



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

December 5, 2022

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

SUBJECT:

Consider a request from Martha Ann Miller to rezone 1051, 1067, 1069 Smith Avenue

Consider a request from Martha Ann Miller for a special use permit to allow multi-family dwellings at 1051, 1067, and 1069 Smith Avenue

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: November 9, 2022**

Chair Finnegan read the requests and asked staff to review.

Ms. Dang said The Comprehensive Plan designates this site as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

- Site: Multiple-family buildings, zoned R-2
- North: Duplex dwelling, zoned R-2
- East: Single-family detached dwellings, zoned R-2
- South: Single-family detached dwelling, zoned R-2
- West: Multiple-family building, zoned R-2

The applicant purchased the property in 1989. Minutes from Board of Zoning Appeal (BZA) meetings indicate that the applicant was told by the previous property owner that they could add a kitchen to the downstairs four-bedroom area and have two dwelling units in the building addressed as 1067 Smith Avenue. They proceeded to do the work believing that they already had City

approvals. A complaint was made in 1992 to the Building Inspection Office who required a building permit to be filed, but then denied the building permit because the Zoning Ordinance did not allow adding dwelling units and nonconforming uses cannot be expanded. Following the City's denial of a building permit to allow for the construction of an additional unit within the building addressed as 1067 Smith Avenue, on June 1, 1992, the applicant requested from the BZA a variance for the property addressed as 1067 and 1069 Smith Avenue (tax map parcel 48-C-8) from the maximum allowable density of two units to allow for the addition of another unit. This request was denied by the BZA. On August 7, 1995, the applicant requested from the BZA a variance to move one dwelling unit from the building addressed as 1051 Smith Avenue to 1067 Smith Avenue. This request was denied by the BZA. Then on August 5, 1996, the applicant requested from the BZA a variance for the expansion of a nonconforming use at 1067 Smith Avenue so that they could convert a four-bedroom apartment unit into two 2-bedroom units. The request also describes that the applicant planned to remove an efficiency unit on the adjacent lot and add it as a bedroom to an existing one-bedroom apartment. That request was also denied by the BZA.

The applicant is requesting to rezone a +/- 36,394 square foot property consisting of three parcels from R-2, Residential District to R-3C, Medium Density Residential District Conditional. Simultaneously, the applicant is requesting a special use permit (SUP) per Section 10-3-48.4 (6) of the Zoning Ordinance to allow multi-family dwellings of up to twelve (12) units per building under conditions set forth in subsection 10-3-48.6 (e) and other such conditions deemed necessary by City Council within the R-3, Medium Density Residential District. The subject property is located on Smith Avenue approximately 350 feet south of the intersection with Mt. Clinton Pike. If the requests are approved, the applicant would convert a 4-bedroom unit within the building addressed as 1067 Smith Avenue into two, 2-bedroom units, which would bring the total number of dwelling units in the three buildings to 11 as described below:

Tax Map/Address	Current Uses/Number of Bedrooms per Unit
48-C-7	Vacant parcel
48-C-9 (1051 Smith Avenue)	1051 – 4 multifamily dwellings Unit 1 – 1 bedroom Unit 2 – 2 bedrooms Unit 3 – 2 bedrooms Unit 4 – 1 bedroom
48-C-8 (1067 & 1069 Smith Avenue)	1069 – 3 multifamily dwellings Unit 5 – 2 bedrooms Unit 6 – 2 bedrooms Unit 7 – 1 bedroom 1067 – 3 multifamily dwellings Unit 8 – 2 bedrooms Unit 9 – 2 bedrooms Unit 10 – 4 bedrooms

As noted in the previous paragraph, the purpose of the rezoning and SUP request is to convert Unit 10 from a 4-bedroom unit to, two 2-bedroom units, which ultimately adds one unit to the site, but maintains the same number of bedrooms for the entire complex.

With the rezoning request, the applicant has proffered the following (written verbatim):

1. The property shall only be used for residential dwellings, except that any allowed special use permits shall be permitted as approved by City Council.
2. Dwelling units may be occupied by a single family or no more than three (3) unrelated persons.
3. Dwelling units shall provide 1.5 – parking spaces per unit.

Recognizing that a rezoning to R-3 would open the opportunity for this property to have by right abilities for non-residential uses, including but not limited to, hospitals, convalescent or nursing homes, funeral homes, medical offices, professional offices, and charitable or benevolent institutions, the applicant has proffered that the property shall only be used for residential dwellings, except that any allowed special use permits shall be permitted as approved by City Council.

