 40 Block: T Lot: 9 Total Land Area (acres or square feet): 7449  
Existing Zoning District: R2 Proposed Zoning District \* : M1 (Per GIS 7,461 sq ft) AF  
Existing Comprehensive Plan Designation: Commercial

*\*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**



566 East Market Street · (540) 432-9555 · (540) 434-7604 fax · www.BlackwellEngineering.com

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September 23, 2015

Written on behalf of: Edwin Joya

**Re: Description of Proposed Use for 707 N. Main St. (TM: 40-T-9)**

Harrisonburg City,

Currently Tax Map # 40-T-9 is zoned R-2 and I am wishing to rezone it to M-1 to better align itself with the surrounding properties.

I will leave the current residential structure located at 707 N. Main St.; however, it will be used as a storage unit for my property and will not be used for residential use. I fully understand that once my property is rezoned to M-1 the "home" at 707 N. Main St. can not be used for residential purposes.

My desire is to:

1. Rezone the property on 707 N. Main St. from R-2 to M-1.
2. Vacate the property line between 707 N. Main St. and 705 N. Main St. (of which I am also the owner).
3. After vacating the property line I would like to construct a two or three bay automobile garage and office area. The garage bays will be to service the vehicles for my business, and the office space will replace the current office space I am occupying on 705 N. Main St.

I am aware of the setbacks required from the adjacent properties and the garage\office I want to build will safely fit well within those boundaries once it is rezoned to M-1.

Sincerely,

A handwritten signature in black ink that reads 'Jon Clark'.

Jon Clark-

ROCKINGHAM COUNTY  
Chaz W. Evans-Haywood  
CLERK OF COURT  
Harrisonburg, VA 22801



60 2010 00018569

Instrument Number: 2010-00018569

As

Recorded On: July 09, 2010

Deed of Bargain & Sale

Parties: SHIFFLETT GEORGE E

To

JOYA EDWIN E

Recorded By: WEST VIEW TITLE AGENCY INC

Num Of Pages: 4

Comment: PARCEL HBURG

**\*\* Examined and Charged as Follows: \*\***

Deed of Bargain & Sale	6.50	10 or Fewer Pages	14.50	Deed Processing Fee	20.00
Transfer Fee City	1.00				
Recording Charge:	42.00				
	Tax Amount	Consideration Amount	RS#/CS#		
Transfer Tax Grantee	897.33	269,200.00		State Grantor Tax 0.00	214 Grantee City Tax 224.33
				State Grantee Tax 673.00	220 Grantor County 0.00
				213 Grantee County Ta: 0.00	223 Grantor City 0.00
Transfer Tax Grantor	269.50	269,200.00		State Grantor Tax 134.75	214 Grantee City Tax 0.00
				State Grantee Tax 0.00	220 Grantor County 0.00
				213 Grantee County Ta: 0.00	223 Grantor City 134.75
Tax Charge:	1,166.83				

*Purchase price @ 263,000.00*

**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For ROCKINGHAM COUNTY, VA

**File Information:**

**Record and Return To:**

Document Number: 2010-00018569  
Receipt Number: 174823  
Recorded Date/Time: July 09, 2010 03:33:30P  
Book-Vol/Pg: Bk-OR VI-3730 Pg-296  
Cashier / Station: A Pittman / Cash Station 3

WEST VIEW TITLE AGENCY INC  
C/O CHRISTOPHER A JONES  
370 NEFF AVE SUITE VA  
HARRISONBURG VA 22801



THE STATE OF VIRGINIA  
COUNTY OF ROCKINGHAM

I certify that the document to which this authentication is affixed is a true copy of a record in the Rockingham County Circuit Court Clerk's Office and that I am the custodian of that record.

*Chaz W. Evans-Haywood*  
CLERK OF COURT  
ROCKINGHAM COUNTY, VIRGINIA

VE&Z  
Doc Bk Vol Pa # of Pgs  
00018569 OR 3730 296 4  
Jul 09, 2010

*Please Return this Document to:*  
West View Title Agency, Inc.  
370 Neff Avenue, Suite V  
Harrisonburg, Virginia 22801

**D E E D**

**THIS DEED** made this 6<sup>th</sup> day of July, 2010 by and between George E. SHIFFLETT, Grantor, and Edwin E. JOYA, Grantee.

