



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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August 29, 2024

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

SUBJECT: *Consider Zoning Ordinance amendment to modify regulations associated with the validity period of special use permits*

**EXTRACT FROM THE DRAFT MINUTES OF HARRISONBURG PLANNING
COMMISSION MEETING HELD ON: August 14, 2024**

Chair Finnegan read the request and asked staff to review.

Ms. Dang said during its 2024 Regular Session, the General Assembly passed, and the Governor approved HB 650, which specifies that in the case of a special use permit (SUP) for residential and electrical generation projects, the period of validity shall be at least three years. For more information, visit Virginia's Legislative Information System (LIS) – 2024 Session –HB 650 Zoning; residential and electrical generation projects; period of validity at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+HB650>

Within Harrisonburg's Zoning Ordinance (ZO), each zoning district's regulations identify uses that are allowed by right and uses that are allowed by SUP. Uses allowed by SUP are considered to have a potentially greater impact on neighboring properties or the public than those allowed by right in the district. The potential impacts warrant a case-by-case review and can be addressed through conditions.

Section 10-3-130 (c) of the City's Zoning Ordinance states that:

“Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within twelve (12) months from the approval date of such permit.”

This means that unless City Council determines a longer time period, the applicant must continue to demonstrate diligent pursuit of the project starting within 12 months of City Council approval of the SUP. Diligent pursuit can be demonstrated with submittals, that include but are not limited to a preliminary plat, a preliminary fire review, a preliminary engineering report, an engineered comprehensive site plan submittal, or an application for a building permit. If staff determines that

an SUP has expired, the property owner wishing to restart a project that required an SUP would have to reapply for SUP approval, which requires new public hearings at Planning Commission and City Council.

Note that due to Virginia Code Section 15.2-2209.1, which was first adopted in 2009 during the Great Recession, and now Virginia Code Section 15.2-2209.1:1, which was adopted in 2020 during the COVID-19 pandemic, SUPs that were approved within certain dates received an extension and may still be valid after the typical 12-month period.

Staff is proposing to amend the Zoning Ordinance (ZO) to be consistent with State Code. The following is the proposed amendment to ZO Section 10-3-130 (c):

Whenever a special use permit is approved by the city council, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the city council may have specified, or, if no such time has been specified, then within thirty-six (36) months from the approval date for residential projects and within twelve (12) months from the approval date for all other projects. ~~of such permit.~~

While State Code requires SUP validity for at least 36-months for both residential and solar projects, staff has only proposed amending the ZO to address residential SUPs. This is because there are no solar-related SUPs available in any zoning district. Attached herein is a Zoning Determination dated November 6, 2023, which describes zoning regulations effecting solar photovoltaic (PV) installations, specifically describing where solar PV is allowed by-right as utility-scale and by-right as accessory uses.

Examples of SUPs that might be applicable to residential projects that would receive the 36-month approval time period include, but are not limited to:

- In all zoning districts – Reducing required parking areas.
- In all zoning districts - Walls and fences greater than the height otherwise permitted.
- In all zoning districts - Recovery residences that have more than eight adults and any number of minor dependents of those residents.
- In R-5 - Multiple-family dwellings of more than 12 units per building.
- In R-5 - Multiple-family buildings greater than four stories and/or 52 feet in height.
- In R-8 - Reduced required side yard setbacks to zero (0) feet, when single family detached dwellings or duplexes meet certain National Fire Protection Association requirements or exterior walls meet certain standards.
- In B-2 - Multiple-family dwellings and/or mixed use buildings.

The 36-month minimum period of validity would apply only to SUPs for residential projects approved on or after July 1, 2024, which is the effective date of HB 650.

Staff recommends approval of the Zoning Ordinance amendment.

Chair Finnegan asked if there any questions for staff.

Commissioner Baugh said now I am being a legal nerd because I have no idea whether they really thought about this in Richmond but my assumption would be for a mixed-use proposal that had a residential component of any kind, that would be considered residential.

Mr. Russ said that frustrated us as well. Residential project is not a defined term. We are thinking that it is any sort of proposal that comes before this body and City Council that has a residential component.

Chair Finnegan said similar to the one we heard recently across from the wine bar that has business on the bottom and residential on top, it is residential.

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

Commissioner Nardi said I move to approve staff's recommendation of 36 months from the approval dates for residential projects.

Vice Chair Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (6-0). The recommendation will move forward to City Council on September 10, 2024.