



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

August 31, 2026

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

SUBJECT: *Consider a request for a Subdivision Ordinance Variance at 704 North Liberty Street*

**EXTRACT FROM THE DRAFT MINUTES OF HARRISONBURG PLANNING
COMMISSION MEETING HELD ON:** August 12, 2026

Chair Baugh read the request and asked staff to review.

Ms. Soffel said the applicant is requesting a variance from the Subdivision Ordinance (SO) Section 10-2-61(c), which requires the construction of a public sidewalk when an adjacent property on either side has an existing sidewalk. The property is addressed as 704 North Liberty Street and is identified as tax map parcel 40-N-1 and 2. If approved, the applicant plans to subdivide the property into four lots, retain the existing single-family dwelling, build a duplex along the North Liberty Street frontage, and construct a new single-family detached dwelling along the West Washington Street frontage.

On July 8, 2026, Planning Commission recommended approval of the applicant's requests to rezone the property from R-2, Residential District to R-8C, Small Lot Residential District Conditional, and for a special use permit (SUP) to allow reduced side yard setbacks. The rezoning and SUP requests are scheduled for a public hearing before City Council on August 11, 2026. If approved, the rezoning requires a second reading, anticipated on August 25, to become effective. As part of the rezoning request, the applicant proffered to dedicate right-of-way along West Washington Street for the existing sidewalk and to dedicate right-of-way along the North Liberty Street frontage. While the applicant has proffered to dedicate right-of-way along North Liberty Street, dedication alone does not satisfy Section 10-2-61(c).

SO Section 10-2-61(c) requires that "[w]here a lot being subdivided fronts on an existing street, and adjacent property on either side has an existing sidewalk, the subdivider shall construct, and where necessary dedicate land for, sidewalk on the property being subdivided to connect to the

existing sidewalk, even when no other street improvements are required.” There is an existing sidewalk along the West Washington Street frontage to the intersection with North Liberty Street; therefore, extending the sidewalk along the North Liberty Street frontage is required as part of the subdivision.

Within the submitted application materials, the applicant states, “[a] sidewalk currently exists along the West Washington Street frontage of the property. This sidewalk was constructed by the City without an easement having first been obtained from the property owner.” Aerial images show that the sidewalk along the West Washington Street frontage existed as early as 2002, before the applicant acquired the property in 2019. In addition, survey information from 2011 showed an existing two-foot combination curb and gutter and a three-and-a-half-foot sidewalk entirely within the 27-foot right of way of West Washington Street.

The City widened the sidewalk to five feet in 2011-2012 and made improvements to the intersection with North Liberty Street in 2024. If an encroachment exists related to the sidewalk widening or from the intersection improvements, it can be investigated and addressed, if the applicant desires. However, such encroachment would be evaluated and addressed through a separate process and should not be considered a determining factor in the review of the applicant’s SO variance request to waive the requirement to construct sidewalk along North Liberty Street since sidewalk has existed along West Washington Street for some time.

According to Section 10-2-22(a), for a SO variance to be granted, the subdivider must show that strict application of the sidewalk requirement would cause an unnecessary hardship because of topographical or other unusual conditions or would undermine or conflict with the City’s Comprehensive Plan goals and policies encouraging walkable, pedestrian- and bicycle-friendly street corridors. The applicant has not demonstrated that the property has physical constraints, topographical limitations, or other unusual site conditions that prevent sidewalk construction. The applicant states in their letter that “the cost of the required improvement is substantial.” While sidewalk construction has a cost, similar subdivisions are subject to similar costs.

Land Use

The Comprehensive Plan designates this site as Neighborhood Residential and states:

These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

Transportation and Traffic

The Determination of Need for a Traffic Impact Analysis (TIA) form (“TIA determination form”) for the proposed development was completed during the rezoning process and indicated that the project would not generate 100 or more peak hour trips, which is the threshold for staff to require a TIA.

As with other older residential neighborhoods, this area has an incomplete sidewalk network. Goal 13 of the Comprehensive Plan calls for the City to develop and maintain a safe and convenient transportation system serving all modes of travel, including driving, walking, biking, and taking public transportation. Strategy 13.1.5 addresses implementation of measures to expand the pedestrian infrastructure network so that all streets have pedestrian accommodations on both sides of the street.

Objective 13.2 of the Comprehensive Plan addresses the desire to increase opportunities for alternative modes of transportation, including walking, and several strategies refer to the City’s Bicycle and Pedestrian Plan. The Bicycle and Pedestrian Plan’s vision includes providing “pedestrian infrastructure to safely and conveniently reach all areas of the city for school, work, play, and other daily needs.” In addition, the City’s ADA (Americans with Disabilities Act) Transition Plan documents current accessibility deficiencies and establishes policies and procedures to make transportation facilities accessible to all, including pedestrian infrastructure. The SO requirement to construct sidewalks is an important tool for implementing the goals and objectives of the Comprehensive Plan, Bicycle and Pedestrian Plan, and ADA Transition Plan.