The R-3 district allows by right dwellings to be occupied by a family or not more than four persons. Proffer #2 reduces the allowable occupancy of dwelling units to either a family or not more than three persons. With this proffer, because the minimum off-street parking requirements of Section 10-3-25 (7) allows for reduced parking when occupancy is restricted, the multiple-family use has the flexibility of providing only one parking space per unit. However, with proffer #3, the applicant has proffered that they will provide 1.5 parking spaces per dwelling unit. With 11 proposed dwelling units and the parking proffer, the property would be required to provide 17 off-street parking spaces, which can be accommodated on the site. Staff's research of land records indicates there are private easements granting permission to the subject property (and other properties) to use the existing drive areas along the north and south side of the subject property for access.

Note that the existing parking area along the Smith Avenue property frontage cannot be counted as required off-street parking. The applicant is also aware that while parallel parking along Smith Avenue is allowed, the Zoning Ordinance Sec. 10-3-25 (5) prohibits on-site parking from depending on the public street for maneuvering and therefore the perpendicular parking that appears to be occurring today can no longer function as perpendicular parking.

The applicant did not proffer a maximum number of dwelling units because the R-3 district's requirement of 3,000 square feet of lot area for each multiple-family dwelling unit would limit the property to a maximum of 11 dwelling units, which is what the applicant proposes to have.

As part of the requirements for obtaining a SUP for multiple-family development in the R-3, Medium Density Residential District, an applicant must substantiate that they have met several conditions to justify the development. Those conditions outlined in Section 10-3-48.6 (e) of the ZO consist of the following:

1. Existing multiple-family development, or land planned for multiple-family development according to the Land Use Guide, is located adjacent to, across the street from, or in close proximity to the proposed development;
2. The applicant has demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities:

- currently serve the site; or
 - are planned to serve the site according to a city or state plan with reasonable expectation of construction within the timeframe of the need created by the development; or
 - will be provided by the applicant at the time of development; or
 - are not needed because of the circumstances of the proposal.
3. The applicant has demonstrated that the proposed multiple-family development's design is compatible with adjacent existing and planned single-family, duplex and townhouse development. Compatibility may be achieved through architectural design, site planning, landscaping and/or other measures that ensure that views from adjacent single-family, duplex and townhouse development and public streets are not dominated by large buildings, mechanical/electrical and utility equipment, service/refuse functions and parking lots or garages.
 4. The applicant has shown that the site is environmentally suitable for multiple-family development. There shall be adequate area within the site, or the development shall be designed, to accommodate buildings, roads and parking areas with minimal impact on steep slopes and floodplains.

The applicant has described in their letter how they believe the four conditions are met.

Staff believes that the four conditions are met if the following special use permit condition is added to the request:

1. The SUP shall be limited to the existing structures and no more than 11 multiple family dwelling units. (Note: Small additions to the existing structure for housing improvements may be allowed at the discretion of the Zoning Administrator.)

This condition allows for consistency in the understanding for the surrounding community to know what development could actually be allowed under the approved SUP. If in the future, the property owner wishes to add more dwelling units or to redevelop the site for other multi-family development, then a rezoning or SUP will be required.

Staff believes condition 1 outlined in Section 10-3-48.6 (e) is met because there are existing multiple-family structures near the proposed development, including on an adjoining property to the west addressed as 1081 Smith Avenue and two parcels to the north at 1301 Mt. Clinton Pike. Additionally, the Comprehensive Plan designates this site as Neighborhood Residential and describes that “[t]hese areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development.”

With regard to condition #2, staff would typically expect for the applicant to construct street frontage improvements of curb, gutter, sidewalk, and any other necessary improvements at the time of development to meet the condition of adequate pedestrian facilities. However, the applicant proposes only to convert one multiple-family unit into two units within an existing structure and

will not be disturbing more property, which brings into question whether the circumstances of the proposal negate the need for such improvements to be made as is allowed in the last bullet of condition #2. In this particular case, staff believes the circumstances of the proposal do not warrant such improvements.

With regard to condition #3, as proposed and with staff's recommended special use permit condition, the exterior of the three existing multiple-family buildings will not be structurally changed.

Lastly, with regard to condition #4, the proposed conversion of one 4-bedroom unit into two 2-bedroom units will not impact the environment as the work will be limited to the interior of a building. Additionally, the property does not require additional parking areas to be created to meet off-street parking requirements.

The applicant is aware that if the requests are approved and they wish to create an additional dwelling unit that they would be required to complete a minor subdivision to vacate the internal property lines to achieve the necessary lot area to meet zoning requirements and must also obtain proper building and sub-trade permits. Additionally, if an additional dwelling unit is added, then the property owner will be required to delineate the required off-street parking spaces.

