



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

409 South Main Street

Harrisonburg, Virginia 22801

Website: <http://www.harrisonburgva.gov>

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

December 1, 2015

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

**SUBJECT:** Public hearing to consider a request from Power Acceleration Inc. with representatives Saber Khoshnaw and Bashdar Azeez for a special use permit per Section 10-3-91 (9) of the B-2, General Business District to allow a reduction in the side yard setback to zero feet. Such permission is only permitted along the lot line of an adjoining parcel zoned B-2 or M-1. The 9,350 +/- square foot parcel is located at 685 East Wolfe Street at the intersection of East Wolfe Street and Old Furnace Road and is identified as tax map parcel 33-V-15.

## **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: November 11, 2015**

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Professional. This designations states that these areas are for professional service oriented uses with consideration to the character of the area. These uses are found in the residential areas along major thoroughfares and adjacent to the Central Business District. Conversion of houses in these areas to office and professional service uses is permitted with appropriate attention to maintaining compatibility with adjacent residential areas in the same manner as described for Planned Business areas.

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

- Site: Car wash, zoned B-2
- North: Across East Wolfe Street, Beth El Cemetery, zoned R-2
- East: Across Old Furnace Road, vehicle repair shop, zoned B-2
- South: Vehicle repair shop, zoned B-2
- West: Residential dwelling, zoned R-2

The applicants are requesting a special use permit (SUP) per Section 10-3-91 (9) of the Zoning Ordinance, which allows B-2 property owners the ability to request a zero side yard setback along adjoining properties zoned B-2 or M-1. The applicants hope to utilize the SUP to renovate the existing principle buildings, which are non-conforming to setback regulations, and to change the property's use to a vehicle repair shop, which is a use permitted by right.

The standard side yard setback in the B-2 district is 10 feet, unless the adjoining property is zoned residentially and then the setback increases to 30 feet. The subject property is located at the southwestern corner of the East Wolfe Street/Old Furnace Road intersection, where a car wash has

operated for many years. In this particular case, the southern parcel boundary is the property line they are requesting the ability for a zero lot line setback, and in fact is the only internal line the applied for SUP can be utilized because the western property line is considered the rear line and the adjacent western property is zoned R-2.

The site is improved with two principle structures and an accessory building, all three of which are non-conforming to setback regulations. With regard to the two principle buildings, the easternmost building does not meet the required 30-foot setback along East Wolfe Street nor does it meet the side yard setback along the southern boundary as the structure is about 20-feet from the front line along East Wolfe Street and one-foot from the southern side line. The westernmost building also does not meet the required setback along East Wolfe Street nor the southern side boundary as this building is just over 10 feet from the front line along East Wolfe Street and 0.7 feet from the southern lot line. The structures do, however, meet the required minimum setbacks from the front line along Old Furnace Road and the western rear boundary.

Improving the property by either renovating the existing principle buildings or demolishing all structures and constructing on a vacant lot would be challenging for anyone owning the subject property. This is because the property is a corner parcel, where 30-foot setbacks are required along both street frontages; it adjoins a residentially zoned property, which requires increased setbacks; the structures are non-conforming to setback regulations, where Section 10-3-20 (2) of the Zoning Ordinance prohibits the existing buildings from being extended, enlarged, reconstructed or structurally altered except in conformity with the Zoning Ordinance; and lastly, because the parcel is relatively narrow at just over 60-feet wide.

With regard to setback regulations, the Zoning Ordinance has existing, accommodating provisions that affords some relief to the required setbacks for corner parcels. Section 10-3-112 (2) states that “[c]orner lots shall provide a setback equal to the required front setback for all yards adjoining a public street; provided, however, that the setback regulations shall not reduce the buildable width of a lot to less than fifty (50) percent of lot width and measured at the point of required setback line.” In applying this code section, at the required 30-foot setback from Old Furnace Road, the subject parcel is 60.38 feet wide and thus the parcel shall have a buildable width of 30.19 feet. After subtracting the required 10-foot setback along the side line, at first glance one would compute the setback off of East Wolfe Street to be 20.19 feet. However, because the front lot line along Old Furnace Road is a non-perpendicular line, when the setback line is extended the length of the lot and measured at a right angle, staff computes the setback distance at 19.92 feet, which happens to be more accommodating for the property owner. Once all setback regulations are applied, the 9,350-square foot parcel is limited to a buildable area of 2,864 square feet.

