



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

409 South Main Street

Harrisonburg, Virginia 22801

Website: <http://www.harrisonburgcommdev.com/>

Telephone: (540) 432-7700 Fax: (540) 432-7777

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## **TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA**

**SUBJECT:** Public hearing to consider a request from J-M Apartments with representative Jim Monger for a special use permit per Section 10-3-85 of the Zoning Ordinance to allow warehousing and other storage facilities within the B-1, Central Business District. The 17,777 +/- square feet parcel is located at 141 West Bruce Street at the intersection of West Bruce Street and Chesapeake Avenue and is identified as tax map parcel 25-H-19A.

### **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: August 12, 2015**

Chair Fitzgerald read the next three items on the agenda and said these requests will be heard as one report. She then asked staff for a review.

Mr. Baugh recused himself and left the room at this time, 7:11 p.m.

Mr. Fletcher said the Comprehensive Plan designates this area as Planned Business. This designation states that these areas are suitable for commercial development but need careful controls to ensure compatibility with adjacent land uses.

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

- Site:** Dilapidated Chesapeake and Western Railway building and warehouse, zoned M-1
- North:** Across West Bruce Street, Ice House parking lot, zoned B-1C
- East:** Parcel owned by the railroad containing railroad spurs, zoned M-1, further east and across Norfolk-Southern railroad, the Ice House, zoned B-1C
- South:** Chesapeake Avenue, and further south, industrial uses, zoned M-1
- West:** Across Chesapeake Avenue, parcel owned by the railroad containing railroad spurs, zoned M-1

The applicant has submitted three separate applications for simultaneous review and approval. The first is a rezoning for the 17,777 +/- square feet parcel located at 141 West Bruce Street from M-1, General Industrial District to B-1C, Central Business District Conditional. The second application includes a Zoning Ordinance amendment to create a new special use permit to allow B-1 property owners the ability to operate warehousing and other storage facilities; and finally, they have applied for the special use permit they are requesting be created.

The property, located at the southeastern corner of the West Bruce Street/Chesapeake Avenue intersection, includes the historic Chesapeake and Western Railway building, which staff understands was built in 1913. The building was used by the railroad for many years and had suffered through

several fires including the last and most destructive fire in 1982, which rendered much of the building unsafe and unusable. In 2005, the property was purchased by the applicant (J-M Apartments), where they have used portions of the building and outside property for warehousing and storage of materials—a use permitted by right in the M-1 district—for R.S. Monger and Sons, Inc.

Given the odd dimensions of the property and because it is a corner parcel, redeveloping it—including razing all structures and thus building on vacant property—under the M-1 zoning regulations would be difficult. A 30-foot setback would be required off of West Bruce Street, and then, even after utilizing the setback alleviations afforded by the Zoning Ordinance, a 21.875-foot setback would be required off of Chesapeake Avenue while a 10-foot setback would be needed from the eastern and southern boundary lines. This means the buildable area of the parcel is limited, where at its widest point it would only be 31.875-feet. Currently, the existing building is non-conforming to setback regulations while the size and shape of the property also makes it challenging to meet the required minimum on-site off-street parking regulations for many uses in the M-1 district. What may be the most burdensome zoning regulations for this property in particular, is associated with redeveloping/renovating non-conforming structures. The Zoning Ordinance’s Article E provides the regulatory control for non-conforming structures and uses, where the intent is to limit how such properties can be used so that they will eventually develop into compliance with existing regulations. Since the applicant desires to redevelop the property by restoring the non-conforming historical building (which is highly desirable by many individuals in the City), Sections 10-3-20 (2) and 10-3-22 (a) together prohibit them from reconstructing and structurally altering the building. It should be understood that the Code of Virginia protects properties from non-conforming zoning stipulations when they are damaged by accidental fire so long as the damaged building is repaired within two years of the fire. In short, without rezoning the property or making amendments to the Zoning Ordinance, the historical Chesapeake and Western Railway building could not be reasonably restored.

