



City of Harrisonburg, Virginia

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December 5, 2016

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: 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.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: November 9, 2016

Chair Fitzgerald read the request and asked staff for a review.

Mr. Baugh recused himself from the request and left council chambers at 8:04 pm.

Mrs. Banks said 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

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 WSVB 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.

As reference, the existing towers on the property are 350-feet in height with guyed wires. The lights on the High School Football Stadium are 85-feet in height.

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.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Colman asked whether the 119 feet setback from the R-1 property applies to their own R-1 property

as well.

Mrs. Banks said it is a setback from a property line, those are not property lines, they are zoning district lines because the property is split-zoned.

Mrs. Whitten asked whether there would not need to be a light on the tower.

Mrs. Banks said no it is not going to be tall enough that it requires the FCC lighting.

Mr. Fletcher said I think if I am recalling it correctly you have to be above 200 feet. It might be 200 feet and above, which is why a lot of time it ends up being 199 feet.

Mrs. Banks said the tower on Reservoir Street, the wireless communications tower that was completed in 2011, was 125 feet.

Mr. Finks said that brings up a question I actually had, in the recommendations it says if the tower ceases to be used, the question I have with that is if the business closes down, the radio station goes out of business, they still own the building, the way this is written, could they not retrofit that to be a cell tower and still be used so that they can allow it to stay up for future purchase. Does the language get specific enough where it has to be used for its intended structural purpose?

Mr. Fletcher said definitely not a telecommunications tower. Our current Wireless Telecommunications Facility regulations that we approved last year covers that; so they cannot reuse it in that manner. The allowable uses as a proffer pretty much limit it to radio towers, so if a radio station goes out of business and it ceases to operate for more than 12 months, the property owner is still responsible. If you make this part of the conditions with the special use permit, they are obligated to take it down by the Zoning Ordinance.

Mr. Finnegan said will it need any kind of tethers like those other ones that already exist nearby.

Mrs. Banks said I do not think they need guy wires, but we have some representatives here that might be able to answer that.

Chair Fitzgerald asked if anyone had any more questions for staff. Hearing none, she opened the public hearing first on the rezoning and asked if anyone would like to come forward and speak to this request.

David Nahm, representative of the radio station, said I will answer a few questions if you have them. All the information in the packet and as Mrs. Banks stated is everything more or less that there is to say. There are no guy wires, it is a self supporting tower, it has bolts that go down into the ground, it is very secure and it would not have any wires. With regard to the tower, I guess we are just talking about the rezoning, I think its placement is the only place to build a new tower; the old tower will also come down, the 40-foot one. There will just be one tower; we have to leave the old one up while the new one is being built. Then, when it is finished, the old one can come down.

I know we are not into the special use permit, but they kind of go hand in hand. We detailed it in our letters we submitted. To get the fiber optic cable across the property to the old radio station, it would potentially tangle with both the underground 350 foot spokes that come off the big radio towers. There are also old coaxial cables under there from the 1950s, so potentially running that cable would tangle up with those. The distance requires a power booster, which is attractive to lightning, having lightning attractive to a thing that is connected with all these wires underneath the ground that is just not the right way to do it.

Also, there was some consideration of trying to do it over the internet, but as Matt Richardson, the radio station representative, was trying to write and explain to me, the English Major, so that I can explain it to you all, his internet went out. That is the kind of interruption the radio station is trying to avoid—from a

tractor mowing the field to a more modern internet going out problem. We are trying to avoid all of those.

Chair Fitzgerald asked if anyone else would like to speak on behalf of the rezoning request. Hearing none, she closed the rezoning public hearing and opened the special use permit public hearing and asked if anyone would like to come forward and speak to the special use permit request. [Speaking to David Nahm] You kind of covered it, but you are welcome to come back up again if you would like.

Hearing none, she closed the special use permit public hearing and asked for any further questions or a motion.

