



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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January 9, 2023

**TO THE MEMBERS OF CITY COUNCIL  
CITY OF HARRISONBURG, VIRGINIA**

**SUBJECT:** *Consider a request to amend the Zoning Ordinance to create and define a new use called “Cooperative Sober Living Residence” to be allowed by special use permit in certain zoning districts.*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION  
MEETING HELD ON:** December 14, 2022

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. 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.”

City staff first became aware that 760 Collicello Street was an Oxford House sometime in 2019, learned of 339 West Water Street in December 2019, and then of 69 Middlebrook Street in May 2022. Notices of violation letters were sent to the property owners in 2020 and communication with Oxford House representatives had taken place. However, the violations went unresolved until May 2022 when the most recent complaint about 69 Middlebrook Street was received.

On June 29, 2022, staff sent notice of violation letters to the property owners and to the residents at the aforementioned addresses and sent copies of those letters to Oxford House, Inc. On July 17, 2022, on behalf of the three aforementioned Oxford Houses, its residents, and Oxford House, Inc., 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 Behavior 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. Staff recommended a City-initiated amendment related to group homes to ensure consistency, enforceability, and alignment with City Council’s priorities and preferences and offered to City Council two options to address the City’s needs (written verbatim from the staff memorandum):

1. Creation of a “group home” use, permitted by special use permit in any residential district. This option would allow Planning Commission and City Council to consider each request individually and tailor appropriate conditions to the specific site after hearing any relevant concerns expressed at the public hearings. For example, there may be valid concerns related to availability of parking, depending [*sic*] on-street parking availability in the area, where conditions related to on-site parking or limited occupancy would be appropriate.
2. Creation of a “group home” use, permitted after review and approval of a request for a reasonable accommodation by staff. This option would not allow for public hearings prior to the approval of a group home. Staff’s decision would be appealable to the Board of Zoning Appeals.

City Council directed staff to prepare a Zoning Ordinance amendment to create a use permitted by special use permit in any residential district.

Staff proposes to amend the Zoning Ordinance to 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.

The following is the proposed new use and associated definition to be added to the Zoning Ordinance:

*Cooperative Sober Living Residence: A dwelling unit occupied by multiple unrelated residents in recovery from chemical dependency and considered handicapped 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 cooperative sober living residence are similar to a family unit, and share kitchen facilities and other common areas of the unit. Cooperative sober living residences do not provide on-site supportive services to residents.*

The additional components of the amendments include adding the Cooperative Sober Living Residence use as an allowed use by special use permit to the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, R-8, MX-U, B-1, B-2, M-1, and U-R. A property owner who desires to allow a “cooperative sober living residence” to operate within a dwelling would apply for a special use permit, 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.

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.

Staff recommends approval of the Ordinance amendments.

Chair Finnegan asked if there were any questions for staff.

Councilmember Dent said one word that jumped out to me was “handicapped.” I think that is an obsolete use. Sure enough, there is a footnote to the Joint statement that states “[t]he Act uses the term ‘handicap’ instead of ‘disability.’ Both terms have the same legal meaning... This document uses the term ‘disability,’ which is more generally accepted.” I suggest changing that word from handicapped to disabled.

Mr. Russ said that is fine. We can use either one. They are interchangeable.

Commission Whitten asked what the Virginia law requires. How does that come into play with what we are discussing? You have here that 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..." Now, they are not subject to licensing requirements, and they do not meet the definition of what the State is discussing because they do not have counselors or staff members. Are we changing the way things have been done in Virginia to accommodate one non-profit or business? I do not know what they want to be called. They are a non-profit, I guess, Oxford House. The Dillon Rule still happens here.

Mr. Russ said that the Department of Behavioral Health and Developmental Services is the licensing authority for certain types of group homes where you are receiving actual behavioral health or developmental services treatment directly from a professional, on-site. The same department also has certified group homes which Oxford House or any organization can apply to be a credentialing agency for the types of homes that we are talking about tonight. Oxford House and the Virginia Association of Recovery Residences both do credentialing for these homes and the State will maintain a list of all the homes that have been certified by one of their approved agencies.

Commissioner Whitten asked they would not certify these homes because of the lack of staff?