While the North Liberty Street sidewalk segment would not span the entire block, it does not mean it lacks value. The City’s pedestrian network is built incrementally as properties subdivide or redevelop. Requiring frontage improvements at the time of subdivision is one of the City’s tools for closing sidewalk gaps over time. Staff does not agree with the applicant’s argument that constructing the sidewalk along the subject property frontage would create an unsafe pedestrian condition. The sidewalk would connect to the existing sidewalk and crosswalk location at West Washington Street and North Liberty Street. The applicant has stated that terminating a sidewalk at the edge of the property would encourage pedestrians to cross North Liberty Street at a midblock location; however, the absence of sidewalk does not prevent pedestrians from walking along the frontage. Staff believes the presence of a sidewalk along the frontage would encourage residents to walk to the intersection to cross North Liberty Street. Sidewalk construction provides a defined pedestrian facility and improves access to the established intersection crossing.

Housing

The City’s Comprehensive Housing Assessment and Market Study (Housing Study) places the subject property within Market Type D, which notes that “[m]arket type D has lower market

activity as well as lower access to amenities. This could be because the areas are stable residential neighborhoods or because the area is less developed and therefore has fewer sales and fewer amenities. Strategies that would be appropriate in the latter case include concurrent development of the housing and economic opportunities through mixed-use developments to build commerce and housing centers across the City.”

The proposed development adds to the housing supply in support of the Housing Study. However, the applicant is requesting relief from a required public improvement. While there is a cost to constructing the sidewalk, safe pedestrian access is also an important component of housing affordability. Providing safe pedestrian access can reduce transportation costs and improve residents’ ability to reach jobs, schools, transit, parks, and other services.

Conclusion

The applicant has not demonstrated that strict application of Section 10-2-61(c) would cause an unnecessary hardship due to topographical or other unusual conditions. In addition, requiring sidewalk construction would advance the City’s Comprehensive Plan, Bicycle and Pedestrian Plan, and ADA Transition Plan by incrementally expanding the City’s pedestrian network. Staff recommends denial of the SO variance request.

Commissioner Seitz said given the objectives of 13.2 in the Comprehensive Plan and the Bicycle and Pedestrian Plan, why do we not require people to put bike lanes in front of their property when they develop the property? Why is a bike lane less important than a sidewalk?

Ms. Soffel said we consider bike lanes important.

Mr. Fletcher said the Code of Virginia specifically grants localities the ability to have this as a requirement, essentially as an option within the subdivision regulations. It does not grant the ability for bike lanes. Sidewalk is specifically listed as an option, and we added that requirement 15 or 20 years ago.

Chair Baugh said I think it came up when we were working on the 2004 Comprehensive Plan.

Mr. Fletcher said it is very possible.

Chair Baugh said that would be a little over 20 years ago. One of the reasons we have fewer sidewalks is that we did not use to require them. People argued that since it was not required, you should not make it required. That was when we shifted, I believe.

Mr. Fletcher said yes. It would take me a second to look it up, but I am not 100 percent certain. Maybe Mr. Russ, you might know right off the top of your head. We might mimic the language in the Code of Virginia.

Mr. Russ said I am not sure if it is identical or not.

Ms. Soffel said we do very much encourage shared-use paths when we have the opportunity to do so.

Commissioner Kettler said in terms of a sidewalk network that is not necessarily connected, how does that impact our eligibility for future funding, like through Smart Scale?

Ms. Soffel said I do not know the answer to that.

Mr. Fletcher said I am not sure I fully understand the question.

Commissioner Kettler said basically, I am wondering when we have disconnected sidewalk networks, when does that mean it is more likely that it is going to become a completed sidewalk network? One funding tool is Smart Scale, where it looks at what the destinations are in between and what existing infrastructure there is. But not just Smart Scale, other funding sources as well.

Mr. Fletcher said it is a difficult question to answer. I am not sure I know the answer.

Ms. Soffel said Public Works assesses the sidewalk network. I am sure they have some sort of priority system for their Smart Scale applications.

Mr. Fletcher said that is very possible. I was also going to add that CDBG [Community Development Block Grant] funding is sometimes used to fill in gaps if the neighborhood fits the criteria under the CDBG program and federal guidelines. The Bicycle and Pedestrian Plan identifies, going by memory, all areas of the City where sidewalks are needed, where we know there are gaps. The subdivision regulations in this specific instance are another tool that we use to help identify and extend sidewalks where they are not present.

Ms. Soffel said when I looked at the ADA Transition Plan, the goal is to have the entire network accessible by, I think, 2040 or something like that. There are efforts through the various plans to close those gaps.

