



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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January 2, 2024

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

SUBJECT: *Consider a request from Richard Germroth and Alexandra Vilela to rezone 1182 Nelson Drive*

**EXTRACT FROM THE DRAFT MINUTES OF HARRISONBURG PLANNING
COMMISSION MEETING HELD ON: December 13, 2023**

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said on June 6, 2023, the applicant submitted a minor subdivision for a boundary line adjustment associated with tax map parcels 83-B-6 and 16 (1182 Nelson Drive) and tax map 83-B-5 (1184 Nelson Drive). The owner of 1184 Nelson Drive unknowingly built a section of their driveway over the property line and onto their neighbor's property. The intent of the minor subdivision was to enlarge tax map parcel 83-B-5 by adjusting the property boundary with tax map 83-B-16 so the driveway did not encroach the property line. However, the proposed subdivision did not comply with the R-1 dimensional lot width regulations, which requires new lots to have 80 feet of lot width. This is because tax map 83-B-16 is currently a nonconforming lot, where its width is 50 feet and the proposed subdivision intended to reduce that width to 37.5 feet measured at the required setback line. Staff cannot approve a subdivision that decreases the lot width of a parcel that is already nonconforming to the required lot width.

While staff proposed other solutions that would have allowed the minor subdivision to proceed, the proposed solutions did not meet the desired outcome of the two parties, thus they chose to move forward with the proposed rezoning.

The applicant is requesting to rezone tax map parcel 83-B-16 and a +/- 7,438-square-foot portion of tax map 83-B-6 from R-1, Single Family Residential District to R-8C, Small Lot Residential District Conditional. The residual +/- 1,062-square foot portion of tax map 83-B-6 would remain zoned R-1 as the intent is to subdivide this parcel by transferring that square footage to the adjacent neighbor's property identified as tax map 83-B-5 so that their driveway would not encroach property boundaries.

By rezoning the identified area to R-8, the aforementioned proposed minor subdivision can be approved because the R-8 district's minimum lot width requirement for single-family detached dwelling lots is only 35-feet.

Proffers

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

- More than one dwelling is prohibited.

Regarding the proffer, in the R-8 district, single-family detached homes and duplexes are allowed by right so long as, among other things, lot area and dimensional requirements are met. The submitted proffer prevents more than a single unit within the R-8-zoned area.

Land Use

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

These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

With the submitted proffer, use and density conforms with the Low Density Residential designation. Know also that the R-8 district's occupancy regulations are the same as the existing R-1 district's occupancy regulations, which allow owner-occupied dwellings to be occupied by a family plus two individuals or a maximum of three individuals while nonowner-occupied dwellings may be occupied by a family plus one individual or a maximum of two individuals.

Transportation and Traffic

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

Public Water and Sanitary Sewer

Staff has no concerns regarding water and sanitary sewer service availability for the proposed development.

Housing Study

Rezoning this property to R-8 will not impact housing because the property currently has one single-family detached dwelling, and the proffer restricts the property to having only one dwelling unit.

Public Schools

Rezoning this property to R-8 with the submitted proffer will not change the estimated student generation for the property.

Recommendation

Staff recommends approval of the request.

Chair Finnegan asked is the driveway moving?

Ms. Rupkey said the driveway would stay in the same location. The property line would move to the other side of the driveway so it would all be on the neighboring property.

Chair Finnegan said the driveway itself is not being relocated?

Ms. Rupkey said correct.

Chair Finnegan asked if there were any questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Richard Germroth, the applicant, came forward regarding this request. He said my thanks to Adam Fletcher, Thanh Dang and Meghan Rupkey for coming out, well two of them, and putting eyeballs on what we are trying to do. Essentially, if you stand where the line is and put your arm out you are touching 1184's [Nelson Drive] mailbox and looking kind of into about a third of their house, it is just a kind of funny configuration. So, we thought 12 and a half feet does the job, that would open up the parking area. We have no intentions whatsoever of developing the property and just move to kind of realign things. It goes from 12 and a half feet down to zero as the driveway widens.

Vice Mayor Dent said not exactly a question, but I was amused to see the driveway portion and the house portion are two separate properties.

Mr. Germeroth said yes, to our surprise to be honest with you. We were not at all aware of that but they were at that time. I do not know if they are becoming one property at this point or not. If they stay what they are that is fine as well. What occurs is that when you enter the driveway, you are in the upper left hand corner of the property and when you exit toward the side load garage, you are in the...you go from the upper left corner to the bottom right corner. The driveway just works that way so you can get into the garage.

Vice Mayor Dent said I guess that is a question for staff, does it become one property? Are they merged or are they still two separate zonings?

