



# 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 from Maria Sonia Trejo to rezone 793 North Liberty Street*

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

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the Comprehensive Plan designates this area 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: Nonconforming single-family detached dwelling, zoned M-1

North: Nonconforming single-family detached dwelling, zoned M-1

East: Across North Liberty Street, industrial uses, zoned M-1

South: Nonconforming single-family detached dwelling, zoned M-1

West: Across an undeveloped alley, industrial uses, zoned M-1

On August 17, 2022, staff from the Building Inspections Division noticed work being completed on a covered deck on the subject property without permits and verbally informed the contractor they must stop the work and get appropriate permits. On September 2, 2022, a permit was submitted and upon review, Zoning staff informed the applicant's contractor that the property is zoned M-1, General Industrial District and that the residential use on the property is nonconforming. It was explained that the Zoning Ordinance (ZO) prohibits the expansion of the nonconforming use, which includes prohibiting the expansion or construction of a new covered deck.

The applicant's contractor and city staff met on October 14, 2022, to discuss options for complying with the ZO, which includes entirely removing the uncompleted covered deck, returning the deck to its original size and footprint, or to rezone the property to the R-8 district.

The applicant is requesting to rezone a +/- 5,975 square foot property from M-1, General Industrial District to R-8, Small Lot Residential District. The property currently contains a single-family detached dwelling and is considered nonconforming since the property is zoned M-1. Without reviewing a physical survey of the site, the existing single family structure could also be nonconforming setback regulations. The reason the applicant is requesting the rezoning is to bring nonconformities with the property, including use and, potentially, setbacks, into conformity. If the rezoning to R-8 is approved, the property owner could have a building permit issued to complete construction of the covered deck. If the rezoning is denied, then the property owner must remove the deck or return the deck to its original size and footprint.

The R-8 district is intended for medium- to high-density residential development including single-family detached, duplex, and, in special circumstances, by special use permit, townhouse development. As previously described, the Comprehensive Plan's Land Use Guide designates this area 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. The Comprehensive Plan goes on to say that 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. It depends on the exact dimensions of the parcel, but if the request is approved, the property owner might also gain the ability to somehow redevelop the site to contain a duplex. If the parcel is at least 50 feet wide, the site would meet the R-8's dimensional requirements to allow for a subdivision and to construct a duplex (one unit on each parcel). Staff does not believe such a scenario is inconsistent with the Comprehensive Plan.

Staff believes that this request does not have any major adverse effects to the surrounding properties and is consistent with the Comprehensive Plan and recommends approval of the request as submitted by the applicant.

Chair Finnegan asked if there were any questions for staff.

Commissioner Whitten asked why are we not looking at three lots instead of just one? It makes no sense to do it with just one. I feel that this should be a City function. We know that these are residential. They should be treated as residential. Let us rezone all three, potentially more. It does not make sense to me to isolate one lot that wants to put a deck and not take care of this.

Ms. Rupkey said that based on the fact that they had the permits, there is a time constraint that they were restricted to that would not provide the amount of time needed to get all the property owners.

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.

Maria Trejo came forward and spoke through an interpreter. In addition, her friend Austin Miller came forward to speak on her behalf.

Mr. Miller said I will do a little talking for her because I know the project. The patio that she originally had was rotting. She wanted to extend it bigger. I am from Richmond, so I never gave a thought that the zoning would be a problem. It is different how you work here and how you do things here. We started making the patio. Then she decided she wanted the overhead, so I put the overhead on. The house is small. Now we can sit outside, eat outside. When it is raining, we can put the shoes out there when we come in the house. It is a two-bedroom, one bath, a little living room and a little kitchen. By the doing that, extended a little bit to sit out there when family comes because it is a small area. We were not trying to do something out of the ordinary. We were trying to extend a little bit so that we could sit outside, cook on the grill. We are requesting if it could stay. It is built. It is done. It is a matter of whether we can keep it. Whatever needs to be done, we are here to take care of it.

Ms. Trejo said what he said is accurate. I want to thank you for giving me the time to bring this. I want to make the patio because my house is very small and I would like that space, especially when my family comes.

Chair Finnegan asked if there were any questions for the applicant. 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 this kind of request is about the letter of the law. They are following the rules, but there are times when I think that the rules overreach a little bit. I think this is one of those situations. I think this is a perfectly reasonable addition onto the house.

Commissioner Whitten said if it was not in M-1. That is the thing that has to be addressed. That is what we are doing. They are just trying to do their job.

Chair Finnegan said I believe that staff is treating everyone the same. There are times when people are trying to do very reasonable things to their houses, and they run into these kinds of entanglements.

Commissioner Whitten said this has been family type housing for a very long time. It is unfortunate that this was not cleaned up a while back in terms of rezoning it and making it a rezoning on behalf of the City. I am sorry that neighbors are having to come in piecemeal like this.

Chair Finnegan asked if this is something that we can fix in the Zoning Ordinance rewrite?

Ms. Dang said there are many reasons why we want to resume the Zoning Ordinance rewrite, and this is one of them. That is something that we have already discussed. There are areas along Liberty Street, West Washington Street... There are homes designated in our Comprehensive Plan as neighborhood residential that are non-conforming because they are zoned M-1 and we recognize that. That is something that we want to address.

Commissioner Whitten said I can see the scenario where the neighbor sees that patio and decides that they want one too.

Commissioner Washington asked there was a patio there before and they were making it bigger?

Commissioner Whitten said bigger and covered.

Councilmember Dent asked did building the roof kick in the notice?

Ms. Dang said it was expansion of the physical footprint of the deck as well as adding the roof. If they were to replace it, they could do that repair and replace it. It is the expansion that they wanted to do. I appreciate you recognizing the non-conformity with the other properties and the need to address that.

Commissioner Whitten moved to recommend approval of the 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 January 10, 2023.