Mr. Russ said the ADA Transition Plan is about taking currently undersized sidewalks and making them ADA compliant. It is not necessarily a goal to close all the gaps.

Mr. Fletcher said this situation is not uncommon. This happens everywhere across the City. This particular applicant would not be the first to have this requirement.

Councilmember Dent said speaking of ADA requirements, I am looking at the Google Maps Street View, and would you know, there is a telephone pole right in the middle of the sidewalk.

Vice-Chair Porter said I know we were told to disregard it as part of our deliberations related to this. But can you help me understand how the sidewalk currently existing there got there if it was built by the City without the previous property owner's permission?

Ms. Soffel said we would have to investigate whether there was an easement. I did not find any agreements for that, but I did not do a thorough investigation. That is definitely something that, if the applicant wants to pursue it, we could investigate.

Ms. Dang said I want to clarify the statement that the 3-foot-wide sidewalk, you did find evidence that it was within the right-of-way. The original sidewalk.

Ms. Soffel said yes. It was the expansion and then the work on the intersection.

Vice-Chair Porter said that was done by the City, not by an applicant. My other question is, if the City decided North Liberty Street needed to have sidewalks, all the other properties that are not being subdivided currently would not have to pay for their sidewalks. The City would.

Mr. Fletcher said the City would have to acquire the necessary right-of-way from each individual property owner and then build the sidewalk.

Vice-Chair Porter said which the applicant is offering.

Mr. Fletcher said correct. They are offering dedication of right-of-way.

Chair Baugh asked if there were any questions for staff. I know this is not a public hearing item, but we typically allow the interested party to speak.

Gil Colman, Colman Engineering, and the applicant, Jose Lopez came up to speak.

Mr. Colman said when it comes down to answering your question, I want to expand some more on the sidewalk. I gave a small speech last night for City Council addressing some of these things. I want to mention some of the things I mentioned to them. The applicant commissioned a surveyor to determine the property. The surveyors were worried about the encroachment of the sidewalk into the property. I do not know for how long or when that happened. That was one of the discussions. That is also the reason why, during the rezoning application and the rezoning, we offered to give that to the City. We would move the right-of-way behind the sidewalk and offer the same thing here for the City to build the sidewalk, which staff opposes. I understand that the zoning ordinance calls for that sidewalk to be built unless there are other circumstances that can be justified. The biggest circumstance, more than the sidewalk itself, to me and maybe to some or all of you, is that, as I said last night, the biggest challenge for us is affordable housing. Every little thing that we add to it impacts affordable housing. This is something that I proposed to City Council last night: in situations like this, especially with a small developer, whatever is going to be built in terms of anything between two and three homes, whether it is a sidewalk or whether

water and sewer needs to be extended, also a requirement that the City has for properties that otherwise require an easement through another property, it puts a significant burden on this. I know the comment was that this applies to all subdivisions. That is correct. That is true. That is what is happening. The question is, should we let that happen? Should that be the case? What is the impact on our citizens and our tenants in this case? This is a philosophical point more than a technical point. Technically, I recognize that it is a requirement the City has. But I am asking on the basis of the increased cost of affordable housing that this directly impacts our workforce. The property owner who is going to develop the property, and whoever he rents it to, has to pass that cost along. It is not about the technicalities of the sidewalk. If we want to discuss technicalities, the reality is, as much as we are going to argue that this is going to provide safety for people walking in front of this property, there is a sidewalk on the other side. There is already a sidewalk there. It is not like there is not a network. There is an existing network. As the question came up, if the City decides to extend the sidewalk, it can properly build a sidewalk that accommodates all the neighbors walking through it. Looking at a bigger picture, a more comprehensive picture, would make sense here. Again, I concede that this is a requirement that the zoning ordinance has. If you are going to do that, if there is a sidewalk there, you need to build it. At the same time, I think the City needs to be more judicious in how that is applied so it makes sense and there is no injustice in the impact of that requirement. How impactful is this requirement? For a large development building 100 homes, 50 homes, or whatever, that cost spreads out. It will have an impact, but not as it does for somebody building three homes. We are providing housing for people who will be doing work that we need. I am speaking at a higher level in terms of the impact of this, not denying that sidewalks and bike lanes are important. I completely support having sidewalks and bike lanes. I think it is very important for us to have that. But who do we put the burden on for that? That is the question or the argument here. Who should carry that burden? I suggested to City Council that for small developments like this, when it is for workforce housing, that could be part of the housing fund. The housing fund perhaps could assist with some of those small elements. In this case, the housing fund would support City infrastructure that would in turn support the Comprehensive Plan and the things that enhance our City and this area, so the homes there will have a walkable sidewalk. I am completely supportive of that. The question goes back to who we are placing the burden on. That is the reason why I am asking Planning Commission and City Council to approve this on the basis of what this means in terms of our commitment. It boils down to what is our commitment as a City? As people sitting where you are sitting and where I am standing, what is my commitment to provide affordable housing? What am I doing? That is the question I ask myself. How much do I invest in this? What time do I need to put into this? I have been questioning myself whether I should be providing some assistance for him to do that because I care about this. Perhaps I should. What I mean by that is how much are we putting ourselves into that? He says this is what we need to do. I know it sounds like a scenario, but that is not what I am intending. I am intending for us to look at the bigger picture. Thank you.

