

***A request from 865 East LLC to rezone (proffer amendment) 865 Port Republic Road***

***A request from 865 East LLC for a special use permit to allow reduction in required side and/or rear yard setbacks at 865 Port Republic Road***

Chair Baugh read the request and asked staff to review.

Ms. Soffel said in 2017, when the subject site was zoned R-5C, High Density Residential District Conditional, the property received approval for a special use permit (SUP) to allow a concealed wireless telecommunications facility (WTF). In January 2024, the property was rezoned to B-2C, General Business District Conditional, and received SUP approvals to allow multi-family dwellings and/or mixed use buildings and to allow reduction in required side and/or rear yard setbacks to construct an addition to the existing building. (Additional information on the 2024 rezoning and SUP are available at: <https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6461978&GUID=909CEC69-13BA-4A6B-9FF1-67FE7483256D&Options=&Search=>). The proffers restricted the permitted nonresidential uses to retail stores, convenience shops, personal service establishments, restaurants, and business and professional offices. The 2024 rezoning did not include WTFs in the list of permitted uses. In the B-2 district, WTFs would typically be allowed by-right, if not excluded by proffers. The discrepancy became evident when upgrades to the existing WTF was being discussed with staff. If the rezoning is approved, the proffer amendment would rectify this oversight, permitting the WTF to continue operation on the parcel and undergo facility upgrades, as needed.

Additionally, since the 2024 rezoning, the Zoning Ordinance (ZO) was amended in June 2024 to add “tobacco, smoke and vape shops” (referred to herein as vape shops) as a by-right use in the B-2 district. A vape shop currently operates on the ground floor of the existing building and is now considered a nonconforming use. Previously, the ZO did not make reference to vape shops, and they were treated as a retail operation. Operating a vape shop within 1,000 feet of any property containing a public or private school or child day care center is not permitted by the ZO. A radius check confirmed compliance that the subject site is not within 1,000 feet of a public or private school or child day care center. Including vape shops as a permitted use in the proffer amendment will eliminate future ambiguity regarding their operation on the property. Any future new vape shop would have to comply with the location requirements specified in 10-3-93(e).

***Proffers***

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

1. Only the following non-residential shall be permitted on the Property: retail stores, convenience shops (including tobacco, smoke and vape shops), personal service establishments, restaurants (excluding those with drive-through facilities),

business and professional offices, and uses permitted under City Ordinance Section 10-3-90(20).

2. Special use permits shall be permitted as approved by City Council.
3. The Existing Building and the Building Addition shall contain no more than 160 individual apartment units containing a maximum of 470 bedrooms.
4. Non-residential uses may only be located on the first/ground floor of the Existing Building and shall not exceed 16,000 gross square feet with the exception of uses permitted under City Ordinance Section 10-3-90(20). The Building Addition shall have no additional commercial square footage, but may have on-site laundry, exercise and game room facilities and other customary resident amenities to encourage on-site convenience.
5. Ten (10) designated parking spaces shall be reserved for the exclusive use of the Devonshire Townhomes, as shown on the Development Plan, to accommodate for street parking along Devon Lane that was removed as a consequence of the development of the Existing Building. The neighboring property owners' association, for which the spaces are reserved, will regulate the ten (10) reserved spaces via a permit system.
6. The Building Addition shall contain a varied and complementary exterior finish consisting of a mixture of brick, dryvit, and other non-combustible materials with architectural offsets, angles and finishes to create an exterior appearance similar to the Existing Building.
7. Applicant shall install and maintain the following as bonded improvements as part of any engineer-submitted comprehensive site plan for the Building Addition, and as generally shown on the Development Plan:
  - A. Construct a five-foot (5')-wide sidewalk where none exists at the back of the curb bordering the slip lane at the intersection of Port Republic Road and Devon Lane;
  - B. Dedicate a right-of-way for the existing slip lane and sidewalk referenced below, to be located one-half foot (0.5') behind back of the sidewalk;
  - C. Reconstruct the crosswalk across the slip lane including the existing island sidewalk section, such that the crosswalk ramp for the slip lane connects to the crosswalk ramp for the Devon Lane crosswalk, adhering to the Public Right of Way Accessibility Guidelines to the maximum extent feasible, and eradicate the existing crosswalk.
8. Applicant shall grant the City a twenty-foot (20')-wide easement for a shared use path and pedestrian accessway to be finally located and granted upon City request in the general location shown as the yellow hashed area on page 1 of the Development Plan.
9. Any new or relocated site lighting for parking shall be installed with downward directional lighting and shielding to minimize light exfiltration into neighboring properties.
10. The maximum height of freestanding signs along Port Republic Road is eighteen (18') feet and the maximum height of freestanding signs along Devon Lane is eight feet (8').

11. The height of the Building Addition shall not exceed the maximum elevation of the Existing Building as measured from the Existing Building frontage on Port Republic Road.

Proffer #1 was amended to add “tobacco, smoke and vape shops” and “wireless telecommunications facilities” to the list of approved uses for the property. Proffer #4 was amended to exempt the WTFs from the requirement that all non-residential uses be located on the first/ground floor of the existing building. All other proffers remain unchanged, except for minor proofreading corrections.

#### *Special Use Permit*

In conjunction with the rezoning in January 2024, City Council approved SUPs to allow multi-family buildings and to allow a reduction in required side and/or rear yard setbacks. The SUP to allow multi-family buildings has been established through the existing multi-family building. The SUP to allow a reduction in setbacks for the planned addition is at risk of expiring on July 1, 2025. As allowed by Sec. 10-3-130 (c), the applicant is requesting an extension of the time period to establish or demonstrate diligent pursuit of the SUP to reduce setbacks.