As described above, the applicants plan to change the use of the site from an operating car wash to an automotive repair shop. Their plan is to renovate the existing principle structures and to connect the two buildings by constructing an addition between the two buildings, where the end result would be one structure. However, because the buildings are non-conforming to setback regulations, renovations to the buildings can only occur on the portions of the structures that fall within the buildable area. After discussing different options over several months with the applicants, the option of applying for the requested SUP appeared to be the most useful for their plans because if approved, larger portions of the buildings could be improved.

If the SUP is approved, improvements to the principle buildings could be made entirely to the southern side of the buildings, and as is planned by the applicants, they could connect the buildings with an addition between the structures in line with the existing southern walls. The northern side of both

existing buildings, however, would still be in question as to where and how much of the buildings can be renovated. As noted above, staff believes the required setback along East Wolfe Street is 19.92 feet; it is clear that the existing westernmost building will not be able to be completely renovated as this building is located just over 10 feet from the front property line along East Wolfe Street. This means any portion of the building that encroaches the minimum required setback cannot be extended, enlarged, reconstructed or structurally altered. The current location of the easternmost building might however fit just within the buildable area of the site. The physical survey of the property scales this structure at 20 feet or just less than 20 feet from the front lot line. If approved, when the applicants submit their building permit application, their submission must include an exact surveyed measurement of the easternmost building from the front property line along East Wolfe Street. The surveyor should also confirm what staff believes would be the required setback along East Wolfe Street. In addition, the building permit application must demonstrate where the setback is located within the westernmost building so staff and the property owners understand where improvements are permitted to occur.

During this application's review, the Fire Department noted that generally speaking they are opposed to zero yard setbacks due to the associated fire spread danger when buildings are constructed so close together and the difficulty that occurs in fighting the fire. However, in understanding the applicants' plan to renovate the existing principle buildings and to add an addition to connect the two buildings, they consented to the idea, but only if the permit was granted to the stated plan of development.

As noted by the Zoning Ordinance's review standards for SUPs, Section 10-3-125 states, among other things, that "[t]he proposed use shall be consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted in the district." In this particular case, staff does not believe the proposed use would have an adverse effect on the health, safety or comfort of persons living or working in the area nor be injurious to property or improvements in the surrounding area. The subject site's principle buildings have been established for several years at one foot and less than a foot from the adjacent property; approving the SUP does not change the general characteristics of how the site has been improved. Furthermore, the adjacent property—the property most impacted by the SUP—is also improved with a principle building that is non-conforming to setback regulations and at its closest point is likely less than one foot from the shared property boundary.

Staff is recommending approval of the SUP, but only with the following condition:

- The special use permit shall only be applicable for the renovation of the existing principle buildings, where the zero side yard setback shall be applied along the location of those buildings and in the space between the buildings so that the two buildings may be connected to create one structure.

The above condition means that a zero side yard setback shall not be applied for any new building to the west of the westernmost principle building or the east of the easternmost principle building. Further, if the existing principle buildings are substantially demolished, where for all intents and purposes the site is being redeveloped, the standard side yard setback must be applied.

If the SUP is approved, at the time of building permit review, the applicants must still ensure the site can accommodate the required minimum off-street parking spaces. Given that the site is paved to the northeastern corner at the intersection of the public streets, staff is concerned that parked vehicles at this corner could block sight distance for vehicles stopped on East Wolfe Street. Staff recommends the property owner devise a parking layout to prevent this situation. Furthermore, it would be

advantageous to the public if parking spaces were located at least five feet off of the back of curb along East Wolfe Street to provide a clear pedestrian pathway along the public street.