Mr. Russ said these would be certified but they are not licensed which is an odd distinction that they have made in the last two or three years that they have created the certification process for group homes that do not need...

Commissioner Whitten said it seems like what is happening is Oxford House is telling us how we need to write this according to their plan of operation. We do have to allow people to be able to live a sober living type of residence, but do you necessarily have to adopt their protocol for how that happens? If we do not, then they say that they will not come to our community.

Mr. Russ said under Federal law, as long as what they are asking for is reasonable, we have to accommodate them. The State has created the system with the licensure and the credentialing. Federal law still trumps state law. In order to comply with the Fair Housing Act, you have to at least consider these requests when they come forward. They may or may not be reasonable. They are on a case-by-case basis. The intent is for it to be individualized to the property. It is like if you ask for a reasonable accommodation for a disability at work. You are supposed to engage in an interactive process with your employer where you discuss what sorts of accommodations might be acceptable and what might best meet their business needs. Something similar is supposed to happen with these sorts of requests. It would be on a case-by-case basis with the SUP applications.

Chair Finnegan said what do we actually have purview over? It sounds like City Council has directed staff to go the route of the SUP instead of having staff decide it. We create this designation because we are required to, then people make the requests for the SUP, and those get potentially denied. Then the City is...?

Mr. Russ said when we review those requests, we will have to look at the test for approval under the Fair Housing Act rather than our normal zoning practice. Generally speaking, courts have found arguments persuasive that up to eight individuals in single-family home is reasonable and necessary in most cases. A lot of the cases come out of Oxford House since they are the largest,

national organization. The theory is that you need some wiggle-room for vacancies, it may have only six or seven people living there at a time. You need a sufficient number of people living there at any given time for the therapeutic benefits of living in a cooperative environment. Courts have found that fairly persuasive. It is somewhere around eight people.

Chair Finnegan asked other cities in Virginia have similar ordinances that allow for up to eight?

Mr. Russ said yes. They approve them through SUPs or they have the Zoning Administrator issue a determination that the group living there merits protection under the Fair Housing Act and should be treated as a family.

Chair Finnegan said capping it at eight... Are there cities that have gone lower than that and been sued and the lawsuit was won? What are we being forced to do by the law versus what do we actually have purview over?

Mr. Russ said that the most recent lawsuit in Virginia came out of Winchester. They ultimately settled and agree to allow up to eight provided that there is not more than one person per bedroom. That was the outcome of the settlement that they came to with the organization that wanted to operate the facility there.

Commissioner Armstrong said that "eight" number does not seem to accommodate the women with children situation. That is just not enough.

Mr. Russ said there may be situations... The way that we have worded it, they can request for larger numbers. They would have to explain the reason for the request, the unusual circumstance that they are wanting to address.

Commissioner Armstrong said this model is based on peer counseling and peer support. I thought that in the last line there it should say "do not provide on-site *professional* supportive services" because it is by design support.

Councilmember Dent said regarding the Joint statement, number 23 on page 17, "[d]oes the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?" It says the "Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures." I thought, we should do this, then I realized that this is exactly what we are doing. We are creating the formal procedure with this amendment.

Mr. Russ said this only addresses one type of reasonable accommodation. In some areas that have historic districts with very strict architectural guidelines that need to be followed, you would need to make the variances to allow someone to install a ramp that would not have been there when the area was originally built one hundred years ago, and you froze your architectural guidelines. Any dimensional regulation could be handled with a variance request to the Board of Zoning Appeals (BZA). This is the only use that I have been able to find that gets requested as a reasonable

accommodation. There are some communities that have a catch-all, anyone who thinks that they have a reasonable accommodation that they want to request, can make one and make their case.

Commissioner Byrd said we are discussing the language in blue, correct? There is no “eight” in there.

Ms. Dang said after the staff report there is the Ordinance Amending and Re-enacting Multiple Sections page which states that “[o]ccupancy shall not exceed 8 individuals unless specifically approved by City Council.” Thank you for bringing that up.

