



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Meeting Minutes - Final Planning Commission

Wednesday, November 8, 2023

6:00 PM

Council Chambers

1. Call To Order

The Harrisonburg Planning Commission held its regular meeting on Wednesday, November 8, 2023, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

2. Roll Call/Determination of Quorum

Members present: Chair Brent Finnegan; Heja Alsindi; Dr. Donna Armstrong; Richard Baugh; Valerie Washington; and Vice Mayor Laura Dent. Vice Chair Adriel Byrd arrived late.

Also present: Adam Fletcher, Director of Community Development; Thanh Dang, Deputy Director of Community Development; Wesley Russ, Deputy City Attorney; Meg Rupkey, Planner; and Anastasia Auguste, Administrative Specialist/Secretary.

Chair Finnegan called the meeting to order and said that there was a quorum with six members present.

Present 7 - Brent Finnegan, Adriel Byrd, Donna Armstrong, Valerie Washington, Richard Baugh, Vice-Mayor Laura Dent, and Heja Alsindi

3. Approval of Minutes

3.a. Minutes from the October 11, 2023 Planning Commission Meeting

A motion was made by Baugh, seconded by Byrd, that this Minutes be approved. The motion carried by a voice vote.

4. New Business - Public Hearings

4.a. Consider a request from Patricia Valle-Alvarez to rezone 505 Northglen Lane

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the subject property is a corner parcel located on the southeastern corner of Northglen Lane and Hearthstone Lane. Corner lots are required to provide a principal building setback equal to the required front setback for all yards adjoining a public street. For the subject property, which is zoned R-2, such setbacks are 30-feet.

The existing dwelling was constructed in 1986 and included an uncovered rear deck. In October 2015, a permit was issued for the construction of a 5-foot by 18-foot uncovered deck to run along the length of the dwelling facing Hearthstone Lane and connected to the rear deck. On March 29, 2023, it was brought to the attention of the Department of Community Development that the deck was being replaced and covered but without an approved building permit. The property owner was notified, and then a building permit was submitted. During the building permit review, zoning staff flagged the permit for setback concerns as the covered porch would not meet setback requirements. Note that uncovered porches may project in to the front setback one-third the required distance. However, covered porches and decks must meet principal building setbacks.

In an effort to correct the violation, the applicant applied for a variance to the Zoning Ordinance through the Board of Zoning Appeals (BZA). In August 2023, the BZA denied the variance request.

The applicant is now requesting to rezone the property to the R-8 district, which offers reduced front yard setbacks. If approved, the structure would be in zoning compliance.

The applicant is requesting to rezone a +/- 10,525-square foot property from R-2, Residential District to R-8C, Small Lot Residential District Conditional. The property is located at the southeastern corner of Northglen Lane and Hearthstone Lane and is addressed as 505 Northglen Lane.

Proffers

The applicant has offered the following proffers (written verbatim):

1. More than one dwelling is prohibited.
2. The setback off of Northglen Lane will be no closer than 30 feet.
3. The setback off of Hearthstone Lane will be no closer than 20 feet.

The conceptual site layout is not proffered.

Regarding proffer #1, in the R-8 district, single-family detached homes and duplexes are allowed by right if the lot area and dimensions of the property are met. If the rezoning is approved, although the R-8 district dimensional regulations would allow the property to be further subdivided, the submitted proffer prohibits more than one dwelling on the property, and thus they would be restricted to having only one dwelling unit on the property.

The R-8 district typically allows for 10-foot front yard setbacks, however, proffers #2 and #3 are further restricting front yard setbacks. Specifically, the applicant has proffered that the front yard setback along Northglen Lane shall be 30-feet, which is consistent with the property's existing R-2 setback requirements, but then allowing for a 20-foot setback along Hearthstone Lane, which would provide the flexibility needed to bring the existing illegally covered porch in to zoning compliance.

Land Use

The Comprehensive Plan designates this site as Low Density Residential and states:

These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

With the submitted proffers, use and density conforms with the Low Density Residential designation. Know also that the R-8 district's occupancy regulations are the same as the existing R-2 district's occupancy regulations, which allow owner-occupied dwellings to be occupied by a family plus two individuals or a maximum of three individuals while nonowner-occupied dwellings may be occupied by a family plus one individual or a maximum of two individuals.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the rezoning request.

Public Water and Sanitary Sewer

Staff has no concerns with the requested rezoning regarding water and sewer matters.

Housing

Rezoning this property to R-8 will not impact housing as the site will essentially maintain its current density provisions.

Public Schools

Rezoning this property to R-8 with the submitted proffers will not change the estimated student generation for the property.

Recommendation

Staff recommends approving the rezoning.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Patricia Valle Alvarez, the applicant, came forward regarding this request. She said I would like you all to consider this because I have three kids and I like to get them outside as much as possible. When there is inclement weather, it is not as easy to do without a covered porch. My grandma also comes to my house and watches my kids and she takes my dogs out so I would like to prohibit her from slipping if there is inclement weather.

Chair Finnegan asked if there were any questions for the applicant. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he

closed the public hearing and opened the matter for discussion.

Chair Finnegan continued to say we have seen quite a few of these and we are seeing another one this evening. How do we feel about this?

Vice Chair Byrd said since I have a different hat on this time that I am seeing this, I have no issues with changing the setback relative to Hearthstone, which is the only significant change to this. Besides the property that would also be their neighbor on Hearthstone, I do not see how this would spread in the existing neighborhood where there would be a bunch of people asking for the same type of thing. Under those circumstances I would be in favor of this.

