



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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June 27, 2025

**TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA**

SUBJECT: *Consider a request for a special use permit to allow restaurants at 201 South Avenue*

**EXTRACT FROM THE DRAFT MINUTES OF HARRISONBURG PLANNING
COMMISSION MEETING HELD ON: June 11, 2025**

Chair Baugh read the request and asked staff to review.

Ms. Rupkey said the applicant is requesting a special use permit (SUP) per Section 10-3-97 (1) to allow restaurants in the M-1 district. The +/- 5,774-square foot property is located at the intersection of South Avenue and South High Street (Route 42), is addressed as 201 South Avenue, and is identified as tax map parcel 20-B-8.

In March 2025, staff became aware of a mobile food truck operating illegally at this site and issued a notice of violation to the property owner. After the notice of violation was issued, staff began working with the property owner to apply for a SUP. While reviewing the site, staff also discovered an unpermitted platform constructed as a standing area for customers to place orders. A building permit application has since been submitted for the platform, which is currently under staff review.

The applicant has also been informed that their electrical permit was not applied for correctly. They had applied for an electrical permit and installed an electrical service on the property addressed as 1105 South High Street. However, the service is providing power to the food truck located at 201 South Avenue. This is not allowed as each parcel will need their own electrical service. Harrisonburg Electric Commission requests that if the SUP is approved, the property owner apply for new electrical permits for 201 South High Street to have its own service within 60 days of approval.

The applicant is aware that if the SUP is approved, the mobile food truck will need to meet all the requirements associated with Mobile Businesses and Food Trucks, which are located on the City's website at <https://www.harrisonburgva.gov/mobile-businesses>. It will be the responsibility of the

mobile food truck/trailer owner/operator to work with the Harrisonburg/Rockingham Health Department and the City of Harrisonburg's Public Works, Public Utilities, Fire, Community Development, and Commissioner of Revenue Departments to ensure all requirements are met.

Land Use

The Comprehensive Plan designates this site as Limited Commercial and states:

These areas are suitable for commercial and professional office development but in a less intensive approach than the Commercial designation. These areas need careful controls to ensure compatibility with adjacent land uses. The maintenance of functional and aesthetic integrity should be emphasized in review of applications for development and redevelopment and should address such matters as: control of access; landscaping and buffering; parking; setback; signage; and building mass, height, and orientation. It is important that development within Limited Commercial areas does not incrementally increase in intensity to become similar to the Commercial designation. Efforts should be made to maintain the intent as described above.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the SUP request.

The site currently has two entrances, one on South High Street and one on South Avenue. The Design and Construction Standards Manual (DCSM) Section 3.1.8.2 states that "[d]irect property access will be restricted along arterials and collectors, whenever reasonable access can be provided to a lower class roadway." Since there is the ability to access the site from South Avenue and the existing entrance from South High Street is less than 50 feet from the signalized intersection, staff recommends a condition to permanently close the South High Street entrance and replace it with curb and gutter.

Access to the site via the South Avenue entrance will also require modifications. The DCSM requires that commercial entrances be a minimum of 30 feet wide to allow for safe maneuvering for two-way vehicular traffic in and out of the site. Staff recommends a condition that the applicant rebuild the South Avenue entrance to meet the DCSM standards for a commercial entrance.

Staff has discussed these concerns and proposed conditions with the applicant, and the applicant is aware that any work within the public right-of-way, which includes closing the South High Street entrance and widening the South Avenue entrance, will require public access permits issued by the Department of Public Works.

Additionally, while there is not a requirement for off-street parking for mobile food trucks/trailers, any area that is used for parking must comply with Section 10-3-30.1 of the Zoning Ordinance. The applicant has graveled a portion of the property to provide parking for their customers and this area must meet parking lot landscaping requirements, which includes, but is not limited to, a

ten-foot landscaping border or three-foot fence between the parking area from all side and rear property lines and a ten-foot landscaping border and trees between the parking area and the public street.

Public Water and Sanitary Sewer

The applicant is aware that liquid waste must properly be disposed of into a sanitary sewer system. It is the responsibility of the mobile food truck operator to ensure that they are meeting the regulations that are put in place by the Department of Public Utilities and the Department of Public Works.

