



# City of Harrisonburg, Virginia

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To: Kurt Hodgen  
From: Planning Commission and  
Adam Fletcher, Director - Department of Planning and Community Development  
Date: December 13, 2016  
Re: Rezoning – B-2C Proffer Amendment and Special Use Permit 10-3-91 (12) to Allow a Structure in Excess of 75 Feet in Height at 1820 Heritage Center Way

## **Summary:**

Public hearing to consider a request from Tidewater Communications, LLC with representative David C. Nahm to rezone a 2.14 +/- acre site zoned B-2C, General Business District Conditional by amending existing proffers to allow for a taller radio tower in a new location. The property is located at 1820 Heritage Center Way and is identified as tax map parcel 122-B-2.

Public hearing to consider a request from Tidewater Communications, LLC with representative David C. Nahm for a special use permit per Section 10-3-91 (12) of the Zoning Ordinance to allow structures, except wireless telecommunications facilities, in excess of seventy-five (75) feet in height. Tidewater Communications, LLC proposes to replace an existing 40-ft radio tower with a new tower that exceeds seventy-five (75) feet in height. The 2.14 +/- acre site is zoned B-2C, General Business District Conditional, is located at 1820 Heritage Center Way, and is identified as tax map parcel 122-B-2.

## **Background:**

The Comprehensive Plan designates this area as Low Density Mixed Residential. This designation states that these large undeveloped areas located at the edge of the City are planned for residential development containing a mix of large and small-lot single family detached dwellings and attractive green spaces. Planned “open space” (also known as “cluster”) developments are encouraged. The intent is to allow innovative residential building types and permit creative subdivision design solutions that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and protection of environmental resources. Such innovative residential building types as zero lot-line development and patio homes will be considered as well as other new single family residential forms. The gross density of development in these areas should be in the range of 1 to 6 dwelling units per acre.

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

- Site:** Radio station and studio, zoned B-2C
- North:** Single-family dwellings, undeveloped land, zoned R-1 and radio transmitter towers, zoned M-1C
- East:** Across Garbers Church Road, Heritage Oaks Golf Course club house and parking lot, First Tee, Elementary School (under construction), zoned R-1
- South:** Across Heritage Center Way, Harrisonburg High School Complex, zoned R-1
- West:** Undeveloped land, zoned R-1

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**Key Issues:**

The applicant, Tidewater Communications, LLC is requesting to rezone the B-2C portion of their property at 1820 Heritage Center Way by amending existing proffers and for a special use permit (SUP) to allow a new radio tower in excess of 75-feet in height. The property is located on the northwest corner of Garbers Church Road and Heritage Center Way (a private street).

The 2.14 +/- acre site was the subject of a February 2007 rezoning request from R-1, Single Family Residential District to B-2C, General Business District Conditional in order to construct a radio station at the location. City staff and Planning Commission recommended denial of the request because it was not in keeping with the City's long range land use plan, nor would it serve as a direct benefit to the surrounding neighborhood with regard to parking and buffering from adjacent single-family homes. The applicant refined the proffers to limit the uses to radio and television stations, recording studios, and public uses, prior to the City Council public hearing and the rezoning request was approved unanimously.

The existing B-2C proffers are as follows:

It is proffered that the 2.14± acre portion of the property rezoned as B-2C will be used only for the following uses permitted by right under section 10-3-90:

- 8) Radio and television stations and studios or recording studios.
- 18) Public uses.

It is also proffered that:

1. The basic layout as shown on the Proposed Rezoning Plan, hereto attached, is proffered.
2. Access to the site will be along a proposed driveway commencing at the existing CG-11 entrance on Garbers Church Road onto the Myers' Property (T.M. #117-B-1). The driveway will connect to the proposed site across property owned by the Valley Brethren-Mennonite Heritage Center and join the Center's existing driveway. Negotiations with the Myers family and the Heritage Center are on-going. Both parties have given approval to the concept and believe appropriate easements can be agreed to. Letters of agreement are included with this submission.
3. A landscape /tree screen and/or a six foot fence will be provided along portions of the adjoining neighbor's property line (T.M. 117-E-1) as specified by the current resident.
4. The proposed building will not exceed 35' in height and will be constructed generally of brick and drivit with an asphalt shingle roof.
5. No free standing signs greater than eight feet in height will be installed on the property.

Site lighting will be diverted downward and will meet City requirements.

In September 2016, the applicant applied for a SUP per Section 10-3-91 (12) of the Zoning Ordinance in order to construct a new radio tower on the subject property that would be in excess of 75-feet in height. The property currently has a 40-foot radio tower adjacent to the building that was constructed with the radio station; however, the proposed new tower is described as 124-feet in height and would be situated away from the building. The 40-foot tower would be removed after the new 124-foot tower is operational. After staff's initial review of the request it was determined that existing proffer number 1, which states that "[t]he basic layout as shown on the Proposed Rezoning Plan, hereto attached, is proffered," and would not allow for the construction of a new tower in a location that was not shown on the 2007 proffered plan. The applicant then submitted a request to rezone the property by amending the proffers.

Submitted with the application for rezoning, the applicant proposed the following proffer amendments:

It is proffered that the estimated 2.14 acre portion of the property zoned as B-2C will be used only for the following uses permitted by right under section 10-3-90:

- 8) Radio and television stations and studios or recording studios.
- 18) Public uses.

It is also proffered that:

1. The proffers dated February 5, 2007 are still in effect ("2007 Proffers").
2. Proffer number 1 of the 2007 Proffers will be hereby amended for the relocation of the STL radio tower as shown on the attached drawing.