For the sum of TEN DOLLARS (\$10.00) and other consideration, of which Grantor acknowledges receipt prior to the delivery of this Deed, George E. Shifflett, Grantor, grants and conveys with General Warranty and English Covenants of title, subject to easements and restrictions of record, the following described real estate located in the City of Harrisonburg, Virginia to Edwin E. Joya, Grantee:

**PARCEL ONE:** All that certain tract or parcel of land, together with any improvements thereon and all rights, privileges, easements, appurtenances, and rights-of-way thereunto belonging or in anywise appertaining, situate on the northeastern side of West Washington Street in the City of Harrisonburg, Virginia, and more particularly described by the following metes and bounds description:

Beginning at the northeastern corner of Washington Street and the Valley Turnpike or North Main Street, and thence with the line of Washington Street N 62 2/8 W 215 feet to the east bank of Black's Run, and along the bank of the same, N 34 1/4 E 97.5 feet to a stake, thence along the line of Everette Snyder S 50 3/8 E 152.5 feet to a post near a thorny locust, thence S 28 3/4 E 89.5 feet to a fence post on line of Valley Pike (U.S. Highway No. 11) and along the west line of same S 61 3/8 W 26.8 feet to the beginning, containing 59.6 poles.

**LESS AND EXCEPT, HOWEVER,** all that certain tract or parcel of land containing 5,436 square feet, conveyed by Russell P. Eagle and Frances C. Eagle, husband and wife, by deed dated July 21, 1960, to Glendon R. Spitzer, which deed is recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 280, page 301.

Tax Map # 40 T 7, 40 T 8, 40 T 8A and 40 T 9

---

*This instrument was prepared by:*  
**David W. Earman, Attorney at Law**  
57 S. Main Street, Suite 206, Harrisonburg, Virginia 22801  
Tel (540) 434-7306 Fax (540) 434-1411

**PARCEL TWO:** All those two (2) certain tracts or parcels of land, together with any improvements thereon and all rights, privileges, easements, appurtenances, and rights-of-way thereunto belonging or in anywise appertaining, situate in the City of Harrisonburg, Virginia, and described as follows:

**TRACT ONE:** All that certain lot or parcel of land situate on the west side of North Main Street, and described by a survey made by A. R. Myers, S.R.C. on May 24, 1933, as follows:

Beginning at a notch cut in the pavement in the northwest line of North Main Street, A. V. Lawson's corner, said notch being 26 feet from the intersection of the north line of West Washington Street with the northwest line of North Main Street; thence, with Lawson's line, N. 28 W. 89.5 feet to an iron pin; N. 51 3/4 W. 152.5 feet to an iron pin on the east bank of Black's Run, Lawson and George W. Webster's corner; thence, with Webster's lines, N. 27 E. 17 feet to an iron pin; N. 55 3/4 E. 85.4 feet, to an iron pin at the intersection of the south line of a 12 foot alley and the east line of a 12 foot alley, Webster and Frank Melhorn's corner; thence, with Melhorn's lines, S. 28 3/4 E. 250 feet, to a notch cut in the pavement in the northwest line of the street, Melhorn's corner; and thence, with the line of said Street, S. 62 W. 42 feet to the beginning.

**TRACT TWO:** All that certain tract or parcel of land situate north of West Washington Street, and bounded and described as follows:

Beginning at a point in a rock fence, a corner of Fultz and Webster; thence, by a new line through the lot northwestward 56 feet crossing the creek, to a rock on the right bank of same; thence, northeastward 65 feet, re-crossing creek, to a 12 foot alley; thence, with the south line of said alley, eastward 35 feet to a proposed 20 foot street; and, thence with same, southward to the beginning.

**LESS AND EXCEPT, HOWEVER,** from Parcels One and Two above, 1,449 square feet, more or less, for improvements to Washington Street conveyed by Certificate dated July 15, 1994, to the City of Harrisonburg, recorded in the aforesaid Clerk's Office in Deed Book 1291, page 343.