As noted above, vehicle repair shops are permitted by right in the B-2 district per Section 10-3-90 (7). Specifically within this section it states that “all activities and storage of inoperable vehicles must be completely enclosed within a permitted structure.” These provisions are stricter than those specifying how vehicle repair shops shall operate in the M-1, General Industrial District, where the Zoning Ordinance states that “[a]ny outside storage or repair shall be located within a designated area and screened.” Since the planned use of the site is to convert the car wash, which has pipes draining to the sanitary sewer system, to a vehicle repair shop, the site must comply with all applicable City Codes and Building Codes pertaining to grit chambers and oil/water separators. Lastly, the applicant must understand that building in close proximity to property lines triggers restrictive Building Code requirements that can lead to significant construction costs.

Staff recommends approving the SUP to allow a zero side yard setback along the southern property line with the condition as noted above that it shall only be applicable for the renovation of the existing principle buildings, where the zero side yard setback shall be applied along the location of those buildings and in the space between the buildings so that the two buildings may be connected to create one structure.

Chair Fitzgerald asked if there were any questions for staff at this point.

Mr. Way asked staff to review the allowable setbacks on the subject parcel again.

Mr. Fletcher said that is one of the most difficult things to understand when looking at this layout. It is a corner parcel and must have 30-foot setbacks from both streets. In this particular case the required 30-foot setback goes way deep into the parcel. Corner parcels are also guaranteed to have a 50 percent buildable width. The way we find out what the 50 percent would be is to determine what the width of the property is; in this case the width of the property is 60.38 feet wide. Fifty percent of that is 30.19 feet. The southern setback for this property is required to be ten feet – subtract that from 30.19 feet and that leaves you a 20.19 feet setback from Wolfe Street. But because these lines are not perpendicular, when you extend the line the length of the lot it works to the applicants favor; they get additional tenths of inches of buildable area. We are fairly comfortable with those numbers, but it is ultimately the responsibility of the applicant to prove these distances.

Mr. Way asked can you get closer with the western building.

Mr. Fletcher replied renovations can occur, but it cannot be structurally altered. Most of the improvements they were planning to do were structural alterations; they basically want to raise the roof so that they can get a lift system in the building for automotive repair. We have been talking with the applicants for several months now and they have actually had a meeting with some of the City’s building inspectors at the site.

Mr. Da’Mes said I have a concern about the sight distance at the corner when vehicles are on East Wolfe Street. Are we asking the applicants voluntarily to ensure that the parking is not blocking the sight distance?

Mr. Fletcher said you cannot impede site distance. We are just giving them a “heads-up” that they should be devising a layout such that sight distance is not impeded.

Mr. Da’Mes questioned who would approve something like that.

Mr. Fletcher said they will confirm it through us. When they apply for their building permits, they will have to verify that they have met the parking requirements. If we see a space that is in an area we feel impedes the sight distance, we will have it checked with our City Engineer or City Surveyor.

Chair Fitzgerald asked if there were any further questions. Hearing none, she opened the public hearing and asked if the applicant or the applicant's representative would like to come forward and speak.

The applicant's son, Ray, spoke on behalf of the applicant who had a prior meeting to attend and could not be here tonight. I would like to thank you for hearing this request. We do not have any issue with the setback regulations from Wolfe Street and Old Furnace Road; however, we would like to be able to construct closer to the southern property boundary. If we cannot be closer, then we will not be able to go in at this location. We appreciate being here this evening.

Chair Fitzgerald asked if there was anyone else wanting to speak in favor of this request. Hearing none, she asked if there was anyone who would like to speak against this special use permit request.

Mr. Roger Hansbrough, 684 East Wolfe Street said he has been employed at Hilltop Car Wash (the adjacent property to the south) for the last five years as a caretaker and maintenance person. My question is in regards to my property across the street, and is this going to affect my property value when I go to sell my property.

Chair Fitzgerald said I do not know if any of us here tonight could answer whether it would affect your property value or not.

Mr. Baugh said it does not jump out as an entirely different thing from what you have there now. If anything, they are making an investment in and improving the property. There is no way to really answer your question; but, there is nothing that necessarily jumps out as a red flag. It is not like it is a vacant lot now. Generally speaking when people make investments in your adjoining property that tends to help your property value rather than hurt it.

Mr. Bob Jefferson said I have leased the property to the south for the last twenty years or so. I am here speaking for Dave and Jeannie Coiner, the adjacent property owners, and they would really like to have this meeting postponed.