Mr. Lopez said I paid the survey in 2019, I think. I have my [unintelligible] points. When I went to look at it, the City took them out when they put the sidewalk in front of my property. When I

went to look at it, I did not have any of my pins for my lot. They are right in the sidewalk. Nobody told me anything or sent me a text about them doing something on the property.

Vice-Chair Porter said have you received any bids for this work and what it would cost?

Mr. Colman said not yet. We did some evaluation of what it would cost. We evaluated that the sidewalk would cost anywhere from \$5,000 to \$10,000, depending on what improvements need to be added. We do not know yet, and it is not designed yet, so we really do not know. On the sewer side, the addition of the sewer that we had to put there was probably an additional \$10,000 to \$15,000 beyond what it would cost if it was simply a lateral. These are costs that are requirements that the City has. Let me put it the way I put it to City Council. Those are things within the power of City Council to change. Those are not state requirements. Even when it comes to the sidewalk, the way the state has it is as an option for the City. The City can choose to require a sidewalk or choose not to. I understand requiring it. I am not opposing requiring it completely. I am saying we need to consider a bigger picture of burdens that we should consider, not simply topographic burdens or impediments. Any other questions?

Chair Baugh said if we still have a caller on the line, please go ahead and put them through.

Panayotis Giannakouros, City Resident, called in and said thank you, Mr. Chair, for this additional time. I thought it was curious that, in this time of zoning rewrite, there was one important element of context that has not come up yet. One of the most basic ideas that we hear about why we need zoning, to quote Commissioner Alsindi, is that one of the basic functions is to prevent the siting of slaughterhouses next to housing. Here we have exactly a case of housing being put adjacent to a slaughterhouse. In this context, the discussion of whether the City will provide this public good of a segment of sidewalk may benefit from considering this larger context. If we are going to have housing there, it would seem to me, and it is going to be fairly obvious why that housing is being put there, that it is so people can get to those jobs. It would seem to me in the public interest to reduce the cost as much as possible so that the people living there can save up and get out of that situation as expeditiously as possible. We see that in other kinds of housing around the City, especially in an area like this. It would seem beneficial. And keep in mind that City Council, on the day it considered this application, approved giving over \$3 million to \$4 million in land to a developer. If we are talking about fairness and add context, it would seem to me an easier lift to make to, if we are going to put housing there, give this developer the sidewalk and put in that public infrastructure so that the people who will be renting and living there will have a slightly easier life. Thank you so much for the extra time, Mr. Chair.

Chair Baugh said there was a request for a five-minute break.

The Commission took a 5-minute recess.

Chair Baugh opened the matter for discussion.

Vice-Chair Porter said to me, this is one of those situations where two things can be right, and sometimes they do not necessarily allow each other to exist. I think the issue at hand is that, as directed and laid out before us, there is no disputing what the ordinance says. It is very clear. This would be a little bit like a jury getting instructions from a judge about what we can consider and what we cannot consider. With that being said, I fully believe there is a worthy discussion to be had about whether a public improvement or City infrastructure, when that does have an impact on a small developer in a very small subdivision, the cost of that infrastructure cannot be spread out the way it could in a larger development. I view this as a unique circumstance. Another thing we were told not to consider in this discussion, but I think is germane, is that if the City had not taken the unilateral action to build the initial sidewalk, we would not be having to worry about this issue on the other side of the street. As I understand it, it is because it has a frontage that is attached to a sidewalk. If that sidewalk did not exist, they would not be required to provide a sidewalk. Is that correct?

Ms. Soffel said the expansion of the sidewalk and the work on the intersection is something that, if the applicant wants to pursue, can be investigated. But the initial 3.5-foot-wide sidewalk that existed and was surveyed as of 2011 was within the right-of-way. It was not on this property.

Vice-Chair Porter said I think I may have misunderstood that in the initial explanation. Again, I think Mr. Colman's point is well taken, and it may not carry the day. But I feel that this is a circumstance where a small developer who is trying to do something to create workforce housing in a very specific part of our City is being asked to take on an additional cost that is effectively a in my opinion a public benefit. I know how the ordinance is written. I know why it exists. But this is a circumstance where this infrastructure is making this project considerably less affordable. That is my concern. Again, we have a circumstance where the ordinance is very clear. It really comes down to whether the ordinance is wrong, whether the ordinance should be more specific, or whether the ordinance should address certain types of builds versus other types of builds. It does none of that currently.