**PARCEL THREE:** All that certain tract or parcel of land, together with any improvements thereon and all rights, privileges, easements, appurtenances, and rights-of-way thereunto belonging or in anywise appertaining, situate and fronting thirty feet (30') on the west side of North Main Street in the City of Harrisonburg, Virginia, said lot extending westward therefrom by parallel lines a distance of 250 feet, and being the northern half of Lot No. Two (2) as shown on the plat and plan of PRICE AND SHUNK ADDITION to the City of Harrisonburg, which plat is recorded in the Clerk's Office of Rockingham County, Virginia, in Hustings Court Deed Book No. 1, at page 45.

---

*This instrument was prepared by:*

**David W. Earman, Attorney at Law**  
57 S. Main Street, Suite 206, Harrisonburg, Virginia 22801  
Tel (540) 434-7306 Fax (540) 434-1411

The above described property is a portion of the real estate conveyed to the Grantor herein by deed dated the 14<sup>th</sup> day of May 2010 from David W. Earman, Substitute Trustee, which deed is of record in the Clerk's Office of the Circuit Court of Rockingham County in Deed Book 3706 at page 433, reference to which is made for derivation of title to the property conveyed herein.

*WITNESS* the following signature and seal.

x. George E. Shifflett (SEAL)  
George E. Shifflett, Grantor

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

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of July, 2010, by George E. Shifflett, Grantor.

My commission expires: November 30, 2013

Angela Renee Schirmscher  
Notary Public

MAIL TO: 679 Stonewall Dr.  
Harrisonburg, VA 22801

Angela Renee Schirmscher  
Notary of Public  
Commonwealth of Virginia  
Registration # 329797  
My Commission Expires 11/30/2013

---

*This instrument was prepared by:*  
**David W. Earman, Attorney at Law**  
57 S. Main Street, Suite 206, Harrisonburg, Virginia 22801  
Tel (540) 434-7306 Fax (540) 434-1411



SCALE: 1" = 4000 FT.

