



City of Harrisonburg, Virginia
Department of Planning & Community Development

409 South Main Street
Harrisonburg, Virginia 22801
(540) 432-7700 / FAX (540) 432-7777
www.harrisonburgva.gov/community-development

Building Inspections
Engineering
Planning & Zoning

November 1, 2018

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

SUBJECT: Public hearing to consider a request from Robert Nickell Jackson & Other Trustees to rezone two 3,250 +/- sq. ft. parcels totaling 6,500 +/- sq. ft. from M-1, General Industrial District to B-1C, General Business District Conditional. The two parcels are located at 455 and 457 North Liberty Street and are identified as tax map parcels 34-C-4 and 34-C-4A, respectively.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING
HELD ON: October 10, 2018**

Chair Way read the request and asked staff to review.

Mrs. Banks said the subject property came to the attention of City staff in July 2018 when a concern was received from a tenant regarding possible building code violations within the structure. Community Development personnel performed an inspection of the property and noted that not only were there property maintenance violations, but the use of the structure had changed from a non-conforming duplex building to an illegal four-unit apartment building. There were no building permits or Certificates of Occupancy on file showing the approved conversion of the structure from a duplex to an apartment building. Staff determined that the structure was converted illegally and sent a certified notice of violation informing the owner that the property had lost its non-conforming status and would need to be brought into compliance with the zoning regulations for the M-1, General Industrial District, which meant it could no longer be used for residential purposes.

In August, the property owner submitted an application to the Board of Zoning Appeals (BZA) appealing staff's decision that the property must conform to the M-1 zoning district. However, after reviewing the BZA application and viewing the site, staff believed that no matter what the outcome of the appeal, the structure would still be non-conforming to setbacks making it difficult, if not impossible for the owner to make any necessary property maintenance repairs regardless of the use. Staff suggested that the owner may want to withdraw the appeal and consider rezoning the property to B-1, Central Business District; if approved it would allow for flexibility with setbacks, density and parking issues.

Assistant City Attorney Russ said I just want to state that this item does have that procedural history with the BZA, and the rezoning application is just kind of a solution that both staff and the applicant prefer to the alternative to resolve any dispute of the present use. But, in the event that City Council does not approve the rezoning, then the issue related to the present use and what is and is not allowed at this property would go back to the BZA. This puts us in a situation where we need to discuss the property in the present use, and we do not want anyone to feel misled about how we got to where we are; but, at the same time we want to be careful not to unintentionally prejudice the members of the BZA of the relevant issues in the event that they have to decide who is correct about what use should be allowed on the property right now. Therefore, the applicant and staff would appreciate if we did not dwell too much on whether the present use is technically legal and try to perhaps, not unintentionally expose the BZA

members to a back and forth debate on the legality issue and focus more on the merits of this rezoning application.

Mrs. Banks continued, the Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. These are older neighborhoods, which can be characterized by large housing units on small lots.

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

Site: Illegal four-unit apartment building, zoned M-1

North: Non-conforming single-family dwelling, zoned M-1

East: George's Food feed mill operation, zoned M-1

South: Upholstery manufacturing operation, zoned M-1

West: Single-family dwellings, zoned R-2

The applicant is requesting to rezone two parcels totaling +/- 6,500 square feet, from M-1, General Industrial District to B-1C, Central Business District Conditional. The property is located along the western side of North Liberty Street, between West Gay Street and the George's Food poultry processing facilities. The building that is currently situated on the property is the original structure and is identified on the City's 1912 Sanborn Maps as two units. City records indicate the structure was constructed around 1910 in an area that included other residences. When the City adopted zoning in 1939, this area was placed within the B-2, Business, Manufacturing, and Industrial District. City records indicate that throughout the years this area has continually been some form of industrial zoning classification, and although some dwellings have been removed to create industry uses or parking lots, several non-conforming residences remain today.

With the requested rezoning, the applicant has proffered the following (written verbatim):

In connection with the rezoning request for the properties located at 455 North Liberty Street and 457 North Liberty Street, such properties being identified on the tax maps of the City of Harrisonburg as tax map parcels 34-C-4 and 34-C-4A, the following are proffered:

1. The following permitted uses are hereby proffered:
 - (ii) Dwelling units, up to a maximum of four dwelling units. Occupancy of each dwelling unit can be a family or not more than two unrelated persons;
 - (iii) Business or professional offices; or
 - (iv) Religious, educational, charitable and benevolent institutional uses which do not provide housing facilities.

