



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Master

File Number: ORD 22-010

File ID: ORD 22-010	Type: PH-Zoning Ordinance	Status: Tabled
Version: 1	Agenda Section:	In Control: City Council
Department: Community Development		File Created: 12/09/2022
Subject: Amend Zoning Ordinance to add Cooperative Sober Living Residences		Final Action:

Title: Consider a request to amend the Zoning Ordinance to create and define a new use called "Cooperative Sober Living Residence" to be allowed by special use permit in certain zoning districts

Internal Notes:

Sponsors:

Attachments: Memorandum, Current ordinance reflecting recommended amendments, Extract from Planning Commission - Cooperative Sober Living Residences, July 17, 2022 Letter from Steven G. Polin, Esq., Joint Statement of the DHUD and DOJ on Fair Housing Act, Public comments, PC Memorandum, Notice of Public Hearing, PowerPoint presentation

Contact:

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Related Files:

Agenda Number: 4.f.

Enactment Date:

Enactment Number:

Hearing Date:

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Planning Commission	12/14/2022	recommended to full council	City Council	01/10/2023		Pass
	Action Text:	A motion was made by Byrd, seconded by Orndoff, that this PH-Zoning Ordinance be recommended for denial to City Council, due back on 1/10/2023. The motion carried with a recorded roll call vote taken as follows:					
	Notes:	Commissioner Whitten said we had someone who was testifying at a public hearing regarding where the residents are coming from. You mentioned local, that they would be local residents. People coming from outside the area to Harrisonburg just to live in an Oxford house, is that the model?					

Mr. Stevens said we do not dictate where the individuals are coming from, but the houses do not solicit applications from outside of the community. They do come from inside and outside of the community.

Commissioner Whitten asked how would they find their way to Harrisonburg, if they were from outside the community, to live in an Oxford House here?

Mr. Stevens said it probably varies, case by case. I would be only conjecturing. We have people who come into Oxford houses from a variety of places. Some of them just decide that they need to get sober, seek out mutual support groups and decide that they need supportive housing. Some people will go complete a treatment program somewhere and then want to return to the community and then return to the community to seek work and supportive housing. There are any number of places that they could come from. We have Oxford houses throughout the rest of the Commonwealth, so for people that reside in other areas, there really is no need for them to come to Harrisonburg because we have other Oxford houses and VARR has other recovery residences throughout the rest of the Commonwealth.

Commissioner Whitten said it sounds like there are other localities the use the SUP process in the State of Virginia, according to our attorney.

Mr. Stevens said that none of the Oxford houses that are currently open and operating in the Commonwealth have ever been asked to go through a SUP process.

Mr. Diehl said the bus stop in front of my house which is 1706 Central Avenue. I have talked to several individuals, and they were from Alexandria and other parts of the State. They were not close to this region. When you ask him about where the people come from, he did not answer you in a very direct way. I see people that are not from this area. If we could poll them, I would say that it is infrequent if somebody is.

Chair Finnegan asked if there were any questions for the applicant's representative. 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 often times with these types of hearings, there are people in opposition and people speaking for them. We now have heard from Oxford House, and they are against it. The folks in the room are against it. It sounds to me like City Council maybe picked the wrong choice of the choices to pursue.

Councilmember Dent said I am looking at a letter we received from Strength in Peers which is a wonderful, local organization that has been trying to find ways to establish sober recovery housing. They are indicating their support for the amendment and have been advocating for these for a while. I have noticed that, even though they are supporting it, they say "[z]oning rules and procedures that prohibit recovery houses,

limit them to certain zoning districts, limit the number of persons, or require a public hearing process have a discriminatory effect.” A SUP requires a hearing process.

Chair Finnegan said Strength in Peers probably did not know. The SUP is not a rezoning, but it is similar to a rezoning in that there is a public hearing.

Councilmember Dent said based on their recommendation, but without that understanding, perhaps we need to revisit it as some process that does not require a public hearing but does allow in all zones. That is what they would be advocating.

Chair Finnegan said I am confused as to how to proceed because I do not feel that I can support this, but I also... It sounds like there needs to be another way to do this. If we deny this, it would go to City Council, and City Council would say “we kicked it to Planning Commission.”