**SITE**

**CITY OF HARRISONBURG**

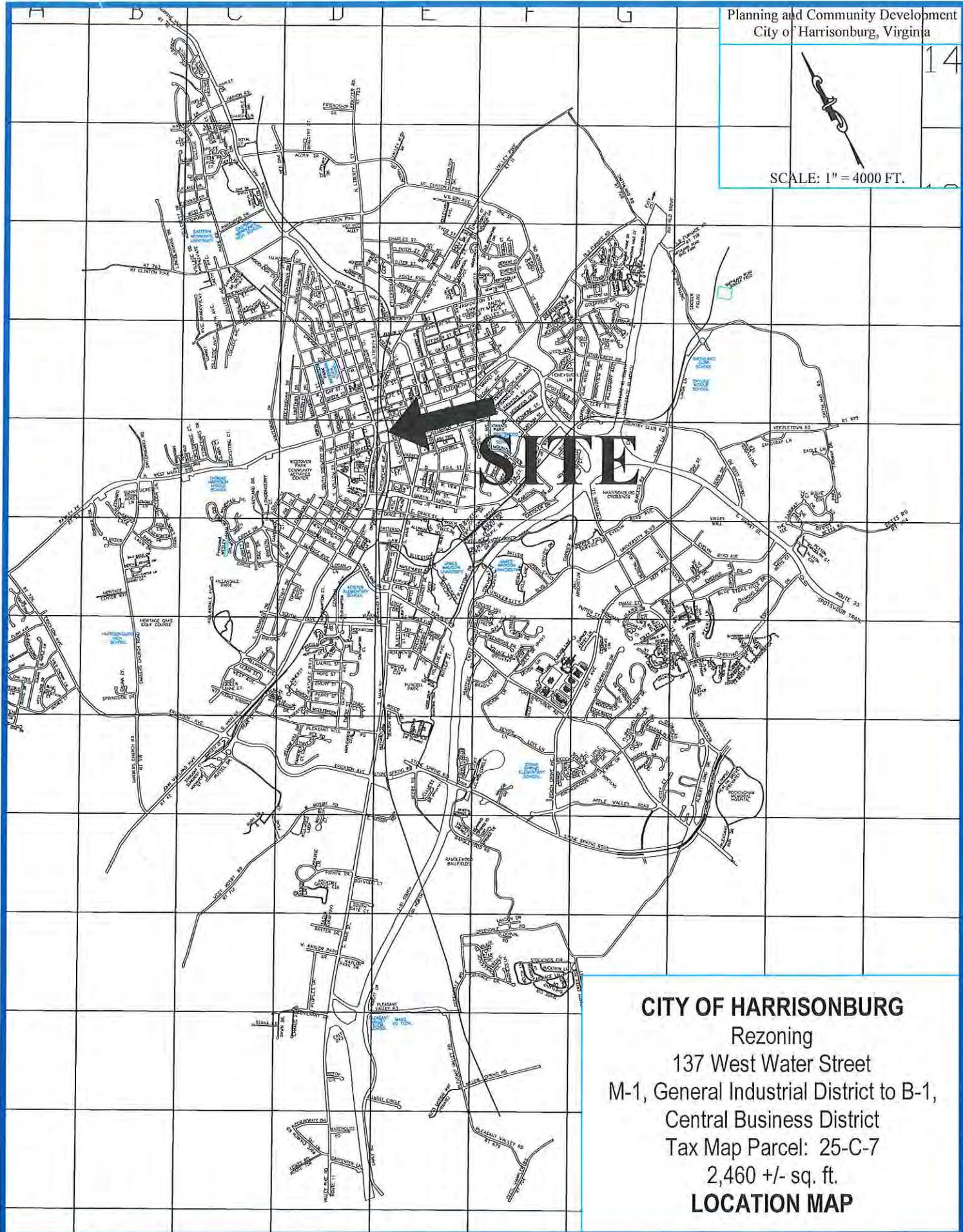
Rezoning

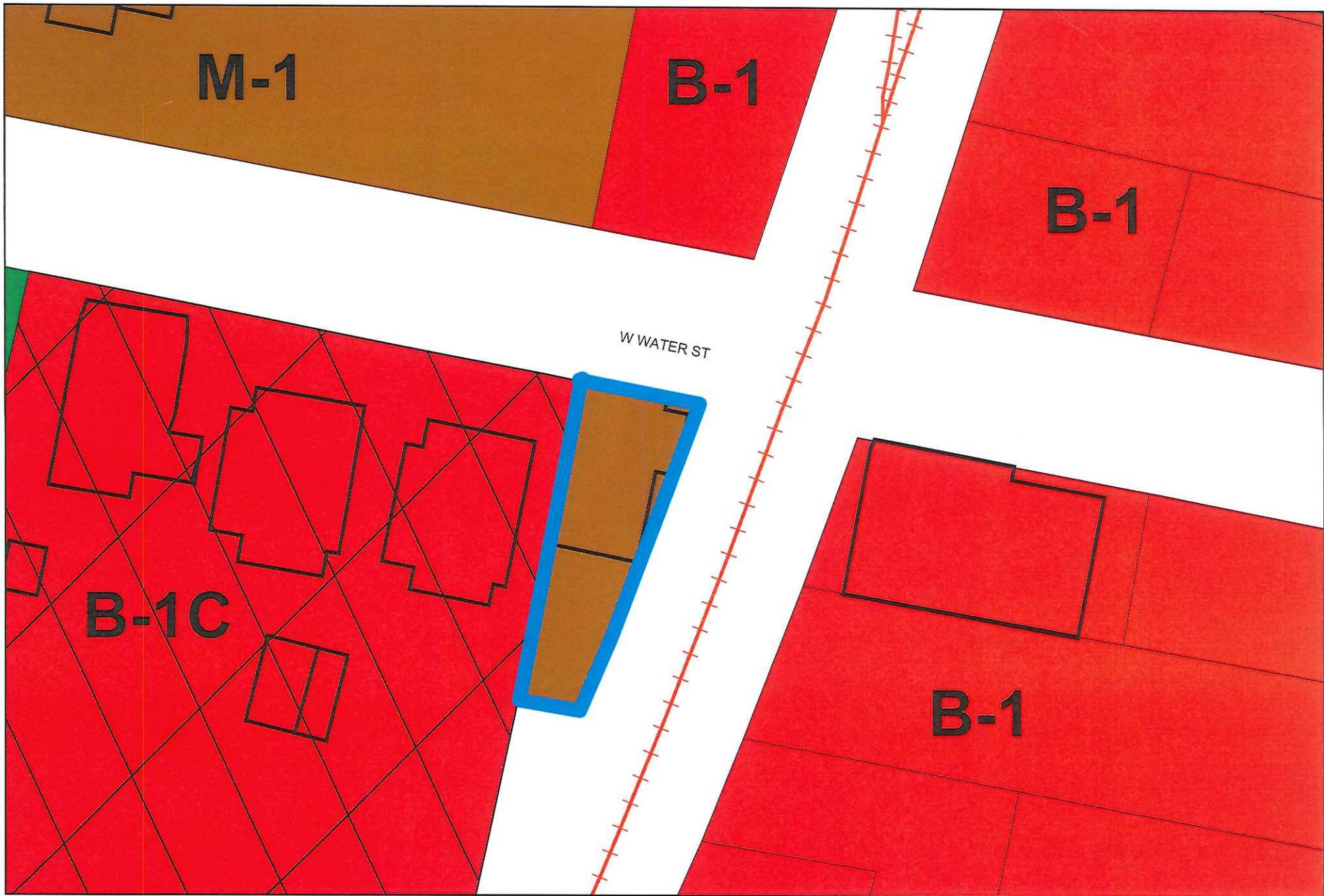
137 West Water Street  
M-1, General Industrial District to B-1,  
Central Business District