Commissioner Seitz said I agree with a lot of what you said, Vice-Chair Porter. I will start with a personal declaration. Connected public walkways are City responsibilities, not just benefits, but responsibilities. To the extent that we aspire to them in our Comprehensive Plan and our Bicycle and Pedestrian Plan, I think we have to have a stronger public mechanism to put them in place other than waiting for the piecemeal implementation of them, candidly, over decades. I understand and appreciate the spirit. Vice-Chair Porter alluded to it, when somebody is putting in a new division and is putting in streets, water, sewer, and sidewalks for the sake of increasing the price of the lots they want to sell, and that cost gets amortized over a bigger area, I do not have any problem with it. I would welcome some kind of parsing of this so that it recognizes these kinds of situations where the cost relative to the advancement of the agenda is more proportional. Staff made the point that safe walkways are part of affordable housing. Again, it is an issue of scale. You build at scale, that is one conversation. You build one or two houses, it is a different

conversation. The final point I will make is that I flat out disagree that sidewalks which stop arbitrarily or at property lines are safe. In Sunset Heights, where I live, has lots of sidewalks that stop mid-block or at property lines. I would argue that whether you are with your kids in a stroller or your dog is pulling you around, the act of stepping off a sidewalk, often past a parked car, into oncoming or overtaking traffic creates a dangerous situation. I generally am not a fan of just saying the City should pay for this or the City should pay for that. But whether it is through CIPs, Smart Scale grants, or whatever mechanisms we have, I think systematic planning over time of how we prioritize and implement completed sidewalk networks is just as important as when we reconfigure streets to add bike lanes.

Councilmember Dent said excuse me, just a clarifying question on your last point. Are you saying that a piecemeal sidewalk that requires stepping off into the street is in itself unsafe?

Commissioner Seitz said yes. I absolutely agree with that. That is based on personal experience.

Commissioner Kettler said this is my least favorite kind of vote. Two of the most important things to me are making housing more affordable and making streets safe. It seems to me that this is a case where those can be in direct conflict. I take your point about disconnected sidewalks and the potential dangers there. I also think that part of how you get a totally connected sidewalk network in an existing neighborhood is by initially having a disconnected sidewalk network. Building any part of that is helpful. There is a not-insignificant additional cost for the developer because of this. For me, either way, it is a pretty close call. If it were in a different area and there were more amenities nearby, it would be a less close call than it is in this case. Given how hard it is to build sidewalk networks in existing neighborhoods generally, I am still inclined to vote for denial of this. I can be persuaded, I will be honest.

Commissioner Jezior said I agree with the ordinance as a whole, but I think this is exactly why variances should be allowed. If you look at the street, we have an existing sidewalk running the whole length of the other side of the street. If we build 50 feet of sidewalk in front of this house, no Smart Scale funding is going to pay to put sidewalk in front of every other house on the street. That is not where the funding is going to go. There is no precedent or reason to provide that funding there. There are so many other places in the City where that money would be better spent. In a way, I feel like calling this person a developer is almost inaccurate. This is a homeowner trying to expand housing options in the City. It is a different scale in my mind. I think this is an undue burden put on them to require payment for this section of sidewalk when there is an existing sidewalk on the other side of the street. Again, I think the ordinance as a whole makes perfect sense across the City, but in this case, I think this is a good use of a variance.

Councilmember Dent said I am looking down the continued North Liberty Street, and the houses have very narrow front yards. Putting a sidewalk into it would really cause disruption to all of these neighbors. I agree. I do not think that would be a great use of even a Smart Scale application to say, let's put sidewalk down the whole street and invade people's front yards when there is a

perfectly good one across the other street. I agree that this is a good case for a variance, even though we do not want to work against the overall principle of sidewalk networks. Is this one of those situations where it is really a variance, or is it a variation or exception in the new terminology?

Ms. Soffel said this is a variation.

Councilmember Dent said I agree it is a close call on principle. But for the specific case, which is the whole point of a variance, I think I would support the variance.

Chair Baugh said unless he has changed my mind listening to others, my position is more like Commissioner Kettler's. I think Vice-Chair Porter is right. You have the disadvantage of a formal legal education to take what you said and use a formal term like jury nullification. But that is the legal term of what you are talking about. This is one of those situations where the ordinance is clear. The ordinance is clear and does not provide for ambiguity. As somebody who believes I certainly am not somebody who objects to the principle of jury nullification, just to be clear, we know what the rule is, but we decide that the right thing to do here is something else. To me, this is not that issue. There are multiple sides to it. There are multiple factors. But for me, this does not rise to the level where I need to cast my vote at this level because the ordinance is just wrong and I am going to vote no, and Council can figure it out, because that is what it would amount to.