Councilmember Dent said my favorite part of this is number five in the Joint statement which states that the City “may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents’ protected characteristics.” That is the pushback to people saying that they do not want it in their neighborhood. Too bad, it is a reasonable accommodation, unless there is something legitimate such as parking or the structure or something like that.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and asked if there was anyone wishing to speak to the request.

Robert Steere, 1652 Central Avenue, came forward to speak to the request. I am former member of the Planning Commission and a graduate of the Virginia Tech Residential Certified Planning Commissioner course. I am here to voice concerns and inquire on legal processes regarding the proposed Sober Living Residence zoning change. It is my understanding that when the third or fourth Sober Living Residence was created on Middlebrook Street in the Pleasant Hill neighborhood, it is the first time this was brought to the attention of the City. There are three or four other units in the City. I ask the following: Were the proper signs notifying neighbors on Middlebrook of its existence posted for the required amount of time before presentation to the Planning Commission? If not, why not? When I served on the Commission, one of the subcommittees that I served on was to actually create the wording requiring the posting of the neighborhood changes that had to be done. Zoning requests that were to before the Commission required the owner to post a sign at the property weeks ahead of the hearing, informing the adjoining owners of the requested zoning change. What about the current properties if they have not received the postings, why not? Are the neighbors of these properties even aware of their existence to the proposed zoning change hearing notice in the Daily News Record? This Ordinance has been in place for many years, probably 20 or 22 years. I recommend that a certified letter be sent to every adjoining property owner of record making them officially aware of these units’ existence so that we may present concerns to the proper authorities. The potential, or implied potential reduction in property values of these properties should be addressed, especially in R-1 and R-2 zones. The current units may be in violation of the current zoning laws. Why have not the owners of these units had legal action taken against them. It is also my understanding that all the properties are owned by the same enterprise and that they are not local residents, therefore creating absentee landlords in established single-family neighborhoods, in family homes such as the Pleasant Hill area where I live. Another example of this zoning change is a large scale development being proposed across from the High School at the corner of Erickson Avenue and Garbers Church Road. I have read that one of the descriptors of the project would be to “create a neighborhood.”

By placing these types of units in a neighborhood area such as R-1 and R-2 would seem to do just the opposite of that. This type of zoning seems to allow anyone to do just about anything in any district based on the lack of enforcement of current zoning laws. As far as the group owning these units go, lack of knowledge of the law is absolutely no excuse. I have copies of these if anybody would like to see it.

Steven Polin, general counsel for Oxford House, called in regarding the request. While we appreciate the efforts that the City to address Oxford House's request for reasonable accommodations; however, we believe that the present text amendment is inappropriate and the wrong way to go on this. I prepared a letter which you do not have. We sent it to staff this evening. Oxford House is seeking to be treated in the same manner as those facilities or those houses that are licensed by the State. Everyone knows that Oxford House does not have staff nor are we licensed, but in terms of an equal opportunity to use and enjoy a dwelling, which is language right out of the Fair Housing Act reasonable accommodation, we believe that it is necessary to treat us in the same manner. Oxford House has been in Virginia since 1990. We have houses throughout the State. I think that we have more houses in Fairfax County than we do in any other jurisdiction in the State. I can give you examples of the number of jurisdictions that will accommodate Oxford House either through acting administratively through zoning or have the City Attorney making a determination to treat Oxford House in the same manner that it treats State licensed housing. Fairfax County allows Oxford House to have up to eight persons without having to go through a zoning process. Arlington County and Arlington City allows Oxford House to have up to eight persons without having to go through a zoning process. Fredericksburg does the same thing. Winchester, the lawsuit that was referenced, allows up to eight without having to go through zoning. Hampton, we just recently had a situation where the city made a determination that we could have up to eight. Virginia Beach is another city where we can have up to eight. There are others throughout the state. What Harrisonburg is proposing in terms of creating a SUP process for Cooperative Sober Living is, to a certain extent, unprecedented in the State and takes a different direction. By requiring this, we believe this violates the Fair Housing Act, not the reasonable accommodation provision, but Section 3604(f)(1) and (2) and particularly (f)(2) "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of handicap." I have looked at the SUP process. It is a zoning process, so there are clocks involved, \$425 application fee plus \$30 per acre, requires submission of the site plan, and then the Planning Commission and the City Council are allowed to put special conditions on the SUP. On top of that there are public notices. There are notices of the hearing posted in the yard. Neighbors are sent notices. None of this is required under Virginia law because such housing has to be treated as single-family uses. It is our position that there are other, less onerous mechanisms available to the City in terms of addressing it. One mechanism would be to enact a reasonable accommodation process. This reasonable accommodation process would *unintelligible* the Fair Housing Act, that someone like Oxford House or other unlicensed, unstaffed sober living provider would make a reasonable accommodation application to the City and the City would consider it on its merits and either approve or deny it based on whether it meets the criteria. The other would be to give someone within the City the same authority to do so. In listening to the discussion on this, the members of the Planning Commission have made several references to the Joint statement. Under number 23 "Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?" in the middle of the paragraph it says that if "a jurisdiction chooses to adopt formal

procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability.” By requiring unlicensed and unstaffed cooperative sober living houses to apply to zoning for SUP is a more onerous process or proceeding than what state licensed housing gets because they do not have to do anything. It is more onerous compared to what other jurisdictions within the state have dealt with this issue. This is the first time that we have encountered any jurisdiction within the Commonwealth believing that by requiring setting up a classification based on handicap would require a SUP. We believe that the whole process violates the Fair Housing Act. If you have any questions, I would be happy to answer them. If not, thank you for your time.

Anthony Bopp, 69 Sharon Street, came forward regarding the request. I am going to offer you two alternatives to the proposal that is in front of you. The Americans with Disabilities Act says that the localities have to make reasonable accommodations. I would think that if you took what was written up, the proposal from staff, and simply omitted R-1, that it would be a reasonable accommodation. She is shaking her head no, but if you allow people to put a recovery house in R-2, R-3, R-4, R-5, R-6, R-7, R-8, B-1, B-2... I go before reasonable people. I would say that is reasonable. I would say what is unreasonable is to say you can put a house anywhere you want to regardless of what the zoning laws are. I think that omitting R-1, but you can go anywhere else, is reasonable. What is unreasonable is saying you can go anywhere you want to. The second thing is, what really bothers me as an individual, that somebody would come in here and break the law and then come before us and say you have to change the law so that we are not breaking the law. Never mind the circumstances, that just bothers me. The third thing I would like to show is that I have the Oxford House annual report, and if you allow me, I am going to read one sentence. “Once sequester of houses is developed in an area, it becomes to expand.” Do not think that this is the end of it. This is just the beginning in terms of bringing Oxford House into this community. The last thing is, I think of R-3 as the appropriate place for multi-family housing. We have a district. It is not like we are saying that Oxford House cannot come in. It is just that Oxford House has to pick the places according to our zoning laws where they can come. And the last thing is, if you do not like that. If you do not like anything that I have said, then I recommend that you follow Virginia law and make Oxford House go after the State of Virginia, that we are following the Virginia law about the counselors and about the licensing. That is what the law says. All we are doing is following Virginia law, so they would not have to sue us. They would have to sue the Commonwealth.

Mr. Steere came forward with a question. Since these are as a non-profit organization, does that mean that all of these units come off of the tax rolls? If so, you are probably talking about a value in excess of a million dollars that residents in the City have to pay what comes off the rolls by these individuals.

Sandy Bopp, 69 Sharon Street, came forward regarding the request. I am an American person with a disability. I have Type I diabetes. I have had it for 47 years. I have never asked for any kind of help except maybe some paint on the curb or maybe a street lighting which everyone has been very accommodating with. What concerns me is, yes, we all know someone with a drug or an alcohol problem, every family has them, but we do not need them in a house together. I know they are supposed to have support, but these boys, and they are nice boys, but they do not want to be here

either. I try to be fair with them. I walk every day. The sad part is that they are not from around here. How many addicts or rehab people are we going to bring into our community. We already have lots and lots who need help. I think that we need more housing in the City, but we also need more elementary schools. There are a lot of kids in my neighborhood, and I am concerned about them. I always worry about the children. Somehow, we have to put safeguards about this. I wish they would have invited the boys to come here. The young gentlemen to speak on their behalf and say what they like about the community and what they dislike about the community. They do not have anyone that comes and checks on them. I have never seen anybody come there to give them support or help them with their issues. If you have an illness, you definitely need help.

