



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 865 East LLC to amend Section 10-3-91 (9) of the Zoning Ordinance's B-2, General Business District regulations*

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. Dang said presently, a B-2 zoned property's side and rear yard setbacks are different depending upon the zoning district of adjacent parcels. Section 10-3-92, Area and dimensional regulations within the B-2 district requires a 10-foot side and rear yard setback when the adjacent parcels are not zoned residentially. However, when a B-2 property abuts a residential district, the side and rear yard setback increases to 30 feet and when structures on the B-2 property are taller than 35 feet, an additional foot of setback is required for each foot above 35 feet. Section 10-3-91 (9) presently allows, by special use permit, a B-2 property to reduce the required side yard setback up to zero feet along the lot line of an adjoining lot or parcel zoned B-2 or M-1.

The applicant is requesting to amend Section 10-3-91 (9) within the B-2, General Business District to allow by special use permit (SUP) the reduction in required side and/or rear yard setbacks of up to zero feet. The ordinance amendment is associated with separate but simultaneous requests including a rezoning and two SUP applications for the property addressed as 865 Port Republic Road. The specifics of the requested rezoning and SUPs are addressed in a separate staff report. The following is the proposed amendments to Section 10-3-91 (9):

Reduction in the required side **and/or rear** yard setback **up** to zero feet **along the lot line of an adjoining lot or parcel zoned B-2 or M-1.**

While this will open the opportunity to both reduce setbacks along the side and rear yards and to reduce setbacks adjoining residentially zoned parcels, staff is comfortable supporting this request because SUPs are evaluated on a case-by-case basis.

Vice Mayor Dent said I am slightly perplexed by the wording “up to zero” meaning that it can be less than zero? I cannot quite wrap my brain around it.

Mr. Fletcher said you mean down to zero.

Vice Mayor Dent said I cannot quite figure out what the wording is but that just strikes me as really strange.

Chair Finnegan said Mr. Russ is that standard language, “up to zero” meaning down to? The only reason I am asking is because we are amending the Zoning Ordinance. I just want to make sure that if there is a legal challenge or something, is the word up an issue or is that reasonably understood by courts to mean what we think it means?

Vice Mayor Dent said to as little as zero feet is what you are trying to say right?

Chair Finnegan said yeah, but there is certain standard language that is used in the Zoning Ordinance?

Ms. Dang said I hear what you are saying. I am laughing because I did not think of it that way.

Vice Chair Byrd said zero is the smallest it can be.

Mr. Fletcher said in our world when you are talking about setbacks it is sort of like “I want to move my building up to ten feet from the property or up to zero feet” and I think as people speak, you are moving it closer to the public street. You are not moving it back...honestly it does not matter to us, we just want to make sure it is clear.

Ms. Dang said we could remove the word up if you want. In one iteration that we had, “reduction that required side and/or rear yard setback to zero feet.” It was understood the same way and we have not had issues.

Chair Finnegan said as long as it holds up in the courts if it is ever challenged. As long as attorneys and folks know what it means, it seems like it is not a problem. If that is a problem then we can change it to down to zero.

Vice Mayor Dent said I think I would like something like to as little as zero, to a minimum of zero. Maybe just skip the up entirely because that was the thing that glitched my brain.

Chair Finnegan said do we need the word up?

Mr. Fletcher said yeah, we can eliminate it, but you want to make sure that people do not get confused that it is only zero feet. If you wanted it to be...as Thanh described it is 30 feet or more than 30 based on the height of the building that you would only want it to be 10. It is clear that you can request that.

Vice Mayor Dent said so that is why ‘to as little as zero’ makes more sense.

Mr. Fletcher said that is where I was headed, “to a minimum of zero.”

Vice Mayor Dent said I think allowing for that range is important too, not just to jump to zero.

Chair Finnegan said as long as we understand the spirit of it, I am comfortable with giving staff the flexibility to...we know what we are talking about here, we can wordsmith it.

Vice Chair Byrd said because down to or to a minimum of...the idea is that regular people tend to think of setbacks and you tell them a number and they go “well, I want it reduced.” Anything that highlights that would make it easier for anyone else reading it to go “oh, we are going in that direction.”

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

Todd Rhea, applicant’s representative, came forward to speak to the request. He said this revision actually came up in the context of the Peach Grove rezoning that happened back in February of this year. We ended up not having to get to that issue because the topography there pushed the buildings down from a high density student housing community next door. When the City adopted its B-2 special use for multifamily in the B-2 district in February of 2022, where everyone thought of that in context it was going in the middle of a B-2 zoned property that abutted other B-2 zoned property. In fact, sometimes as in the case of these examples it is next to a residential property but we did not want to blanket change to where if you are next to an R-1 or R-2 neighborhood, you can automatically go up to increased heights. That is why the ordinance was suggested in numerous conversations with staff to be on a special use permit basis, sort of a case-by-case basis, that increases the utility by allowing a special use or multifamily in B-2. But in those cases where you are against a residential district provides some commonsense flexibility.

Chair Finnegan asked if there were any questions for the applicant’s representative. 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.

Vice Chair Byrd said the gentleman earlier who was talking about being beside a residential area and having to deal with a 30 foot setback, would have been very useful to be here to hear this. As long as staff sets the language in the spirit of what we have already discussed, I would have no issue with this special use permit. I would like to make a motion to approve.

Vice Mayor Dent seconded the motion.

Commissioner Baugh said I was just looking at the pervious one, I think he is M-1, so this would not cover that but might be a reason to think about whether we would do anything similar with M-1 at some point but that is not in front of us so. This would not help him as is.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the Zoning Ordinance amendment passed (7-0). The recommendation will move forward to City Council on January 9, 2024.