Special use permits shall be permitted as approved by City Council.

2. If the use of some or all of the properties is changed from dwelling units to another use, five off-street parking spaces shall be provided.

Currently, the property is in violation of the M-1 zoning regulations because it was converted to a four-unit apartment building without proper permits. Prior to becoming four units, it was a non-conforming duplex; but, because of the illegal conversion and the length of time since the conversion, it has lost its non-conforming status and cannot be converted back to the non-conforming duplex. Therefore, it must conform to the M-1 zoning uses and requirements. The subject property is small, the building on the

site does not meet current setback regulations and parking is limited. Renovating and changing the use of the existing building from residential to industrial is limited because of the non-conformance of the structure and access to the rear of the property for parking purposes would have to be achieved by obtaining an easement from an adjacent property or attempting to access through an undeveloped alley way along the rear of the site. The property could be redeveloped with an M-1, industrial use, a new structure and parking lot; however, staff does not believe this is the best use of this site and is not in the best interest for the surrounding neighborhood.

As noted above, the property's current Land Use Guide designation is Neighborhood Residential, which we often align with the R-2, Residential District; but, rezoning this property to R-2 would not alleviate the non-conforming setbacks, or non-conforming density issues of this site. Currently, all properties fronting along both sides of Liberty Street, from the southern intersection with South Main Street to the West Johnson Street intersection are designated Mixed Use Development Areas, except for these six parcels on the western side between West Gay Street and the George's Food poultry processing facilities. During last month's Comprehensive Plan update discussion, Planning Commission reviewed this area and proposed within the Draft Comprehensive Plan's Land Use Guide to designate the area as Mixed Use.

The adopted Mixed Use Development Areas and draft Mixed Use designation are most often associated with the B-1, Central Business District. The B-1 district is most commonly known for the massing of large commercial or mixed use buildings along street frontages; but, B-1 also creates flexibility for setbacks and parking requirements, and it may contain spaces of all residential uses.

With this request, the applicant has addressed staff's concerns with density on the site by limiting the number of dwelling units and the occupancy of each dwelling unit to a family or not more than two unrelated individuals. Non-residential uses are limited and the proffer of providing parking spaces if the use changes from all residential to a non-residential use addresses staff's concerns with parking in this area of the City. As well, if approved, the site could continue to be used as a four-unit apartment building that provides housing in the City, a concern that staff continues to hear from community members.

Lastly, no matter what the outcome of this request is, the owner will need to resolve all property maintenance violations, apply for a change of use permit with the Building Inspections Division to the use that will ultimately occupy the structure, and obtain a Certificate of Occupancy.

Staff recommends approval of the rezoning request from M-1 to B-1C.

Chair Way asked if there were any questions for staff.

Mrs. Whitten asked if anyone was living in the structure currently, and if yes, how many.

Mrs. Banks replied that it is occupied at this time. I believe there are six tenants; however, the applicant's representative can better confirm that number.

Mr. Colman asked where do the current residents park.

Mrs. Banks said along the front of the property there are maybe four spaces that residents can use for parking, as well there is on street parking along this portion of North Liberty Street.

Mr. Colman asked when it comes to the residential use of this property we are not requiring any parking.

Mrs. Banks said if it is rezoned to B-1, there is no requirement for parking; but, the applicant has proffered if any portion of the properties convert to the other allowable B-1 uses then five parking spaces will be provided.

Chair Way said I will open the public hearing at this time and invite the applicant, or the applicant's representative to come speak.

Mr. Jordan Bowman, attorney for the Jackson Family Trust, the property owner and applicant, said thank you and I have just a couple of comments this evening. To address the earlier question, I believe there are six people currently living in the property. We are not aware at any time of it being more than eight persons total. The owner's policy has been not to rent a unit to more than two people. One issue in creating the proffers was what if there are two people living in a unit and they become pregnant and have a baby, we did not want to have a zoning violation. That is why we phrased the proffer as we did with a family or two individuals.

We do not anticipate changing the use at this time, but we believe that changing the zoning brings it more in line with the City's Land Use Guide and the proposals for where this area is going; as we have already seen here tonight.

