



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

## STAFF REPORT

April 8, 2015

### REZONING – 1320 PORT REPUBLIC ROAD ( B-2C PROFFER AMENDMENT)

#### GENERAL INFORMATION

**Applicant:** Alan E. “Butch” Strawderman

**Tax Map:** 88-C-6

**Acreage:** 19,602 +/- square feet

**Location:** 1320 Port Republic Road

**Request:** Public hearing to consider rezoning a parcel zoned B-2C, General Business District Conditional by amending existing proffers.

#### LAND USE, ZONING, AND SITE CHARACTERISTICS

The Comprehensive Plan designates this area as Low Density Residential. This designation states that these areas consist of single family detached dwellings with a maximum density of 1 to 4 units per acre. Low density sections are found mainly in and around well established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

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

Site: A 4,555 sq. ft. commercial building and parking lot, zoned B-2C

North: Single family home at the intersection of Port Republic Road and Nelson Drive, zoned R-1

East: Non-conforming mobile home park, zoned R-1

South: Portion of mobile home park parcel, zoned R-1 and further south, Comsonics, zoned M-1

West: Across Port Republic Road, single family homes, zoned R-1

#### EVALUATION

The applicant is requesting to rezone a 19,602 +/- square foot parcel zoned B-2C, General Business District Conditional by amending existing proffers that were approved when the property was rezoned in 2009. If approved, at this time, the property owner’s plan is to lease the 4,555 square foot building for a convenience store. The property is located at 1320 Port Republic Road, less than 900 feet from the City limits, between Nelson Drive and Portland Drive on the northeastern side of the street.

Before getting into the details of the proposed request, some of the history of this property should be known and one must understand how the unusual circumstances involving the

property's 2009-approved applications for a rezoning and a special use permit (SUP), together, strictly control how the property can currently be used.

The subject parcel was annexed into the City in 1983 and had a convenience store operating on-site, which staff believes began during the 1960s. Upon annexation, the property was given an R-1, Single Family Residential District zoning classification; therefore, the use of the property was immediately a non-conforming use. The site was also non-conforming to minimum parking requirements and the building was non-conforming to setback regulations. The building was (and remains) 5.7 feet from the eastern property line and, on average, 2.3 feet from the southern property line.

In 2004, the previous property owner (Ellen Desarno) received approval of a SUP per Section 10-3-34 (1) to operate a daycare within the R-1 zoning district with the condition that the hours of operation be limited from 6:00 a.m. to 9:00 p.m. Because daycare facilities and retail operations have their minimum required parking spaces calculated under the same requirement, at 1 space per 200 square feet of gross floor area for buildings 10,000 square feet or less, the operators of the daycare facility were not required to increase the number of parking spaces as they could take advantage of the non-conforming parking situation.

In November 2008, Ms. Desarno requested to rezone the property from R-1 to B-2C, General Business District Conditional with six proffers. Because the daycare operated on-site for more than 24 consecutive months, the site lost its non-conforming retail status. Staff recommended denial of that rezoning stating that: the proposal was not in conformance with the Comprehensive Plan, there were other properties already located along Port Republic Road zoned for the proposed use, and we believed it would have set a precedent for other property owners requesting a commercial zoning classification—a trend we did not want to see occur since there was (and remains) large tracts of undeveloped properties zoned and planned for single family home neighborhoods. We noted that if the property were rezoned to the B-2 district, the building would be further from conforming to setback regulations because B-2 properties have increased yard requirements when abutting residential districts. We further noted that if the property had merit for rezoning, we did not believe it should be allowed for commercial uses. This was recognized because the lower portion of Ashby Meadows, the development across Port Republic Road from the site, had already been successfully rezoned to R-3C, which among other proffers, only allowed medical and professional office uses. Planning Commission unanimously (6-0 with one recusal/abstention) recommended denial of the Desarno rezoning; however, City Council voted (4-0 with one abstention) in December 2008 to approve the request. (The rezoning did not become official until the consent agenda approval in January 2009.)

During the Planning Commission review of the 2008 rezoning request, staff noted that if approval of the rezoning was desired, “[we] suggest[ed] tabling the application for a month to allow the applicant’s representative to compose a more comprehensible proffer statement. Although staff [understood] the letters objective, we [had] concern that in the future it could cause inconsistent interpretation of the statement’s intent.” The applicant amended proffers between the Planning Commission and City Council public hearings; those proffers are what govern the property today. Unfortunately, the proffer statement was approved with one strangely crafted statement that oddly connects the conditional zoning to a subsequently approved conditioned SUP, which in the end complicates how the property can be used.