Commissioner Armstrong said given the proffers, I support it.

Chair Finnegan said I am sure this will come up again but when we have time to revisit the Zoning Ordinance, I think it would be good to think about how we could prevent these kinds of request by allowing certain setbacks by right. I do not know what that language would look like. So far, have we denied any requests like this that you are aware of that is R-1 to R-2 or R-8 so that they could build a covered porch? It would be good to address this in the Zoning Ordinance rewrite.

Vice Chair Byrd said in light of that, I would like to make a motion to approve the request.

Vice Mayor Dent seconded the motion.

- Commissioner Armstrong Aye
- Commissioner Baugh Aye
- Vice Chair Byrd Aye
- Vice Mayor Dent Aye
- Commissioner Alsindi Aye
- Commissioner Washington Aye
- Chair Finnegan Aye

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on December 12, 2023.

A motion was made by Byrd, seconded by Vice-Mayor Dent, that this PH-Rezoning be approved. The motion carried with a recorded roll call vote taken as follows:

- Yes:** 7 - Finnegan, Byrd, Armstrong, Washington, Baugh, Vice-Mayor Dent and Alsindi
- No:** 0

4.b. Consider a request from Mohammed Hewa to rezone 1149 Clay Street

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in June 2023, the applicant submitted a request for a minor subdivision of the property located at 1149 Clay Street aiming to create two separate lots-one parcel containing the existing single family detached home and a new undeveloped parcel. During review, staff determined the proposed subdivision would have met all requirements except that the undeveloped parcel would not have met the R-1 district's lot depth requirements. In the R-1 district, new parcels must have a minimum of 80 feet in width, a minimum of 100 feet in depth, and a minimum of 10,000 square feet in lot area. Because the parcel cannot be subdivided within the R-1 district, the applicant is now requesting to rezone the property to the R-8 district, which allows parcels to have a minimum of 35 feet in width, 60 feet in depth, and 2,800 square feet in lot area.

The applicant is requesting to rezone a +/- 27,434-square foot property from R-1, Single Family Residential District to R-8C, Small Lot Residential District Conditional. The property is located at the corner of Clay Street and Country Club Road, is addressed as 1149 Clay Street, and is identified as tax map parcel 29-G-28.

Proffers

The applicant has proffered the following (written verbatim):

1. No duplexes will be allowed.
2. More than two dwellings are prohibited.
3. The minimum setback for principal structures along Clay Street shall be 30 feet and along Country Club Road shall be 30 feet.
4. The driveway entrance will be located away from the intersection of Clay Street and Country Club Road as generally illustrated on the attached work sheet labeled Exhibit A.
5. At the time of future subdivision, the property owner shall dedicate public street right-of-way as described below:
 - a. A triangular area, beginning at the northern property corner and measuring a distance of ten feet along the bearing of the existing, two property boundaries along Clay Street and Country Club Road, where a straight line connects the two end points; and
 - b. From the new property corner along Country Club Road, as described above, for a distance of 190 feet along Country Club Road, the area needed to ensure 30 feet of right-of-way from the centerline of the existing developed street and tapering to the end point the area needed to ensure not less than 22 feet from the centerline of the existing developed street; and
 - c. For the remainder of parcel, a length along a curve for a distance of about 123 feet, the area needed to ensure at least 22 feet from the centerline of the existing developed street.

The conceptual site layout ("Proposed Rezoning Plat") is not proffered.

Regarding proffers #1 and #2, in the R-8 district, single-family detached homes and duplexes are allowed by right if the lot area and dimensions of the property are met and so long as each unit is

on its own parcel. If the rezoning is approved, although the R-8 district dimensional regulations would allow each new parcel to be further subdivided into more lots, the submitted proffers prohibit more than two total dwellings on the subject property.

The R-8 district typically allows for 10-foot front yard setbacks, however, proffer #3 is further restricting front yard setbacks for principal structures to 30 feet, which is the same existing setback regulation for R-1 zoned properties. Note that because the proffer does not address accessory structures, the accessory structure setback would be 10-feet from either public street as allowed by the R-8 district.

Proffers #4 and #5 are addressed in the Transportation and Traffic portion of this report.

Land Use

The Comprehensive Plan designates this site as Low Density Residential and states:

These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

With the submitted proffers, use and density conforms with the Low Density Residential designation. Know also that the R-8 district's occupancy regulations are the same as the existing R-1 district's occupancy regulations, which allow owner-occupied dwellings to be occupied by a family plus two individuals or a maximum of three individuals while nonowner-occupied dwellings may be occupied by a family plus one individual or a maximum of two individuals.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the rezoning request.

Proffer #4 requires the driveway for the proposed corner lot to be located further than the required 50 feet from the Clay Street and Country Club Road intersection.

Proffer #5 has three parts addressing dedication of land for public right-of-way. Proffer 5.a commits to dedicating a triangular shaped area for forthcoming improvements by the City at the intersection of Clay Street and Country Club Road, including an ADA-compliant sidewalk ramp for future sidewalk installations. Proffer 5.b and 5.c requires the applicant to dedicate public right-of-way along Country Club Road to allow for future sidewalk and improvements associated with the intersection of Country Club Road and Blue Ridge Drive, which involves a channelizing island to improve the flow of traffic with the geometry that is currently present at that intersection. The Comprehensive Plan's Street Improvement Plan recommends that Country Club Road be improved to a three-lane facility-one travel lane in each direction with a center turn lane. Staff is appreciative of the applicant's willingness to dedicate public street right-of-way to assist with future street improvements.