Some of the purposes of zoning, and I am paraphrasing from the City Code Section 10-3-3, include: promote the appropriate and best use of land; facilitate the creation of a convenient, attractive, and harmonious community; provide for efficiency and economy in the process of development; and conserve the value of land and buildings. These are two lots; each are 0.07 acres and they are zoned M-1, Industrial. One is 26-feet wide and the other is 23-feet wide. So, with the applicable M-1 setback regulations you could build approximately a five-foot wide building on these lots. The allowable uses are manufacturing facilities, warehouses, wireless telecommunication towers, processing stations, and the like. I have never seen a five-foot wide warehouse. Basically, there is no use for these lots other than parking; the structure torn down and this would become a parking lot.

This is why we are here this evening, to seek the rezoning to continue to use the property for the uses that we have proffered. Furthermore, this property backs up to a bunch of residential homes and I doubt that any of the home owners would like an industrial use backing up to their residential home. I do not know why it was zoned that way in 1939, the house was already existing, built in 1910. We do not believe that it promotes the appropriate use of the land, creates a harmonious community, promotes economic development, or conserves value to leave it zoned M-1. Probably the most important thing is in the draft Land Use Guide you have already decided it should be moved away from the industrial uses. With that, we respectfully ask that you recommend for this rezoning and I would be happy to answer any questions.

Chair Way asked if there were any questions for Mr. Bowman. Hearing none, he opened the public hearing and asked if there was anyone wanting to speak in favor or in opposition of the rezoning request.

Mr. Barry Kelley, Hillcrest Drive, said we own property on Collicello Avenue, right behind this property; as well as the City Exchange across Liberty Street and the railroad tracks from this property. We support this rezoning request because we feel it is the highest and best use of the property and we would like to see more housing available downtown.

Chair Way asked if there was anyone else wanting to speak with regard to the rezoning request.

Mr. Randall Reichenbach, Collicello Street, asked how long does the property owner have to bring it into conformity regarding the various concerns that were raised this evening as to property maintenance and parking.

Mrs. Banks replied if this rezoning request is approved by City Council next month, then the owners must begin working on the property maintenance issues right away to bring them up to code with a residential use. If this rezoning request is not approved by City Council, and the applicant appeals staff's earlier decision regarding the use of the property, then whatever the outcome of the BZA

meeting will determine what use will be allowed on the property. This process would take some time and therefore it could be another two or three months.

Mr. Fletcher concurred, it would be a couple of months, given the fact that it would have to continue through this process, perhaps another, applying for building permits, and change of use permits, and going through reviews to ensure that whatever changes are needed physically to the structure to ensure compliance are done. It will be a work in progress, but we will work with the owners to ensure all issues are rectified.

Mr. Reichenbach said currently it is zoned M-1 and it does not comply with M-1; however, going to the B-1, business classification would bring it into compliance or just allow for more uses?

Mrs. Banks replied it would allow for a residential use on the property.

Chair Way asked if there was anyone else desiring to speak. Hearing none, he closed the public hearing and invited discussion or perhaps a motion.

Mrs. Whitten said I am glad a tenant came forward about the maintenance and with that I will move to recommend approval of the rezoning request as submitted.

Mr. Finks said I second and state that I believe that this type of rezoning makes sense. We do not want to lose this type of housing in this area and it does not make sense to have another industrial use on that lot.

Mr. Baugh said this is a challenging area and I have spoken with a lot of folks in this area over the years. The problem is they are small lots, usually with an M-1 zoning designation with some type of long standing residential use. We do not want to drive out viable M-1 uses; but, in situations like this I believe it makes sense and is a good solution.

Mr. Finnegan said I would also add that as housing becomes more expensive I would expect to see more of this type of violation. I think this is the best solution.

Mr. Fletcher said before you vote I want to clarify with staff, for the record, that there are two separate parcels with this request and the proffers are for both. In the second proffer which states if the use of some or all of the properties is changed from dwelling units to another use five off-street parking spaces shall be provided. This is to clarify that the five is for the subject sites, plural, we are not talking ten parking spaces, five for each property; but, five as a whole.

Mr. Bowman said from the applicant's perspective we meant it would be five as a whole.

Mrs. Banks concurred that it would be only five.

Chair Way said we have a motion and a second; is there any further discussion? Hearing none, he called for a voice vote on the motion.

All voted in favor (7-0) of the motion to approve.

Chair Way said this request will go forward to City Council on November 13, 2018.

Respectfully Submitted,

Alison Banks

Alison Banks
Senior Planner