

From: "Marc S. McKellar II" <msm@kuhnrogers.com>

Date: April 2, 2024 at 6:08:47 PM EDT

To: pieter schous <pjschous@yahoo.com>

Subject: RE: Zoning Ordinance Amendment regarding combined uses in the Light Industrial District

Peter,

No worries. I have reviewed this. If his intention was to make it so uses by right were still approved administratively, but that the PC would have to make one determination, "are the uses by right compatible with each other". I understand the concept in theory, but not only does it add an additional process, cost and time, the devil is in the details in practice.

As the proposed language provides, it would require that the use by right would have to meet article 6 special use requirements. I see the use language that says "applicable" but there is no language to say what's applicable or not. Further, compatibility of uses by right on sight isn't provided for in article 6 so what is applicable, I would argue that as written, all of article 6 is. Which is obviously an issue, because it makes all uses, even by right, go through the special use process.

Further, uses by right are considered compatible to neighboring parcels by the very existence of them identified as uses by right. That is why a use by right applicant doesn't have to prove the use is compatible with the neighboring parcel. It's deemed compatible under the law. So, what purpose at all is it to have the parcel owner prove that their uses are compatible on their own property, that seems odd at best. As proposed an owner doesn't have to worry about proving its compatibility to the neighbors but does to itself? And if so, why even go through such a process. Most importantly, the ordinance must provide context to a requirement, here there is no definition or guidance of what is considered "compatible for combined uses by right". So how would an owner go about proving that it's compatible.

And frankly uses by right could subjectively not be "compatible" or maybe they are "compatible".

I would ask that the language not be changed, from what we proposed. The use by right language we use is appropriate and provides that it is further subject to special use review for any special use that is considered in the combination of uses. The only justification for it being moved by Mr. Figura is the need to have the PC determine if the uses by right are compatible with itself and not neighbors. For the reasons above I can't see a legal reason that needs to be required. That seems like a planning process and I'm uncertain in practice how that would even proceed.

I have to apologize for the late response and my inability to attend the meeting tonight, I was just made aware of it this afternoon. However, I would request that if you are going to move forward with the original language that we would support it going forward tonight. However, if there is consideration that the proposed language from Mr. Figura is going to be required, I would ask that the decision be postponed until we have an opportunity to present and meaningfully participate at a PC meeting. Further, I believe that changing the use from a use by right to special use would be a material change and would require that it go back to the county. Given our timeline to get moving and that I had, and maybe mistakenly, thought legal review was going to be to legal concepts and

not planning ones, I would again ask that the original language be recommended and sent to the village counsel for their approval.

Best regards,

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