The original 2024 SUP included a condition which prohibited constructing other structures with reduced setbacks not vetted by the SUP process. Staff recommends applying the same condition to the SUP, as follows:

The SUP shall be applicable only to the existing building and planned building addition in the location shown on the Development Plan with the ability to deviate up to 10 feet in any direction.

#### *Land Use*

The Comprehensive Plan designates this site as High Density Residential and states:

These areas have been developed or are planned for development that have the highest residential density ranges outside of the downtown area and properties designated Mixed Use by the Land Use Guide. Density is planned to allow up to 24 dwelling units per acre. While a number of existing multifamily developments and areas adjacent to such developments are identified as High Density Residential, residential land use could include small-lot single-family detached and single-family attached neighborhoods. In special circumstances, non-residential uses may be appropriate.

### *Transportation and Traffic*

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

### *Public Water and Sanitary Sewer*

While staff does not anticipate issues regarding water or sanitary sewer service availability for the proposed development, the applicant has been advised that they will be responsible to complete a study of the water and sanitary sewer capacity prior to submittal of an engineered comprehensive site plan. Any public system improvements required to meet the increased demands resulting from the project will be the responsibility of the developer.

### *Recommendation*

Staff recommend approval of the rezoning and SUP with the suggested condition.

Chair Baugh asked if there any questions for staff. Hearing none, he invited the applicant to speak to their request.

Todd Rhea, applicant's representative, came forward to speak to the request. He said these were a couple of clean up items. One of which was missed by the attorney, namely me, when we were rezoned back in 2023. The small Verizon telecommunications facility on the roof was approved by special use permit in 2017 under the R-3 zoning. When we rezoned to B-2, it became a permitted use but the proffers were in artfully drafted to inadvertently exclude the previously granted permits, so we are cleaning up the proffers for that. The vape shop is something upon staff review we looked at to make a nonconforming use into a conforming use. We double checked it is not within the 1,000 feet of any school or daycare facility, so it is conforming if approved. The special use permit is as Planning Commission will recall, the general assembly and subsequently the City ordinance which changed to extend the special use permit period from one year to three years for residentially related uses that happened in June or July of 2024. Our special use permit was granted in January of 2024 so we did not fall under that new regulation. We are simply asking the City to reauthorize it consistent with other current City Zoning Ordinance to give time and not have to go back through the reapplication process should that building addition move forward. Hopefully just a couple of minor clean up items. Staff did a great job in explaining them to you that there is no hidden ball here and we would appreciate the recommendation for approval to City Council.

Councilmember Dent said you said should that building proceed, well, should it?

Mr. Rhea said it should. The last eighteen months have been challenging from a building materials and interest rate environment. That addition has been looked at from a design standpoint and from a cost standpoint and there certainly is hope that expansion will get constructed within the three-year period if the SUP approval is extended.

Chair Baugh asked if there were any questions for the applicant's representative. Hearing none, he opened the public hearing and asked if there was anyone in the room or on the phone wishing to speak to the request.

Chair Baugh closed the public hearing and opened the matter for discussion.

Commissioner Porter said this seems to just be recognizing a de facto reality and it is kind of retroactive action to bring it back into compliance. What would be the implications if we denied the request? Just for my own understanding.

Ms. Soffel said the existing facility would not be allowed.

Ms. Dang said correct, the wireless telecommunications facility would have to be removed.

Ms. Soffel said the vape shop is nonconforming.

Vice Chair Finnegan said there are other states that have what I will call the "vape shop problem" and most of those states do not have a regulated cannabis market and Virginia does not have a regulated cannabis market. If you are talking about objections to vape shops, I share those objections, but I also place the blame at the feet of Governor Youngkin for not taking action on regulating these things.

Commissioner Porter said despite my commentary, I do not see any reason to deny this request whatsoever. It reflects the reality of the circumstances. All commentary aside, I do not see a reason why we would even consider anything other than accepting this.

Vice Chair Finnegan said I would be inclined to support this. I supported the request that came before us a year or two ago to rezone and allow that extension of the building and I also support flexibility in setbacks. With that, I will recommend approval with the conditions.

Commissioner Porter seconded the motion.

Councilmember Dent said I like this project a lot because it is using existing essentially wasted parking lot to expand a building that is student housing. I understand it a lot of it is international students who do not have cars, so they do not need the extra parking. There is also a building on stilts to have the underneath parking allowed. I hope this does go forward and this gives it the leeway of the new timing that we allowed by ordinance and Virginia Law for three years.

Chair Baugh said the motion and the second are to approve both the rezoning and the special use permit. Obviously if you have an objection to doing that just speak up.

Ms. Dang said [to Mr. Russ] procedurally does it matter if they do the two items, the rezoning and the special use permit in one vote or do they have to split it in two.

Mr. Russ said I think they can do it either way.

Chair Baugh said as long as the records are clear to what we are voting on we are fine. The answer to that would be if you objected to taking up both of them together, speak up or let that be known. Any additional discussion?

Chair Baugh called for a roll call vote.

|                         |     |
|-------------------------|-----|
| Vice Chair Finnegan     | Aye |
| Councilmember Dent      | Aye |
| Commissioner Alsindi    | Aye |
| Commissioner Washington | Aye |
| Commissioner Porter     | Aye |
| Chair Baugh             | Aye |

The motion to recommend approval of both the rezoning and special use permit request passed (6-0). The recommendation will move forward to City Council on June 10, 2025.

Ms. Dang asked for a clarification if the motion included the condition.

Chair Baugh said that the condition was included in the motion.