Public Water and Sanitary Sewer

Staff has no concerns with the requested rezoning regarding water and sewer matters.

Housing Study

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject site within Market Type A. Among other things, this Market Type is characterized by high population growth. The study notes that Market Type A has "above median overall access to amenities such as public transit within walking distance, full-service grocery stores, and multiple parks and recreation facilities." The study also notes that "policies that are appropriate to Market type A areas include an emphasis on increasing density through zoning changes, infill development and housing rehabilitation to maintain the quality of housing."

Public Schools

Rezoning this property to R-8 with the submitted proffers will not change the estimated student generation for the property.

Recommendation

Staff recommends approval of the rezoning request.

Vice Chair Byrd said I just wanted to make sure that I was understanding the drawing, there is a triangle around where would be the new existing house...so there are two houses in the drawing and there is a triangle around one, those are given the footprint of...

Chair Finnegan asked Ms. Rupkey if she could go back to the drawing.

Vice Chair Byrd said so where it says SBL 30?

Ms. Rupkey said that is the setback line. So, 30 feet from Country Club Road is that setback line. Country Club is 30 feet and then additionally Clay Street is 30 feet. Within the smaller triangle is the buildable area.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Hemen Rosul, applicant's representative, along with the applicant, Hewa Mohammed, came forward regarding this request. Mr. Rosul said Mr. Mohammed would like to rezone a portion of this property so he could build a smaller house. Currently the house that is on the lot is about 1,000 square feet. He is looking to build a similar house which would benefit the City and also his family because he has kids and he wants to have something for them for the future. Currently he is saying the lot is basically in that corner and he mows the lawn and people just walk on it and he does not want to put a fence around it. He would like to rezone it so he can build another small house for himself and his family.

Chair Finnegan asked if there were any questions for the applicant. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request.

At this time, the Commission was made aware that the livestreaming on cable TV had not been working properly (livestreaming online was working), the issues were able to be resolved, and the meeting continued.

Chair Finnegan closed the public hearing and opened the matter for discussion.

Vice Mayor Dent said I think once again this is a creative use of space to fit in infill housing especially with the intention that it would be for a family. Although, for the future it would just be two houses that become available. I am in favor of this.

Chair Finnegan said this is a little different than the porch R-8.

Vice Mayor Dent said right, this is actually more houses.

Chair Finnegan said we need another designation of R-8P for porch. I would agree with that this is creating another house where there currently is none.

Vice Chair Byrd said as a person that use to mow grass before, I can see why someone was like “uh, if we can reduce the amount of grass that needs to be cut...” so I would be in favor of this, and I will make a motion to approve.

Vice Mayor Dent seconded the motion.

- Commissioner Armstrong Aye
- Commissioner Baugh Aye
- Vice Chair Byrd Aye
- Vice Mayor Dent Aye
- Commissioner Alsindi Aye
- Commissioner Washington Aye
- Chair Finnegan Aye

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on December 12, 2023.

This PH-Rezoning was approved.

Yes: 7 - Finnegan, Byrd, Armstrong, Washington, Baugh, Vice-Mayor Dent and Alsindi

No: 0

- 4.c.** Consider a request from Harginia LLC to rezone 1300, 1302, and 1316 South Main Street

Please see attachment 4 in Legistar for the full minutes extract.

A motion was made by Byrd, seconded by Armstrong, that this PH-Rezoning be denied. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Byrd, Armstrong, Washington, Baugh, Vice-Mayor Dent and Alsindi

No: 0

- 4.d.** Consider amending the Zoning Ordinance to amend the definition of “Family” and add “Recovery Residence” use

Chair Finnegan read the request and asked staff to review.

Ms. Dang said the City is aware of three properties in the City that are in violation of the Zoning Ordinance for exceeding the residential occupancy regulations of the zoning districts in which they are located. The three properties include 760 Collicello Street, 339 West Water Street, and 69 Middlebrook Street. The overoccupancy of these units, however, is different from other overoccupancy violations that have been identified from time to time. In these three examples an organization known as Oxford House, Inc. has coordinated efforts to help individuals, who are recovering from drug and alcohol addiction, to reside in these units with other individuals in similar circumstances so that they can live in-as described by the Oxford House website-"a democratically run, self-supporting and drug free home." The Oxford House website notes that "[t]he number of residents in a House may range from six to fifteen; there are houses for men, houses for women, and houses which accept women with children." The City is also aware of another organization planning to establish a similar operation in the City.

On June 29, 2022, staff sent notice of violation letters to the property owners of the properties identified in the previous paragraph as well as to the residents of those addresses and to the Oxford House, Inc organization. On July 17, 2022, on behalf of the three aforementioned Oxford Houses, its residents, the Oxford House, Inc. organization, and the property owners, Stephen G. Polin, Esq., General Counsel for Oxford House, made a request to the City for reasonable accommodation pursuant to the Federal Fair Housing Act, 42 U.S.C. 3604(f)(3)(B), by requesting: “a waiver on the limitations of the maximum number of unrelated persons who can reside together as a family under the City’s definition of family, and equal treatment in the City’s single family zoning laws that is applied to “residential [*sic*] facilities.” Mr. Polin’s letter goes on to state that “[s]pecifically, I am requesting that the City waive any state licensing requirements and staffing requirements that pertain to ‘residential facilities,’ and treat the use of these Oxford Houses as the functional equivalent of a family, and the use of the property as a single family use.” A copy of Mr. Polin’s letter is attached.

