

City of Winchester
COUNCIL ACTION MEMO



Resolution Ordinance Discussion

To: Honorable Mayor and Members of City Council
From: Timothy Youmans, Planning Director
Subject: CU-20-439 Request of RCI Properties LLC for a Conditional Use Permit to construct a non-compliant fence, per Section 18-9-4 of the Zoning Ordinance, in the front yard of 206 West Wyck Street (Map #153-01-I-6) zoned Limited Industrial (M-1) District.
Meeting: City Council Regular Meeting - Oct 13 2020
Regular Meeting: October 13, 2020
Presenter: Tim Youmans, Planning Director

THE ISSUE:

The applicant is requesting a conditional use permit for a black vinyl chainlink fence that does not comply with the maximum height and requirements in a non-required front yard.

STRATEGIC PLAN:

Goal III: Advance the quality of life for all Winchester residents by increasing cultural, recreational, and tourism opportunities; enhance and maintain infrastructure and promote and improve public safety.

BACKGROUND INFORMATION:

See staff report.

BUDGET IMPACT:

N/A

OPTIONS:

Option A. Forward to public hearing
Option B. Table request for additional information

RECOMMENDATION:

Option A.

ATTACHMENTS:

[CU-20-439 Staff Report for CC Work Session 9-22-20](#)
[CU-20-439 Application and Letter](#)
[CU-20-439 Site Layout](#)

REVIEW:

Timothy Youmans, Planning Director
Melisa Michelsen, City Attorney

Approved - Sep 17 2020

Approved - Sep 17 2020

MEETING HISTORY:

After a public hearing on September 15, 2020, no public comment was received, Planning Commission forwarded this request to City Council with a recommendation for approval, subject to two conditions (see staff report).

September 22, 2020 City Council Work Session:

Motion to forward CU-20-439 to the next City Council Regular Meeting for approval.

RESULT: Approved to Forward

MOVER: Councilor Willingham

SECONDER: Councilor Veach

AYES: Vice-President Clark, Councilor Herbstritt, Vice-Mayor Hill, Councilor McKiernan, Councilor Sullivan, Councilor Veach, Councilor Willingham, and Mayor Smith, Jr.

ABSTAINED: Councilor Wiley

CU-20-439 Request of RCI Properties LLC for a Conditional Use Permit to construct a non-compliant fence, per Section 18-9-4 of the Zoning Ordinance, in the front yard of 206 West Wyck Street (Map #153-01-I-6) zoned Limited Industrial (M-1) District.

REQUEST DESCRIPTION

The applicant is requesting a conditional use permit for a black vinyl chainlink fence that does not comply with the maximum height and requirements in a non-required front yard.

AREA DESCRIPTION

The subject property is zoned Limited Industrial (M-1) District and is home to Rinchem, a chemical storage company. The property has an unusual shape, where the legal street frontage is along W. Commercial Street, but the main building is set over 150 feet back from West Commercial Street, where the property widens. The property does have access from West Wyck Street across private property, but there is no legal street frontage in this area. All of the surrounding properties are similarly zoned Limited Industrial District. The city is currently in the process of acquiring the Wyck Street right-of-way as well as the vacant Winchester & Western railroad land to the west.



COMMENTS FROM THE PLANNING DEPARTMENT

The applicant is requesting the CUP to allow for an 8-foot tall fence to be located in the front yard. The zoning ordinance requires that fences in a non-required front yard be limited to 5-feet in height. (Section 18-9-3.1).

18-9-3.1 Fences shall be subject to the following requirements pertaining to height, opacity, minimum setback, and special provisions, except as per Section 18-12 of this Ordinance.

Yard Type	Maximum Height	Opacity	Setback	Special Provisions
Front Yard	4-feet	Minimum 25% open (e.g. picket, chain link, rail, etc.)	None	Sections 18-9-3.3, 18-9-3.3, and 18-12-1 apply.
Non-required Front Yard	5-feet	100% solid permitted	None	Section 18-9-3.3 applies.

Non-primary Front Yard	6-feet	100% solid permitted	Minimum 3-feet, plus 1 foot for each additional foot of fence height above 3 feet	Sections 18-9-3.3, 18-9-3.3, and 18-12-1 apply.
Side Yard	8-feet	100% solid permitted	None	Section 18-9-3.3 applies.
Corner Side Yard	4-feet	Minimum 25% open (e.g. picket, chain link, rail, etc.)	None	Sections 18-9-3.3 and 18-9-3.4 apply.
Non-required Corner Side Yard	5-feet	100% solid permitted	None	Section 18-9-3.3 applies.
Rear Yard	8-feet	100% solid permitted	None	Section 18-9-3.3 applies.