Tax Map Parcel: 25-C-7

2,460 +/- sq. ft.

**LOCATION MAP**





**Rezoning - 137 West Water Street  
M-1, General Industrial to B-1, Central Business**



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

**STAFF REPORT**  
**November 11, 2015**

## **REZONING – 137 WEST WATER STREET (M-1 TO B-1C)**

### **GENERAL INFORMATION**

**Applicant:** 137 Water LLC, with representative Barry Kelley

**Tax Map:** 25-C-7

**Acreage:** 2,460 +/- square feet

**Location:** 137 West Water Street

**Request:** Public hearing to consider rezoning one parcel from M-1, General Industrial 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:** Non-conforming single family structure, zoned M-1

**North:** Across West Water Street, Rosetta Stone offices, zoned B-1

**East:** Across Norfolk Southern Railroad tracks, retail uses and other Rosetta Stone offices, zoned B-1

**South:** Ice House parking lot, zoned B-1C

**West:** Ice House parking lot, zoned B-1C

## EVAULATION

The applicant is requesting to rezone a small parcel containing 2,460 +/- square feet from M-1, General Industrial District to B-1C, Central Business District Conditional. The property is located at 137 West Water Street, which is adjacent to the southwest of the wooden bridge over the Norfolk Southern Railroad tracks. The property has been used residentially for many years and includes a non-conforming single family structure. The building also is non-conforming to setback regulations as the structure does not meet minimum setback requirements. Per staff's research, the building appears to have been built sometime between 1907 and 1912 as the structure is not shown on the 1907 Sanborn map but then appears on the 1912 Sanborn map, where it is described as a cigar factory.

The applicant acquired the property in April 2015 and believes the prior owners had used the building as a duplex. There are only a few building permits on record for this property; a 1972 permit was issued to convert the basement to an apartment for the property owner's in-laws. Aside from that building permit, there is no documentation to confirm the property was used continuously since 1972 as a two unit dwelling to maintain its non-conformity. Although not always an indication of two units, the site does not have two addresses nor does it have two water meters or two electrical meters.

The applicant would like to rezone the property to B-1 because the Central Business District allows residential uses by right and has no minimum setback regulations; therefore, successfully rezoning the lot to B-1 would bring the use and the structure into zoning compliance. The applicant plans to renovate the existing residential structure by creating two, one-bedroom units—one on the first floor and one on the bottom/basement floor. At the end of October, the applicant was issued a building permit to begin renovating the structure. The work on that permit includes improvements that are permitted, whether the rezoning is approved or not.

