



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

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To: Ande Banks, City Manager
From: Adam Fletcher, Director, Department of Community Development and Harrisonburg Planning Commission
Date: January 9, 2024 (Regular Meeting)
Re: Rezoning and Special Use Permits - 865 Port Republic Road (R-5C to B-2C), (To Allow Multiple-Family Dwellings and/or Mixed Use Buildings), and (To Allow Reduction in Required Side and/or Rear Yard Setbacks)

Summary:

Project name	865 East
Address/Location	865 Port Republic Road
Tax Map Parcels	92-F-1
Total Land Area	+/- 5.45-acres
Property Owner	865 East LLC
Owner's Representative	AES Consulting Engineers
Present Zoning	R-5C, High Density Residential District Conditional
Proposed Zoning	B-2C, General Business District Conditional
Special Use Permit Requests	To allow multiple-family dwellings and/or mixed use buildings per Section 10-3-91 (17) To allow reduction in required side and/or rear yard setbacks per Section 10-3-91 (9)
Staff Recommendation	Approval of all three requests
Planning Commission Recommendation	December 13, 2023 (Public Hearing) Approval (7-0) of all three requests.
City Council	January 9, 2024 (First Reading/Public Hearing) Anticipated January 23, 2024 (Second Reading)

Background:

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

Site: Mixed use building, zoned R-5C

North: Townhomes, zoned R-3 (Medium Density)

East: Across Port Republic Road, commercial uses and multi-family, zoned B-2C and R-4. In October 2023, the property addressed as 810 Port Republic Road was rezoned and a special

use permit approved for planned multifamily and commercial uses (the project is known as “The Vista at Forest Hills”).

South: Multi-family, zoned R-3 (Multiple Dwelling)

West: Townhomes, zoned R-3 (Medium Density)

In December 2007, City Council approved a rezoning of the subject property from B-2C, General Business District Conditional to R-5C, High Density Residential District Conditional and approved three special use permits, which included: (1) to allow multiple-family dwellings to have more than 12 units per building, (2) to allow multiple-family dwellings to be greater than four stories and/or 52 feet in height, and (3) to allow retail stores, convenience shops, personal service establishments, restaurants (excluding those with drive through facilities), and business and professional offices. The existing, regulating proffers, include (written verbatim):

1. The density and layout of the development will be in substantial conformity with the plan of development. Landscaping shall be provided as generally shown and common and recreational amenities will be provided as generally shown on the plan.
2. Ten parking spaces shall be reserved for exclusive use of the Devonshire Townhomes. The neighboring property owners association will regulate these parking spaces.
3. The single primary structure shall not exceed a maximum dimension of 90-feet in width, 310-feet in length, and 91-feet in height. The structure will contain no more than 100 individual apartment units with a maximum of 290 bedrooms. The project will contain a maximum of 16,000 gross square feet of commercial/retail space on the first floor of the structure. The project will have on-site laundry, exercise and game room facilities.
4. The structure will contain a varied and complimentary exterior finish consisting of a mixture of brick, drivit [*sic*], and other non-combustible materials. The exterior appearance generally as shown on the sample exterior elevation submitted herewith as Exhibit A.
5. The structure will contain all refuse collections facilities within the building.
6. All commercial spaces will have delivery service via a consolidated loading dock area with internal fire-rated service access to the rear of individual commercial units.
7. Site lighting for parking will be installed with downward lighting to minimize light pollution.
8. The applicant or its successor will retain operation and control of the project and retain responsibility to govern and approve all architectural, signage, regulatory, and other management functions of the project. The applicant, or its successor will maintain control and regulation of on-site parking.
9. All commercial signage will be restricted to either a pylon sign along Port Republic Road and/or along the first floor sign marquee area above individual commercial units.
10. The structure will contain an interior secure bike rack area for residents.
11. The structure will contain security features to control access to the residential areas of the building.
12. The applicant proffers the construction of a turn lane on Devon Lane materially shown on the plan. The entrance from Port Republic Road will be designed as a “right-in right-out” entrance subject to further discussions and design approval by the Public Works Department.