Ronald Diehl, 1706 Central Avenue, came forward regarding the request. Oxford House can be googled. I did get some information on their 2021 Annual Report. Mr. Bopp mentioned about the cluster houses, if they can be approved once then it is easier to get them for existing additional houses. If you approve one, you are going to get more. In single-family neighborhoods, the real issue is that Oxford House wants only R-1 districts to buy, and they buy before they get approval from Planning Commission. There are currently 3,231 houses in this country. There are 26,000 residents. It works out to 8.1 persons per house. I keep hearing that it is an upper limit to have eight residents per house, but to do these numbers, they have certainly some houses that are three-bedrooms or two-bedrooms that cannot support eight people. I know that the house on Middlebrook Street... I do not if they came before the building department to get approval for a bedroom in the living room, but it was built out that way. To be honest with you, to have a residential house to meet fire code, to meet city planning, it is a stretch to say that these residential houses are going to do that. The safety factor of having this many in a house that Oxford will only accept the city that says you have to go by what we want, and they buy in different parts of the City and tell you what you have to do under the Fair Housing Act. I am not sure I do buy that. The organization is doing a great purpose, but they are doing this in something other than what was meant to be a single-family dwelling. Eight people does not quite... On average, 8.1 people are in these houses. I feel like the city of Wilmington, North Carolina turned them down and they turned them down for a reason. They could not find cause that they were able to prove to that city that they had met all of their codes. I thank you for your time.

Paul Stevens, Regional Manager for Oxford House, Inc., called in regarding the request. Mr. Polin asked me to provide some comment to clarify a little about the certification process, and in response to a couple of things that were said. Oxford House does not own any of these properties. There are local landlords that rent directly with the specific individual Oxford House. The State of Virginia decided a few years that they wanted to have a process through the Department of Behavioral Health and Developmental Services by which recovery residences were certified and they identified Oxford House as having high quality standards for our model. We were identified as one of the organizations that would be able to certify to credential recovery residences and to hold them to the high-quality standards of our model. We have had a very long relationship with the Commonwealth of Virginia and the Department of Behavioral Health. Now we certify Oxford Houses on behalf of the Commonwealth. There is a fair amount of oversight of that process. The houses are self-governing. They are financially self-supporting. The individual, local people living in the house pay their own way, the utilities and the rent. They form a community of houses that will look after each other and hold themselves to standards. There are Oxford House, Inc. employees. As a result of the contract that we have with the Department of Behavioral Health we

have a few outreach workers. Their job is to go around, train the houses, offer technical assistance, and make sure that they are complying with the standards of the Oxford House model so that they are running well and being good neighbors. That interaction happens on a regular basis. I have a staff person who will go to Harrisonburg and meet with the houses very regularly, weekly, monthly at least. If you have any questions, I would be happy to answer them.

Chair Finnegan said I have a question in relation to the comment from Mr. Polin earlier about the SUP versus how it is done elsewhere in the state. Can you speak to that?

Mr. Stevens said that there is no jurisdiction in the Commonwealth where we have ever been asked to apply for a SUP, and we have 158 Oxford Houses in quite a few localities. As far of the nuances of the differences between the two processes, I would leave up to Mr. Polin.

Commissioner Armstrong asked do you see differences between R-1 or higher R values in terms of establishing houses in your program.

Mr. Stevens said that the success of our model relies on the idea that they be functionally and legally treated as a family residential unit. The idea is that people recover better when they are in good homes, in good neighborhoods. Any restrictions on that would be a compromise of the model.

Commissioner Whitten said we had someone who was testifying at a public hearing regarding where the residents are coming from. You mentioned local, that they would be local residents. People coming from outside the area to Harrisonburg just to live in an Oxford house, is that the model?

Mr. Stevens said we do not dictate where the individuals are coming from, but the houses do not solicit applications from outside of the community. They do come from inside and outside of the community.

Commissioner Whitten asked how would they find their way to Harrisonburg, if they were from outside the community, to live in an Oxford House here?