The Zoning Ordinance only allows for 8 foot tall fences to be located in a side yard or rear yard, which is defined by building location, not the required setbacks. The proposed location of this fence is parallel to the front wall of the main building, but an estimated 10 feet in front of the front wall plane. With the building set more than 150 feet back from the street, where only a 50 foot setback is required, a fence in this area of the property would be defined as being in the non-required front yard. Fences in the non-required front yard may be 5-feet tall and 100% opaque (see the chart above) by-right, but the applicant seeks an 8 foot tall fence for security and safety, due to the storage of chemicals on site. It's worth noting that the proposed fence is also 130 to 140 feet back from W. Commercial Street, the legal frontage.

A fence and gate that is in line with the front wall of the main building would not be practical due to facility having a loading dock near the front wall, which would make it difficult to maneuver trucks in this area.

The owner is seeking a deviation from the fence standards pursuant to Section 18-9-4, which allows for a conditional use permit to be sought for situations where either (1) a property owner can demonstrate that compliance with the requirements is technically impractical to maintain functionality of the property or (2) Council makes a finding that the proposed alternative design is desirable and consistent with neighborhood character.

According to Rinchem, the need for an 8 foot tall fence surrounding the property is stipulated in the guidelines developed by the Department of Homeland Security for this type of facility. Additional security measures include monitors, sensors and an alarm system that synced to the Department of Homeland Security.

RECOMMENDATION

Staff was unable to find comparable situations, but 8 foot tall fences are not out of character for the surrounding industrial district. Previous conditional use permits under this provision had been evaluated comparatively to the immediately adjoining neighbors and those properties within the same neighborhood block. Due to the unusual property layout, and extreme setback of the main building and proposed fence, staff is supportive of this request.

For a conditional use permit to be approved, a finding must be made that the proposal will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. Furthermore, in the case of this specific request, the finding must include that the proposed alternative fence design is desirable and consistent with neighborhood character.

After a public hearing held by Planning Commission on September 15th, 2020, during which no interested citizens spoke, this request was forwarded to City Council with a favorable recommendation, subject to the following conditions;

- 1) The fence height in the front yard is limited to 8-feet.
- 2) If the fence is removed in the future, the CUP approval will expire.

At the upcoming September 22nd Work Session, City Council has the option to either forward **CUP-20-439** to public hearing or table the request, if more information is needed. The following are draft motions.

A motion to forward could read:

MOVE, that **CU-20-439** be forwarded to public hearing on October 13, 2020.

A motion to table could read:

MOVE, that **CU-20-439** be tabled until the October 13, 2020 work session to allow adequate time for the applicant to address comments and concerns that the Council has identified, which include: {insert any that apply}

- 1) The proposed alternative fence design is undesirable and inconsistent with neighborhood character.
- 2) _____

After public hearing, if City Council is inclined to approve the Conditional Use Permit, a favorable motion could read:

MOVE, that City Council approve **CU-20-439** per Section 18-9-4 of the Zoning Ordinance because the proposal, as submitted, will not adversely affect the health, safety, or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. This includes a finding that the proposed alternative design is desirable and consistent with neighborhood character, and is consistent with the Comprehensive Plan. The approval is subject to:

- 1) The fence height in the front yard is limited to 8-feet.
- 2) If the fence is removed in the future, the CUP approval will expire.

-OR-

If the proposal is found to be undesirable and inconsistent with neighborhood character, then a unfavorable motion could read:

MOVE, that City Council deny **CU-20-439** per Section 18-9-4 of the Zoning Ordinance because the proposal, as submitted, does not adhere to the finding requirements of Section 18-9-4, namely that the proposed alternative design is not consistent with neighborhood character due to the following reasons: {insert any that apply}

- 1) The proposal would adversely affect the health, safety or welfare of residents and workers in the neighborhood and be injurious to adjacent properties or improvements in the neighborhood because _____.