13. Applicant hereby proffers that it will provide a weekday private van/bus shuttle service during peak hour traffic periods (at minimum 7:30am to 10:00 am and from 3:30 pm to 6:00 pm) to and from the JMU campus for project residents only. This service will be limited to times when JMU is in full enrollment operation. This service will commence once the building has reached residential unit lease rates of 75% and be maintained for a minimum period of three years from service commencement.

The engineered comprehensive site plan for the development as it exists today was approved on April 25, 2008. Building permits were applied for that same year and the 6-story building (as viewed from Port Republic Road) was completed in September 2009. While the proffers identified that the height of the building would not exceed 91-feet in height, 100 residential units, and no more than 16,000 square feet of commercial/retail space, the building today stands at 70.2-feet in height with 96 dwelling units and 15,564 square feet of commercial/retail space.

Key Issues:

In all, the applicant has submitted four applications to make way for the proposed project. The first application is a Zoning Ordinance (ZO) amendment that, if approved, would create the ability for property owners of B-2-zoned properties to request a special use permit (SUP) to allow for the reduction in required side and/or rear yard setbacks of up to zero feet. The specifics of the ZO amendment are described in a separate staff report. This report presumes that the ZO amendment is approved as submitted by the applicant.

The second application is a request to rezone the property from R-5C, High Density Residential District Conditional to B-2C, General Business District Conditional. The third application is a SUP to allow multiple-family dwellings and/or mixed use buildings per Section 10-3-91 (17) while the fourth application is a SUP to allow for the reduction in required side and/or rear yard setbacks per Section 10-3-91 (9).

The property is located at the intersection of Port Republic Road and Devon Lane and addressed as 865 Port Republic Road. If all four requests are approved, the applicant intends to construct an addition to the existing building as shown on the Development Plan for 60 multifamily dwelling units. Given the terrain of the property, the new building addition will have 7 to 8 stories exposed. The new building addition would be elevated on columns above the existing surface parking area and connected to the existing building by a breezeway.

Proffers

If the rezoning is approved, it would supersede and replace the existing 2008-approved proffers.

The applicant has offered the following proffers (written verbatim):

1. Only the following non-residential shall be permitted on the Property: retail stores, convenience shops, personal service establishments, restaurants (excluding those with drive-through facilities), and business and professional offices.
2. Special use permits shall be permitted as approved by City Council.

3. The Existing Building and the Building Addition shall contain no more than 160 individual apartment units containing a maximum of 470 bedrooms.
4. Non-residential uses may only be located on the first/ground floor of the Existing Building and shall not exceed 16,000 gross square feet. The Building Addition shall have no additional commercial square footage, but may have on-site laundry, exercise and game room facilities and other customary resident amenities to encourage on-site convenience.
5. Ten (10) designated parking spaces shall be reserved for the exclusive use of the Devonshire Townhomes, as shown on the Development Plan, to accommodate for street parking along Devon Lane that was removed as a consequence of the development of the Existing Building. The neighboring property owners' association, for which the spaces are reserved, will regulate the ten (10) reserved spaces via a permit system.
6. The Building Addition shall contain a varied and complementary exterior finish consisting of a mixture of brick, dryvit, and other non-combustible materials with architectural offsets, angles, and finishes to create an exterior appearance similar to the Existing Building.
7. Applicant shall install and maintain the following as bonded improvements as part of any engineer-submitted comprehensive site plan for the Building Addition, and as generally shown on the Development Plan:
 - A. Construct a five-foot (5')-wide sidewalk where none exists at the back of the curb bordering the slip lane at the intersection of Port Republic Road and Devon Lane;
 - B. Dedicate a right-of-way for the existing slip lane and sidewalk referenced below, to be located one-half foot (0.5') behind back of the sidewalk;
 - C. Reconstruct the crosswalk across the slip lane including the existing island sidewalk section, such that the crosswalk ramp for the slip lane connects to the crosswalk ramp for the Devon Lane crosswalk, adhering to the Public Right of Way Accessibility Guidelines to the maximum extent feasible, and eradicate the existing crosswalk.
8. Applicant shall grant the City a twenty-foot (20')-wide easement for a shared use path and pedestrian accessway to be finally located and granted upon City request in the general location shown as the yellow hashed area on page 1 of the Development Plan.
9. Any new or relocated site lighting for parking shall be installed with downward directional lighting and shielding to minimize light exfiltration into neighboring properties.
10. The maximum height of freestanding signs along Port Republic Road is eighteen feet (18') and the maximum height of freestanding signs along Devon Lane is eight feet (8').
11. The height of the Building Addition shall not exceed the maximum elevation of the Existing Building as measured from the Existing Building frontage on Port Republic Road

Between publication of the Planning Commission staff report and the Planning Commission public hearing, the applicant submitted a new proffer letter that amended the proffer regarding sign height. The B-2 district allows freestanding signs to be 35-feet tall and the proffer has reduced the allowed maximum height.

