



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Planning Commission  
From: Department of Community Development  
Date: November 10, 2021 (Regular Meeting)  
Re: Special Use Permit – 716 & 722 Foley Road (Section 10-3-48.4(6) to Allow Multiple-Family Dwellings)

### **Summary:**

Public hearing to consider a request from Devon Lane, LLC for a special use permit per Section 10-3-48.4(6) of the Zoning Ordinance within the R-3, Medium Density Residential District to allow multiple-family dwellings of up to twelve (12) units per building under conditions set forth in subsection 10-3-48.6(e) and such other conditions deemed necessary by City Council. The +/- 1.06-acre area consists of two parcels addressed as 716 and 722 Foley Road and are identified as tax map parcels 84-B-15 & 16, respectively.

### **Background:**

The Comprehensive Plan designates this site as Medium Density Residential. These areas have been developed or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.

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

**Site:** Single-family detached dwellings; zoned R-3  
**North:** Across Foley Road, single-family detached and duplex dwellings; zoned R-3  
**East:** Single-family detached dwelling; zoned R-3  
**South:** Single-family detached, duplex, and multiple-family dwellings; zoned R-3  
**West:** Multiple-family dwelling; zoned R-3

### **Key Issues:**

The applicant is requesting a special use permit (SUP) per Section 10-3-48.4 (6) of the Zoning Ordinance (ZO) to allow multiple-family dwellings of up to 12 units per building on a +/- 1.06-acre site consisting of two parcels addressed as 716 and 722 Foley Road. If approved, the applicant desires to keep the two existing single-family detached dwellings on the site, to vacate the property line between the two parcels, and to add a three-story multiple-family building consisting of 11 efficiency dwellings.

In the past ten years, there have been several SUP requests, of the same nature, approved along Foley Road. Those requests have predominately been for the construction of new structures within new developments. The most recent request, however, was at 728 Foley Road, which is adjacent and to the west of the subject site, and was to change the use of an existing structure from a single-family detached dwelling to a multiple-family building consisting of four dwelling units.

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.”

Staff believes that condition #1 is met because there is existing and planned multiple-family development in close proximity to the proposed 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, and to dedicate right-of-way or a public sidewalk easement at the time of development to meet the condition of adequate pedestrian facilities. The applicant, however, is seeking a waiver of such requirements and has compared the current request with the SUP request at 728 Foley Road (reviewed by Planning Commission in November 2020 and approved by City Council in December 2020), where staff determined that the

circumstances of that specific proposal did not warrant such improvements. The staff report for 728 Foley Road stated:

“Specifically with regard to Section 10-3-48.6 (e)’s condition #2 as stated above, 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. The conversion of the existing structure into multi-family units rather than demolishing the existing building and constructing a new multi-family structure, and thus disturbing more property, however, brings in to 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. If the applicant demolished the existing structure and constructed a new multiple family dwelling structure, the scale of the project would likely require an engineered comprehensive site plan (ECSP), and therefore, frontage improvements would also be required. The current plan to convert the existing building would not necessitate an ECSP. If curb, gutter, and sidewalk were to be constructed, the existing fire hydrant in front of this property would likely need to be relocated, creating the need for more financial investments in design and construction. While staff contemplated whether the applicant must construct curb, gutter, and sidewalk along the frontage to meet the requirements of condition #2, and further debated whether a condition should be attached to the SUP to achieve the same, in this particular case, staff believes the circumstances of the proposal do not warrant such improvements.”

Furthermore, to limit the scale of development/redevelopment of 728 Foley Road, staff recommended the following condition which was approved with the SUP: “The SUP shall be limited to the existing structure and no more than four multiple family dwelling units.” In short, staff does not believe the circumstances at 728 Foley Road and the proposal on the subject site are equivalent. The subject proposal is adding a new building that will likely require an engineered comprehensive site plan (ECSP) for the construction of a new City-owned water main and fire hydrant to serve the building. Additionally, a formal Erosion and Sediment (E&S) control review may also be required if the proposed building and parking areas disturb more than 10,000 square feet of land. Staff does not agree with the applicant that sidewalks on the opposite side of the street (Foley Road) meets condition #2 of Section 10-3-48.6 (e) as contended in the submitted application letter. To be clear, staff is comfortable not requiring the construction of curb and gutter with this proposed development because it can be difficult to piecemeal short sections of curb and gutter into an existing street with shoulder/ditch, but, as noted below, is recommending a condition requiring the applicant to construct sidewalk along the frontage of the property.