The 2016 submitted proffers and site drawing are included within this packet.

The applicant noted the location for the proposed new tower was selected for several reasons. For safety issues; they desired to keep the tower away from Garbers Church Road and Heritage Center Way; there is a drainage ditch that slopes and runs along the entire back portion of the site, behind the parking lot; and the tower will be connected to the radio station building by means of an ice bridge, thus it needed to be situated in close proximity to the building. Because the site is zoned B-2C there is also an additional setback requirement for the structure from any property line abutting a residential district. The setback would be 30-feet from the property line plus an additional one-foot of setback for each foot above 35-feet in height. Therefore, if the tower is 124-feet in height, a 119-foot setback is needed. The proposed location is approximately 150-feet from the property lines adjacent to the R-1 single-family dwellings on Garbers Church Road.

Staff does not have concerns with regard to the proffer amendments to allow the proposed new tower location.

As noted above, the applicant is requesting a SUP per section 10-3-91(12) of the Zoning Ordinance to allow a radio tower that exceeds 75-feet in height. The applicant describes the proposed tower as a 120-foot tower with 4-feet of satellite dish above the top of the tower. The tower is below the Federal Communications Commission (FCC) requirement for lighting purposes and will not have any lights on or directing at the tower. The radio station is licensed and certified such that their frequencies do not interfere with any other communications in the area and the applicant has stated that they will not allow any co-locating of wireless communication on the tower.

The applicant stated the current tower is barely tall enough to send audio signals across to the old WSVa studio located at 130 Media Lane (off Route 33 West), which is necessary in order for the station to transmit. Consequently, the station has suffered from low signal levels since its construction in 2009. The applicant did consider other options such as running a fiber optic cable underground from the radio station at Heritage Center Way to the Media Lane station, or transmitting a signal over the internet; however, there were issues with each of the options and they returned to the idea of a new tower.

Staff recognizes the difficulty of the current tower situation for this property and appreciates the applicant's consideration of other alternatives. The radio station does offer a valuable service to the city and surrounding community. Staff recommends approval of the SUP with the following conditions:

1. If the radio tower ceases to be used for more than 12 months, all equipment, including the structure, shall be removed within a timeframe determined by the City at the owner's expense.
2. Placement of advertising of any kind is prohibited on the antennas and equipment.

**Environmental Impact:**

N/A

**Fiscal Impact:**

N/A

**Prior Actions:**

N/A

**Alternatives:**

Denial of the request would require the applicant to continue operating as they currently do or find a suitable alternative to the tower.

**Community Engagement:**

As required, the requests were published in the local newspaper twice advertising for Planning Commission’s public hearing and twice for City Council’s public hearing for both the rezoning and special use permit. The advertisements were published as shown below:

*Rezoning– 1820 Heritage Center Way (B-2C Proffer Amendment)*

Public hearing to consider a request from Tidewater Communications, LLC with representative David C. Nahm to rezone a 2.14 +/- acre parcel zoned B-2C, General Business District Conditional by amending existing proffers to allow for a taller radio tower in a new location. The Zoning Ordinance states that the B-2, General Business District is intended to provide sufficient space in appropriate locations for a wide variety of retail shopping, commercial, automotive, miscellaneous recreational, and service activities. No minimum lot size restrictions exist in the B-2, General Business District. The Comprehensive Plan designates this area as Low Density Mixed Residential. This designation states that these large undeveloped areas located at the edge of the City are planned for residential development containing a mix of large and small-lot single family detached dwellings and attractive green spaces. Planned “open space” (also known as “cluster”) developments are encouraged. The intent is to allow innovative residential building types and permit creative subdivision design solutions that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and protection of environmental resources. Such innovative residential building types as zero lot-line development and patio homes will be considered as well as other new single family residential forms. The gross density of development in these areas should be in the range of 1 to 6 dwelling units per acre. The property is located at 1820 Heritage Center Way and is identified as tax map parcel 122-B-2.

*Special Use Permit – 1820 Heritage Center Way (Section 10-3-91 (12) to Allow Structures in Excess of Seventy-Five (75) Feet in Height)*

Public hearing to consider a request from Tidewater Communications, LLC with representative David C. Nahm for a special use permit per Section 10-3-91 (12) of the Zoning Ordinance to allow structures, except wireless telecommunications facilities, in excess of seventy-five (75) feet in height. Tidewater Communications, LLC proposes to replace an existing 40-ft radio tower with a new tower that exceeds seventy-five (75) feet in height. The 2.14 +/- acre property is zoned B-2C, General Business District Conditional, is located at 1820 Heritage Center Way, and is identified as tax map parcel 122-B-2.

In addition, adjoining property owners were notified of the public hearings; the property was posted with signage advertising the requests; and a notice was provided on the City’s website at <https://www.harrisonburgva.gov/public-hearings>.

**Recommendation:**

Staff recommends approval of the rezoning request with the submitted proffers and recommends approval of the SUP with the following conditions:

1. If the radio tower ceases to be used for more than 12 months, all equipment, including the structure, shall be removed within a timeframe determined by the City at the owner's expense.
2. Placement of advertising of any kind is prohibited on the antennas and equipment.

**Attachments:**

1. Site maps (2 pages)
2. Applications, applicant letters, and supporting documents (16 pages)

**Review:**

Planning Commission recommended approval (6-0) of the B-2C proffer amendment rezoning request and recommended approval (6-0) of the SUP with conditions as presented by staff.