



City of Harrisonburg, Virginia

Department of Planning & Community Development
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To: Kurt Hodgen, City Manager
From: Planning Commission;
Adam Fletcher, Director of Planning and Community Development
Date: April 4, 2016
Re: Zoning Ordinance Amendment, Section 10-3-24 and Several Sections within Article W

Summary:

Public hearing to consider a request to amend the Zoning Ordinance Section 10-3-24 Definitions and several sections within Article W Board of Zoning Appeals (BZA) to align the City Code with approved changes to the Code of Virginia that occurred during the 2015 Virginia Acts of Assembly and in general to perform a few housekeeping revisions to line up our Code better with the State Code.

Background:

Overall, the changes herein described pertain to the procedures and criteria under which the board grants variances and decides appeals. The amendments would occur within Section 10-3-24 Definitions and the following code sections within Article W Board of Zoning Appeals: 10-3-132 and 10-3-135 through 10-3-140.

In general, the BZA is charged with: hearing and deciding appeals to decisions of the Zoning Administrator, authorizing variances that allow deviations from particular zoning regulations, hearing and deciding applications for interpretations of the zoning map, and to determine (in cases of uncertainty) the district classification of any use not specifically named in the Zoning Ordinance.

The existing definition of “variance” within Section 10-3-24 is proposed to be updated by removing the requirement of a property owner proving that strict application of the ordinance results in “unnecessary or unreasonable hardship” and replacing it with the requirement that an applicant demonstrate that strict application of an ordinance would “unreasonably restrict the utilization of the property.” Changes made to Section 10-3-132 titled Composition, would be amended to better define the duties of the secretary of the BZA and the BZA members. New criteria to decide appeals would be added to Section 10-3-135 titled Powers, while Section 10-3-136 titled Variances would be updated to reflect the new definition of a “variance” and outline the criteria under which one can be granted. Section 10-3-137 titled Conditions Attached to Approvals, has been removed altogether since the power to impose conditions is given at the end of Section 10-3-136. Section 10-3-138 titled Amendment of Variance, would be changed to require applicants to follow the same process as individuals applying for a variance. Three new subsections have been added to Section 10-3-139 titled Procedures on Applications and Appeals, to include the requirements of equal say during a public hearing, availability of materials to the applicants and the public, and for issues associated with open communication among all parties involved while a case is open.

The purpose of most of these changes is to clarify the criteria under which the board can grant a variance. In the past, deciding whether or not an applicant met the requirement of a “hardship” has been difficult. With this amendment, the hope is that the BZA will find it easier to determine if a property’s utilization is being unreasonably restricted by regulations within the Zoning Ordinance. Other important changes that are proposed within Article W are to further ensure that applicants are being treated fairly and have equal access to all of the materials and conversations surrounding their case. As noted in the Summary section above, several of the proposed amendments are not associated with recent changes to the Code of Virginia, but rather are put forth to better align the overall regulations of the BZA with the Code of Virginia.

Key Issues:

N/A

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

Do not approve the staff proposed revisions and to remember that the City Code is outdated and to rely on referring to the Code of Virginia for up-to-date legislation related to functions of the BZA.

Community Engagement:

As required, the proposed amendments were published in the local newspaper twice advertising for Planning Commission’s public hearing for the modifications. The advertisement was published as shown below:

“Public hearing to consider amending the Zoning Ordinance Sections 10-3-24, 132, and 135 through 140. Section 10-3-24 Definitions shall be amended by updating the definition of “variance” to align with changes to the Code of Virginia. Section 10-3-132 shall be amended by adding language to better describe the structure of the Board of Zoning Appeals. Section 10-3-135 shall be amended by adding review criteria to assist the Board of Zoning Appeals in hearing and deciding appeals. The criteria includes adding that the determination of the administrative officer shall be presumed to be correct and that the officer must explain the basis for their determination and further that the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. Section 10-3-136 shall be amended by updating four of the five existing subsections to align with the provisions of the Code of Virginia, which among other things, adds to the criteria to consider when reviewing variance requests as well as by adding a new subsection explaining that the applicant has the burden proving that they meet the standards for receiving a variance. Section 10-3-137 titled Conditions Attached to Approvals shall be removed in its entirety and thus necessitating the renumbering of Sections 10-3-138, 139, and 140 accordingly. Existing Section 10-3-138 title Amendment of Variance shall be amended by aligning it with the application procedures as specified within existing Section 10-3-139. Existing Section 10-3-139 shall be amended by adding three new subsections including information regarding equal say during hearings, ex parte communications, and when materials of the case shall be available to board members, the applicant, and the public.”

Recommendation:

Staff recommends approving the proposed Zoning Ordinance amendments as described and shown herein.

Attachments:

Planning Commission extract; staff report, and; Ordinance – reflecting proposed changes

Review:

Planning Commission recommended approval (6-0) of the Zoning Ordinance Amendments – Section 10-3-24 Definitions, and Multiple Sections within Article W.