To be clear, you vote in favor of the variance and then say Council can figure out why we did that later or how to sort that out. We have patches of unconnected sidewalks, but we touched on the history. Why do we do that? Because we did not make people put them in in the first place where they should have, and one of the few things in the toolkit is to get people to build them when the opportunity arises. If you are not going to do that because it does not make sense, you just took one of the few things in your toolkit back out of your toolkit. I am not ready to jump on that. We certainly have plenty of places in the City that, in my view, are crying for sidewalks. Why do we not have them? We do not have them because unless you are in one of these opportune locations, we have had a nice run in the last decade or so. If you are fortunate enough to be close to a school, there are some ways to move things forward. But otherwise, it has been contingent on property owners actually wanting them and being willing to grant the right-of-way. Guess what? I live in the neighborhood that is the champion of that. I remember when we did a survey on traffic calming. Everybody who does not live on Central Avenue and wants to go into Central Avenue thinks Central Avenue really needs sidewalks. Nobody who lives on Central Avenue wants to see sidewalks on Central Avenue. That is probably not quite that extreme, but you get the gist of it. I understand the point that sidewalks would create small front yards. I have been to some places with really tiny front yards and a porch. I kind of like them. Ultimately, the thing that is sticking with me here is related to the fact that I can see strong arguments different ways. If I am going to put this jury nullification concept and raise that bar to where it should be, I just do not think it gets there. And the other thing about this is that it feels to me, and I am not speaking for anybody else,

that if I vote in support of this variance, I am doing it because I like this party. I like their case. I like the way they presented it. The Harrisonburg that I first got involved with and that first got me to even run for office, one of the things that spurred me was a sense that we had done business too much that way historically. Maybe it was a different group of people who were liked, but decisions were made a whole lot less about planning and principle and more about whether we liked the people or the applicant. My sense is, at least for me personally, that I am mindful that if what puts me over the edge is that I like what this party is trying to do, I can think of a whole lot of folks out there that I am probably not willing to be that gracious with. My inclination right now is to support staff's recommendation and vote against it.

Commissioner Seitz said Chair Baugh, you made the statement that, in essence, if we approve the variance, we are basically sending this fundamental conflict up to City Council and saying, you figure it out. I would like to say that approval of the variance could possibly send a different message. That message is that I think the subdivision ordinance that creates this requirement is too broad and imprecise to accommodate these types of situations and many others that exist, regardless of how we feel about who the developer is. The signal I would like to send to City Council is to instruct staff to bring us alternatives that allow for a more nuanced evaluation of these situations. That is the one point I would add to my position.

Commissioner Kettler said my ultimate position has not really changed. I do think this is an issue that is going to come up a lot in the future. Would increased intensification by adding an ADU [accessory dwelling unit] on a property trigger this kind of infrastructure improvement?

Mr. Russ said the state code explicitly prohibits localities from trying to do that with ADUs.

Commissioner Kettler said If there is an addition onto a house?

Mr. Russ said no. The ordinance does not require it.

Mr. Fletcher said this is all about the subdivision. Chair Baugh, I had a follow-up question to your comments. My mind was going to precedent-setting. I was not sure if that is where you were going.

Chair Baugh said that is part of it.

Mr. Fletcher said this is a very unique situation. It is very narrowly tailored. I cannot recall anyone challenging this specific instance. I have been sitting over here racking my brain for it. I do not think we have had anyone actually request this specific instance. Would you agree with that?

Ms. Dang said of any size development, a request not to construct the sidewalk?

Mr. Fletcher said even in a very small-scale situation.

Councilmember Dent said what about Foley [Road]? There was affordable housing that was a similar case of a disconnected sidewalk. Did we require it anyway?

Ms. Dang said it is not the same.

Mr. Fletcher said hey are all so different. We think about this often. Any time somebody comes in and asks what the potential is to subdivide a property, we say they have sidewalk here and sidewalk here, and they would have to extend the sidewalk. Often, we are seeing it with larger developed sites, commercial sites, where there is sidewalk on one end and they are connecting it. Yes, this rule applies to everyone, as I was stating earlier. But I wanted to be clear because it makes me think about precedents. I do not think we have had a situation yet where somebody has actually built at a small scale like this or requested a variance not to build it. I am thinking this might be the first.

Ms. Dang said I can only think of a situation where somebody was building a public street and requested not to construct a sidewalk because of some difficulties or situations with that public street.

Mr. Fletcher said the one I thought of, and again, it was not the same scenario, was off East Weaver Avenue for the subdivision of Mr. Stone's property, where Edgelawn Drive was involved. It was a different interpretation. That was several years ago, before Mr. Russ's recommendations about how it should be interpreted. They requested not to build the sidewalk at the time of subdivision, but they proffered that they were going to build it when it was redeveloped.

Ms. Dang said that is correct.

Mr. Fletcher said the interesting thing there is that there was no sidewalk on East Weaver Avenue. I was just trying to clarify whether there was concern about precedent.

