



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

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To: Planning Commission  
From: Department of Community Development  
Date: August 14, 2024 (Regular Meeting)  
Re: Rezoning – 895 North Liberty Street (M-1 to R-8C)

### **Summary:**

Project name	N/A
Address/Location	865 North Liberty Street
Tax Map Parcels	40-Z-54 and 55
Total Land Area	+/- 10,312 square feet
Property Owner	Concepcion Ortiz Vasquez
Owner's Representative	N/A
Present Zoning	M-1, General Industrial District
Proposed Zoning	R-8C, Small Lot Residential District Conditional
Staff Recommendation	Denial
Planning Commission	August 14, 2024 (Public Hearing)
City Council	Anticipated September 10, 2024 (First Reading/Public Hearing) Anticipated September 24, 2024 (Second Reading)

### **Background:**

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

**Site:** Illegal duplex, zoned M-1

**North:** Presumed nonconforming residential uses, zoned M-1

**East:** Across North Liberty Street, presumed nonconforming residential use and auto repair business, zoned M-1

**South:** Vacant land and presumed nonconforming residential uses, zoned M-1

**West:** Presumed nonconforming junk yard and presumed nonconforming residential uses, zoned M-1

The existing structure addressed as 865 N Liberty Street is believed to have been built in 1945 before the property was annexed into the City in 1983. When the property was annexed, it was zoned M-1, which did not at the time allow dwellings, and the existing dwelling would have been considered nonconforming at the time.

A 1993 plat recorded in deed book 1235 on page 766 (a copy of the plat is attached) shows a two-story dwelling setback 25-feet and 2-inches from the public street right of way. It is unknown when the structure began operating as a duplex. The current property owner/applicant purchased the property in February 2024.

In June 2024, the applicant met with Community Development staff to discuss adding an addition to the rear of the building to expand one of the presumed dwelling units. During the meeting, it was discovered that the structure has been operating as a duplex. Since then, staff has been working with the applicant to verify the structure's nonconforming status. The applicant has been unable to prove that a duplex was legally established and is nonconforming.

The Zoning Ordinance states that “[w]hen a nonconforming use is enlarged or extended beyond the size, character, or intensity of the use as it existed at the time that it became nonconforming, the nonconforming status of such use shall terminate and become unlawful.” Additionally, the purpose of the nonconforming principle is to preserve rights in existing lawful buildings and uses of land, subject to the rule that public policy opposes the extension and favors the elimination of nonconforming uses. Nonconforming uses are disfavored because they detract from the effectiveness of a comprehensive zoning plan.<sup>1</sup>

Staff has determined that the structure has lost its nonconforming use status as a single-family detached dwelling when the structure was converted to a duplex.

After discussing options with staff, the applicant is requesting to rezone the property to allow for a single-family detached dwelling in the R-8 district. The applicant is aware that if the request is denied that the residential use cannot continue on the site.

**Key Issues:**

The applicant is requesting to rezone a +/- 10,312-square foot property from M-1, General Industrial District to R-8C, Small Lot Residential District Conditional. The property is located at 895 North Liberty Street and is identified as TM 40-Z-54 and 55.

*Proffers*

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

1. There shall be no more than one dwelling on the site.
2. The setback off of North Liberty Street will be no closer than 15 feet.

The R-8 district is intended for medium- to high-density residential development including single-family detached, duplex, and, in special circumstances, townhouse development with an approved special use permit. If rezoned, although the dimensions of the property would allow for a total of two units (either

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<sup>1</sup> Albemarle Land Use Law Handbook, <https://www.albemarle.org/government/county-attorney/resources/land-use-law-handbook>

two single family detached units or a subdivided duplex structure), Proffer #1 prohibits more than one dwelling on the site.

The R-8 district typically requires a minimum 10-foot front yard setback, however, proffer #2 further restricts the front yard setback to 15 feet.

#### *Land Use*

The Comprehensive Plan designates this site as Industrial and states:

These areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities. They include the major existing and future employment areas of the City.

Staff does not believe this specific site is appropriate for a residential use. Not only is the subject site planned and zoned for industrial uses, but all properties on the same side of the street extending from the North Liberty Street/Edom Road intersection north to the City/County jurisdictional line are also planned and zoned for industrial operations. While it is presumed that the adjacent properties to the north and south are nonconforming residential uses, the site is also adjacent to a presumed nonconforming junk yard, which raises concerns about potential issues such as noise, odors, and other factors that are incompatible with residential uses and that impact the safety and quality of life for individuals that live near such areas. Staff understands a residential use has existed for many years on the subject site; however, the property has lost its nonconforming status. Staff believes approving a rezoning to continue a residential use at this location would be inconsistent with the goals and intent of the Comprehensive Plan's Land Use Guide.

#### *Transportation and Traffic*

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

#### *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 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.

#### *Public Schools*

If the rezoning is approved, no additional dwelling units would be added to the property; therefore, the student generation is zero. Based on the School Board's current adopted attendance boundaries, Waterman Elementary School, Thomas Harrison Middle School, and Harrisonburg High School would serve the students residing on this property.

#### *Recommendation*

Staff realizes how difficult of a situation the details of this case present, which is further complicated by the demand for housing in the City. While the City is working hard to find solutions for more opportunities for housing in the City, from a land use perspective, staff cannot recommend in favor of this request given that the current zoning aligns with the future plans for the area and because we do not want to promote residential uses adjacent to the existing industrial uses.

**Environmental Impact:**

N/A

**Fiscal Impact:**

N/A

**Prior Actions:**

N/A

**Alternatives:**

- (a) Recommend approval of the rezoning request; or
- (b) Recommend denial of the rezoning request.

**Community Engagement:**

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

***Rezoning – 895 North Liberty St (M-1 to R-8)***

Public hearing to consider a request from Concepcion Ortiz Vasquez to rezone a +/- 10,312 square foot property from M-1, General Industrial District to R-8, Small Lot Residential District. The property is addressed as 895 North Liberty Street and is identified as tax map parcels 40-Z-54 and 55.

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) denial of the rezoning request.

**Attachments:**

- 1. Site maps
- 2. Application and supporting documents

**Review:**

N/A