The Fair Housing Act requires municipalities to make “reasonable accommodations” to their rules, policies, practices, or services, when the accommodation is necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. Under federal law, addiction is considered a disability; therefore, accommodation requests to the Zoning Ordinance that would facilitate recovery from addiction must be considered and, if reasonable, granted. These often take the form of “group homes.” Additional information is available in the 2016 Joint statement of the Department of Housing & Urban Development and the Department of Justice titled “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” which is attached.

Virginia law requires localities to treat as a “single family” the residents of any group home or other residential facility that is subject to licensing requirements from the Department of Behavioral Health and Developmental Services with eight or fewer residents. In addition to state licensing requirements, these group homes must have one or more counselors or other staff members.

Group homes affiliated with Oxford House and other similar organizations are not subject to the same state licensing requirements and are resident-operated. In other words, there is no outside counselor or staff member who operates the home. Localities are often asked to accommodate these group homes by treating them no differently than state-licensed group homes.

Currently, the only process to request a reasonable accommodation for a group home requires the applicant to request an amendment to the Zoning Ordinance.

On September 13, 2022, at a regular City Council meeting, City Attorney Chris Brown requested City Council’s input on different options for Zoning Ordinance amendments to ensure compliance with Federal Fair Housing laws. At that time, City Council directed staff to prepare a Zoning Ordinance amendment to create a group home use permitted by special use permit in any residential district. On December 14, 2022, staff presented Zoning Ordinance amendments to create and define a new use called “Cooperative Sober Living Residence” and to allow this use by special use permit in most zoning district. While staff recommended approval, Planning Commission, with a unanimous 7-0 vote, recommended denial of the ordinance amendments generally because the Planning Commission believed there should be a by right option. On January 10, 2023, the Zoning Ordinance amendments were presented to City Council by City Attorney Chris Brown who then stated that staff chooses to withdraw the request for further evaluation. The meeting minutes from both the December 14, 2022, Planning Commission meeting and the January 10, 2023, City Council meeting are attached herein.

Staff is proposing to amend the Zoning Ordinance (ZO) to create and define a new use called “recovery residence” and to amend the definition of “family” to align with Section 15.2-2291 of the Code of Virginia. Together, these amendments would ensure compliance with the Fair Housing Act, which requires municipalities to make “reasonable accommodations” to their rules, policies, practices, or services, when the accommodation is necessary to afford persons with

disabilities equal opportunity to use and enjoy a dwelling and would align with the Code of Virginia's regulations associated with assisted living facilities and group homes of eight or fewer individuals. If approved as presented, recovery residences with up to eight individuals would be permitted by right within any legal dwelling unit. If a property owner wanted to have a recovery residence with more than eight individuals, they would have to apply for a special use permit (SUP).

The following is the proposed amendment to the definition of "family" and the proposed new use and associated definition for "recovery residence":

~~*Family: One (1) or more persons occupying a dwelling and living as a single housekeeping unit, all of whom are related to each other by birth, adoption or marriage as distinguished from a group occupying a boardinghouse, roominghouse or hotel as herein defined.*~~ Includes:

(a) An individual, or two or more persons related by blood, marriage, adoption, foster care, or guardianship; or

(b) A group of up to eight persons with mental illness, intellectual disability or developmental disability who are residing with one or more resident counselor(s) or other staff person(s) in a facility which is licensed by the Department of Behavioral Health and Developmental Services of the Commonwealth of Virginia. For the purposes of the Zoning Ordinance, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Section 54.1-3401

<<https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3401/>>of the Code of Virginia or its successor; or

(c) A group of up to eight aged, infirm, or disabled persons who are residing with one or more resident counselor(s) or other staff person(s) in a facility licensed by the Virginia Department of Social Services of the Commonwealth of Virginia; or

(d) A recovery residence, as defined, provided it has no more than eight (8) individuals.

A family is distinguished from a group occupying a boardinghouse, rooming house, or hotel as herein defined.

Recovery residence: A dwelling unit occupied by multiple unrelated residents in recovery from chemical dependency and considered disabled under the Federal Fair Housing Act Amendments of 1988 that provides a non-institutional residential environment in which the residents willingly subject themselves to rules and conditions intended to encourage and sustain their recovery. Residents of a recovery residence share kitchen facilities and other common areas of the unit. A recovery residence is not required to provide on-site supportive services to residents, but is, or intends to become, certified by a credentialing entity approved by the Virginia Department of Behavioral Health and Developmental Services.

Within the proposed “family” definition, subsection (a) broadens the existing definition to include individuals under approved foster care and guardianship. Subsections (b) and (c) align the ZO with Section 15.2-2291 of the Code of Virginia associated with assisted living facilities and group homes of eight or fewer individuals. A copy of Section 15.2-2291 is attached herein. Subsections (a), (b), and (c) are consistent with how City staff has enforced the ZO’s occupancy regulations. Finally, subsection (d) adds a recovery residence of no more than eight individuals. This amendment would allow “recovery residences, as defined, provided it has no more than eight (8) individuals” in all legal dwelling units. Staff recommends allowing up to eight individuals because this number is used in the Code of Virginia Section 15.2-2291 for group homes and assisted living facilities and it appears that eight individuals is a common standard practice.