Mr. Russ said there was a long period of time where anyone building anything other than a single-family home, regardless of whether sidewalk was adjacent, was required to build it.

Mr. Fletcher said that is what I was alluding to. Mr. Russ said we need to have a cleaner interpretation of this.

Mr. Russ said I do not know what is being interpreted.

Chair Baugh said that is one of the things that is jumping into me about it. While I certainly appreciate Commissioner Seitz's sense of nuance, a lot of times nuance is a really good thing. Sometimes a nuance is low-hanging fruit. You look at it and think we could tweak this a little bit and make this better. I think we have a pretty good track record of doing that. What is gnawing at me about this is what nuance are we talking about? Are we talking about, for example, the

economic strength of the applicant? That seems like it is going to be an interesting ordinance to write.

Mr. Fletcher said that is where I was going. There is no interpretation issue here. The interpretation is very clear. I was concerned that, if this is the first, what message or precedent is there for others that are similar that we may encounter?

Vice-Chair Porter said I think the operative answer to your question, Chair Baugh, is the size of the development. The fact that this is a very small subdivision being done in a very unique setting would be the answer. I do not want to make this about the applicant. I think this is really about what is just in the circumstances as it relates to whether a division of this size should have to take on the additional infrastructure cost just because the law said so. The reality is that there is a process in place for variances to be allowed for extenuating circumstances. I do not think this is going to become a test case or precedent that is going to come back and haunt us. The more I sit here and listen to this, even though as you all get further and further away from this, I am more of the opinion that common sense is telling me there are not going to be any sidewalks built around this sidewalk addition anytime in the near future. We are effectively putting this burden on a small developer who is trying to develop workforce housing. If you go back to the philosophical discussions we have about whether the City is easy to do business with and whether we are a good place to come and build, this is an example of us maybe holding on too tightly to what is on the page and not the spirit of what we are trying to do here. In this particular case, we are trying to build a couple additional homes that will house folks who are likely, not necessarily 100 percent, but likely going to be working at the facility right next door. If there was going to be a variance, this would be the example of why we should have a variance, simply because it is a small development in a very unique spot in an area where I do not see it connecting to anything anytime soon. These are all single-family homes down the street, and they are not likely to be subdivided anytime soon. It is not going to trigger property owners paying for the improvement. And if the City has no intent or will to build sidewalks on the street right now, what are we doing here? I understand the argument that we have to build it in pieces. But should this developer have to carry that burden when there is no practical payoff anytime in the near future?

Commissioner Jezior said I have a question for staff. What is the front yard setback in R-2?

Mr. Fletcher said it will be zoned R-8 soon.

Commissioner Jezior said the houses next to it, as you move down, are all going to be R-2?

Mr. Fletcher said R-2 has a 30-foot front yard setback. But because these homes sit closer to the street, there is an opportunity for a reduced front yard setback based on the averages of either the two closest structures or the entire block.

Commissioner Jezior said if the City were to build sidewalks in the future in front of the adjacent houses, I am looking at Google Maps, and it looks like there are 11 feet from the edge of the road to the front of the houses there. Is that legally even going to be allowed if you take into account a 4- to 5-foot sidewalk? The house would only be 6 feet from the sidewalk. Would the City even legally be allowed to build sidewalks down the rest of that street?

Mr. Russ said yes, that is routine. There are a lot of areas that have properties which no longer meet setbacks under the zoning ordinance because the City acquired right-of-way to build sidewalks or expand the road in some other capacity.

Commissioner Kettler said there are two things I was thinking about. With respect to front setbacks, I think we are accustomed in a lot of places to seeing larger setbacks. But there is a lot of value in having sidewalks relatively close to the houses themselves. That is how connections get made. That is how you meet your neighbors a lot of the time. In this particular development, when you talk about the relatively marginal use of sidewalks and how much 50 feet of sidewalk is going to add, you also noted, Vice-Chair Porter, that these might be people working next door. If they are working next door, how are they going to get there? They are probably going to walk there.

Vice-Chair Porter said they are probably going to walk down the existing sidewalk on Washington Street.

Commissioner Kettler said maybe. There is a good chance of that. But every foot of sidewalk increases those possibilities. They are multiplicative, not additive, because every house connected to that network increases the options for that person. As it expands, it increases that value.

Chair Baugh said it is interesting because I am sitting here. I have had someone on one side of me talk about how we ought to do this because it is a rare situation. I had somebody else on the other side of me make the comment that they believe this is something we are going to see a whole lot more of. Neither of which we are probably going to sort out tonight. If I was going to vote for the variance, it is starting to feel a little bit like we are quasi-legislating on the fly, which is another thing I do not really like doing. I have a hard time seeing how size would work. It seems to me that you could have plenty of situations like this in another part of town where the applicant would be considerably less sympathetic. But by golly, as long as it is not a whole lot of sidewalk, we are not going to make them do it. By the way, this is back to my point that we do not feel like we have enough tools in the toolkit as it is. We are talking about scaling back one of them, because if you change the rule, you have to apply that rule to everybody. Those thoughts are keeping me from getting to the finish line that some of you would like me to.