Mr. Stevens said it probably varies, case by case. I would be only conjecturing. We have people who come into Oxford houses from a variety of places. Some of them just decide that they need to get sober, seek out mutual support groups and decide that they need supportive housing. Some people will go complete a treatment program somewhere and then want to return to the community and then return to the community to seek work and supportive housing. There are any number of places that they could come from. We have Oxford houses throughout the rest of the Commonwealth, so for people that reside in other areas, there really is no need for them to come to Harrisonburg because we have other Oxford houses and VARR has other recovery residences throughout the rest of the Commonwealth.

Commissioner Whitten said it sounds like there are other localities the use the SUP process in the State of Virginia, according to our attorney.

Mr. Stevens said that none of the Oxford houses that are currently open and operating in the Commonwealth have ever been asked to go through a SUP process.

Mr. Diehl said the bus stop in front of my house which is 1706 Central Avenue. I have talked to several individuals, and they were from Alexandria and other parts of the State. They were not close to this region. When you ask him about where the people come from, he did not answer you in a very direct way. I see people that are not from this area. If we could poll them, I would say that it is infrequent if somebody is.

Chair Finnegan asked if there were any questions for the applicant's representative. 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 said often times with these types of hearings, there are people in opposition and people speaking for them. We now have heard from Oxford House, and they are against it. The folks in the room are against it. It sounds to me like City Council maybe picked the wrong choice of the choices to pursue.

Councilmember Dent said I am looking at a letter we received from Strength in Peers which is a wonderful, local organization that has been trying to find ways to establish sober recovery housing. They are indicating their support for the amendment and have been advocating for these for a while. I have noticed that, even though they are supporting it, they say "[z]oning rules and procedures that prohibit recovery houses, limit them to certain zoning districts, limit the number of persons, or require a public hearing process have a discriminatory effect." A SUP requires a hearing process.

Chair Finnegan said Strength in Peers probably did not know. The SUP is not a rezoning, but it is similar to a rezoning in that there is a public hearing.

Councilmember Dent said based on their recommendation, but without that understanding, perhaps we need to revisit it as some process that does not require a public hearing but does allow in all zones. That is what they would be advocating.

Chair Finnegan said I am confused as to how to proceed because I do not feel that I can support this, but I also... It sounds like there needs to be another way to do this. If we deny this, it would go to City Council, and City Council would say "we kicked it to Planning Commission."

Councilmember Dent said and we kicked it back. Mr. Russ, this would be a question for you and Chris Brown because they were offering the two options, the SUP or some sort of administrative review.

Ms. Dang said that with an administrative review, staff would make the determination. There would be no public notice.

Mr. Russ said Oxford House's position has always been that public hearings stigmatizes the eventual residents. You have to come out to a public hearing and say that the people who live in

this house are recovering from addiction and there are negative consequences to that. One way of avoiding that is having staff review, having the City Attorney or the Zoning Administrator review and issue a letter. The neighbors do have standing to challenge the Zoning Administrator's determination with the BZA if they do not like the Zoning Administrator's determination, but it would avoid a public hearing. Although, if it wound up at the BZA, then there would be a public hearing.

Commissioner Washington said from my understanding, the Oxford House functions as a family. As a family of eight, to require a SUP for that sounds discriminatory. If they are seen as a family rather than a dense housing situation with multiple different people living there independently, that is different. Is there a chance to change the wording? The ask for a SUP does sound discriminatory in its effect of excluding housing in R-1 and other areas.

Ms. Dang said what I am hearing from Planning Commission is an interest in another option that we could take back and talk internally and present, Option A, here, and the administrative option. I do not know if that is countering what City Council has directed, instead of going to City Council and letting City Council decide based on your recommendation if there should be another option that is created. As far as timing goes, with the large proposal that you are expecting in January, we are not going to have time over the holidays to discuss it. I am not concerned that we will lose time if this went to City Council and they decide if they want to adopt this option or if they want to draft something else based on what you are discussing.

Chair Finnegan said I would suggest two things. One, that City Council's option to pursue this option as opposed to the administrative option was not the right choice. The second is that there will be a new City Council, with two new members of City Council. I would be in favor of recommending denial and having it go to City Council.

