



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: September 10, 2024 (Regular Meeting)
Re: Zoning Ordinance Amendment – Period of Validity for Special Use Permits for Residential Projects

Summary:

Zoning Ordinance Section	Amend Section 10-3-130
Purpose	To modify the Zoning Ordinance to allow special use permits associated with residential projects 36 months to be established or commenced before the special use permit expires.
Applicant	City of Harrisonburg
Staff Recommendation	Approval
Planning Commission Recommendation	August 14, 2024 (Public Hearing) Approval (6-0)
City Council	September 10, 2024 (First Reading/Public Hearing) September 24, 2024 (Second Reading)

Background:

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.

Key Issues:

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.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the Ordinance amendment;
- (b) Approve the Ordinance amendment with modifications; or
- (c) Deny the Ordinance amendment. (Denial would be inconsistent with State Code.)

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 Amendment – Period of Validity for Special Use Permits for Residential Projects

Public hearing to consider amending the Zoning Ordinance to modify regulations associated with the validity of the special use permits, specifically related to residential projects. The proposed Zoning Ordinance amendments would modify Section 10-3-130 of the Zoning Ordinance to allow residential request 36 months to be established or commenced before the special use permit expires.

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 Zoning Ordinance amendment.

Attachments:

- Extract from Planning Commission
- Current Ordinance Reflecting Recommended Amendments
- Virginia Acts of Assembly – 2024 Session – Chapter 301 - An Act to amend and reenact §§ 15.2-2209.1:2 and 15.2-2286 of the Code of Virginia, relating to zoning; solar photovoltaic and energy storage projects; period of validity for certain projects.
- Zoning Determination: Zoning Regulations effecting Solar Photovoltaic (PV) installations, November 6, 2023

Review:

Planning Commission recommended approval (6-0) of the Zoning Ordinance amendment. Commissioner Washington was absent.