At this time I am going to speak on their behalf as well as for myself. I was there when the property was surveyed and the carwash property is actually about six inches in on the Hillcrest property; not the other way around. A main concern is that the electric service lines for Hillcrest go across this property right where they want to put a building. What happens if we need to get to the back of the building for maintenance, or if there is a fire, it will be almost impossible to get to? All the utilities to Hillcrest come in through the back of the building across this lot. Also, in order to build a wall and dig a footer, you would have to actually impede over onto the Hillcrest property. These are the concerns that we have.

Mr. Colman asked is there an easement in place for those utilities to come across this property onto the Hillcrest property.

Mr. Jefferson said the utility comes off of a transformer that is on the HEC pole along East Wolfe Street.

Mr. Colman asked whether it is an aerial line.

Mr. Jefferson said yes. You can see in the photo from the presentation that the line comes into the rear of the Hillcrest building.

Mr. Colman said anyone who purchases this property could ask that the line not come across the lot.

Mr. Jefferson said I have spoken to some of the other neighbors in the general area and they have a concern regarding traffic. If you are putting a high volume commercial building in at this location, I do not think East Wolfe Street could handle the traffic. The car wash has been somewhat of a moderate buffer between heavy commercial and neighborhood. The building is not going to have any parking area at all. I do not know if they can meet the amount of parking for the square footage of the building.

Mr. Colman said these are things that will be reviewed through the building permit process when the applicant gets to that point. They will have to comply with all regulations. There are many more steps that must be taken before it becomes a reality.

Mr. Jefferson said the owners just wanted me to come and voice concerns. Will they have the opportunity to come and speak at a later date?

Chair Fitzgerald said this will move forward to City Council on December 8<sup>th</sup> for a public hearing and will be decided if it is approved or not.

Mr. Way said this brings up questions I have for the owners. Do you have an idea if this is going to lead to more traffic than the current car wash?

Saber Khoshnaw, the applicant, said I feel the car wash probably has more traffic daily than a mechanic shop. A shop may have only five to ten customers a day, where a car wash could have much more.

I am planning to do a lot of changes to the building to make it a better building. The existing buildings are ugly and I plan to make a nice building that looks good.

Mr. Da'Mes asked how many garages will there be.

Mr. Khoshnaw said there will be two in the front and one in the side, for three garage bays. But often you have a vehicle that stays in the bay for multiple days. There is not heavy traffic, nothing like a carwash.

Mr. Way asked do you understand what we are hearing here tonight – the concerns about the immediate neighboring property and the structure as far as access to the existing building for maintenance. Can you work things out with the neighbor to the south as far as access?

Mr. Khoshnaw said yes of course.

Chair Fitzgerald asked if there were any further questions. Hearing none, she asked if there was anyone else wishing to speak regarding the request. Hearing none, she closed the public hearing and asked for a motion or further discussion.

Mr. Colman asked if there were any comments from HEC regarding the service line.

Mr. Fletcher replied no, they receive a packet every month just like all the other departments, and they had no comments regarding this request.

Chair Fitzgerald said there does sound like there is some concern regarding the exact location of the property line.

Mr. Fletcher replied a surveyor is always the final say and they can always be challenged in court. The survey we have was done this summer and it is what we have to go on at this time. All of the other issues, such as parking, will be worked out at the time of building permit application. If parking cannot be met on the site, they may have to make a smaller building. The electrical issue will have to be figured out at that time as well.

Mr. Da'Mes said in the B-1 zoning district, where there is a zero set back, these type issues are routinely addressed.

Chair Fitzgerald said again, these are issues that are taken care of in the next phase after the special use permit.

Mr. Colman made a motion to recommend approval of the request as presented by staff with the condition.

Mr. Way seconded the motion.

Hearing no further discussion, Chair Fitzgerald called for a voice vote on the request.

All voted in favor of the motion (5-0).

Chair Fitzgerald said this request will go forward to City Council on December 8<sup>th</sup> with a favorable recommendation.

Respectfully Submitted,

Alison Banks  
Senior Planner