Conclusion

As previously stated, the Land Use Guide designates this area as Limited Commercial, and a restaurant use can at times be a suitable use on properties designated Limited Commercial. Overall, staff believes that with the appropriate changes to the entrances on South Avenue and on South High Street, that the mobile food truck restaurant use should have no adverse effect on the health, safety, or comfort of those working and living in the area. Staff recommends approval of the SUP with the following conditions:

1. The special use permit is limited to one mobile food truck/trailer.
2. Within 60 days of approval of the special use permit, the applicant shall permanently close South High Street and rebuild the curb and gutter.
3. Within 60 days of approval of the special use permit, the entrance along South Avenue must be re-built to meet commercial entrance standards width of a minimum of 30 feet.
4. Within 60 days of approval of the special use permit, the property owner shall complete the appropriate permits and work for 201 South Avenue to have its own electrical service and meter.
5. If any the above conditions are not met within 60 days of approval, then operations of a mobile food truck/trailer must immediately cease until the conditions are met.

Recommendation

Recommend approval of the special use permit request with suggested conditions.

Chair Baugh asked if there any questions for staff.

Councilmember Dent said I think you said it was B-1 district?

Ms. Rupkey said M-1, if I said B-1, I apologize.

Commissioner Alsindi said it says the applicant is requesting a special use permit to allow restaurants or is it...?

Ms. Rupkey said it is for a food truck, but we consider a food truck the same classification as a restaurant in the terms of use. They would need to have the restaurant special use permit to use the food truck.

Commissioner Alsindi said how many restaurants, approximately speaking, would be able to open there? More than one now?

Ms. Rupkey said today?

Commissioner Alsindi said no, in the future.

Ms. Rupkey said it would be limited to the one food truck or trailer.

Ms. Dang said based on the condition that staff is recommending we are asking that you all continue to recommend that only one food truck can be allowed on the site so, no other restaurant.

Commissioner Alsindi said I just saw that and wanted to make sure. Thank you.

Councilmember Dent said is the responsibility of the owner/operator to work with the Health Department, Public Works, Public Utilities, Fire, Community Development and [Commissioner of the] Revenue and so on, that is a whole list of things they have to do. Is that all within 60 days too?

Ms. Rupkey said no, those are the typical food truck requirements that would have to be met for any food truck that is existing.

Councilmember Dent said that does not have the same time limit as the 60 days to do the streets and electric and such.

Ms. Dang said some of those things they have completed already. I understand that the Fire Department, for example, has already completed their inspection. I would hope that the Health Department has reviewed this but maybe the applicant can weigh in on that.

Commissioner Porter said I just wanted to express to staff that I appreciate that there has been an effort made to keep this business operating while this process is going on.

Chair Baugh asked if there were any more questions for staff. Hearing none, he invited the applicant or applicant's representative to speak to their request.

Belen Martinez, the applicant, came forward to speak to the request. He said we purchased it the end of last year and it is our first experience of this. We will do whatever you need us to do. That business, again, to your comment [directed toward Commissioner Porter], thank you. It is something that someone depends on to provide for their family. Thank you guys for doing that. Other than that, we are here to help and do whatever you guys need us to do.

Vice Chair Finnegan said for the 60 day requirement for closing that entrance and...

Mr. Martinez said closing the entrance and expanding the other.

Vice Chair Finnegan said "Within 60 days the applicant shall permanently close the entrance and rebuild the curb and gutter." I guess my question both for you and for staff is that something that can be done within 60 days?

Mr. Martinez said contractor wise, we do have a contractor set and they have already given me an estimate. It would just be a matter of them applying and getting the permits correctly to get that work done. It should not take them more than 60 days. I mean I do not know, it is one of those things.

Vice Chair Finnegan said I guess what I am getting at is I think closing the entrance seems doable. You can put a chain or something across there.