The existing proffers along with the approved conditioned SUP strictly regulate the uses of the property. The existing proffers include the following (written verbatim):

1. The “by right” use of the property is limited to mercantile establishments and accessory uses, including those which promote the show, sale and rental of goods or equipment for impaired, handicapped or disabled persons, inclusive of goods or equipment for their medical treatment or rehabilitation or mobility or transportation, under Section 10-3-90 (1) and (15) of the Code of the City of Harrisonburg.
2. The existing playground area will be maintained in its present state and will not be paved, except as provided for the purposes of the special use permit for the property.
3. If in the future exterior lighting is regulated by a City ordinance applicable to the B-2, General Business zone, then the property will comply with the regulations at that time.
4. The building will not be open later than 9:00 o’clock p.m.
5. No drive-thru, restaurant or shopping center uses will be allowed.
6. Any freestanding sign on the property will be restricted to 24 square feet and 6 feet in height.

While the rezoning with the above proffers was being reviewed (and ultimately approved), Ms. Desarno had already submitted a SUP application requesting for the reduction in required parking per Section 10-3-91 (8). Twenty-three parking spaces were required and the applicant requested to maintain the existing 17 spaces—a reduction of six spaces. As required by the SUP, “...an amount of open space equal to the amount of space that would have been used for the required number of parking spaces [must be] left available for parking in the event that it is needed at some time in the future.” The SUP was approved, and along with the requirement as stated, the condition was added that it be applicable only for the business of VIP Scooters.

Although proffer #1 above states that all uses permitted by 10-3-90 (1) and (15), (exclusive of drive-thrus, restaurants, and shopping centers, and personal service establishments—a use that was not listed as being permissible) shall be permitted, proffer #2 oddly connects the conditioned SUP to the proffers and effectively limits the uses that can operate on the site. This is because, unless a use substantially the same as VIP Scooters operates on site or the building is reduced in size or a smaller building is constructed in turn reducing parking requirements, the existing building’s size requires 23 parking spaces for retail uses and it appears those spaces cannot physically fit on the property without utilizing the playground area, which is proffered to be “maintained in its present state” and “not be paved.” The clause the applicant provided within proffer #2, which states: “except as provided for the purposes of the special use permit for the property” was meant to allow parking to be added within the existing playground area if so ordered later by the City because more parking was deemed necessary.

Because of the existing strict limitations, the current property owner (Alan E. “Butch” Strawderman) is requesting to rezone the property by amending the existing proffers. The applicant has submitted the following new proffers (written verbatim):

1. Use Restrictions: All uses delineated in Harrisonburg's Zoning Ordinance, Article Q. B-2 General Business District, § 10-3-90 (1) and (15) shall be permitted on the Property. Except that no drive-thru, restaurant or shopping centers will be allowed.
2. Sign restrictions:
  - a. The total square footage of all freestanding signs will not exceed 24 sf (each side).
  - b. The freestanding sign height will be limited to 6 feet.
  - c. No electronic message boards or flashing signs shall be permitted on site.
3. The building will not be open later than 11:00 o'clock p.m. and not open before 6:00 o'clock a.m.
4. A six-foot opaque privacy fence shall be installed adjacent to any new parking lot area along the northern and eastern property lines. In addition, an evergreen vegetated screen shall be installed along the same boundaries. At the time of planting, such plantings shall be at least six feet in height and planted a minimum of seven feet on center so as to form a dense screen. Such vegetation shall be maintained and replaced when necessary.

In addition to the proffers, the applicant supplied a planned layout of the site. Note that this layout is not proffered, but rather illustrates how the site could accommodate the required 23 parking spaces as well as demonstrating the general appearance and location of the proffered fencing and evergreen plantings as specified in proffer #3.

If the request is approved, the differences between the currently permitted uses and what the proposed proffers would allow includes the following: 1) personal service establishments would be added as an allowable use along with the previously permitted mercantile establishments, which promote the show, sale and rental of goods—the site would no longer be required to permit only a use substantially the same as VIP Scooters, or for the building to be renovated and reduced in size or a new smaller building constructed in its place so that minimum parking requirements could be met; 2) the open space area north of the building could be fully utilized for any of the allowed uses including it being a parking area for those uses; 3) the site could operate until 11:00 p.m. rather than being limited to 9:00 p.m.; 4) no electronic message boards or flashing signs would be permitted along with the current sign restrictions; and 5) the site would be required to screen any new parking lot area along the northern and eastern property lines with a six-foot privacy fence and a dense evergreen screen.

Although some may believe there are few differences, staff believes those differences are quite impactful and is recommending denial of the request.