Although the property is quite small, and the applicant has already been issued a building permit to begin renovations to use the property residentially, if the property is rezoned to the B-1 district, there are no guarantees about future uses or residential occupancies of the property. By right, any residential unit could have up to 4 occupants in the B-1 zoning district. As is always emphasized by staff, because there are no minimum parking requirements in the B-1 district, if the City approves any B-1 rezoning request, the City is also accepting the responsibility of the parking demand such properties place on the City's downtown area. In this particular case, the property's uses could change over time from the current intended use to something more parking intensive.

Staff understands that historically this site has been occupied by individuals that often times did not have a vehicle or may have only had one vehicle. Prior to the adjacent property developing into a large parking lot, there was a small parking area to the rear of the subject property's residential structure, and there was access to the public street. Since the construction of the parking lot, there no longer remains vehicular access to the rear of the property to provide off-street on-site parking.

In understanding staff's concerns, the applicant submitted the following proffer:

- The subject property shall be permitted to utilize all abilities granted by the B-1 zoning district, except that residential use of the existing single family structure shall be limited to two, one-bedroom units, where occupancy shall be restricted to a family or not more than two (2) persons.

The submitted proffer resolves staff's typical concerns regarding off-street parking for B-1 properties. Although parking details were not proffered, limiting the residential use of the existing structure essentially maintains its likely historical use while limiting the occupancy of each unit. Also, in this

particular case, the adjoining parking lot is owned by the applicant and he has explained that any tenant of either unit would have the ability, if necessary, to lease parking spaces within the Ice House parking lot. Furthermore, given the small size of the property, redeveloping the subject property would likely mean redeveloping the larger block, which includes the Ice House parking lot. The Ice House parking lot parcel is zoned B-1C, where the only regulating proffer states that “all uses shall comply with requirements of Article G Off-Street Parking except that residential dwelling units shall provide one parking space per dwelling unit.”

The West Water Street wooden bridge over the railroad, which is adjacent to the northeast of the subject property, is planned for reconstruction, which would likely necessitate some type of improvements across the subject properties street frontage. At this time, staff is uncertain of the exact timeline of when the improvements would be made. Rezoning the property does not require public street right-of-way dedication. However, the applicant should understand if the subject property is redeveloped (i.e. the existing structure is demolished, the use of the property is substantially changed, etc.), prior to improvements being made to the bridge, the property owner would be required to dedicate a portion of the property’s street frontage to the City for the bridge and street’s reconstruction and improvements.

Although unrelated to the rezoning request, the Department of Public Utilities noted that the existing residential structure utilizes a private sanitary sewer lateral connection across the adjoining property to the west (the Ice House parking lot parcel). During the development of the adjoining property in 2014, the City requested that a private sewer easement be provided to the parcel at 137 West Water Street. Staff is unaware if the private easement was established. Without the private easement, there is no legal sewer service connection to 137 West Water Street. If the easement does not exist, staff recommends the required private sewer lateral easement be recorded as soon as possible.

With regard to the Comprehensive Plan, rezoning the property to B-1C conforms with the Land Use Guide as the property is designated Mixed-Use Development Areas. The property falls within a quarter-mile radius of Court Square proving the property’s ability to being walkable to the many services offered downtown. Furthermore, the property is identified within the Plan’s Downtown Revitalization Area and although there is no specified strategy or guideline for development for having such a designation, the Plan recognizes that developments and redevelopments in this area are highly desirable for continued efforts for reviving downtown.

With the submitted proffer, staff supports rezoning the property from M-1 to B-1C.

To: City of Harrisonburg  
From: Barry K. Kelley  
Manager – 137 Water LLC

11/5/15

To Whom it may concern,

I am the manager of the entity that owns 137 W. Water Street. It has been used as a Duplex until January 2015. I would like to request a zoning change from M-1 to B-1 in order to bring the property into compliance. The use will remain Residential. The property is surrounded by B-1 zoning. Changing the zoning will allow future appropriate development for the area.