All three applications applied for herein together is one way they can restore this historical asset while also being able to utilize it for their desired operations. Although the immediate plans for the property is to have a mixture of uses including retail floor area and warehousing space both in association with R.S. Monger and Sons, Inc. and unassociated business office space, the proffers submitted by the applicant would allow other uses. The submitted proffers include the following (written verbatim):

1. The property shall be redeveloped by improving and maintaining the existing structure, where all by-right uses of the B-1 district shall be permitted except for the following limitations:
  - a. Residential uses shall be limited to multi-family residential uses, where one parking space shall be provided on-site per bedroom.
  - b. Restaurants and personal service establishments are not permitted without an amendment to these proffers.
  - c. No retail uses shall be allowed except those associated with R.S. Monger and Sons, Inc.
2. Special Use Permits shall be permitted as approved by City Council.
3. The property shall maintain at least seven off-street parking spaces. Any number of these spaces may be used to meet the minimum required as specified in proffer “1a.”
4. Exterior storage of materials associated with any warehousing component of the property shall only occur under the rear covered porch/dock and to the south of the building.

(Note that the submitted layout of the site is not proffered but rather illustrates how they plan to utilize the building and redevelop the property at this time. Proffer #1, however, states that the property “shall

be redeveloped by improving and maintaining the existing structure,” which means the historical building must remain on the site.)

Along with the rezoning is a request to amend the Zoning Ordinance Section 10-3-85 Uses Permitted Only by Special Use Permit of the B-1, Central Business District by adding an additional subsection to allow warehousing and other storage facilities. The additional subsection would be stated as follows, which mimics the exact wording of the same set of uses allowed by right within the M-1, General Industrial District:

- Warehousing and other storage facilities; provided, that the size, volume, and contents shall be governed by applicable safety regulations.

The final application for this development project includes the applicant’s request for the special use permit that, as explained above, they are requesting be created.

First, it should be understood that the current use of the property and zoning do not conform to the Comprehensive Plan’s Land Use Guide as the site is designated Planned Business. Staff believes the proposed development project is in line with the Land Use Guide since this designation advocates that such properties may be suitable for commercial development when controls are in place to ensure compatibility with adjacent land uses. The applicant’s planned use of the property is a nice transition of the existing surrounding land uses as the northern front half of the property would be compatible with other B-1 zoned properties to the north and east of the site while the rear portion of the property, where they intend to operate warehousing and storage, transitions well toward the M-1 properties to the south. It should also be known that the subject property’s Land Use Guide designation, along with all of the properties on Chesapeake Avenue, was changed from General Industrial to Planned Business during the 2004 Comprehensive Plan update. At that time it was recognized to have these properties become something other than industrial uses; and further, the City recognized that these properties could not be planned for Mixed Use Development Areas (the designation typically associated with B-1 zoning) because there were too many variables to consider for having them become zoned B-1—likely due to setback issues as well as the impact of having no parking requirements on these properties.

In addition to staff’s belief that it conforms to the Land Use Guide, the Comprehensive Plan also illustrates that the property is within a quarter-mile radius of Court Square and that it is identified within the Plan’s Downtown Revitalization Area. Although there is no specified strategy or guideline for development for having such a designation, the Plan recognizes that developments and redevelopments in this area are highly desirable for continued efforts for reviving downtown.

Although public sidewalk exists along the property’s West Bruce Street frontage and for about 130 feet southward from West Bruce Street along Chesapeake Avenue, the Design and Construction Standards Manual (DCSM) Section 3.3.3.2 requires “(s)idewalks [to] be constructed along the street frontage of all developing and redeveloped properties. In cases where insufficient right of way exists for sidewalk construction, appropriate right of way shall be dedicated and sidewalks constructed.” In addition to these requirements, when redeveloping sidewalks in the downtown area, the Downtown Streetscape Plan (adopted by City Council in July 2014) demonstrates the style of sidewalks that should be installed.

