



November 24, 2009

TECHNICAL STAFF REPORT

*Petition Accepted on October 8, 2009
Planning Board Meeting of December 10, 2009
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA 122 – Forest Venture II, LLC (c/o Richard B. Talkin, Esq.)

Request: Zoning Regulation Amendments to permit residential dwelling units in the B-1 and B-2 Districts to comprise up to a maximum of 50 percent of the floor area of a structure provided the dwelling units are located above the first floor level.

Department of Planning and Zoning Recommendation:

APPROVAL

I. DESCRIPTION OF PROPOSAL

- **The proposal is for amendments to Sections 118 and 119 of the Zoning Regulations. The Petitioner proposes to amend the B-1 and B-2 District Regulations to permit residential dwelling units in these districts to comprise up to a maximum of 50 percent of the floor area of a structure provided the dwelling units are located above the first floor level.**
- **The Petitioner states that the amendment is being proposed to revise an outdated and rarely-used provision in the Zoning Regulations which was created for the purpose of providing housing for the proprietor of a business by allowing each business to have one residential unit above in a business owner-occupied dwelling unit and that the existing restriction on the number of residential units results in the inability to provide a vibrant residential component to a mixed-use development.**
- **According to the petition, the proposed amendment will permit the same square footage of residential use as is currently allowed, but removing the limitation of one dwelling unit per business establishment will allow for opportunities to create small mixed-use centers to help revitalize areas such as the US 40 corridor and other areas. The amendment will encourage the development of buildings which will be more architecturally interesting and deviate from a strip-center appearance.**
- **The complete proposed amendment text is attached to this Technical Staff Report as Attachment A (Petitioner's Proposed Text).**

II. EXISTING AND PROPOSED REGULATIONS

- **Currently, the Zoning Regulations permit one dwelling unit per business establishment within the same structure, provided the dwelling unit does not exceed 50 percent of the floor area of the structure. There is no requirement that the dwelling unit be occupied by the business owner.**

The proposed amendment would only remove the ratio of the number of dwelling units to business establishments. It would not change the permitted overall percentage or total square footage of residential use.

Under the proposal, the permitted residential area would be calculated as a percentage of the square footage of the overall area of a building. The amendment would allow the residential area to comprise up to 50 percent of the floor area of a structure without any limitation on the density or number of residential units.

- **Under the current regulations, the number of residential units is calculated based on the number of businesses within a building, limited to 50 percent of the floor area of the structure. There is no specific density maximum based on a calculation of density units per acre or minimum lot size. There is no provision regarding what should happen to the number of residential units should the number of businesses within a building increase or decrease after initial plan approval.**

The current B-1 and B-2 regulations allow residential units based on a ratio to business establishments in the initial development scenario, but do not provide for changes in the residential component should the number of business establishments increase or decrease over time. The amendment would remove the one-to-one ratio of the number of residential units to the number of business establishments and would instead establish a one-to-one ratio of residential area to the commercial building.

The residential density will be limited by the percentage of area permitted per building, as well as by the parking requirement.

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendments

- **The amendment could affect any B-1 or B-2 zoned property.**

B. Background/history of the Zoning Regulations

- In the 1948 Regulations the Commercial A and B Districts allowed commercial uses as well as uses in the Residential District, including “Dwellings, including apartment houses and hotels”. There was no lot size minimum for residential uses except that the area requirement in the residential district was, “Every lot upon which a building used in any part for dwelling purposes shall be erected shall contain at least 5,000 square feet of lot area for each family housed in said building”.

- In the 1954 Regulations the B-1 and B-2 Districts were created and included as permitted uses those uses permitted in the R-R and R Districts. R-R and R included “One and two family detached dwellings”. Apartment houses were excluded by this language. This held in the 1961 Regulations except that new, additional residential districts were created.
- In the 1977 Regulations the B-1 and B-2 Districts added language that permitted “One dwelling unit per business establishment within the same structure”. This language held in the 1985 Comprehensive Zoning Plan.
- In ZB Case 882R which became effective in August, 1989, the language “Provided the dwelling unit does not exceed 50% of the floor area of the structure” was added. This language has held through subsequent Comprehensive Zoning Plans.

IV. EVALUATIONS AND CONCLUSIONS

- Removal of the ratio of residential units to business establishments would simplify the permitting and enforcement processes should a change in the composition of business occupancy occur. Since business occupancy generally changes over time, the existing one-to-one ratio may be an impediment to inclusion of residential units.
- This amendment has the potential to increase the actual number of residential units, but the overall permitted percentage of residential square footage under the proposal would remain the same as the existing regulation.

V. RECOMMENDATION

APPROVAL

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-122 be **APPROVED**.

Marsha S. McLaughlin

11/25/09

Marsha S. McLaughlin, Director

Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

MM:ZLK/zlk

ATTACHMENT A

Petitioner's Proposed Text

(CAPITALS indicates text to be added; [[brackets indicate text to be deleted]].)

SECTION 118 (Business: Local) District

B. Uses Permitted as a Matter of Right

37. [[One d]] Dwelling unitS [[per business establishment within the same structure,]] provided the dwelling unitS do[[es]] not exceed 50 percent of the floor area of the structure AND ARE LOCATED ABOVE THE FIRST LEVEL.

SECTION 119 (Business: General) District

B. Uses Permitted as a Matter of Right

62. [[One d]] Dwelling unitS [[per business establishment within the same structure,]] provided the dwelling unitS do[[es]] not exceed 50 percent of the floor area of the structure AND ARE LOCATED ABOVE THE FIRST LEVEL.

The remainder of each Section remains the same.