The proposed “recovery residence” definition requires that the residence either be certified or intends to become certified by a credentialing entity approved by the Virginia Department of Behavioral Health and Developmental Services. Information on Certified Recovery Residences in Virginia and how to apply to become a Virginia Certified Recovery Residence is available at: [<https://dbhds.virginia.gov/office-of-recovery-services/recovery-residences/>](https://dbhds.virginia.gov/office-of-recovery-services/recovery-residences/).

In addition to allowing recovery residences of up to eight individuals by right, staff is proposing to allow a “[r]ecover residence of more than eight (8) individuals” through approval of a SUP within the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, R-8, MH-1, MH-2, B-1, B-2, M-1, and UR. A property owner who desires to allow a “recovery residence” with more than eight individuals would apply for a SUP, which would require the typical periods for staff review, posting of signs, mailed notifications to adjacent property owners, advertisements in the local newspaper, and public hearings at Planning Commission and City Council. Note that staff is proposing to add the use to the B-2 and M-1 districts as there could be residential dwelling units that are nonconforming in those districts and thus a property owner could apply for a special use permit to allow a “cooperative sober living residence” in those units. There are also particular SUPs that can be applied for in both districts that allow for dwelling units.

Staff recommends approval of the Zoning Ordinance amendments.

Chair Finnegan asked if there were any more questions for staff.

Vice Mayor Dent said just pointing out the difference between certified and licensed, the “b” and “c” items, that does not apply to recovery residences, however, it does need to be or intend to become certified. Is that a lower standard?

Mr. Russ said this has been the source of many questions over the last four or five years and I do not know why the state came up with those two different terms, it creates a lot of confusion. The licensed facilities are typically going to have a practitioner who is actually on site and providing some sort of medical care versus the certified recovery residences. They have a list of rules that they abide by and there are larger organizations that keep them in check, but they do not

necessarily have a profession providing those sorts of medical services on site. The licensed facilities versus credentialed recovery residences are two separate things.

Vice Mayor Dent asked who would that credentialing entity be?

Mr. Russ said the state approves credentialing entities. They have approved Oxford House and the Virginia Association of Recovery Residences which is sort of a larger national association of recovery residences. Each recovery residence, to maintain your certification it is a yearly process where you submit updates on how things are going.

Chair Finnegan said my question relates to this part in the report where it says, "reasonable accommodation pursuant to the federal Fair Housing Act." How much choice do we really have here, if we need to bring our Zoning Ordinance or these definitions into alignment with that. This is not a statement for or against, it is just a question about how much latitude do we even have.

Mr. Russ said generally speaking, eight seems to be kind of the magic number that the courts and the expert witnesses and everyone kind of decided that is where the line is reasonable. Eight unrelated people can be equivalent to a family in order to accommodate people who are recovering and that is in part to accommodate they need someone who is kind of President of the house, you need someone else who is collecting money to pay utilities and everything, you need to account for potential vacancies of one or two and you need a certain number of people there for it to fully be an operating house. Eight seems to be what works best for the model that Oxford House uses. Generally, courts have told localities that "no, you did need to approve that. You needed to make some sort of accommodation there around eight." There are cases involving houses with 12 or 16 people. At some point, it is too big. This is no longer equivalent to a family and that is kind of what the special use permit process would be for. We may have some scenarios where it makes sense for the property or what they are proposing. Some recovery residences have individuals that have young children, so maybe you do need more than eight because some of those eight are going to be children. There is not a whole lot choice, you run the risk of a lawsuit.

Chair Finnegan said that is what I was getting at. I guess my follow up question is, it sounds like this is equivalent to or in alignment with a lot of other cities with they kind of have. So, if Harrisonburg is in trouble a lot of people are in trouble because the ordinances are all kind of the same.

Commissioner Armstrong said in here it said that typically these are organized as single gender, male house, female houses, and houses with children they tend to be designed to be specific to those types of groups. I wondered why we use persons and individuals rather than adults because the way it is designed now you are discriminating against women with children. Women with children are going to have to special use permit. If we used adults in here there would be some flexibility around the inclusion of children because the tasks you mention are adult tasks. Then we could give more flexibility to these houses with women who have children.

Mr. Russ said I am not sure that I had considered that. That is certainly interesting.

Vice Chair Byrd said you are coming to the number based on the idea of a family. You are saying that there would just be less women in there because if they had their children they would be counted as individuals and persons. They are individuals and persons.

Commissioner Armstrong said that is discriminatory to women and children.

Vice Chair Byrd said it is a recovery house. What I am saying is it is a recovery house we are trying help the people. They need help with that situation they are dealing with and the fact that they also have to take care of their children, I do not see how adding more people in aids that.

Commissioner Armstrong said that is a long discussion and I do not think it warrants a back and forth now but if you are doing shared in a recovery situation like that there is a definite shared assistance. If we are cutting down the number of adults because you are including children then you are reducing that distribution of that load and that work capacity.

Chair Finnegan said I think I understand the point that Commissioner Armstrong is making. My question to Mr. Russ would be... I do not like making edits to this language on the fly. We have a pretty full docket next month and I would hate to table this and come back to it. Is it possible to between here and City Council adjust the language? I would like to suggest that we change persons to adults or something to address that.

Ms. Dang said or individuals over age 18.

Mr. Russ said we can reach out to the Department of Behavioral Health and Developmental Services has an Office of Recovery Services that oversees this and a number of other programs, I can reach out to them and ask if they have any insight into how this holds where some of the residents that have children work and what would be most appropriate.