What this means is that the DCSM requires sidewalk improvements along the subject property’s entire public street frontages along West Bruce Street and Chesapeake Avenue—in all about 410 feet of sidewalk reconstruction and installation. However, staff recommends deviating from this DCSM requirement, and rather than providing all of the stated improvements and dedicating public street right-of-way (ROW), have the developer construct a seven feet wide decorative concrete sidewalk on

West Bruce Street between Chesapeake Avenue and the at-grade railroad crossing per the Downtown Streetscape Plan specifications and construct a seven feet wide decorative concrete sidewalk on Chesapeake Avenue between West Bruce Street and the northernmost entrance of the warehouse portion of the building. In all, this is about 260 feet of sidewalk construction and reconstruction (150 feet less than required). Staff recognizes there will be challenges to achieve the desired sidewalk improvements/alignments stated above. The Department of Public Works will work with the applicant to determine feasibility and potential alterations to the sidewalk design as needed. The applicant is aware of these requirements and is agreeable to staff's recommended deviations; the submitted layout reflects the planned sidewalk reconstruction and installation desired by staff.

One other matter discussed with the applicant includes staff's concerns with the use of the Chesapeake Avenue public street ROW to maneuver vehicles for the warehousing operations. However, we recognize the ROW utilization has been occurring for quite some time and that trying to change the situation might mean the use of the building for the planned operations by R.S. Monger and Sons, Inc. would be severely limited. Staff will continue to work with the property owner towards potential improvements to this concern.

Overall, staff is very appreciative of the applicant's submitted proffers and the efforts the applicant made to listen to staff's concerns about how this property should be used. Staff believes the submitted proffers should alleviate any negative impacts the B-1 zoning might have to this area of the City. Given the wording of proffer #4, which stipulates where warehousing and storage of materials should be located on the site, and in considering the existing adjacent land uses and zoning, staff has no suggested conditions for the special use permit application. Staff is also supportive of the proposed Zoning Ordinance amendment as presented.

Staff is recommending all three applications be approved and for a variance to DCSM Section 3.3.3.2 be approved to allow for sidewalk improvements in lieu of the requirements as stated herein.

Chair Fitzgerald asked if there were questions for staff.

Mr. Colman said regarding the extension of the sidewalk, along Bruce Street, in front of the railroad property, does this include curb and gutter improvement in that area?

Mr. Fletcher replied that it likely would. If you are concerned about drainage and runoff into the railroad tracks, I do not know the answer to that. There is already curb and gutter in place.

Mr. Colman said I am assuming the current curb and gutter is probably not compliant with the typical standard.

Mr. Fletcher said I really do not know the answer to your question, but the sidewalk improvements will be done.

Mr. Colman said I would say that since they will have to replace it along their frontage with West Bruce Street it would be appropriate to continue it along West Bruce Street. I do not know what the requirement would be along Chesapeake Avenue.

Mr. Da'Mes said should we add a proffer to include new curb and gutter all along West Bruce Street?

Mr. Colman said yes, along with the sidewalk, we should add that the curb and gutter be brought up to standard; which is something that I would think Public Works would suggest. Since they are proffering this here tonight, I think it should be included.

Mr. Fletcher said you cannot require the inclusion of a proffer, the City cannot require a proffer.

Mrs. Turner said the sidewalk is not part of the proffers for the rezoning; is that correct Adam?

Mr. Fletcher said the sidewalk is part of a requirement for developing/redeveloping a site. The deviation that staff, and the applicant, is in favor of is the requirement of having the entire sidewalk constructed along their property. I do not know if curb and gutter can be an additional requirement. There has been a lot of give and take with Public Works and the applicant and they have come to a good solid consensus about a specified improvement along West Bruce Street.

Chair Fitzgerald asked Planning Commission if there was a preference as to whether one public hearing is done for all three items, or would you prefer three separate public hearings.

Planning Commission agreed to one public hearing for all items.

Chair Fitzgerald opened the public hearing for the rezoning, ordinance amendment, and special use permit and asked the applicant or the applicant's representative to speak.

Mr. Jim Monger said he is an owner in the property and with him is Charles Hendricks the architect for the project. We are available for any questions you may have.

Mr. Colman said you are proffering a sidewalk, so once it is proffered it is probably going to be built in the right-of-way.

Mr. Monger said this is not a proffer at all. The sidewalk is part of the Downtown Streetscape Plan that when anyone is improving or redeveloping their property they have to conform to the new standards that have been approved for the downtown sidewalks.

