



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Ande Banks, City Manager  
From: Adam Fletcher, Director, Department of Community Development and Harrisonburg Planning Commission  
Date: January 10, 2023 (Regular Meeting)  
Re: Zoning Ordinance Amendments – To Add New Cooperative Sober Living Residence

### **Summary:**

Public hearing to consider amending the Zoning Ordinance by creating and defining a new use called “Cooperative Sober Living Residence” to be allowed by special use permit in the following 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.

Staff recommended approval and Planning Commission (7-0) recommended denial of the Ordinance Amendments.

### **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. 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.

**Key Issues:**

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. The language proposed in each zoning district regulations is:

*Cooperative sober living residences. Occupancy shall not exceed 8 individuals unless specifically approved by 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.

**Environmental Impact:**

N/A

**Fiscal Impact:**

N/A

**Prior Actions:**

N/A

**Alternatives:**

- (a) Approve the ordinance amendments as proposed;
- (b) Approve the ordinance amendments with modifications;
- (c) Deny the ordinance amendments; or
- (d) Direct city staff draft alternative 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 Add New Cooperative Sober Living Residence***

Public hearing to consider amending the Zoning Ordinance by creating and defining a new use called “Cooperative Sober Living Residence” and by adding this as a use allowed by special use permit to the following 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. The proposed “Cooperative Sober Living Residence” would be defined in the Zoning Ordinance as: “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.” 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 ordinance amendments as proposed.

**Attachments:**

- Extract from Planning Commission (forthcoming)
- Proposed Zoning Ordinance Amendments
- 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

**Review:**

Planning Commission (7-0) recommended denial of the Ordinance Amendments.

While the Planning Commission did not include the following changes in their motion to deny the Ordinance Amendments, there was discussion among Commissioners to modify the definition of *Cooperative Sober Living Residence* by changing the word “handicapped” to “disabled” and adding the word “professional” to describe on-site supportive services to residents where highlighted below:

*Cooperative Sober Living 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 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 professional on-site supportive services to residents.*