Vice Chair Byrd said I just wanted to clarify that is my only concern about this. We are discussing this as if these do not already exist and are dealing with the very question of bringing it up. If that has not been accounted for with the coming up of the eight, then that is a concern. Therefore, I would also be in favor of adjusting the language to account for the possibility of children not being accounted in the restrictive eight number. If they still came to the number eight and they were accounting for the presence of children, then I do not see why we would need to change the language. That was my only concern about that.

Chair Finnegan said if there is, on this Commission, an appetite to advance this with some modified language what is the best way for us to do that? Labeling it?

Mr. Fletcher said I think you could offer, if this is the direction you are going, a recommendation

for if you say you want to approve it with giving staff the flexibility to amend language appropriately to rectify issues brought up by Commissioner Armstrong. You can technically make a slight amendments even without that motion but I think it makes it more clear.

Commissioner Armstrong said it is very specific to the definition of the number eight to individuals, persons or persons over 18 are adults. That is a very specific adjustment. I would leave that up to you.

Vice Chair Byrd said I would have no issue with that.

Chair Finnegan said if somebody wanted to make a motion to support it would be with the amended language to allow for children not counting as the eight.

Mr. Fletcher said I would also like to maybe build in a bit of flexibility kind of speaking to what Mr. Russ was saying that we can reach out to the Department of Behavioral Health and Developmental Services. They may have something that says do not worry about that particular thing, we can account for that and I would like to be able to have that flexibility as well. We hear the message.

Vice Mayor Dent said just to circle back to what I asked before and your follow up question about fair housing and how much choice do we have, is having requiring certifications still allowed under Fair Housing?

Mr. Russ said yeah, that is not an issue.

Chair Finnegan opened the public hearing and asked if there was anyone in the room or on the phone wishing to speak to the request.

Paul Stevens, a regional manager for Oxford House, called in to speak to the request. He said we have no objection to the proposed amendments. While I will express some concern, we do not always agree that part of the [unintelligible] is always a reasonable accommodation depending on the house, the community and the costs, there are operational and financial needs that sometimes make a compelling case for a nine or ten bed Oxford House. We do not have any objection to the proposal here. I do want to thank Commissioner Armstrong for raising the point that she did and I could not agree with her more, that it really ought to distinguish between adults and if it does not it would certainly make up the case that any recovery residence, certainly any Oxford House that is for women and children would never be able to qualify by right they would have to do the special use permit. Oxford Houses has as a practice that are women with children typically depending on space and layout of the house will have an allowance for one or two mothers with children. It is not a house full of women that all have their children living with them. Typically, it would be a limit of up to two children per mother, whether that is one or two mothers depending on the house and the space. It is not a huge difference, but it certainly would put any proposed limits on women and children Oxford House over the eight and force them into that special use permit. I hope you will

make that change and thank you Commissioner Armstrong for proposing it. I did not know if you had any questions about the whole certification distinction, but I might be able to answer those.

Vice Mayor Dent said from what Mr. Russ said it sounds like Oxford House has its own credentialing entity, is that correct?

Mr. Stevens said we are recognized as a credentialing entity by the Department of Behavioral Health and Developmental Services, so this is a relatively new thing that happened both in Virginia and a lot of other states where they have recognized the need to have some regulation on recovery residences, so they created something. Virginia's is very typical where they would identify an organization with national recognized standards for recovery residences that can sort of put their stamp of approval. We have a chartering process, so credentialing is our chartering process and as the gentleman over there said there is also for the other models the ones that generally have a owner operator or a house manager, for profit models, the Virginia Association of Recovery Residences certifies them.

Vice Mayor Dent said my only question there is you are certifying your own facilities?

Mr. Stevens said the facilities are completely independent financial and operational entities. Oxford House Incorporated is really just there to provide technical assistance to sort of keep an eye on their operations as far as their compliance with our charter requirements and to occasionally expand into new communities and help open those houses. The houses are not ours. They are independent entities that rent from individual landlords.

Chair Finnegan said I think this came up last time we were talking about... does this take it off of the tax roll? It is still a private residence that is paying property tax.

Bryan Eckstein, a resident at 73 Middlebrook Street, called in to speak to the request. He said my wife and I have lived right here for over 30 years. My concern for max occupancy with recovery residences is who enforces the max occupancy? It has been our experience that it is a revolving door and it is hard to keep track of who is coming and who is going. Our issues are also parking spaces. You would be surprised that a number of the residents are all driving and have cars, which is surprising with alcohol recovery. Also the houses have a max capacity just because the number of bedrooms and toilets. So, whether you change a number, they are still going to be so many people that is going to live within a house. Who is enforcing the building and fire codes in these homes? These are not your standard residence the way they are being run. I know that these considerations that get taken up under the special use permit process but again but if you just set the number on eight, how is that being enforced? It is my understanding that Oxford House, and anybody else, could just buy a house in a neighborhood and move in and no announcement, no fanfare, and they are there.

Chair Finnegan asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Vice Chair Byrd said I have been trying to wrap my head around how to word this condition. Help me along, if I was to bring it up it would be about an amendment with the condition to allow staff to add language that individuals under 18 years of age are not included in that. How do we want to say it?

Mr. Fletcher said I was just going to say to allow staff the flexibility to accommodate the concern with any type of discrimination of women with children impacting the number of individuals that can reside on the property.