While some of the proffers are self-explanatory, staff offers additional information on Proffers #1, 3, 5, 6, 7, 8, 9 and 11.

Proffer #1 would retain the non-residential uses currently allowed with the property's R-5 zoning and approved SUP, while prohibiting other by right uses in the B-2 district. If in the future, the property owner

desires to add other uses typically allowed by right in the B-2 district, they would have to rezone the property to amend the proffers.

Proffer #11 restricts the maximum height of the Building Addition to not exceed the maximum elevation of the Existing Building. Attached is a letter dated November 17, 2023 and titled “Zoning Administrator Determination on How Building Height is Calculated for Proposed Development Plan at 865 Port Republic Road” that further describes how building height is calculated for the proposed project.

Proffer #s 5, 6, and 9 are similar to proffers #2, 4, and 7 from the 2007 rezoning.

Proffer #3 is addressed in the Development Plan section of this report.

Proffers #7 and 8 are addressed in the Transportation and Traffic section of this report.

Development Plan

As required by Section 10-3-93 (d) of the ZO, the applicant has submitted a development plan to be in accord with the requirements of the SUP. Section 10-3-93 (d) states that “[f]or multiple-family dwellings and mixed use buildings, the development plan submitted with the special use permit shall govern development on the site and shall be used as a basis for subdivision and engineered comprehensive site plan approval.” If the SUP is approved, then details of the development plan would be used to ensure that what is proposed and evaluated during the SUP review is what is developed. If significant deviations are desired by the property owner in the future, the property owner must apply to amend the development plan by going through the SUP process again.

Features of the development plan submitted with the SUP that would be used as the basis for an engineered comprehensive site plan approval include, but are not limited to:

1. The general location of buildings and structures as illustrated.
2. The general number of stories within proposed buildings and structures as illustrated.
3. The general location of parking areas as illustrated.
4. The general location of pedestrian connections as illustrated.

Additionally, the applicant has proposed the following conditions, which are described on the development plan as “Owner/Developer Self Imposed Conditions” (written verbatim):

1. The density of the development and layout of improvements will be in substantial conformity with the Plan of Development (“Plan”) submitted in connection with this request by AES Consulting Engineers. Minor alterations to the “as constructed” layout for topographical features, utility installation, and other contingencies shall require approval by the Zoning Administrator. Further, landscaping and open area shall be provided as materially shown on the plan.
2. The existing building and the building addition shall not exceed the dimensions shown on the Development Plan. Said maximum dimensions are excluding projecting balconies, covered walk or entry areas including residential area unloading canopy.
3. The existing building and the building addition will contain all refuse collection facilities within the building as to avoid the need for a separate exterior dumpster or trash collection structure or area.

4. The existing building and the building addition will contain security features to control access to the residential areas of the building.
5. A minimum of two (2) “Level 2” (equivalent or better technology at the time of construction) electric vehicle charging stations at the property shall be installed prior to issuance of first certificate of occupancy and the occupancy of any residential unit in the building addition, and thereafter maintained in operating condition.

Conditions #3 and 4 are similar to proffers #5 and 11 from the 2007 rezoning.

As previously described, the new building addition is proposed to have 60 multifamily dwelling units. Note that proffer #3 restricts the existing building and building addition to no more than a total of 160 individual apartment units containing a maximum of 470 bedrooms. The number of dwelling units between the two buildings can change so long as they do not exceed the maximums proffered.