Councilmember Dent said and we kicked it back. Mr. Russ, this would be a question for you and Chris Brown because they were offering the two options, the SUP or some sort of administrative review.

Ms. Dang said that with an administrative review, staff would make the determination. There would be no public notice.

Mr. Russ said Oxford House’s position has always been that public hearings stigmatizes the eventual residents. You have to come out to a public hearing and say that the people who live in this house are recovering from addiction and there are negative consequences to that. One way of avoiding that is having staff review, having the City Attorney or the Zoning Administrator review and issue a letter. The neighbors do have standing to challenge the Zoning Administrator’s determination with the BZA if they do not like the Zoning Administrator’s determination, but it would avoid a public hearing. Although, if it wound up at the BZA, then there would be a public hearing.

Commissioner Washington said from my understanding, the Oxford House functions as a family. As a family of eight, to require a SUP for that sounds discriminatory. If they are seen as a family rather than a dense housing situation with multiple different people living there independently, that is different. Is there a chance to change the wording? The ask for a SUP does sound discriminatory in its effect of excluding housing in R-1 and other areas.

Ms. Dang said what I am hearing from Planning Commission is an interest in another option that we could take back and talk internally and present, Option A, here, and the administrative option. I do not know if that is countering what City Council has directed, instead of going to City Council and letting City Council decide based on your recommendation if there should be another option that is created. As far as timing goes, with the large proposal that you are expecting in January, we are not going to have time over the holidays to discuss it. I am not concerned that we will

lose time if this went to City Council and they decide if they want to adopt this option or if they want to draft something else based on what you are discussing.

Chair Finnegan said I would suggest two things. One, that City Council's option to pursue this option as opposed to the administrative option was not the right choice. The second is that there will be a new City Council, with two new members of City Council. I would be in favor of recommending denial and having it go to City Council.

Commissioner Washington asked could we table it as the previous option that we tabled.

Councilmember Dent said I would prefer to table it and go back to the drawing board better than to deny because you want to advance it in some form. With the public hearing process having a stigmatizing or discriminatory effect, maybe that is not the right way to go. I do not know what motion to make to recommend that back to City Council.

Chair Finnegan said the SUP is not the right path.

Commissioner Byrd said among the things that I have heard related to this and how people have been discussing it, I would be in favor of denial if it is going to include a SUP request. The definition, I am fine with, with the suggested changes from "handicapped" to "disabled" and adding "professional" to supportive. I have no issue with it applying to all the zones that could have residences, I am fine with that. I highly believe in the prejudice and discriminatory effects of a public hearing for multiple reasons. I see how people will feel that they need a say about what is in their neighborhood, but they are just putting people in a residence. Making it a bigger to-do sounds like it is defeating the purpose. If I for some reason got on something, and we have seen studies where people have gone on stuff because drug companies did not inform doctors and stuff... There are many reasons why people end up doing things. Then I go to a place and cannot go anymore because the community found out that we are there... As long as there is a SUP requirement, I am not going to be in favor of it.

Chair Finnegan said what Commissioner Byrd just said is why I would be in favor of denying this. It is not about tweaking the language. It is not send this back and give us a different version of a SUP. The SUP is not the right path. I am in favor of denying.

Councilmember Dent said based on that logic, I could go with that, as long as we make it clear to City Council that we support the sobriety housing, but the SUP is the wrong way to go because of the public stigmatizing and the outing of the people who live there.

Commissioner Washington said I used to do case management in Charlottesville for

two years. I saw a lot of people who suffer from addiction. A part of what I saw, the reason why people move around so much, is because Oxford House is in demand. If the Oxford Houses in Charlottesville are full, they go elsewhere. I would not say, in terms of where they are coming from “local versus regional,” because to some folks that is still a community. Also, in some cases, folks do not want to be in the same community where they fell into addiction. There are different reasons why people travel. It is because of necessity and because they want a fresh start. What is the difference between someone moving here for sobriety and someone moving here for a job? I think that a lot of the comments that I heard tonight were discriminatory. You referred to the statement that said for whatever reason you cannot say no to this. It is discriminatory to question that because you have an addiction and you are in my neighborhood, that looks bad. You do not know what people are going through and to be good neighbors, you should be able to accept someone who is a millionaire versus someone who has an addiction problem and that looks different for everyone.