Vice Mayor Dent said well would it be as simple as just adding individuals over age 18 or do we want to allow staff to...

Mr. Fletcher said I would like the opportunity for us to put our heads together.

Chair Finnegan said I did want to address the one comment that we got about the number of cars and the number of occupants in the house. I will say that in my neighborhood there are houses that are occupied by a family, they are blood related and have seven or eight cars. I do think that putting a cap that is similar to what other cities have makes sense so that we are putting some limitation on it but we are changing the definition of what we mean by family. It feels like a good compromise between what he was saying about wanting more, we do want some regulation on that. I feel like staff did a good job of landing on something that tries to capture the concerns from the meeting that we had eleven months ago.

Vice Mayor Dent said as I recall, what we were objecting to before was not wanting to have every single one of these go through the special use permit because of the stigma that seemed to go against the intent of the Fair Housing Act. I think establishing a maximum by right with any more than that is a special use is a good compromise.

Vice Chair Byrd said I would also like to make sure the citizens know that our whole idea is to establish a baseline number of people who represent a family of people trying to recover from something and therefore if you are asking who is going to enforce this or that, the people who enforce the laws of the City are the same people who enforce all of the other laws of the City. If you have concerns about something, that is what that would be. These would be residents of the City, that is all they are, just like every other resident that you walk or drive past. All those citizens you do not know what they are doing in their houses. Just because you know what these people have done in the past and what they are trying to do now does not change the nature of anything. You will have other neighbors who you will not know doing all kinds of things. We have to always keep these things in mind that just because we know something does not mean that we know everything what is going on. That is all I wanted to say about those types of concerns from the citizens of the City. Does anyone remember what Mr. Fletcher said for that condition?

Mr. Fletcher said what I said earlier is captured in the minutes.

Vice Mayor Dent said I just wanted to add one other thing about the enforcement idea. Maybe that can be a part of the certification process that they certify that only eight people are living there but that is not up to us.

Chair Finnegan said that is not up to us. The City is not doing certification that is DBHDS. That is between DBHDS and Oxford House. I do not want to insert ourselves into the middle of that.

Commissioner Washington said last thing, instead of mother or mother with children, can we do parents with children?

Mr. Fletcher said good amendment.

Vice Chair Byrd said I will make a motion to approve the minutes with the condition as stated by Mr. Fletcher and amended by Commissioner Washington.

Commissioner Armstrong seconded the motion.

- Commissioner Armstrong Aye
- Commissioner Baugh Aye
- Vice Chair Byrd Aye
- Vice Mayor Dent Aye
- Commissioner Alsindi Aye
- Commissioner Washington Aye
- Chair Finnegan Aye

The motion to recommend approval of the Zoning Ordinance amendments passed (7-0). The recommendation will move forward to City Council on December 12, 2023.

A motion was made by Byrd, seconded by Armstrong, that this PH-Zoning Ordinance be approved. The motion carried with a recorded roll call vote taken as follows:

Yes: 7 - Finnegan, Byrd, Armstrong, Washington, Baugh, Vice-Mayor Dent and Alsindi

No: 0

5. New Business - Other Items

None.

6. Unfinished Business

None.

7. Public Comment

None.

8. Report of Secretary & Committees**8.a. Rockingham County Planning Commission Liaison Report**

Commissioner Baugh said I was asked to cover their November 7 meeting, and I inferred this I did not check, but presumably they did meet on Election Day because they did not meet last night and then when I looked carefully at their agenda it said November 8. They had a pretty full agenda. They start at 6:30, they are probably still going. It did look like there were a couple of proposals for some more housing development out on Port Road. Their general agenda looked like ours, with a whole series of things on it. Four rezonings, two ordinance amendments and two unfinished business items. That is about all I can tell you. I am also the one scheduled to go to December's, maybe I will have something to tell you at the next one.

Chair Finnegan said Commissioner Alsindi might be willing to switch with you.

Commissioner Alsindi said I have an assignment as a part of the certification program for Planning Commission I am going through that I need to cover the meeting other than the jurisdiction that I am active in now. I was thinking if it would fine with you that I attend the one, either with you or instead of you.

Commissioner Baugh said oh I think you could handle it. I got a lot of confidence in you.

Chair Finnegan said all you have to do is take notes.

Commissioner Baugh said which presumably you are going to be doing anyway.

8.b. Board of Zoning Appeals Report

Vice Chair Byrd said the BZA did not meet. I finished my training program and while there... they did not like how lack of words our bylaws and procedures were but compared to everyone else it was fun. I feel hearing from a lot of other jurisdictions in the state that our legislative body and the Planning Commission and the BZA have been proactive in relationship to our laws and ordinances in the City and I think it is a good job of staff who are the most involved and we are not doing as bad as people in some other places.

8.c. City Council Report

Vice Mayor Dent said again, as I was saying we have that offset meeting so the things that we covered last month will not happen until next Tuesday.

Chair Finnegan said we are going to be busy next month, so City Council is going to be busy in January. We may end up having two meetings next month so you will get to share at either one or both.