With regard to condition #3, as proposed, the two existing single-family detached dwellings will be kept. The applicant explained they plan for the proposed new building to share characteristics and be of similar scale to surrounding properties, including a multi-story, multiple-family building containing seven dwelling units at 721 Ridgeville Road. Staff believes that constraints of the site, due to property size, lot area requirements within the ZO for each dwelling unit, and required off-street parking, will control the size and scale of the proposed multiple-family building.

With regard to condition #4, the applicant has demonstrated in their submitted conceptual site layout that buildings, parking areas, and travelways can be accommodated on the site, and there are no steep slopes or floodplains to contend with.

The built environment of this neighborhood, consisting of properties along Foley Road and Ridgeville Lane, has changed over the past two decades from a neighborhood consisting of only single-family detached dwellings to now include duplexes, townhomes, and multiple family dwelling units. As proposed, the multiple-family building proposed within this application is consistent with the surrounding parcels.

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 the special use permit to allow multiple-family dwellings on the subject parcel with the following conditions:

1. All newly constructed multiple-family units shall be efficiency, or one- or two-bedroom units.
2. Prior to issuance of any certificate of occupancy for multiple-family dwellings, the property owner shall construct a five-foot wide sidewalk and dedicate necessary public street right-of-way to at least 0.5-feet behind the sidewalk. (If necessary, the sidewalk could potentially be located within a sidewalk easement. This can be determined during the design phase of the project.) While not required to build the curb and gutter or to widen the public street, the property owner is responsible for engineering design to ensure that the sidewalk is constructed at the appropriate grade and location for the future construction of curb and gutter and street widening by the City. For engineering design, the future curb and gutter location shall be equidistant from the street centerline similar to what exists across the street, and there shall be a minimum two-foot grass strip between the back of curb and sidewalk.
3. The entrance at Foley Road to serve multiple-family building(s) on the site shall be no greater than 30 feet wide.
4. The special use shall be established, or any construction authorized shall be commenced and diligently pursued within five years from the approval date of the special use permit.

With regard to recommended condition #1, the applicant requested this condition to limit newly constructed multiple-family units to efficiency or one, or two-bedroom units. Staff supports and appreciates the idea to limit the number of bedrooms for the proposed multiple-family dwellings as it should help address the need for smaller dwelling units in the City. The City's 2021 Comprehensive Housing Assessment and Market Study (Housing Study), identifies this neighborhood as being within Market Type A, and describes that "Market Types A and C are areas with above median access to amenities but because Market Type A tends to be more built out than Market Type C (there are more home sales, which contributes to the Higher Market Activity score of Market Type A over Market Type C), priorities and policies that are appropriate to Market Type A areas include an emphasis on increasing density through zoning changes, infill development and housing rehabilitation to maintain the quality of housing." The Housing Study also notes that "[h]aving an adequate supply of smaller apartments in Market Types A and C is important because these block groups have higher scores for access to amenities such as jobs, parks, full-service grocery stores, and public transit. Because smaller apartments are part of the solution for supportive housing, the location of these smaller units is critical to ensure that persons in need of services can easily access them via walking and public transit."

With regard to condition #3, the City's Design and Construction Standards Manual allows entrances serving multiple-family buildings to be up to 50 feet wide. However, staff does not believe a 50 feet

wide entrance is appropriate in this context and therefore, staff recommends a condition that the entrance shall be no greater than 30 feet wide.

Lastly, with regard to condition #4, the applicant has requested that the City allow them five years from SUP approval to obtain any necessary land disturbing permit or building permits for the multiple-family buildings. Section 10-3-130 (c) of the ZO states that “[w]henver 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.” Staff is comfortable recommending an extension from 12 months to five years.

**Environmental Impact:**

N/A

**Fiscal Impact:**

N/A

**Prior Actions:**

N/A

**Alternatives:**

- (a) Recommend approval of the special use permit request as submitted;
- (b) Recommend approval of the special use permit request with suggested conditions;
- (c) Recommend approval of the special use permit with other conditions(s); or
- (d) Recommend denial of the request.

**Community Engagement:**

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing. The advertisement was published as shown below:

***Special Use Permit – 716 & 722 Foley Road (Section 10-3-48.4(6) to Allow Multiple-Family Dwellings)***

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In addition, adjoining property owners were notified of the public hearing; the property was posted with signage advertising the request; and a notice was provided on the City’s website at <https://www.harrisonburgva.gov/public-hearings>.

**Recommendation:**

Staff recommends alternative (b) approval of the special use permit request with suggested conditions.

**Attachments:**

1. Site maps
2. Application, applicant letter, and supporting documents

**Review:**

N/A