Commissioner Whitten said that could be the same person.

Commissioner Washington said absolutely, it could be the same person. You are right. Also, to expect the SUP for a family house does not sound right. The need for an ordinance amendment is important, but to require a SUP is discriminatory.

Commissioner Whitten said I hear that. My discomfort with this is that this one organization that has their model is saying that we have to buy their model. There are other sobriety houses. There are other means and methods of doing this. Their percentage of success is not particularly high, compared with others. Mr. Stevens mentioned a person that checks in frequently, and I feel that there should be some accountability for the people who live there and not just from them because they are, by their own admission, struggling. They are trying, every day, to do better. That is the definition of being a part of a support group or being a part of AA. It is a daily journey. It feels a little strange for us to say that we believe in this model, we want to make an exception to our zoning. It is an exception to our zoning. I am fighting the problem of having fraternity members being able to call them a fraternity house versus just a bunch of guys that live together. There is a difference, and the behavior is different. These are two different things, but it does have a likeness to it. It does have an impact on neighborhoods if there is upset. If you read very much about Oxford House online, it is all not a rosy picture. That is just the facts. You cannot imagine a family that would always have a rosy picture. You put eight individuals in a house together that are struggling with addiction, there are going to be personality issues. There are going to be conflicts. I do not think that it is unreasonable to think that there should be some accountability beyond just welcome to our neighborhood, we want you to be here, we want to support you any way we can. What else does Oxford House do to make them accountable to a neighborhood. There is a responsibility on that end too.

Commissioner Armstrong said they do certify their houses for the Virginia Commonwealth. The people checking, I assume is through regular social services

outreach. That certification has to be accessible to local social services who can support that unit. I think that is what he was describing, so there is accountability through the certification process.

Commissioner Washington said what I heard is accountability for the Oxford House. Also what I heard was an assumption and a prejudice towards folks who live in this communal living based on stuff that you read on the internet rather than... You are judging the individual before they get there. I think that is part of what was said in this packet, trying to avoid prejudice for the living situation. While good intentioned, what you did was make an assumption based on statistics that you got on the internet rather than knowing that person going through recovery locally in Harrisonburg.

Commissioner Whitten said if you want to call that prejudiced because I did go and look at other localities and problems that have occurred, I think that is what most of us do when we look at other zoning issues too. We look at how it is working in different localities and how they are working here. Are there problems? There is nothing wrong with doing research. The way that you said "on the internet" makes it sound like it is some made up story. I believe that it was credible information that I was reading. I always look for sources. I am somewhat insulted that you consider that that comment would be prejudiced. I do not believe that is true. I think that when you put eight people in a house, that have a common problem with addiction, you are going to have some issues. I want to know that there is somebody that is guiding, directing, leading... People that have an alcohol or drug problem do need that support. They do need more than just each other. There is a much bigger problem there to start with that landed them in that house. To be able to be a supportive community, we have to be able to ask for that accountability. I think that is not prejudiced at all.

Commissioner Washington said I did not mean to offend your or insult you in any way. Based on the language in the Fair Housing Act, what you said based on what you read from the Oxford House website and from other people and other municipalities, I think that you are judging the person prior to getting there. One thing that I want to correct it on is that you called it a problem, when these folks have disabilities. That is one thing, in terms of language that we need to be aware of because you are stigmatizing folks who are seeking help for their disabilities. The language is "disability." It has a negative stigma when you say "problem." They are different things. And it is not a density issue. It is how we define "family." That is something that we are getting muddled in, density versus the definition of a family. These folks are coming in as a family. It is a family house. It is not eight independent folks living independently.

Chair Finnegan said these are all valid points. What I would like to focus here at 9:49 p.m. in this meeting is what to do about this ordinance amendment.

Commissioner Byrd made a motion to recommend denial.

Chair Finnegan said Commissioner Whitten was talking about accountability. My question to Mr. Russ is what accountability can the City require regardless of whether we would like Oxford House to do it or not?