First, the Comprehensive Plan's Land Use Guide designation for this property is Low Density Residential; thus, the existing zoning and the proposed zoning does not conform to the Land Use Guide. Those who participated in the 2011 Comprehensive Plan update should remember that we focused on this corridor and analyzed whether the land use designations should be changed. As a result of that analysis, it was recommended, and approved, for the properties fronting Port Republic Road on the southwestern side of the street, between the CVS property at the intersection of Peach Grove Avenue and the City limits, to have the Professional land use designation. No changes were recommended on the opposite side of Port Republic Road.

Second, the lessening of the proffered conditions would make this site more attractive to retail uses having a greater traffic impact. Although the intended use met the threshold for potentially being required to perform a traffic impact analysis (TIA), the Department of Public Works chose

not to require the TIA. Included within the packet is the “Determination of Need for a Traffic Impact Analysis” form, which includes the Department of Public Works’ comment that “Port Republic Road was recently reconstructed to a 5-lane facility and provides a center turn lane that can be used to access this site. It is the opinion of Public Works staff that additional turning lanes and/or traffic control devices will not be needed to support the traffic generated by the proposed development.” Regardless, no one should draw the conclusion that rezoning this property would not have significant impact on traffic in this area. Increasing the hours of operation and increasing the number of parking spaces makes this site more suitable to the intended convenience store use, which will certainly generate more traffic than the previous retail use. The traffic that can be expected is quick in and out type traffic, which staff believes does not mix well with the shared entrance for the mobile home park or the nearby Nelson Drive intersection.

In addition to vehicular traffic, a convenience store (likely selling beer and wine) at this location would generate considerable pedestrian traffic mainly due to the student housing complex (Aspen Heights) located nearby in the County. There is no designated street crossing located near this site, and thus no opportunity for a cross walk to increase safety. Pedestrians trying to cross Port Republic Road, a five lane facility, mid-block and likely during evening and nighttime hours are not desirable situations.

An additional complicated variable regarding the concerns with increased traffic is the fact that there are five separate public school buses that stop in front of this property along Port Republic Road to serve the students that live in this area. The school bus stops include: one for Harrisonburg High School, one for Skyline Middle School, one for Stone Spring Elementary School, one special education bus for Stone Spring Elementary School, and one for Skyline Middle School serving a student in a wheelchair. After bringing this particular matter to the attention of the applicant, as is stated on the same letter as their proffers, it is their “intent to work with the adjoining mobile home park property owner and the City to provide a safe area for students to wait for the bus.”

Although the site is already zoned B-2C and school bus services have to deal with a very busy site today, further utilizing the site and increasing traffic is not desirable. During the review, staff suggested the applicant consider providing better controlled entrances to the property and that some effort should be made to limit the access to the convenience store to the northern-most entrance, especially since the additional parking will be added directly behind that entrance. We further recommended that the applicant consider ways to limit backing from parking spaces into the shared driveway that serves the residents in the mobile home park. In an effort to reduce the conflicts of customers backing into the drive aisle that serves the mobile home park, the submitted layout demonstrates a proposed landscaping island intended to place parked vehicles further from the drive aisle.

Increasing the hours of operation from 9:00 p.m. to 11:00 p.m. may seem minor; it is an incremental increase; nevertheless, that additional two hours could have big implications to surrounding residential uses. The current 9:00 p.m. time limit already has impacts on the adjacent residential uses along Nelson Drive and the mobile home park, yet these impacts from this timeframe are more compatible for the adjacent residential uses than would be an 11:00 p.m. time limit. Staff further believes approving an incremental adjustment now would ultimately be used to request approval beyond 11:00 p.m. in the future.

As was pointed out during the 2008 rezoning request, there is ample area for intense retail uses to locate in this corridor further northwest along Port Republic Road. Moving these uses further south on Port Republic Road is not compatible with the continued Low Density Residential development desired by the Comprehensive Plan. Although some may see the property at 1380 Little Sorrell Drive, the Harrisonburg Community Health Center and WilliamsonHughes Pharmacy location that was rezoned to B-2C in 2010, as a precedent setting case, staff, however, does not. That rezoning was heavily proffered, which among many other details, included a proffered site layout with no entrances on Port Republic Road, specifics regarding the appearance of the building, and every B-2 commercial use was eliminated except pharmacy related retail uses while maintaining the previously permitted professional, governmental, and business office uses that were permitted when that property was zoned R-3C.

If the subject site should be approved for more intense commercial uses, staff believes it should only be done with a redeveloped site. Along with other matters that would need to be considered, the entrances/driveways for the mobile home park and the proposed business should be kept separate to limit conflicts and possible on-site safety issues.

Staff recommends denial of the rezoning/proffer amendment.