Mr. Martinez said I have a suggestion; they do this in local parks here in town. They put these orange pins that they can pull up and down and block roads. Maybe that can be something that we can install too. It can be permeant and only the owners, or even you, all have access to the keys to keep it open. If you are driving, you can see it too. I do not know. I am not the one that is going to do the surveying on that, but it is something that could be an option. I know I have seen it around town. In my neighborhood there was an alley that was blocked off with a couple of them and it works. I did not know if that could be an option. At the same time, we are willing to do whatever needs to be done.

Commissioner Nardi said can staff speak to the 60-day approval?

Ms. Dang said let me preface it with if you are all concerned with the time period, you all could recommend a longer time period and then it would be effective from the date of Council's approval. We believe it can be done if contractors are available. I cannot speak to availability of contractors, but our perspective was that this is in an illegal operation now. Had it been somebody who was looking to newly locate a food truck there, then we would have told them "You cannot locate the food truck until you do these things." It is kind of this balance of figuring out that amount of time.

Councilmember Dent said I kind of wondered that too whether the time frame might be too much of a constriction. I even wonder, frankly, the cost of it. That is a lot of burden on someone who has sort of said “let us put a food truck here. Whoops we have to do all of this stuff.” You do what you have to do I suppose.

Ms. Dang said for the safety of the traveling public on the streets.

Councilmember Dent said I just wonder if that might be onerous and if there are any funding sources that could be available.

Mr. Martinez said I do not want to request funds. I know that in the situation you guys are already being generous to let us have this family operate. For me, I just want to be able to make it right and get it done.

Commissioner Nardi said what happens if it is not done within 60 days? Just because the availability of a contractor. I hope all goes well, but I am just thinking about that scenario.

Vice Chair Finnegan said I am wondering if we could add language. There is language in other requests that is something along the lines of due diligence or I do not know what the phrase is there to keep...they are showing that they are making progress towards this goal.

Mr. Russ said if we come up on day 55 and they clearly have a contractor lined up and the contractor says I cannot get to this until it day 75... I cannot remember what language we would typically use for that.

Mr. Fletcher said there is also an option of they could bond the improvements which also puts them on the hook to ensure that they are completed on time. Ms. Dang is right we even kicked around 90 days and talked ourselves into 60 [days]. Of course, if you want 90 days you can do 90 days. In reality it is more like 120 days because again the time period would not start until Council choose to approve it.

Vice Chair Finnegan said we can talk about this after the public hearing but close the entrance within X days and work on the other things. I agree with what Thanh was saying about the public safety issue of that entrance coming in and out of the street. Closing that entrance does solve that but it would not fix the sidewalk and the other entrance problem.

Councilmember Dent said there is not a sidewalk.

Mr. Fletcher said it is reconstructing the entrance.

Vice Chair Finnegan said because right now it is a curb cut.

Councilmember Dent said there is not a sidewalk there.

Vice Chair Finnegan said there is.

Mr. Martinez said if just blocking off that street too... they are going to have to get into the road. They are going to rebuild that whole curb. So I do not know if...sixty days is like two months. With manual labor you can put it in like two weeks but then you are going to have in between that time you are going to have people come inspect it. You are going to have to request a perfect time to actually shut that corner off. It is really complicated but we can pay the right people to do it. After this I am going to be like hey man we have sixty days if we get a yes.

Commissioner Alsindi said not two months, sixty days is different.

Councilmember Dent said again the clock does not start until City Council approves it. But you can go ahead and do with lining it up. It is maybe a little bit of a gamble to start the work before City Council approves it.

Mr. Martinez said I know that the far side that has the opening just for future purposes that is something that we could take care of.

Councilmember Dent said I have a question about the entrance that is there. On the aerial view it looks like that is also actually the driveway up to 1105 South High [Street]?