Mr. Russ said one of the things that we can require is that they go through one of the credentialing entities that State approves. Between now and whether this goes back to City Council, or you want to meet again, I can make sure that we can have a better understanding of what that process looks like. Whether it is just submitting a form, or someone from the State comes by every so often, or what exactly that process is, to give you a better understanding about what it means to be credentialed, and what that looks like moving forward. Not just when you first become credentialed, but how do you maintain that credential. We can make sure we have more information.

Commissioner Orndoff asked do we have the authority to send this back to staff and ask for a re-do?

Chair Finnegan said we can recommend denial or approval or table it tonight.

Mr. Fletcher said we reacted to what City Council directed. You can make a call as recommendation as to what you want. If you are looking to recommend denial, we can take it, or we can hear you say you recommend denial. We can bring it to the attention of City Council and they may advise otherwise and not put it on the agenda.

Commissioner Byrd said I apologize. I was trying to cut the commissioners off. I am always concerned when commissioners are talking to each other about each and not the application. I do like the definition, but I have an issue with the SUP. I move to recommend denial.

Commissioner Orndoff seconded the motion.

Councilmember Dent said I would like to add, to send with the denial, that we mean that as a recommendation that City Council pursue a different path.

Chair Finnegan said when I vote to deny, it is not because I am against Oxford House, it is because I do not like the SUP process for this use.

Commissioner Whitten said this is not just Oxford House. It needs to be called what it is Cooperative Sober Living Residence. It does feel like they have coopted this conversation. We are bending to what they desire us to do. We should never do that when it is a general topic like this. There are other sober living opportunities.

Chair Finnegan said such as Strength in Peers. They do not want a public hearing process.

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 denial of the Ordinance Amendment passed (7-0). The recommendation will move forward to City Council on January 10, 2023.

Yes: 7 Finnegan, Orndoff, Byrd, Whitten, Armstrong, Dent and Washington

No: 0

1 City Council 01/10/2023 tabled

Action Text: This PH-Zoning Ordinance was referred back to staff.

Notes: Adam Fletcher, director of Community Development presented a zoning ordinance amendment to add a new definition and use for Cooperative Sober Living residences. He reviewed the history of this item, reasonable accommodation request options, the proposed ordinance and possible amendments to the proposed ordinance.

He stated staff recommended approval, however, Planning Commission (7-0) recommended denial as they believed this should be pushed more toward the by-right option, they did not want to create an opportunity where there would be a discussion in the public realm that might negatively stigmatize the people who would be living in these residences.

Chris Brown, city attorney, stated this is a very difficult and thorny issue, with concerns from neighbors, those that want to help these residents and zoning issues. He reviewed the current occupancy ordinances and stated these are in place so that certain sections wouldn't turn into a fraternity row in neighborhoods, which is all legal under Virginia law and the Federal Fair Housing Law. He stated the Fair Housing Law does require a locality to make reasonable accommodations to persons with disabilities when they apply. He stated we have three "group homes" in the city and have been located in community residential areas that are occupying single family residences in which normally unrelated groups would not be able to occupy. He reviewed Virginia State Code that was amended on July 1, 2022, that addresses group homes, recovery residences etc. he stated the Fair Housing Act is critical on this, in which many localities across the nation have dealt with and substantial litigation. He reviewed the Fair Housing Act, in particular the following:

"Cannot discriminate in the sale or rental or otherwise make unavailable, a dwelling to a buyer or renter, because of a handicap." And "a refusal to make a reasonable accommodation in rules, policies, practices necessary to afford

such person equal opportunity to use and enjoy a dwelling.”

He stated just to clarify the definition: “disability” is an individual with a physical or mental impairment that limits one or more major life activities or a person who is regarded as having such an impairment. He stated drug and alcohol addiction is considered such an impairment. He stated that doesn’t apply to someone who is currently using illegal drugs. He stated from what he understands, the recovery centers or group homes residence who are found to be using alcohol or illegal drugs are asked to leave. He stated the Act requires localities to consider and adopt accommodations for group homes for people who are recovering from alcohol and drug addiction. Courts will most likely require localities to accommodate a request for up to eight unrelated individuals to reside in a home if they fall under this category. He reviewed the State Code for certified, highly regulated, assisted living facilities for individuals with mental illness, intellectual disability or development disability, with one or more resident or non-resident staff persons living there. He stated State Code references for 8 or fewer residents with someone providing service and supervision it must be treated just as you would a single family residence. He stated eight should be the maximum we allow in a Cooperative Sober Living Residence in the city. He reviewed other language in the State Code.