-OR-

A motion to table could read:

MOVE, that City Council table Conditional Use Permit **CU-20-439** until the {insert date} work session to allow adequate time for comments and concerns identified by Council to be addressed, including: {insert any that apply}

- 1) The fence height in the front yard is too tall
- 2) _____



CASE #: CU- _____
 FEE AM'T: _____
 DATE PAID: _____

Rouss City Hall
 15 North Cameron Street
 Winchester, VA 22601
 540-667-1815
 TDD 540-722-0782

CONDITIONAL USE APPLICATION

<p>Please print or type all information</p> <p>505-345-3655 Telephone</p> <p>accounting@rinchem.com E-mail address</p>	<p>RCI Properties (Winchester) LLC Applicant</p> <p>5131 Masthead Street NE Street Address</p> <p>Albuquerque NM 87109 City State Zip</p>
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<p><small>Digitally signed by Robert Toledo DN: CN=Robert Toledo, OU=Users, OU=CSC 98 PMO, OU=Rinchem Users and Computers, DC=Rinchem, DC=com Date: 2020.08.07 09:03:11-0600</small></p> <p>Robert Toledo OWNER'S SIGNATURE (use reverse to list additional owners)</p> <p>505-345-3655 Telephone</p> <p>bmoore@rinchem.com E-mail address</p>	<p>RCI Properties (Winchester) LLC Owner Name (as appears in Land Records)</p> <p>5131 Masthead Street NE Street Address</p> <p>Albuquerque NM 87109 City State Zip</p>
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TYPE OF REQUEST - Please mark type of request and complete information

<p>CONDITIONAL USE Code Section: 18-9-4 Type of Use: Fence Standards</p>	<p>FEE</p> <p><input type="checkbox"/> \$500</p> <p><input checked="" type="checkbox"/> \$200 (if filed with site plan)</p> <p><input type="checkbox"/> \$1500 Telecommunications Facility/Tower (New, Modification, or Collocation)</p> <p><input checked="" type="checkbox"/> \$25 – property list</p> <p><input checked="" type="checkbox"/> \$50 – sign deposit</p>
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PROPERTY LOCATION

Current Street Address(es) 206 Wyck Street, Winchester VA 22601 Zoning M-1

Tax Map Identification - (sections, blocks, lots) 153-01-1-6

REQUIRED MATERIALS LIST

- 1 copy of application (this form completed)
- Letter addressing compliance with Section 18-2 of City's Zoning Ordinance and how impacts of use will be mitigated
- 10 copies of the Site Plans, Floor Plans, and elevations of proposed use.
- Fee (check made payable to the **Treasurer, City of Winchester**)
- List of adjacent property owners. List must provide name and mailing address as appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. If provided by the City, there is a \$25 fee.
- Disclosure of Real Parties in Interest (list all equitable owners)

All public hearing materials must be submitted at one time by 5:00 PM on the deadline date for the next regular meeting in order to be placed on the agenda. **Only complete applications, which includes all the above materials, will be accepted.**

I/we hereby certify that the above information is complete and correct and that public notification will be properly posted on the site not later than 14 days before the public hearing and that all delinquent Real Estate taxes have been paid per Section 23-9.

SIGNATURE Robert Toledo Digitally signed by Robert Toledo
 DN: CN=Robert Toledo, OU=Users, OU=CSC 98 PMO, OU=Rinchem Users and Computers, DC=Rinchem, DC=com
 Date: 2020.08.07 16:54:53 -0600 DATE _____
 APPLICANT

(rev 8/22/2013)



August 10, 2020

City of Winchester
Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Re: Rinchem Winchester Rehab Project
206 Wyck St. Warehouse Racking Layout

To whom it may concern,

We are requesting a Special Use Permit for our Fence Height. We are regulated by Homeland Security and one of the conditions is to have 8' high perimeter fencing. The fence we are proposing is black vinyl chain-link around the back side of the property. This area is set back away from the roadway by over 150' and approx. 5'-6' lower than street elevation making the fence virtually invisible from roadway. We have spoken to our neighbor regarding the fence and gate that will separate our property. They are fully on board with our requirement and they feel like this would give them better protection as well. I believe this will not impact the city negatively and will add to the improvements.

Thank you for your consideration

Robert Toledo  Digitally signed by Robert Toledo
DN: CN=Robert Toledo, OU=Users,
OU=CSC 98 PMO, OU=Rinchem
Users and Computers, DC=Rinchem,
DC=com
Date: 2020.08.10 09:06:35-06'00'

Robert Toledo
Construction Project Manager

COMMERCIAL STREET (50' R/W - INST. 150002919)
(ASPHALT SURFACE)