Commissioner Washington asked could we table it as the previous option that we tabled.

Councilmember Dent said I would prefer to table it and go back to the drawing board better than to deny because you want to advance it in some form. With the public hearing process having a stigmatizing or discriminatory effect, maybe that is not the right way to go. I do not know what motion to make to recommend that back to City Council.

Chair Finnegan said the SUP is not the right path.

Commissioner Byrd said among the things that I have heard related to this and how people have been discussing it, I would be in favor of denial if it is going to include a SUP request. The definition, I am fine with, with the suggested changes from "handicapped" to "disabled" and adding "professional" to supportive. I have no issue with it applying to all the zones that could have residences, I am fine with that. I highly believe in the prejudice and discriminatory effects of a public hearing for multiple reasons. I see how people will feel that they need a say about what is in their neighborhood, but they are just putting people in a residence. Making it a bigger to-do sounds like it is defeating the purpose. If I for some reason got on something, and we have seen studies where people have gone on stuff because drug companies did not inform doctors and stuff... There are many reasons why people end up doing things. Then I go to a place and cannot

go anymore because the community found out that we are there... As long as there is a SUP requirement, I am not going to be in favor of it.

Chair Finnegan said what Commissioner Byrd just said is why I would be in favor of denying this. It is not about tweaking the language. It is not send this back and give us a different version of a SUP. The SUP is not the right path. I am in favor of denying.

Councilmember Dent said based on that logic, I could go with that, as long as we make it clear to City Council that we support the sobriety housing, but the SUP is the wrong way to go because of the public stigmatizing and the outing of the people who live there.

Commissioner Washington said I used to do case management in Charlottesville for two years. I saw a lot of people who suffer from addiction. A part of what I saw, the reason why people move around so much, is because Oxford House is in demand. If the Oxford Houses in Charlottesville are full, they go elsewhere. I would not say, in terms of where they are coming from "local versus regional," because to some folks that is still a community. Also, in some cases, folks do not want to be in the same community where they fell into addiction. There are different reasons why people travel. It is because of necessity and because they want a fresh start. What is the difference between someone moving here for sobriety and someone moving here for a job? I think that a lot of the comments that I heard tonight were discriminatory. You referred to the statement that said for whatever reason you cannot say no to this. It is discriminatory to question that because you have an addiction and you are in my neighborhood, that looks bad. You do not know what people are going through and to be good neighbors, you should be able to accept someone who is a millionaire versus someone who has an addiction problem and that looks different for everyone.

Commissioner Whitten said that could be the same person.

Commissioner Washington said absolutely, it could be the same person. You are right. Also, to expect the SUP for a family house does not sound right. The need for an ordinance amendment is important, but to require a SUP is discriminatory.

Commissioner Whitten said I hear that. My discomfort with this is that this one organization that has their model is saying that we have to buy their model. There are other sobriety houses. There are other means and methods of doing this. Their percentage of success is not particularly high, compared with others. Mr. Stevens mentioned a person that checks in frequently, and I feel that there should be some accountability for the people who live there and not just from them because they are, by their own admission, struggling. They are trying, every day, to do better. That is the definition of being a part of a support group or being a part of AA. It is a daily journey. It feels a little strange for us to say that we believe in this model, we want to make an exception to our zoning. It is an exception to our zoning. I am fighting the problem of having fraternity members being able to call them a fraternity house versus just a bunch of guys that live together. There is a difference, and the behavior is different. These are two different things, but it does have a likeness to it. It does have an impact on neighborhoods if there is upset. If you read very much about Oxford House online, it is all not a rosy picture. That is just the facts. You cannot imagine a family that would always have a rosy picture. You put eight individuals in a house together that are struggling with addiction, there are going to be personality issues. There are going to be conflicts. I do not

think that it is unreasonable to think that there should be some accountability beyond just welcome to our neighborhood, we want you to be here, we want to support you any way we can. What else does Oxford House do to make them accountable to a neighborhood. There is a responsibility on that end too.

