



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

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April 6, 2015

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from K&K, LLC to rezone a 0.915-acre parcel zoned R-3C, Multiple Dwelling Residential District Conditional by amending one of the six existing proffers that were approved when the property was rezoned in 1999. The proposed amendment would require the property owner to install and maintain a fence or shrubs to provide both a visual and physical barrier to discourage pedestrian access across the eastern property line rather than the existing proffered requirement of only providing trees or shrubs to accomplish the same purpose. The property is located at 811 and 821 Port Republic Road and is identified as tax map parcel 92-H-0.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: March 11, 2015

Chair Fitzgerald read the request and asked staff for a review.

Mr. Fletcher said the Comprehensive Plan designates this area as High Density Residential. This designation states that these areas are intended for high density residential use, mostly apartment buildings at densities ranging from 12 to 24 dwelling units per acre.

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

Site: Westport Village student housing development, zoned R-3C

North: Hunters Ridge Townhomes, zoned R-3

East: Across Port Republic Road, Campus Corner commercial center, B-2C

South: Devonshire Village townhomes, R-3

West: Devonshire Village townhomes and Hunters Ridge townhomes, R-3

The property owner is requesting to rezone their R-3C, Multiple Dwelling Residential District Conditional property by amending one of the six proffers approved in 1999. If approved, the property owner would be required to install and maintain a fence or shrubs along the eastern property line to provide both a visual and physical barrier to discourage pedestrian access across the same parcel line rather than the existing proffered requirement of only providing trees or shrubs to accomplish the same purpose. The property is known as Westport Village and is located along the southwestern side of Port Republic Road near the intersection of Devon Lane.

In 1999 the subject property was rezoned from R-1, Single Family Residential District to R-3C, Multiple Dwelling Residential District Conditional to allow for a 12-unit student housing complex. The approved and existing proffers include the following:

1. A strip of land along the northeast boundary (the Port Republic Road frontage), up to 25 feet average width shall be reserved for dedication as additional right-of-way for the improvement of Port Republic Road. All building setbacks and development of the property shall be established in conformance with the proposed new right-of-way line as defined by the City Engineering Department.
2. In conjunction with development of the property, the existing structures and other unsightly conditions shall be removed. The property is intended to be developed in an attractive, comprehensive manner.
3. Any building(s) containing residential units shall be constructed on the eastern one-half of the subject property.
4. There shall be no parking areas constructed between residential buildings and the eastern property line.
5. There shall be no entrances or decks situated on the eastern side of residential building(s).
6. Holly or evergreen trees and/or shrubs shall be planted along the eastern property line to provide a visual buffer and to discourage pedestrian access across the eastern property line, to the extent that will not affect the overhead power lines. Existing trees and plants will be left in place wherever possible and practical to accomplish the intent of the buffer. Maximum spacing between new or existing plants comprising the buffer shall be 12 feet.

In December 2014, staff received a complaint regarding a dilapidated fence between the units of Westport Village and the townhouse development to the east known as Devonshire Village. While investigating the issue, staff discovered the subject property was not complying with the sixth proffer as described above. (Staff also learned that the fence was positioned on the Westport Village property and the townhome parcels of Devonshire Village as the fence crisscrossed the dividing line between the two developments). Staff provided notice to the Westport Village property owner to bring their property into zoning compliance by fulfilling their proffered obligation. (All other proffers have been fulfilled or are being maintained.)

Once notified, the applicant's representative informed staff of the difficulty they have had with citizens destroying parts of the existing fence, which they did not wholly own. To rectify the issue, rather than trying to reestablish holly or evergreen trees and/or shrubs across the eastern property line as the proffer requires, the property owner decided to amend the sixth proffer to give them the ability to install *only* a privacy fence.

The following is to replace the existing sixth proffer:

- A privacy fence and/or evergreen shrubs or trees shall be provided along the eastern property line to provide a visual and physical barrier to discourage pedestrian access across the property line. Installed fences shall be six feet in height and maintained. Installed vegetation intended to achieve the purposes as described herein shall, at the time of planting, be at least six feet in height and planted a minimum of five feet on center so as to form a dense screen. Such vegetation shall be maintained and replaced when necessary.

If approved, to fulfill the proffer as written, the property owner intends to install only a privacy fence at this time.

Staff recommends in favor of approving the proposed amendment. Whether the property owner decides to install only a fence or chooses to establish an evergreen buffer or a combination of both, the amended proffer would satisfy the original intent of trying to provide a visual buffer and to discourage

pedestrian access across the property line. Furthermore, if the property owner chooses to establish an evergreen visual and physical barrier, the amended proffer is stricter with five-foot on center plantings and six-foot in height minimum requirements as opposed to the existing proffer that only requires plantings every 12 feet and no minimum height stipulations.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Colman said are the applicants intending to tear down the old fence or work with the old fence.

Mr. Fletcher said I will let the applicant respond to that question.

Chair Fitzgerald said I will open the public hearing and ask the applicant to speak.

Mr. William Riner, Managing Broker with Riner Rentals, said he has managed this property since it went through foreclosure. The applicants that rezoned this property and offered the proffers for the site are no longer in the picture. The current owner who took over in 2001 never realized the proffers and I understand that is no excuse. The reason we never planted evergreens there is because the previous owners had plants and trees already planted; but they grew quickly and then broke off or died. The fence was already installed and we thought that was all that needed to be done. Then staff came to us and pointed out that the proffers were not met. After working with staff, we applied for the rezoning and reworded the proffers regarding the fence and plantings. We have no problem with the new proffer. We did construct a fence along the back side of the lot, next to the dumpster. This is the type fence we are proposing; we plan to just extend this fence. That fence was built two years ago, basically to keep the students along Devon Lane from coming over and using our dumpster. There was a lot of destruction done to that fence in the first year it was constructed; a gate was even installed in it. Nothing has been done to it recently. Students from Devon Lane still walk around the fence to access the Westport property or to cut through.

I appreciate all the hard work staff did on this request and would be happy to answer any questions.

Mr. Colman said are you going to tear down the old fence and extend a new fence all along the property line out to Port Republic Road?

Mr. Riner said we are going to tear down the old fencing and install all new fence out to Port Republic Road. The existing fence is a very cheaply built fence that has rotted and is falling down.

Chair Fitzgerald asked if there was anyone wishing to speak in favor of the request.

Doug Jones said he is a property owner and Board Member for Devonshire Village and would like to say that Devonshire Village is in favor of this request. The one thing I would like clarification on is the wording for the proposed proffer. We received an early draft of the language and it is a bit different than what is provided here tonight. Some of the Board Members have a concern with the language about maintaining the fence. The proffers we received said Westport would maintain the fence in perpetuity, whereas it does not say that now. In the past there have been problems with maintenance, and we just want to ensure they will maintain the fence. If there is a problem with the fence can Devonshire Village just come to the City and say there is a problem with the fence?

Chair Fitzgerald said that is correct.

Mr. Jones said thank you for clarifying and we are satisfied with the proposed new fence.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor or in opposition of the request. Hearing none, she closed the public hearing and asked for discussion or a motion.

Mr. Colman moved to recommend approval of the rezoning to amend the proffer as presented by staff.

Mr. Da'Mes seconded the motion.

Chair Fitzgerald called for a voice vote on the matter.

All voted in favor of the motion to recommend approval (6-0).

Chair Fitzgerald said the motion passes and will be heard at the April 14th City Council meeting.

Respectfully submitted,

Alison Banks
Planner