Mr. Way said this makes sense in terms of the technicalities that are being explained. My only hesitation is the potential impact on R-1-type developments in that area. All the surrounding land is R-1 zoned, I am favorable to the motion of encouraging more single family-type developments. To have some R-1 land here that would potentially be impacted; how much should we be cognizant of when we make our decisions about these things, about perspective land uses based on the surrounding zoning?

Mr. Finks said the only thing about that area, keep in mind, is that any potential properties are going to be impacted by even larger radio towers that are right next to what is already there.

Mr. Way said this puts another one on the other side. What I am saying is that it kind of takes off area in between there.

Mrs. Banks said but remember this is the radio station property that has the large swath of coaxial cables and large 350-foot radius of underground wiring.

Mr. Way said so nothing can be built on it already.

Chair Fitzgerald said it belongs to the radio station.

Mr. Way said I know it belongs to them, but can anything be built on all that R-1 land.

Mrs. Banks said I guess if they are no longer in business, there may be small portions that can be built upon.

Mr. Fletcher said we have in our other files a man illustration showing all the cabling stretched out underneath the ground and it stretches quite a significant distance and I think there is a circular, radial motion, that is exactly where I was thinking that there could potentially be some R-1 property that can be subdivided off. It is a subjective thought as to whether or not it affects it or does not affect it.

Mr. Way said I am just thinking about precluding potential land use of a kind of development we want to see occur.

Chair Fitzgerald said next to a big high school on the county line.

Mr. Way said we want to be able to have people walk to school. There is a new elementary school going in on the road.

Mr. Colman said I think it is a good point but at the same time remember we are keeping the tower 119 feet away from the existing residential use, which is kind of the same as a buffer.

Mr. Way said I just remember our discussions on that Reservoir Street tower and the potential impact on development around there, we had some discussions about that point. I just want to keep that on the radar with this tower. It is aesthetics, it is the viewshed, it is potential development; there are a few things going on here.

Mr. Finks said I will say for someone who has been out to the location on Heritage Center Way a number of times, being near those towers, they hum. They are present, not just visually present; you notice them.

To me, if I lived in that area, those large towers would already just be plain large issues with the aesthetics.

Mrs. Whitten said this is not going to be the deciding factor. It is a radio station.

Mr. Finks said those have lights, blinking lights on them, that are on all night.

Mr. Way said we have the same principals we had for Reservoir Street that the argument was put forth, then that all the areas were kind of scrappy and ugly, so why don't we double down on the scrappy and ugly to solve that. I do not think that is a creditable argument to resist this kind of thing. I do get your point that it is the likelihood commercial side of that development, the high opportunities that would happen there are already limited.

Mr. Colman said the limitation is about real property in the city that could possibly be an area of development, even with the towers that does not discount it as a possible development.

Mr. Way said if you look on the north side, there are some properties that are pretty close. I am just trying to keep it on our radar and just to think about that and the potential impacts.

Chair Fitzgerald asked for a motion on the rezoning request.

Mr. Finks moved to approve the Rezoning – 1820 Heritage Center Way (B-2C Proffer Amendment), as presented by staff.

Mr. Way seconded the motion.

Chair Fitzgerald asked for further discussion on the request. Hearing none, she called for a voice vote on the motion.

All voted in favor (6-0) to recommend approval of the rezoning at 1820 Heritage Center Way (B-2C Proffer Amendment), as presented by staff.

Chair Fitzgerald asked for a motion on the special use permit request.

Mr. Colman moved to approve the Special Use Permit at 1820 Heritage Center Way per Section 10-3-91(12) to allow structures in excess of 75 feet in height with the suggested conditions.

Mr. Finks seconded the motion.

Chair Fitzgerald asked for further discussion on the request. Hearing none, she called for a voice vote on the motion.

All voted in favor (6-0) to recommend approval of the rezoning and the special use permit at 1820 Heritage Center Way (Section 10-3-91(12) to allow structures in excess of 75 feet in height with the suggested conditions.

Chair Fitzgerald said this will go forward to City Council on December 13, 2016

Mr. Baugh returned to council chambers at 8:30 p.m.

Respectfully Submitted,

Alison Banks

Alison Banks
Senior Planner