Staff believes that the requested SUP is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district. Staff recommends approval of both the rezoning and special use permit to allow multiple-family dwellings on the subject parcel with the following condition:

1. The SUP shall be limited to the existing structures and no more than 11 multiple family dwelling units. (Note: Small additions to the existing structure for housing improvements may be allowed at the discretion of the Zoning Administrator.)

Chair Finnegan asked if there were any questions for staff.

Commissioner Armstrong asked if the proffers convey.

Ms. Dang said yes. The proffers would remain unless the property is rezoned to amend or eliminate the proffers.

Commissioner Whitten asked if it the same as with SUP that if they were not rented for a period of two years...

Ms. Dang said in this case it is a structure. It would be maintained as a multi-family structure. It is not a nonconformity.

Chair Finnegan said they are changing the structure.

Commissioner Whitten said they would not lose any of the dwelling units if they did not all remain rented?

Ms. Dang said correct.

Councilmember Dent asked for clarification regarding the block in the middle of Smith Avenue so that it is not continuous.

Ms. Dang said I do not know the history of that.

On the map, there are two properties that extend to the middle of Smith Avenue. The street narrows to a right of way. Staff has not researched the easements through those properties.

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.

Martha Ann Miller, owner of the subject properties, came forward with her son, Jay Miller, in support of her request.

Commissioner Armstrong asked are these all long-term rentals?

Ms. Miller answered they are.

Mr. Miller said there will be no additional construction. We are dividing an existing unit, and there is no need for additional parking.

Chair Finnegan said, in other words, the work is happening inside the structure.

Commissioner Whitten asked do either one of you live at this address?

Ms. Miller said I do.

Chair Finnegan asked if there were any questions for the applicants.

David Lehman, 1032 Smith Avenue, came forward regarding the request. I just recently purchased the property across the street. I am one of the persons whose lots came together. I am learning a lot right now and becoming aware. Does the ability for Ms. Miller to go ahead and do what she would like to do depend on both of these requests being passed? Can she do it if only the SUP is passed?

Chair Finnegan said it would require both.

Mr. Lehman said the one strikes me as harder to swallow than the other. It helps me understand what is decided this evening. Thank you.

Cynthia Smoker, 1091 Smith Avenue, came forward regarding the request. We would share the northern right of way to this property. Our main concern is does a potential approval of this set any precedent for future approvals, such as a broadened expansion of the R3. I am not sure that can be answered but is a concern of mine.

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.

Ms. Dang said I cannot promise that things will not change. In this case, the proffers and conditions are specifically tailored in a way that one can use that if changes are not desired at other parcels... but I cannot guarantee one way or the other. We might not be the ones making the recommendations or the decisions in the future.

Commissioner Byrd said the current Comprehensive Plan would not suggest that we would encourage a flurry of these, correct?

Ms. Dang said I agree. The Comprehensive Plan and the neighborhood residential designation does describe that there would be more single-family detached homes.

Commissioner Whitten said beyond that, this is a rather unique situation in which there are a lot of non-conformities which are very problematic in zoning in order to change the configuration of a building within the walls of the building. That is the reason this request was made, correct? It is not to add more renters. It would allow for one more. My understanding is that the spirit of this is to bring this property into conformity.

Ms. Dang said the applicant wants to bring in the conformity so that she can add another dwelling unit within one of the buildings.

Mr. Fletcher said I would like to address precedents and the Comprehensive Plan designation. Regarding the Land Use Guide, it is neighborhood residential. In the staff report it says different types of housing in a mixture of densities. Precedents can always be something of significance. Ms. Dang is correct. This is very narrowly tailored. You are going to end up with the same number of bedrooms, just one additional unit. It provides additional flexibility, trying to run a four-bedroom unit rather than a two-bedroom unit. The neighborhood residential designation does not specifically say all single-family or all duplexes. It is a mixture and has a lot to do with the surrounding environment and what the existing context of that neighborhood is.

Chair Finnegan said this is a unique cluster of buildings. A lot of the properties on this side of town in the 1983 annexation look different. There are oddities because of the annexation. I generally am supportive of this. We need more smaller units. This would provide one more.

Commissioner Armstrong said I want to acknowledge that we got one or two neighborhood comments on this. I did read them. There was a lot of concern about what could be the worst-case scenario. I hope that this presentation has reassured the neighbors that there will be no more breaking ground. I support this too. It is all inside and it is all long-term rental.

Commissioner Whitten moved to recommend approval of the rezoning request.

Commissioner Byrd seconded the motion.

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 approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on December 13, 2022.

Commissioner Armstrong moved to recommend approval of the SUP.

Commissioner Whitten seconded the motion.

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 approval of the SUP request passed (7-0). The recommendation will move forward to City Council on December 13, 2022.

Councilmember Dent exited the meeting to attend the City Council meeting.