



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801
OFFICE (540) 432-7700 • FAX (540) 432-7777

To: Ande Banks, City Manager
From: Adam Fletcher, Director, Department of Community Development and Harrisonburg Planning Commission
Date: December 12, 2023 (Regular Meeting)
Re: Zoning Ordinance Amendments – To Amend Definition of “Family” and add Recovery Residence Use

Summary:

Zoning Ordinance Sections to be Amended	Sections 10-3-24, Definitions; and Uses Permitted by Special Use Permit within the 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 districts
Purpose	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
Applicant	City of Harrisonburg
Staff Recommendation	Approval
Planning Commission Recommendation	November 8, 2023 (Public Hearing) Approval (7-0) with amendments described in the Review section of this report
City Council	December 12, 2023 (First Reading/Public Hearing) Anticipated January 9, 2024 (Second Reading)

Background:

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.

Key Issues:

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 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/>.

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.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the Zoning Ordinance amendments;
- (b) Approve the Zoning Ordinance amendments with modifications; or
- (c) Deny the Zoning Ordinance amendments.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing and twice advertising for City Council’s public hearing. The advertisement was published as shown below:

Zoning Ordinance Amendments – To Amend Definition of “Family” and add Recovery Residence Use

Public hearing to consider amending the Zoning Ordinance by creating and defining 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 associated with assisted living facilities and group homes of eight or fewer individuals. In addition, the amendment to the “family” definition would add “recovery residences” provided they have no more than eight (8) individuals. These amendments would allow “recovery residences” in all legal dwelling units. In addition, within the 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 districts, the amendments would add: “[r]ecovered residence of more than eight (8) individuals” as a use permitted by special use permit. The proposed “recovery residence” would be defined in the Zoning Ordinance as: “[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.” A substantially similar definition could also be provided.

In addition, a notice was provided on the City’s website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends (a) approval of the Zoning Ordinance amendments.

Attachments:

- Extract from Planning Commission
- Updated Proposed Zoning Ordinance Amendments as proposed by Planning Commission
- Meeting minutes from the December 14, 2022, Planning Commission meeting and January 10, 2023, City Council meeting
- Code of Virginia Section 15.2-2291. Assisted living facilities and group homes of eight or fewer; single-family residence
- July 17, 2022, Letter from Steven G. Polin, Esq. to Thanh Dang, Interim Zoning Administrator
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” November 10, 2016
- Public comments received as of 12noon on November 3, 2023

Review:

Planning Commission recommended approval (7-0) with modified language within subsection (d) in the definition of “family” from:

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

to:

A recovery residence, as defined, provided it has no more than eight (8) adult residents and any number of minor dependents of those residents.

Note that Planning Commission did not vote on the specific language as shown above, but allowed staff flexibility to contact the Virginia Department of Behavioral Health and Developmental Services for information to determine the best language to use in the definition of “family” as it relates to recovery residents.

Due to the modification in the definition noted above, staff is further advising to modify the proposed special use permit use that is to be added to many of the zoning districts as shown below:

Recovery residence of more than eight (8) adults and any number of minor dependents of those residents.