9. Other Matters

9.a. Review Summary of next month's applications

Ms. Dang said if you recall we thought that tonight's agenda was going to be very full, but a lot of those items ended up getting postponed. In addition to getting a lot of applications last Friday for that deadline and the items that were postponed by the applicants anticipated to move forward in December, there are 18 items, 8 sites in total. Some are significant development proposals that we wanted to give appropriate time to at the Planning Commission meeting. However, not knowing as we go through the review process with the applicants over the next few weeks if anybody else would postpone their applications needing to rework things and what not. My request for you all is if all of these items were to proceed forward, our recommendation is to have two meetings, but if enough of them end up getting postponed by the applicants that you allow us discretion, as staff, to make the decision as to if we would have one or two meetings. As well as if we have two meetings, we would need to consult with the applicants and decide who goes on which night based on their availability. I am interested in your thoughts as we move into the next few weeks. We would make a decision by November 22 because that is when we have to submit the advertisement to the local newspaper.

Chair Finnegan said 865 East, that building already exists, correct?

Ms. Dang said correct, the proposal is to add an addition to the building essentially.

Chair Finnegan said so the dates that we are looking at are December 13 and December 19. Are folks able to meet on the 19? Is anyone not able to make it on the 19? Do we need a motion?

Are we okay with doing two meetings?

Ms. Dang said if needed.

Commissioner Alsindi said I thought if there is interest to hear from me some ideas and thoughts about how the Comprehensive Plan would be more effective, rather than to be a vision statement and changing the character and function of the City towards what is in the plan in a more effective way. I can share some of those ideas in 10 to 15 minutes, if there is interest and patience to here me.

Chair Finnegan said this would be relevant to your background?

Commissioner Alsindi said yes, I worked as a trainer and facilitator for the Research Triangle Institute a US organization that worked in Iraq and two programs, three years local government program one and two. Part of my job was to train potential Council's there policy development, city planning, and specifically strategic planning and how it leads to developing the vision for the City. When I went through the first part of the training program here two weeks ago...

Chair Finnegan said the Land Use Education Program that all of the Planning Commissioners have to take.

Commissioner Alsindi said yes, it is called the Planning Commissioners Program. Again, the issue came up of Comprehensive Plan versus more of the three different names of the program. I have some of my ideas whether it is a Comprehensive Plan or it is more of a strategic vision plan and what the word comprehensive might include or not. I was thinking ahead of going because I thought we are going towards this Comprehensive Plan. It is going to happen soon?

Chair Finnegan said it will happen at some point in the future.

Commissioner Alsindi said I thought it might be in the interest of this body and community to consider how can we prosper more effectively in that Comprehensive Plan, if and when it happens. I thought I would just share some of the ideas with you, it might be useful in those conversations that will happen. I am not sure to what extent this body is involved in that Comprehensive Plan eventually.

Ms. Dang said you all are going to be very involved in that.

Commissioner Alsindi said it is on the thoughts between academic and practices and cases from other parts of the world plus what came to my mind more and refreshed and reshuffled were thoughts I had for the training program. Maybe ten or fifteen minutes on that.

Chair Finnegan said maybe we wait for some of these heavy months to clear out and if there is something on the horizon that looks like a lighter month would that be okay with folks, a fifteen minute presentation about that? Is that agreeable?

Vice Mayor Dent said if we could time it to coincide with when we are launching the Comprehensive Plan process perhaps.

Ms. Dang said it sounds to me like he may, and I do not want to speak for you Commissioner Alsindi, want to share these thoughts in advance of. I do not see the harm in just sharing those thoughts even if we are not going to do the Comprehensive Plan for another year and a half or so. Commissioner Alsindi said just consider it as an offer if you have the time. It comes again, as I said, from my professional work with that US based organization that is well known, RTI. We work on strategic planning for three cities over there and combined with the education and certification. I was certified over there, that is where it comes from. I looked into the Comprehensive Plan for Harrisonburg through Citizen Academy as well. I went through that so I had my observations all together to develop some ideas in some places that I would like to show you.

Chair Finnegan said I would be interested to hear that information.

Vice Chair Byrd said I would also be interested in hearing those.

10. Adjournment

The meeting adjourned at 8:17 pm.

NOTE TO THE PUBLIC

Staff will be available at 4:00 p.m. on the Tuesday before the next Planning Commission meeting for those interested in going on a field trip to view the sites on the next agenda.

INTERPRETATION SERVICES

Language interpretation service in Spanish, Arabic and Kurdish is available for Planning Commission meetings. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least four (4) calendar days in advance of the meeting by contacting the City Clerk at (540) 432-7701 or by submitting a request online at: www.harrisonburgva.gov/interpreter-request-form

El servicio de intérpretes inglés-español está disponible para las reuniones públicas de la Comisión de Planificación. Para asegurar la disponibilidad de intérpretes, cualquier interesado deberá solicitar la presencia de un intérprete al menos cuatro (4) días calendarios antes de la reunión comunicándose con la Secretaría Municipal al (540) 432-7701 o por medio de la página por internet al:

<https://www.harrisonburgva.gov/interpreter-request-form>

NOTE TO THE PUBLIC

Residents/Media will be able to attend the meeting.

The Public can also view the meeting live on:

- The City's website, <https://harrisonburg-va.legistar.com/Calendar.aspx>
- Public Education Government Channel 3

A phone line will also be live where residents will be allowed to call in and speak with Planning Commission during the Public Hearings and the Public Comments portion of the night's meeting. We ask those that wish to speak during the public comment period to not call in until after all the public hearings and public comment on those have been heard. This will avoid anyone calling on any other item from holding up the queue and then being asked to call back at a later time.

The telephone number to call in is: (540) 437-2687

Residents also may provide comment prior to the meeting by visiting this page: www.harrisonburgva.gov/agenda-comments