



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Board of Zoning Appeals (BZA)
From: Christopher Perez-Leon, Zoning Technician
Date: August 2, 2021 (Meeting Date)
Re: Appeal – 1110 N Liberty Street

Summary

A request by Valley Corner LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-96, Uses permitted by right in the M-1, General Industrial District and Section 10-3-21, Nonconforming uses. The appeal is specific to the use and occupancy of a structure on the property. The property is located at 1110 N Liberty Street and identified as tax map parcel 45-A-1.

Relevant Definitions per Zoning Ordinance (ZO) Section 10-3-24. - Definitions:

Nonconforming use: Any lawful use existing at the time of the enactment or subsequent amendment of this chapter which does not conform to the current zoning regulations prescribed in the district in which it is situated.

Relevant Code Sections per Zoning Ordinance:

Sec. 10-3-20. - Continuance of nonconformities.

- a) Any lawful land, buildings, and structures and the uses thereof existing at the time of the enactment or subsequent amendment of this chapter which do not conform to the zoning prescribed for the district in which they are situated shall be considered nonconforming.
- b) Nonconforming land, buildings, and structures and the uses thereof may be continued only so long as:
 1. The then-existing or a more restricted use continues;
 2. Such use is not discontinued for more than two (2) years; and,
 3. The buildings or structures are maintained in their then structural condition.
- c) The burden of establishing nonconforming status shall be that of the owner of the property.

Sec. 10-3-21. - Nonconforming uses.

- a) Whenever 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. Any subsequent use shall conform to the

regulations applicable in the district in which it is located. When a use is regulated by this chapter in a quantifiable manner, including but not limited to regulations limiting the number of unrelated occupants permitted in a dwelling unit and limiting the density of dwelling units, any quantifiable increase shall constitute an enlargement or extension beyond the size, character, or intensity of the use.

Article R. – M-1, General Industrial District regulations

Provided as Attachment.

Background

The property located at 1110 North Liberty Street contains three principal buildings addressed as 1110 N Liberty Street, 266 Charles Street, 260 Charles Street, and a fourth unaddressed structure and is zoned M-1, General Industrial District.

On June 2, 2020, Community Development staff was notified by the Real Estate Department that the building addressed as 266 Charles Street was being converted into a residential unit and that a second dwelling unit had been added to the building addressed as 1110 North Liberty Street. Staff researched Department records and found that no building permits had been approved for the construction work at 266 Charles Street or 1110 N Liberty Street. Staff inspected the property on June 2, 2020, and a written account from Ron Schuett, Building Official, is attached. Know that Rachel Drescher was the Zoning Administrator through January 2021 and is no longer employed with the City.

On May 14, 2021, Nathan Beall, the property manager, confirmed to City staff that there was a second dwelling unit in the building addressed as 1110 North Liberty Street and that work had been done to 266 Charles Street to convert the structure into a residential use. Although staff does not have enough information to confirmed this, it is plausible that the building addressed as 1110 North Liberty Street became a nonconforming single-family detached dwelling prior to or when the property was annexed from Rockingham County into the City of Harrisonburg in 1962. The 1963 Zoning Map designates this property as M-1, Light Industrial and the property was later designated M-1, General Industrial, which is the current zoning designation. Residential uses have not been permitted on the property since at least 1963. The Real Estate Office has no records of there ever being more than one dwelling unit on this property.

Assuming that the building was annexed into the City as a nonconforming single-family detached dwelling, enlargement to a two-unit dwelling would have been done illegally. Therefore, according to Zoning Ordinance Section 10-3-21(a), the property shall now conform to all applicable regulations of the M-1, General Industrial District. Dwelling units are no longer permitted on the property.

The appellant said that there were two residences on the property when it was acquired on February 24, 2017, though he has not provided documentation in support of that claim. If the appellant was able to provide documentation to prove that 1110 North Liberty Street was a two-family dwelling when purchased in 2017, the appellant still has failed to provide documentation to prove that the building was legally established and became nonconforming prior to their purchase of the property.

If a previous property owner added a second dwelling unit to the single-family home at 1110 North Liberty Street, that would also be a violation of Zoning Ordinance Section 10-3-21(a).

Staff Determination

The appellant has not provided proof that the two-family dwelling structure is nonconforming. Know that the burden of proof is on the property owner to establish the nonconforming use. Staff contends that the nonconforming single-family detached dwelling was illegally enlarged to a two-family dwelling structure, and therefore according to Zoning Ordinance Section 10-3-21(a), the property shall now conform to all applicable regulations of the M-1, General Industrial District. Dwelling units are no longer permitted on the property.

If the BZA rules in favor of the appellant, then the BZA has enough proof that the structure is a nonconforming two-family dwelling, meaning that the two-family dwelling was established legally before the Zoning Ordinance was changed. There also remains the question of what the nonconforming occupancy for each dwelling unit is.

Community Engagement

As required, the request was published in the local newspaper twice advertising for the Board of Zoning Appeals public hearing. The advertisement was published as shown below:

“A request by Valley Corner LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-96, Uses permitted by right in the M-1, General Industrial District and Section 10-3-21, Nonconforming uses. The appeal is specific to the use and occupancy of a structure on the property. The property is located at 1110 N Liberty Street and identified as tax map parcel 45-A-1.”

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>.

Attachments:

1. Site map
2. Application, appellant letter, and supporting documents
3. M-1, General Industrial District Use Regulations
4. Property Card from Real Estate Office
5. Account of events from Ron Schuett, Building Official
6. Staff Determination
7. Violation notice