Mr. Colman said I am referring to the section beyond your property – that which continues to the railroad. You are not being required to do that, so if it is not proffered, who imposed that requirement?

Mr. Monger said I offered to continue the sidewalk to where the Ice House Project stopped their sidewalk. It will be abutting up to the concrete retaining wall along the railroad property.

Mr. Colman said my assumption is that sidewalk improvements will include new curb and gutter.

Mr. Hendricks replied that is a City requirement.

Mr. Colman said I just want to be certain that is what will happen with the sidewalk extension.

Chair Fitzgerald asked if there were any further questions or comments.

Mr. Heatwole said he is pleased to see that this historic building will be renovated.

Mr. Monger said we received the building permit to repair the roof this week. This will stop the water intrusion and the deterioration of the building. When we decided to do the project we hired Charles as our architect and now he would like to rent one of the offices upstairs when the project is complete. We are looking to put our window and door showroom on the first floor of this building; therefore, Charles can bring his clients downstairs to look at windows and doors and it is a "win-win" situation for all.

Mr. Heatwole said I missed the site tour yesterday, and perhaps this was reviewed then; but is the area to the south going to be for general storage.

Mr. Monger said the triangular piece is where we store a lot of our hardscapes and it is an area where stuff gets unloaded from one vehicle and loaded inside to onto another vehicle to be taken away. It is not usually long term storage at that location; but like any business, it comes and goes in cycles.

Mr. Da'Mes said this question may be more for Adam and staff. In the description you talk about continuity with other landmarks around it, and we know the value of this property being so close to B-1

and as time evolves there may be other possible uses for the site, what limitations are there as a B-1 Conditional property.

Mr. Fletcher said the warehousing is a special use permit that the applicant is asking for. When the property is rezoned to B-1, warehousing is not a use permitted by right; however, the applicant has the right to use the property for storage now because it is zoned M-1. The applicant is asking to create the warehousing and storage special use permit in the B-1 district as well as applying to rezone the property from M-1 to B-1.

If you, or anyone on Planning Commission, sees the need to put specific conditions on the warehousing special use permit, you do have the right to do so. You can recommend for any condition that is associated with the requested special use permit, City Council can accept or reject the condition. Staff's suggestion is to recommend approval with no conditions. We felt the proffers within the rezoning controlled the use of the site.

Mr. Monger said he would like to say that staff has been very good to work with throughout this process. They helped us figure out the avenue that we felt would be best to achieve our end goal; but they are also very "firm" on what they felt we needed to put into this application. There were many good conversations and compromises on both parts. Staff explained very well as to why they do not want a restaurant at this location right now; not that I want a restaurant there. It took a good month of exchanges and it work out very well. I felt staff was working for me as well as working for all the citizens of the City.

Chair Fitzgerald said you are not the first person who has said that during a public meeting regarding City staff. We certainly appreciate the input.

Mr. Way asked Mr. Da'Mes, about conditions on the special use permit and whether the special use permit should only be connected with that particular owner.

Mr. Da'Mes said I was just thinking about the future of the property. Obviously storage is what the need is today, but what is it tomorrow?

Mr. Monger said if someone took over the property and put a retail store in the front, they could have storage in the rear portion of that building for their B-1 retail. Is that correct?

Mr. Fletcher said the way the proffers are worded, if someone should want to use the building for retail they would have to come in and change the proffers because the way they are written only allows a retail component associated with your business. They could request an amendment and, if successful in doing so, then they could indeed use the rest of the building for storage in association with the retail business.

Mr. Fletcher asked Commissioner Da'Mes if his concern was with the component of warehousing and storage in the B-1 zoning district. Staff was very much concerned with that, but in considering the location, the adjacent uses, and the adjacent properties being zoned M-1, we are not in the center of downtown. If someone applied for a special use permit to have warehousing and storage in the center of downtown it is a whole different ballgame. It is circumstantial and site specific and we are looking at different things. In this particular case the proffer really solidified our concerns and of course if the applicant did not want to use it for storage anymore, than anyone who wanted to utilize it for storage could do so because the special use permit would be approved – they just could not do exterior storage.