The building addition would be elevated on columns above the existing surface parking area and connected to the existing building by a breezeway. Sheet 2 of the Development Plan shows that the applicant would maintain the majority of the existing surface parking and anticipates the loss of 14 off-street parking spaces. The ZO requires for multifamily units in the B-2 district a minimum of one off-street parking space for each dwelling unit or as may be more or less restrictive as conditioned by the SUP. At the end of the applicant’s letter, a Summary Table describes that there are 343 existing off-street parking spaces on the property, 219 off-street parking spaces would be required by the ZO for the existing building and proposed building addition, and that the applicant plans to provide 329 off-street parking spaces, which exceeds the number required.

Between publication of the Planning Commission staff report and the Planning Commission public hearing, the applicant submitted an updated Development Plan reflecting a change made to their SUP application to allow for the reduction in required side and/or rear yard setbacks per Section 10-3-91 (9). The Development Plan now shows the proposed B-2 setback for the side and rear yards to be a minimum of 30-feet.

Land Use

The Comprehensive Plan designates this site as High Density Residential and states:

These areas have been developed or are planned for development that have the highest residential density ranges outside of the downtown area and properties designated Mixed Use by the Land Use Guide. Density is planned to allow up to 24 dwelling units per acre. While a number of existing multi-family developments and areas adjacent to such developments are identified as High Density Residential, residential land use could include small-lot single-family detached and single-family attached neighborhoods. In special circumstances, non-residential uses may be appropriate.

With regard to the Comprehensive Plan, Traditional Neighborhood Development (TND) principles are encouraged to be included in all developments throughout the City. Adding multi-family dwelling units at this location would incorporate some of those characteristics such as: having a neighborhood that allows residents to work, shop, and carry out many of life’s other activities; and allowing residents to walk, ride a bicycle, or take transit for many trips between home, work, shopping, and school. Additionally, this

development is proposed for student housing and the location is within close proximity to James Madison University (JMU).

The proffered maximum density of the proposed project is just over 29 units per acre, which is above the planned density, but less than the maximum density allowed by SUP in the B-2 district.

Transportation and Traffic

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

With Proffer #7, the applicant has committed to constructing new sidewalk facilities and dedicating right-of-way at the intersection of Port Republic Road and Devon Lane.

With Proffer #8, the applicant has committed to grant the City a 20-foot-wide easement for a shared use path in the rear of the property. Know that there are no current plans for a shared use path project at this time, but staff requested this easement for planning purposes.

Public Water and Sanitary Sewer

Staff has no concerns with the requested rezoning regarding water and sewer matters.

Housing Study

The City’s Comprehensive Housing Assessment and Market Study (Housing Study) places the subject property within Market Type C. Along with other details of this market type, it is the smallest but fastest growing market type in the City. Among other characterizations, Market Type C has a large number of university students. The Housing Study states “[l]ike Market Type A, Market Type C has above median overall access to amenities such as public transit within walking distance, full-service grocery stores, and multiple parks and recreation facilities.” It goes on to say that “Market Type C has above median access to amenities yet is the most affordable market type in the City. The creation and preservation of affordable housing and construction of middle income housing would be appropriate here as there are already amenities in place that would make these areas attractive locations for housing...” The Housing Study also notes that “[h]aving an adequate supply of smaller apartments in Market Types A and C is important because these block groups have higher scores for access to amenities such as jobs, parks, full-service grocery stores, and public transit.”

Public Schools

The student generation attributed to the proposed 60 new residential units is estimated to be 7 students. Based on the School Board’s current adopted attendance boundaries, Stone Spring Elementary School, Skyline Middle School, and Harrisonburg High School would serve the students residing in this development. Harrisonburg City Public Schools (HCPS) staff noted that schools are over capacity in many of the schools and while the subject rezoning is intended for off-campus student housing, most likely housing vacated by students would create the availability of 60 additional apartments in the community which could be occupied by families.

Recommendation

Considering the proximity of this proposed student housing project to JMU and the High Density Residential designation of this area in the Comprehensive Plan’s Land Use Guide, which supports higher density and in special circumstances non-residential uses, staff believes that this development can have a positive result for the community. Staff recommends approval of the rezoning and approval of the SUPs with the following conditions:

For the SUP to allow multiple-family dwellings and/or mixed use buildings per Section 10-3-91 (17), staff recommends conditioning the “Owner/Developer Self Imposed Conditions” described earlier in this report.