Mr. Martinez said yes. Actually 1105 [South High Street] does not really have access from South Avenue. It is supposed to be from that little entrance. That entrance there used to be a little house there and it got torn down. Now there is existing paved parking. There is nothing in writing. There is no right of way easements. We own both lots because it was sold together. We spoke about getting some surveying done for future projects. I know because of that front entrance that is something that we are going to need to open it up to give official access to 1105 [South High Street]. Our future plans are to eventually rezone that area to get it to where we can operate a little office or business. This situation came into play now and so obviously we are going to have to invest some money in making access to that property in the future. That is something that I wanted to throw up there to maybe help with brainstorming to come up with a good situation. If I am okay with okay, yeah you should go ahead it would be something to do. Even if this would not get approved, future wise, I would still have to want to do that. That plan for the future that we have we would contact an engineer and try to go through the process the correct way and not be in a situation like this. As for the South High Street, that is where I am like okay that is a little tricky with the busy road and traffic. We are up to your guidance.

Councilmember Dent said for the future venture staff could work on whether you would need an easement from the 201 South Avenue or some such.

Mr. Martinez said that question is really hard to answer because there was no official right of way or shared road agreement or anything.

Commissioner Porter said I would definitely share the staff's concerns regarding the entrance on South High [Street] simply because I am a customer at that food truck and I live over in Sunset Heights. I have seen numerous circumstances because of the slope of the drive coming in from the South High [Street] entrance. What you end up having is traffic that is coming on South High [Street] and as that hill is peaking you are not able to see the people stopping and they are taking it very slow because some vehicles will bottom out on that slope. What you are getting is people making very slow turns into that space and you run into circumstances where people would be rear ended from folks who are not able to see them and correct in a quick enough time. I think that staff's request to close that entrance is well placed.

Mr. Martinez said I agree. It is scary. We are willing to do whatever needs to be done.

Chair Baugh asked if there were any more questions for the applicant. Hearing none, he opened the public hearing and invited anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Vice Chair Finnegan said I did have a question for staff about the Land Use Guide designation Limited Commercial. Can you contextualize that? You have R-1 right behind it in that whole neighborhood and then what it says in the staff report this "presumed non-conforming residential" all around it. I do not know if staff can speak to what the intent of Limited Commercial in this corridor was?

Ms. Dang said the Limited Commercial designation is intended to speak to that we want commercial uses there, but we want to respect how it abuts to residential neighborhoods. Typically, when other properties have rezoned, even along this corridor for example or along South Main Street where butts up to Purcell Park neighborhood, we have discussed with applicants to consider proffering out intense uses. Things such as by right parking lots, vehicle fuel stations, auto repair, some of those uses that we do not feel are compatible with the residential neighborhood behind it.

Mr. Fletcher said it is also about site design too. We often are talking about site design and where parking is located, where a building is located, what lights look like, what the signs are. It is all about blending it in with the environment around it. We welcome the commercial uses, it just needs to be some limitations on some of those things.

Chair Baugh said this chunk has the M-1 zoning, so that is at least inferred that what we want to happen is what is happening here. That the parties would come back. There is no proactive zoning. They would have to come back and be evaluated on a case-by-case basis just to get the rezoning.

Councilmember Dent said even though it is zoned M-1, Industrial, we do not want heavy duty industrial here. It seems like that is kind of a mismatch between M-1 and Limited Commercial. It would be addressed on a case-by-case basis with each property, I guess.

Mr. Fletcher said size of the property is going to control a lot of factors here and accessibility of the site. You have zoning that is not in line with the long-term plans of the Comprehensive Plan. They chose to go the special use permit route for the restaurant use. This gets you closer to what we are looking for. I think that staff has answered pretty well that it is really about those controls and to provide the appropriate means of ingress and egress and things like that.

Vice Chair Finnegan said I am curious if there is an appetite amongst other Commissioners to...I think I am struggling with the second half of condition number two "within 60 days of approval of the special use permit the applicant should permanently close South High Street and rebuild the curb and gutter" I would be interested in adjusting that to be close the entrance within 30 days and rebuild the curb and gutter would go on a separate condition. For both the rebuilding of that sidewalk and that expansion of the entrance on the South Street side. I am not a contractor, but I know a lot of this stuff takes awhile.

Ms., Dang said within the 30 days what would you expect would be allowed for closure?

Vice Chair Finnegan said some kind of...I have seen chains. I have seen flex post cones. A chain would need some sort of visual indicator that you should not drive here. I have also seen around the old Red Front they put some chains. I think people drove right through them.