Council Member Robinson asked for clarification of what we have locally. Mr. Brown stated we have three Oxford Houses, that are credentialed, and as of July 1, 2022, Oxford House is recognized by the State as a credentialing agency. He stated a few that we have been approached by over the past few years are not credentialed.

Mr. Brown stated 8 unrelated occupants is where we need to be at, we can still have the special use permit process, but we can’t base denial on the status of the individuals with a disability. He stated we can base the request on other traditional zoning regulations such as parking. He stated the proposed special use permit was designed to provide a process by which an accommodation could be granted by the locality to these group homes. He reviewed what the ordinance amendments consisted of and the changes that need to be made to reflect the changes from July 1, 2022. He stated there may be additional changes from the State Board of Behavioral Health and Development. He reviewed additional requirements and language in the State Code, and stated staff feels that it makes sense for recovery residence of no more than eight individuals to be a by-right use. He stated staff’s recommendation is for Council to refer back to staff and the Planning Commission to look at the By-Right use for up to eight individuals for certified Recovery Residences and other issues such as impacts to a locality, additional court cases etc.

Council Member Fleming stated there are 160 of these in Virginia, Winchester has 14, Richmond has 40, Roanoke has 11, and it sounds like it's a recent treatment model, and it is growing faster than localities can account for this and you can't not allow it due to Fair Housing Act laws. He asked if we have reached out to other localities. Mr. Brown stated staff has reached out to several localities. Further discussion took place regarding possible regulations that could be applied and possible changes to State regulations.

Council Member Robinson asked how many people must be in a sober living house in order to require a live in staff member. She stated she is concerned about the violations. Mr. Brown stated there is no authority that requires someone to live on site at these residences. Council Member Fleming stated some of the credentialed organizations to require on-site live in support.

At 8:58 p.m., Mayor Reed closed the regular session and called the fifth public hearing to order. A notice appeared in the Daily News-Record on Friday, December 23, 2022 and Friday, December 30, 2022

Bob Sear, 1652 Central, stated he attended the Planning Commission meeting, reviewed current city ordinances, and shared his concerns about enforcement of violations.

Anthony Bopp, 69 Sharon Street, stated the way Oxford House has flaunted city regulations is irritating. He stated they create the housing, wait for complaints, and then come to the city to accommodate the regulations. He referenced the federal law "reasonable accommodation" requirement by localities, it doesn't say we have to do everything Oxford House wants. He stated these facilities seem to be consistent with profit maximization not necessarily with the recovery of the residents living in these homes. He thinks some professional should be working in these homes, for the recovery aspect and to watch over things. He stated the Fire Department should inspect the house prior to anyone moving into these homes.

Panayotis "Poti" Giannakouros, spoke on the need for the wellbeing of these residents and preventing predatory exploitation of them; reducing the number allowed to reside might help weaken the profit motive; the possibility of requiring an owner/operator occupancy such as in short term rentals; how potential for profit oriented expansion is the threat and should be limited;

At 9:17 pm, Mayor Reed closed the public hearing and the regular session reconvened.

Council Member Fleming stated he is wondering how other localities are approaching this and would like to get feedback from them. He stated there are people in these places, and he doesn't want to put them at risk.

Mr. Brown stated the staff chooses to withdraw this request for further evaluation but asked if the up to eight individuals and the by-right use is acceptable to Council. Council Member Fleming stated it sounds like a good starting point. Council Member Jones stated we are seeing more of these because it is profitable, and we are forced to make these companies accountable, and we need to be as aggressive as possible to protect the neighborhoods and the city.

Mayor Reed stated we must look at how it effects the neighborhoods, but we also want to make sure that the people living in those homes are taken care of. She wants to know what services the residents of these homes are getting. Further discussion took place on how these homes operate, what services they provide and other organizations already in the city that offer programs.