For the SUP to allow for the reduction in required side and/or rear yard setbacks per Section 10-3-91 (9), staff recommends the following condition:

1. The SUP shall be applicable only to the existing building and planned building addition in the location shown on the Development Plan with the ability to deviate up to 10-feet in any direction.

The condition would prohibit other structures not vetted by the SUP process from being constructed with reduced side and/or rear yard setbacks.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the rezoning and SUPs as submitted;
- (b) Approve the rezoning and SUPs with the suggested condition(s);
- (c) Approve the rezoning and SUPs with other conditions;
- (d) Approve the rezoning request and denial of one or both SUPs; or
- (e) Deny the rezoning and SUP requests.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing and twice advertising for City Council’s public hearing. The advertisement was published as shown below:

Rezoning – 865 Port Republic Road (R-5C to B-2)

Public hearing to consider a request from 865 East LLC to rezone a +/- 5.45-acre property from R-5C, High Density Residential District Conditional to B-2, General Business District Conditional. The property is addressed as 865 Port Republic Road and is identified as tax map parcel 92-F-1.

Special Use Permit – 865 Port Republic Road (To Allow Multiple-Family and/or Mixed Use Buildings in B-2)

Public hearing to consider a request from 865 East LLC for a special use permit per Section 10-3-91 (17) of the Zoning Ordinance to allow multiple-family and/or mixed use buildings in the B-2, General Business District. The +/- 5.45-acre property is addressed as 865 Port Republic Road and is identified as tax map parcel 92-F-1.

Special Use Permit – 865 Port Republic Road (To Allow Reduction in Required Side and/or Rear Yard Setbacks in B-2)

Public hearing to consider a request from 865 East LLC for a special use permit per Section 10-3-91 (9) of the Zoning Ordinance to allow the reduction in required side and/or rear yard setback to zero (0) feet in the B-2, General Business District. Note that this special use permit is requested simultaneously with a Zoning Ordinance amendment request that, if approved, would amend the language of Section 10-3-91 (9). The +/- 5.45-acre property is addressed as 865 Port Republic Road and is identified as tax map parcel 92-F-1.

In addition, adjoining property owners were notified of the public hearing; the property was posted with signage advertising the request; and a notice was provided on the City's website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends alternative (b) approval of the rezoning and SUPs with the suggested conditions.

Attachments:

1. Extract from Planning Commission
2. Site maps
3. Updated Special Use Permit Application for reduced setbacks, Updated Proffer Letter, and Updated Development Plan
4. Application and supporting documents
5. Zoning Administrator Determination on How Building Height is Calculated for Proposed Development Plan at 865 Port Republic Road, dated November 17, 2023
6. Public comments

Review:

Planning Commission recommended approval (7-0) of the rezoning request, approval (7-0) of the special use permit to allow multiple-family dwellings and/or mixed use buildings, and approval (7-0) to allow for the reduction in the required side and/or rear yard setbacks with the following SUP conditions:

For the SUP to allow multiple-family dwellings and/or mixed use buildings per Section 10-3-91(17):

1. The density of the development and layout of improvements will be in substantial conformity with the Plan of Development ("Plan") submitted in connection with this request by AES Consulting Engineers. Minor alterations to the "as constructed" layout for topographical features, utility installation, and other contingencies shall require approval by the Zoning

Administrator. Further, landscaping and open area shall be provided as materially shown on the plan.

2. The existing building and the building addition shall not exceed the dimensions shown on the Development Plan. Said maximum dimensions are excluding projecting balconies, covered walk or entry areas including residential area unloading canopy.
3. The existing building and the building addition will contain all refuse collection facilities within the building as to avoid the need for a separate exterior dumpster or trash collection structure or area.
4. The existing building and the building addition will contain security features to control access to the residential areas of the building.
5. A minimum of two (2) "Level 2" (equivalent or better technology at the time of construction) electric vehicle charging stations at the property shall be installed prior to issuance of first certificate of occupancy and the occupancy of any residential unit in the building addition, and thereafter maintained in operating condition.

For the SUP to allow for the reduction in required side and/or rear yard setbacks per Section 10-3-91 (9):

1. The SUP shall be applicable only to the existing building and planned building addition in the location shown on the Development Plan with the ability to deviate up to 10-feet in any direction.