Commissioner Armstrong said they do certify their houses for the Virginia Commonwealth. The people checking, I assume is through regular social services outreach. That certification has to be accessible to local social services who can support that unit. I think that is what he was describing, so there is accountability through the certification process.

Commissioner Washington said what I heard is accountability for the Oxford House. Also what I heard was an assumption and a prejudice towards folks who live in this communal living based on stuff that you read on the internet rather than... You are judging the individual before they get there. I think that is part of what was said in this packet, trying to avoid prejudice for the living situation. While good intentioned, what you did was make an assumption based on statistics that you got on the internet rather than knowing that person going through recovery locally in Harrisonburg.

Commissioner Whitten said if you want to call that prejudiced because I did go and look at other localities and problems that have occurred, I think that is what most of us do when we look at other zoning issues too. We look at how it is working in different localities and how they are working here. Are there problems? There is nothing wrong with doing research. The way that you said "on the internet" makes it sound like it is some made up story. I believe that it was credible information that I was reading. I always look for sources. I am somewhat insulted that you consider that that comment would be prejudiced. I do not believe that is true. I think that when you put eight people in a house, that have a common problem with addiction, you are going to have some issues. I want to know that there is somebody that is guiding, directing, leading... People that have an alcohol or drug problem do need that support. They do need more than just each other. There is a much bigger problem there to start with that landed them in that house. To be able to be a supportive community, we have to be able to ask for that accountability. I think that is not prejudiced at all.

Commissioner Washington said I did not mean to offend you or insult you in any way. Based on the language in the Fair Housing Act, what you said based on what you read from the Oxford House website and from other people and other municipalities, I think that you are judging the person prior to getting there. One thing that I want to correct it on is that you called it a problem, when these folks have disabilities. That is one thing, in terms of language that we need to be aware of because you are stigmatizing folks who are seeking help for their disabilities. The language is "disability." It has a negative stigma when you say "problem." They are different things. And it is not a density issue. It is how we define "family." That is something that we are getting muddled in, density versus the definition of a family. These folks are coming in as a family. It is a family house. It is not eight independent folks living independently.

Chair Finnegan said these are all valid points. What I would like to focus here at 9:49 p.m. in this meeting is what to do about this ordinance amendment.

Commissioner Byrd made a motion to recommend denial.

Chair Finnegan said Commissioner Whitten was talking about accountability. My question to Mr. Russ is what accountability can the City require regardless of whether we would like Oxford House to do it or not?

Mr. Russ said one of the things that we can require is that they go through one of the credentialing entities that State approves. Between now and whether this goes back to City Council, or you want to meet again, I can make sure that we can have a better understanding of what that process looks like. Whether it is just submitting a form, or someone from the State comes by every so often, or what exactly that process is, to give you a better understanding about what it means to be credentialed, and what that looks like moving forward. Not just when you first become credentialed, but how do you maintain that credential. We can make sure we have more information.

Commissioner Orndoff asked do we have the authority to send this back to staff and ask for a redo?

Chair Finnegan said we can recommend denial or approval or table it tonight.

Mr. Fletcher said we reacted to what City Council directed. You can make a call as recommendation as to what you want. If you are looking to recommend denial, we can take it, or we can hear you say you recommend denial. We can bring it to the attention of City Council and they may advise otherwise and not put it on the agenda.

Commissioner Byrd said I apologize. I was trying to cut the commissioners off. I am always concerned when commissioners are talking to each other about each and not the application. I do like the definition, but I have an issue with the SUP. I move to recommend denial.

Commissioner Orndoff seconded the motion.

Councilmember Dent said I would like to add, to send with the denial, that we mean that as a recommendation that City Council pursue a different path.

Chair Finnegan said when I vote to deny, it is not because I am against Oxford House, it is because I do not like the SUP process for this use.

Commissioner Whitten said this is not just Oxford House. It needs to be called what it is Cooperative Sober Living Residence. It does feel like they have coopted this conversation. We are bending to what they desire us to do. We should never do that when it is a general topic like this. There are other sober living opportunities.

Chair Finnegan said such as Strength in Peers. They do not want a public hearing process.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong     Aye

Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend denial of the Ordinance Amendment passed (7-0). The recommendation will move forward to City Council on January 10, 2023.