I hereby proffer that the development of the subject property on this application shall be in strict accordance with the conditions set forth in this submission. The subject property shall be permitted to utilize all abilities granted by the B-1 zoning district, except that residential use of the existing single family structure shall be limited to two, one-bedroom units, where occupancy shall be restricted to a family or not more than two (2) persons.

Sincerely,



Barry Kelley



VE&Z

Doc	Bk	Vol	Ps	# of Pgs
00010291	OR	4561	596	4

APR 29, 2015

The existence of title insurance is unknown to the preparer.

Tax Map No. 025-(C)-L7

THIS DEED, exempt from recording taxes pursuant to Virginia Code Section 58.1-811(A)(10), made this 27th day of April, 2015, by and between BARRY K. KELLEY, Grantor, and 137WATER, LLC, a Virginia limited liability company, Grantee,

WITNESSETH:

As a capital contribution to 137Water, LLC, a Virginia limited liability company, upon its formation, the Grantor, as the initial member of 137Water, LLC, does hereby grant and convey with General Warranty and English Covenants of Title, unto 137Water, LLC, a Virginia limited liability company, Grantee, all that certain tract or parcel of land, together with all improvements thereon, and all rights, privileges, easements, appurtenances, and rights of way, thereunto belonging or in anywise appertaining, situate on the south side of West Water Street in the City of Harrisonburg, Virginia, and being shown and described on a plat recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 81, page 256, and further described in prior deeds as adjoining Life on the west and the right of way of the Southern Railway on the east, and further described in prior deeds by the following metes and bounds:

Beginning at W. C. Whitmore's corner on the South side of Water Street; thence with the same, S. 77 degrees E. 30 ½ feet, to the West side of the R. R. limits, thence, with the same, S. 20 ¾ degrees W. 83.2 feet, to a stake; thence N. 77 degrees, W. 19.3 feet, to said Whitmore's line and with the same, N. 13 degrees E. 82 ½ feet to the beginning.

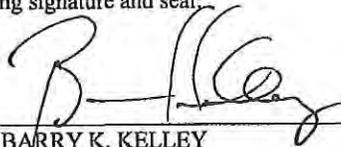
The real estate herein conveyed is the same property acquired by the Grantor herein by deed dated April 27, 2015, from ONE39, LLC, a Virginia limited liability company, which said deed is intended to be recorded immediately prior hereto.

This conveyance is made subject to all recorded easements, conditions, restrictions and agreements as they may lawfully apply to the real estate hereby conveyed or any part thereof.

Reference is hereby made to the aforesaid deed and survey plat for further description and derivation of title to the property described herein.

This deed is prepared without benefit of a title search.

WITNESS the following signature and seal:

  
BARRY K. KELLEY (SEAL)

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

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this 28<sup>th</sup> day of April, 2015, by BARRY K. KELLEY.

My commission expires: 1/31/2018.

Notary Registration Number: 7607138

Heather Renee Boas  
Notary Public



Date Application Received: \_\_\_\_\_

Total Paid: 405.00 *AF*

## Application for Change of Zoning District City of Harrisonburg, Virginia

### Section 1: Property Owner's Information

Name: 137 WATER LLC (Barry Kelley)  
Street Address: 1531 Hillcrest Drive Email: barry@matchboxreality.com  
City/State/Zip: Harrisonburg VA. 22802  
Telephone (work): \_\_\_\_\_ (home or cellular): 540.421.2878 (fax): \_\_\_\_\_

### Section 2: Owner's Representative Information

Name: Same  
Street Address: \_\_\_\_\_ Email: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone (work): \_\_\_\_\_ (home or cellular): \_\_\_\_\_ (fax): \_\_\_\_\_

### Section 3: Description of Property

Location (street address): 137 W. WATER STREET  
Tax Map Number: Sheet: 025 Block: C Lot: 7 Total Land Area (acres or square feet): 2460 sq/ft  
Existing Zoning District: M1 Proposed Zoning District \* : B1  
Existing Comprehensive Plan Designation: B II

*\*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: *[Signature]*  
Property Owner

**See Back for Items Required for Submission**