Ms. Dang said Staff discussed those options and we thought about orange cones but those might get stolen, or the wind might blow them away. The post and chain option was an idea we also discussed but to your point also, will people see it? Does it make it more unsafe? That is why I am asking. What would we expect for the closure? I like where you are going with it but where we got was 60 days and just curb and gutter because it was the cleanest and most obvious thing for drivers who are navigating through there.

Mr. Fletcher said I think we talked ourselves down to the 60 because we were looking at from the opposite perspective. We definitely have empathy for the applicant trying to work with him but then we are we are prolonging unsafe situations by doing that? We said we wanted to go with the

hard line to continue to work with them. Bonding is an option. It gets tricky for the applicant because they are tying up credit and things like that.

Chair Baugh said it is also not a five million dollar project.

Ms. Dang said [directing her comment to Mr. Fletcher] if bonding was an option should we recommend amending the conditions to clarify that bonding is an option? I would just like that clear.

Councilmember Dent said you mean to keep it the 60 days but have the bonding available?

Mr. Fletcher said I was trying to brainstorm what I heard with the people trying to give...

Ms. Dang said it is like the what if.

Mr. Fletcher said it is these scenarios where you are trying to work with the applicant or the developer to continue moving forward with positive movements to get the work done; but what happens if it keeps getting dragged on? That is why the last suggested condition. Here is the thing. We talked about what happens if they do not complete it in 60 days, would this become null and void? We did not want that. We wanted to promote the business and keep going. We were like keep operating for 60 days and if you do not get it completed in 60 days then stop operating and focus on getting that completed and then get yourself back up and running.

Commissioner Porter said I think forcing the applicant through a bond process, for the scope of this particular project, seems a bit much. I think the City has the ability to shut down the truck if necessary. I think there is a lot of incentive for you to be able to get that business in a position where it is legal and up and running. I would share the same concerns that others have had about the fact that concrete contractors are in high demand, this is their high season right now. It may be difficult to get that curb poured within that period of time. I agree that the primary issue is that entrance on South High, which is unsafe, and I think that closing it in a timely manner is the main issue here and than these other things can catch up.

Vice Chair Finnegan said the challenge is putting that into words that hold up in court.

Mr. Russ said would adding in something like the Zoning Administrator determines if the applicant has diligently pursued completion but requires additional time the Zoning Administrator can grant and additional 60 days one time. Maximum we are looking at 120 days give or take depending on when it goes to City Council. It prevents situations where someone goes "My contractor should be out here any day now" and it drags out and the contractor is going to be there any day now every time you talk to them kind of thing that you occasionally run into with

enforcement. We are really limited to one additional 60-day extension as long as the applicant shows they have a contractor lined up and have a contract signed but cannot get them there just yet.

Vice Chair Finnegan said would that be a sixth condition or where would that fit?

Mr. Fletcher said in number two you can just say the Zoning Administrator may grant one extension of an additional 60 days.

Councilmember Dent said maybe on number five to cover all of them.

Vice Chair Finnegan said I agree that the main goal is to close that entrance first and then rebuild.

Mr. Fletcher said we do not have to word smith here if there is a general consent here. If you are saying you want to grant the Zoning Administrator the administrative capability to grant an additional 60 days one time we can figure the text on it.

Councilmember Dent said is there not really the appetite for 30 days and a chain or something?

Vice Chair Finnegan said like we were saying, if you put a chain there will people see it if they have already committed to the turn?

Councilmember Dent said I think just keep it as is and keep the 60 days option as one.

Vice Chair Finnegan said if other folks are in favor of that I would be in favor of recommending approval of the special use permit with the conditions suggested by staff and the additional language about an additional 60 days at the discretion of the Zoning Administrator.

Councilmember Dent said who is the Zoning Administrator?

Mr. Fletcher said Tyler Blanks.

Commissioner Nardi seconded the motion.

Chair Baugh called for a roll call vote.

Commissioner Nardi	Aye
Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye

Commissioner Porter	Aye
Chair Baugh	Aye

The motion to recommend approval of the special use permit with suggested conditions passed (7-0). The recommendation will move forward to City Council on July 8, 2025.