Commissioner Kettler said I have one other question for staff. There was another request, I think two years ago, off South Main Street, where there was a small affordable housing development relatively close to a grocery store. They had requested...

Vice-Chair Porter said no, that is the permanent supportive housing. I knew exactly what you were talking about. It was the permanent supportive housing development being built by Dr. Gordon. We talked about it. In fact, I supported and asked that he put the sidewalk in, which, by the way, he did not have to do. I viewed that as a circumstance where the population would largely be individuals who did not have cars, and the majority of their purchases, both groceries and other items, would likely be from that Walmart. Because of the way that area is laid out, I could see them walking down the frontage road that Walmart has built over to Erickson [Avenue], which at times can be a little dicey.

Commissioner Kettler said what was the nature of that request exactly?

Mr. Fletcher said it was a special use permit to allow multifamily units in B-2. If my memory is correct, we recommended a condition for the sidewalk. Or did they offer the sidewalk and we wanted them to go out there?

Ms. Soffel said I believe we recommended a condition. They were required to build a sidewalk to connect to Erickson [Avenue]. And we recommended the condition to build a sidewalk to connect to Walmart.

Vice-Chair Porter said if I remember correctly, we recommended that condition, but City Council allowed him not to have to build it. That is my memory of it. I think there was an issue that Dr. Gordon was concerned about whether it was going to make his application uncompetitive at the state level for the Housing Trust Fund. That was the other consideration. I felt that maybe that particular thing could have enhanced his application. We disagreed on that point. It is close, but I do not think it quite fits this scenario. In that particular case, there was a clear and immediate benefit. I believe it would have been built on private property as well, so that makes it a little different. Whereas this, I do not know if there is going to be an immediate benefit to anybody. We can make an argument about whether walking that extra 50 feet of sidewalk is going to enhance somebody's trip down North Liberty Street. But the reality is that it is going to be unconnected. I still think the issue of saying we have to build a sidewalk because eventually maybe one day another section will come in and we will eventually get it all connected is difficult here. I do not see a circumstance in this particular case where anybody could say that the City has the will to secure all these easements and put out the cost of this infrastructure. Building sidewalks for the City is expensive, and it is expensive for the developer as well. I go back to my other point, which is that this is an example of an opportunity for us, as we look at our ordinance rewrite and put everything back on the table, including the Comprehensive Plan, to consider our ability as a City to be flexible, reasonable, and recognize when circumstances arise that might put an undue burden on a project. I think our default setting is sometimes to go back to being pretty efficient about it. We cannot litigate this this evening. But I think this particular circumstance shows that it is not specific enough. I think there should be room to provide some relief in these circumstances. I am talking myself further and further away from where I initially started, which was that we had a

very specific window that we could fit through to approve this from the legal perspective. But from a moral perspective and a perspective of sending the proper message up the chain to City Council, I would be more inclined to grant the variance because this is a circumstance that merits a variance.

Commissioner Kettler said I do not have anything additional to add. I just want to say that when we come to a vote, it is probably best for someone to make a motion for approval so that it is clearer. I think it is probably trending that direction anyway.

Councilmember Dent said right. A motion to deny that fails does not send a clear message. It is a double negative.

Chair Baugh said I will throw in a larger point, because I think this has been a really good discussion. My sense of the history is that Mr. Fletcher is right. I do not think we have ever seen this before. My recollection is that every one of these we have seen has been the same. The details may differ, but they have always been in a context where, first of all, I think this is the only time we have ever seen one that staff recommended against. They always come forward with staff recommending in favor, usually because there is considered to be adequate infrastructure around. You have sidewalks across the street where people want to go. Maybe it is in a little neighborhood where you can see it does not really enhance that neighborhood much to have sidewalks on both sides of the street. What has always been interesting to me is that while I think we have approved every one of them, there was always vigorous discussion about whether we ought to grant them. We like sidewalks. Why are we considering not making people build sidewalks? Take that for what it is worth.

Commissioner Seitz said I would like to make a motion. I would like to recommend approval of the subdivision ordinance variance as requested.

Commissioner Jezior said second.

Chair Baugh called for a roll call vote.

Commissioner Jezior	Aye
Councilmember Dent	Aye
Vice-Chair Porter	Aye
Commissioner Seitz	Aye
Commissioner Kettler	Nay
Chair Baugh	Nay

The motion to recommend approval of the Subdivision Ordinance variance passed (4-0). The recommendation will move forward to City Council on September 8, 2026.

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