Mr. Da'Mes said they could not change the use to something else either, perhaps more offices instead of warehouse?

Mr. Fletcher replied actually they could.

Mr. Da'Mes said oh, but they are proffering warehousing.

Mr. Fletcher said the applicant is not proffering anything associated with warehousing. All uses permitted by right within B-1 would be allowed, except with limitations on residential uses needing one parking space per bedroom; restaurants and personal service establishments would not be permitted; and the retail component would only be associated with RS Monger and Sons. Therefore, you could have offices.

Mr. Fletcher said there is the component that businesses will not locate there if they do not have enough parking. But you also do have to recognize that if it is going B-1, than the City is absorbing the demand for parking.

Mr. Da'Mes said thank you. But when you are talking B-1 and downtown there is a concern when you say warehousing. Is that an ideal use for the B-1 district?

Mr. Way said imagining a hypothetical situation where one of the empty store fronts downtown wants to do warehousing, are we going to get a lot of pressure from people saying that some use of a building is better than nothing. I think there may be some economic pressure to encourage that type of thing.

Chair Fitzgerald said then the question will be to planning staff, Planning Commission, and City Council and we will need to stand firm with the vision of downtown that we have expressed, so that we do not put warehousing in a storefront.

Mr. Way agreed that is where it comes to being site specific for each case. But I can see the economic pressure where some use is better than no use.

Chair Fitzgerald asked if there were any further questions. Hearing none, she asked if there was anyone else wanting to speak regarding the rezoning, amendment, or special use. Hearing none, she closed the public hearing and asked for discussion.

Mr. Way said am I just splitting hairs with the wording of the special use permit. What we are talking about here is effectively warehousing. Storage facilities are more like mini-storage and do we need to really worry about that? I am going back to the earlier discussion about what is this opening the door for.

Mr. Fletcher said other storage facilities, like mini-storage, would have to request a special use permit as well.

Mr. Way said could we not just say warehousing, because that is effectively what we are talking about tonight.

Mr. Fletcher said you could, but that is not what the applicant is requesting. So if you do not like the language that the applicants have provided, you would make a motion to deny the requested amendment. You could suggest that the language be different, but the applicants may not be interested in moving forward with that suggestion.

Mr. Way said would just calling this warehousing not cover what they are intending to do.

Mr. Fletcher said it would cover what they are trying to do, but it would not necessarily cover what they are trying to have the flexibility to do. This application was not written by staff. Their application was written by them and they took the language that mimics what is permitted within M-1. They could have simply put warehousing and not other storage facilities, but that is not on the table at this time.

Mr. Way said that is why I am wondering if I am splitting hairs about this.

Mr. Heatwole said is your question about the "storage" component?

Mr. Way said it just seems a bit open ended for me. In my mind “warehousing” implies a rather large building, like the one shown with this request, where you are keeping items. “Other storage facilities” brings about the idea of creating mini storage units and that does not seem to be a downtown type of use.

Chair Fitzgerald asked if the special use permit part of this is not enough control for this use. Warehousing and other storage facilities would only happen if it goes through staff, planning, and council.

Mr. Way said yes, but the special use permit is written to allow for the mini storage scenario.

Mr. Fletcher said it is application specific. If an applicant desires to build mini storage units on a property downtown in the B-1 district they would be applying for the special use permit. There are any number of ways it could be recommended for approval with conditions, or it could just be flat out recommended for denial.

Mr. Way said that is what I am saying; it would be harder to recommend denial when our special use permit allows for such.

Mr. Fletcher said if you want an absolute guarantee that it would never happen, then you would vote against the amendment and never have it in the language for special use permits.

Mr. Colman said the question is whether the special use permit allows for this particular applicant to put mini storage units at this location.

Mr. Fletcher replied it does not. The proffers with the rezoning say that the existing building must be maintained and left on site. Plus exterior storage can only occur on the space available; so mini storage units could not be built. Much of the reason that staff is recommending approval for the special use permit is because of the limitation within the rezoning proffers.

Mr. Way said I have zero concern with this property and with this application. It is about how the special use permit could potentially be used in the future, and the kind of pressure that could be put on us and the downtown, for the use. I just want to make certain we are not missing something here that is opening the door to something we do not intend to happen.

