



City of Harrisonburg, Virginia

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April 4, 2016

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider amending the Zoning Ordinance Sections 10-3-24, 132, and 135 through 140. Section 10-3-24 Definitions shall be amended by updating the definition of “variance” to align with changes to the Code of Virginia. Multiple sections within Article W, Board of Zoning Appeals shall be amended by updating existing sections in order to align with recent changes to the provisions of the State Code and to make general housekeeping corrections within the Article.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: March 9, 2016

Vice Chair Way read the request and asked staff to review.

Mrs. Banks said this is a public hearing to consider a request to amend the Zoning Ordinance Section 10-3-24 Definitions and several sections within Article W Board of Zoning Appeals (BZA) to align the City Code with approved changes to the Code of Virginia that occurred during the 2015 Virginia Acts of Assembly and in general to perform a few housekeeping revisions to line up our Code better with the State Code.

Overall, the changes herein described pertain to the procedures and criteria under which the board grants variances and decides appeals. The amendments would occur within Section 10-3-24 Definitions and the following code sections within Article W Board of Zoning Appeals: 10-3-132 and 10-3-135 through 10-3-140.

In general, the BZA is charged with: hearing and deciding appeals to decisions of the Zoning Administrator, authorizing variances that allow deviations from particular zoning regulations, hearing and deciding applications for interpretations of the zoning map, and to determine (in cases of uncertainty) the district classification of any use not specifically named in the Zoning Ordinance.

The existing definition of “variance” within Section 10-3-24 is proposed to be updated by removing the requirement of a property owner proving that strict application of the ordinance results in “unnecessary or unreasonable hardship” and replacing it with the requirement that an applicant demonstrate that strict application of an ordinance would “unreasonably restrict the utilization of the property.” Changes made to Section 10-3-132 titled Composition, would be amended to better define the duties of the secretary of the BZA and the BZA members. New criteria to decide appeals would be added to Section 10-3-135 titled Powers, while Section 10-3-136 titled Variances would be updated to reflect the new definition of a “variance” and outline the criteria under which one can be granted. Section 10-3-137 titled Conditions Attached to Approvals, has been removed altogether since the power to impose conditions is given at the end of Section 10-3-136. Section 10-3-138 titled Amendment of Variance, would be changed to require applicants to follow the same process as individuals applying for a variance. Three new subsections have been added to Section 10-3-139 titled Procedures on Applications and Appeals, to include the requirements of equal say during a public hearing, availability of materials to the applicants and the

public, and for issues associated with open communication among all parties involved while a case is open.

The purpose of most of these changes is to clarify the criteria under which the board can grant a variance. In the past, deciding whether or not an applicant met the requirement of a “hardship” has been difficult. With this amendment, the hope is that the BZA will find it easier to determine if a property’s utilization is being unreasonably restricted by regulations within the Zoning Ordinance. Other important changes that are proposed within Article W are to further ensure that applicants are being treated fairly and have equal access to all of the materials and conversations surrounding their case. As noted in the Summary section above, several of the proposed amendments are not associated with recent changes to the Code of Virginia, but rather are put forth to better align the overall regulations of the BZA with the Code of Virginia.

Staff recommends approving the proposed Zoning Ordinance amendments as described and shown herein.

Vice Chair Way asked if there were any questions for staff.

Mr. Heatwole said within the section that discusses adjoining property owner notification and states “such notice shall be given by first class mail rather than by registered mail,” was there a previous requirement that it must be sent by registered mail?

Mrs. Banks replied no, this has always been allowed and is not a change initiated by State Code changes, but rather a housekeeping change.

Mr. Fletcher said just to clarify one thing regarding these changes. We are not that far behind with changes to the State Code, as a matter of fact we had these changes prepared and on the Planning Commission agenda for July 2015, right after it was adopted. Staff did not like the way we were moving forward with the changes and we actually pulled the item from the agenda in order to make more changes.

Vice Chair Way asked if the Board of Zoning Appeals had an opportunity to review this.

Mr. Da’Mes said yes and they have no issues. Actually they feel this will help when deciding on requests because previously it has been hard to meet the hardship requirement as spelled out.

Vice Chair Way asked if there were any further questions. Hearing none, he opened the public hearing and asked if there was anyone wishing to speak regarding the ordinance amendments. Hearing none, he closed the public hearing and asked if there was discussion or a motion.

Dr. Dilts moved to recommend approval of the Zoning Ordinance Amendment – Section 10-3-24 Definitions, and Multiple Sections within Article W.

Mr. Colman seconded the motion.

Vice Chair Way called for a voice vote on the motion.

All voted in favor (6-0).

Respectfully Submitted,

Alison Banks

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