Ms. Rupkey said it would be for the large lot in the back and the front lot is what the request is for and their proposed subdivision merges the larger lot and the smaller lot into one lot while also giving about 12 and a half feet to the other neighbor.

Chair Finnegan asked if there were any questions for the applicant. Hearing none, he asked if there was 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.

Commissioner Baugh said I guess in the course of updating the Zoning Ordinance and the Comprehensive Plan amendments that will be up for us, are we giving any thought to...I mean as we see more of these R-8s and we know why we are seeing the R-8s, the R-8s are not really for why we thought we were creating R-8 it just created some flexibility that we are finding very useful and take advantage of. I recognize that...I know we are going to try to deal with that. I guess

my question is maybe more on the lines of are there going to be any limits to conversion of R-1 to R-8? Any thoughts about that?

Mr. Fletcher said I am not sure I understand the question. What do you mean?

Commissioner Baugh said I guess, in theory, if you just look at a zoning map if we approve this, it looks like a spot zoning. Now, we know why we are comfortable with it but I guess are we okay with anybody in town with R-1 property converting to R-8?

Mr. Fletcher said well, that is a huge question, right? Because even in the draft regulations, correct me anyone, I believe our lowest density regulations are much less than what it is today.

Ms. Dang said meaning less than R-1, not less than R-8.

Mr. Fletcher said increased density and lower square footage requirements when you create it. So, the question that is a powerful question really.

Commissioner Baugh said that is why I said we are not going to take it up tonight but stick it in the back of our minds.

Mr. Fletcher said would one be comfortable in saying “every R-1 lot becomes R-8?” I am sure that there are people out there that would not like that idea.

Commissioner Baugh said but even without going that far...

Mr. Fletcher said I am not saying that staff does not like the idea, I am just saying that there could be opinions that they would not like that.

Commissioner Baugh said and I am not really expressing opinion on it. I was wondering if that was something that might be something for us to go through.

Chair Finnegan said I do have a follow up question to Commissioner Baugh’s question which is, have any of these R-8’s actually been R-8 or are they R-8 conditional.

Mr. Fletcher said well, let us pause there for a second. The lots that are on Virginia Avenue are R-8 conditional, those are the Habitat For Humanity ones I believe. You have got to remember that when you do not proactively rezone properties when you create a new zoning district, you actually do not get many un-proffered rezonings. It is the same thing that happened with R-5. I can think of one parcel and it will probably will never be developed at this point; I should never say never. There is a parcel that is R-5 that is off of Hunter’s Road that I think was a straight R-5 property, it is a very unusually shaped property and in fact now JMU might own it. It just does not happen a lot but it can. I would just caution us for making a broad statement about that predicament that you are seeing.

Ms. Dang said I would say maybe what you are recalling are these recent one parcel rezonings from R-1 to something [R-8] have been a conditional rezonings where we are prohibiting

additional dwelling units... not always. I am thinking of Clay Street recently, we rezoned that one to allow them to build one additional single-family home, but they have been pretty restrictive, it has not been a straight R-8.

Mr. Fletcher said you are right, R-8 has been used in ways that we did not anticipate, but if we were in a situation where we thought it was causing concern, you would not get a recommendation for approval from us. You also have to remind yourself that if R-8 did not exist, all the things that people have asked for would have been told no. They would not have been able to, like on Northglen and Hearthstone, keep their covered porch. These are things that are low impact.

Commissioner Baugh said there was one, I want to say East Rock Street, we did over there, was that conditional?

Ms. Dang said East Gay Street?

Commissioner Baugh said was there a condition on that too? That is the one that I am thinking about that seemed like the actual R-8 for what we thought R-8 was going to be.

Ms. Dang said that is correct. I even think Mr. Fletcher's Virginia Avenue example, I think the proffer might have been related to no entrances close to the intersection not about density or the type of dwellings. I do not think we had a condition on the East Gay Street one.

Commissioner Baugh said it is also the exception that proves the rule here because of the points well taken.

Chair Finnegan said I think there is a distinction between people whose existing properties they want to do something different with versus land where there currently is not a structure or a structure that gets demolished. It does feel like these are different.

Commissioner Baugh said I just thought I would throw that out there for down the road while I was thinking about it.

Chair Finnegan said it is a can of worms and we could put the lid back on it.

Commissioner Baugh said with that, I will move to approve the rezoning as presented.

Vice Mayor Dent seconded the motion.

Chair Finnegan called for a roll call vote.

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| Commissioner Armstrong | Aye |
| Commissioner Baugh | Aye |
| Vice Chair Byrd | Aye |
| Vice Mayor Dent | Aye |
| Commissioner Alsindi | Aye |
| Chair Finnegan | Aye |

The motion to recommend approval of the rezoning request passed (6-0). The recommendation will move forward to City Council on January 9, 2024.