Having said that I do not want to hold up this redevelopment; I think this is a wonderful project. I just want to make sure we clearly think about this. If Planning Commission feels there is enough on record as to what we are trying to do with this, than I am fine.

Mr. Monger stepped forward and said I am willing to take out the word facility; therefore, the amendment would read “...warehousing and other storage...” if that is more acceptable. If I can make that change now without having to go through more weeks of waiting to get on an agenda, I will do so.

Mr. Way asked if storage facility or warehousing were defined in the zoning ordinance.

Mr. Fletcher replied no, they are not.

Mrs. Turner asked Mr. Way, are you saying you would like for it to just read “warehousing facilities” because you think that would keep it from becoming mini storage units.

Mr. Way said yes.

Mrs. Turner said I think we (staff) consider mini storage to be warehousing. I do not think we consider mini storage to be an “other storage facility.” I do not think we have ever had to draw that distinction, because the M-1 use, where you get mini storage, is worded like this. However, when we have discussed this in the office we have never said mini storage was something different.



Mr. Fletcher said it is not that staff ignored the things that you are talking about, we actually talked a great deal about this; but, we relied on the fact that it is a special use permit. If City officials think that it is okay in a certain area, then it will be approved.

Mrs. Turner said could we address your concerns by having a condition placed on the special use permit that limited only the rear portion of the subject building can be used for warehousing and other storage facilities. I do not know if some of your concern was that somebody could come in and take the front part of the building and turn it into climate control storage units.

Mr. Way said it was not so much with this particular case; it is just the future use in other places around the downtown. Perhaps I am being too persnickety about this.

Mr. Colman said I have a questions regarding parking. Are there any parking requirements associated with the warehousing and storage?

Mr. Fletcher said for this site the answer is no, there are not parking requirements. In general, yes there are parking requirements associated with warehousing and storage; it is associated with the number of employees on a maximum shift and any truck associated with the warehouse also requires a parking space. Therefore, it is dependent upon the facility.

Mr. Colman said why are we waiving the parking requirement for warehouses for this particular situation?

Mr. Fletcher said you are not waiving the requirement, the rezoning is to B-1 and it is not required.

Mr. Colman said but we are allowing B-1 to have warehousing space now by special use permit.

Mr. Fletcher said correct. When these things come up we look at the parking concerns for any use that wants to have anything like this in the B-1 district. Parking is always at the top when it is a rezoning to B-1. With special use permits, parking is always a concern.

Chair Fitzgerald said it becomes part of the conditions for a special use permit.

Mr. Fletcher replied absolutely, and you can recommend for conditions. I would not be surprised if in the future when something comes up for warehousing that we might have a suggested condition for parking in the special use permit.

Chair Fitzgerald said where are we right now with the wording of the ordinance to add warehousing and other storage facilities by special use in the B-1? Are we leaving it as it is written?

Mr. Way said if warehousing, storage, and storage facilities were defined as three different things, which they are not, then perhaps I would feel differently; but, I am comfortable with the amendment.

Chair Fitzgerald asked if there was any further discussion or perhaps a motion on the three items.

Mr. Way moved to recommend approval of all items as presented by staff. I think that these make a lot of sense at this location. When we think about what the limits of the B-1 district are and what are going to be the pressures for expanding the Urban Development Areas and Mixed Use Area, this area is within that quarter mile radius which is very important to think about where these mixed uses can be expanded.

Mr. Colman seconded the motion to recommend approval.

Mr. Fletcher said I just want to clarify the motion to recommend approval as presented for all four items: rezoning, ordinance amendment, special use permit, and variance from the Design and Construction Standards Manual.

Mr. Way said yes correct and I would like to put on the record my point of being very careful about where we approve these warehousing uses in the downtown area. I think with this one there is a compelling reason to approve, given how the area is used; but, turning something along Court Square into some type of warehouse or storage is not what we desire. Location should be very important with these special use permits.

Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval (6-0). Mr. Baugh returned to the room at this time 8:02 p.m.

Respectfully Submitted,

Alison Banks  
Planner