



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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July 31, 2023

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

SUBJECT: *Consider a request from Katherine S. Moran and Marcie E. Harris to rezone 361 Franklin Street*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: July 12, 2023**

Chair Finnegan read the request and asked staff to review.

Ms. Dang said the applicant is requesting to rezone a +/- 10,269-square foot parcel from R-1, Single-Family Residential District to R-8C, Small Lot Residential District Conditional. The vacant parcel is addressed as 361 Franklin Street and is located on the southeast corner of Franklin Street and Monticello Avenue. The applicant is proposing to construct a single-family detached dwelling. As explained in a letter submitted by the applicant, the key goals are to keep most living spaces and essential functions on the main level of the home. To achieve this, the home requires a large footprint that conflicts with the setback requirements of the R-1 district. Within the attached exhibit, the applicant illustrates the allowable setbacks of both the R-1 and R-8 districts.

Proffers

The applicant has offered the following proffers (written verbatim):

1. More than one dwelling is prohibited.
2. The minimum setback along Franklin Street shall be 20 feet.

When the Planning Commission agenda was published last Friday, the staff report only included proffer #1. Last Friday, staff reached out to the applicant to discuss concerns staff had about the setbacks along the public streets and the applicant needed more time to consider them. Yesterday, the applicant submitted a new proffer statement that includes proffer ##2.

Note that the submitted conceptual layout is not proffered.

Regarding proffer #1, in R-8 zoning, duplexes are allowed by right and given the lot area and dimensions of the property, two duplex structures (four dwelling units) could be constructed, or the property could be divided into three single-family detached dwelling lots. If the rezoning is

approved, although the R-8 district dimensional regulations would allow the property to be further subdivided, since the applicant has proffered to prohibit more than one dwelling on the property, subdividing the property would not grant permission to build another dwelling on any newly created parcel. The submitted proffer essentially limits the subject area to only contain one dwelling unit.

Regarding proffer #2. The R-8 dimensional regulations require a 10-ft. minimum front yard setback and Article T of the Zoning Ordinance, which is where Modifications and Adjustments are, requires corner lots to provide setbacks equal to the required front setback along all yards adjoining a public street; provided, however, that the setback regulations shall not reduce the buildable width to less than 50% of the lot width. Staff was concerned that a 10-ft. minimum setback allowed by the R-8 district along Franklin Street would allow the single-family structure to be too close to the street. In response, the applicant has proffered that the minimum setback along Franklin Street shall be 20-feet. The minimum setback along Monticello Avenue would be 10-ft. as allowed by the R-8 district.

Note that any special use permit approved by City Council would still be permissible.

Land Use

The Comprehensive Plan designates this site as Low Density Residential and states:

“These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.”

With the submitted proffer, both the allowed dwelling type (single-family detached dwelling) and density (at about 4 dwelling units per acre) conforms with the Low Density Residential designation.

Know also that the R-8 district’s occupancy regulations are the same as the R-1 district’s occupancy regulations. When the R-8 district was drafted, the proposed occupancy regulations were intentionally designed to mimic the R-1 and R-2 districts because the R-8 district was intended to promote family occupancy with higher unit density abilities. The occupancy regulations allow owner-occupied dwellings to be occupied by a family plus two individuals or a maximum of three individuals and nonowner-occupied dwellings can be occupied by a family plus one individual or a maximum of two individuals.

The existing property meets the R-1 lot area requirements, lot depth requirements, and is 10 feet less than the currently required 80-foot lot width. During review of this request, staff discussed whether it is appropriate and best practice to rezone an R-1-zoned, buildable property to the R-8 district to alleviate setbacks to construct a larger building. The R-8 district was created in 2019 to provide more flexibility for developers to create more housing opportunities by establishing smaller lots for more dwelling units. Ultimately, staff concluded that on a case-by-case basis and with appropriate proffers, rezoning a lot in an established neighborhood to R-8 should not have

major adverse effects on the surrounding properties nor defeat the overall purpose and intent of the R-8 district.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the rezoning request.

Staff discussed with the applicant concerns with the proposed entrance along Franklin Street, primarily with the steep slope on the property, grade of Franklin Street, and potential for sight distance issues. The applicant understands these concerns and will evaluate them in more detail during building design. If the driveway is ultimately approved and constructed, the property owner must also ensure that the entrance (including the ADA-compliant pedestrian access route across the entrance) is built to standard and does not impede the sidewalk.

Public Water and Sanitary Sewer

Staff has no concerns with the requested rezoning regarding water and sewer matters.

Housing Study

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject property within Market Type D, which has "neighborhoods [that] are characterized by the lowest growth of any market type and low housing volume turnover." Additionally, "[i]ncomes in different pockets vary greatly. Median household incomes across block groups in these neighborhoods have the broadest range: \$20,000 to \$91,000. This could point to a divergence of two conditions found within these neighborhoods: one of stable, high-income, low turnover neighborhoods and one of lower turnover in lower income neighborhoods.

Public Schools

The student generation attributed to the proposed single family dwelling is estimated to be one student. Based on the School Board's current adopted attendance boundaries, Spotswood Elementary, Skyline Middle School, and Harrisonburg High School would serve the students residing in this development. Harrisonburg City Public Schools (HCPS) staff noted in their review comments that schools are over capacity in many of the schools.

Recommendation

While staff initially withheld the recommendation pending additional information from the applicant, with the newly submitted proffers, staff is recommending approval of the rezoning. Chair Finnegan asked if there any questions for staff.

Vice Chair Byrd said the setbacks that are on corners make sense to me from a drivers' perspective of site from Franklin into Monticello. Are you saying that the 10 is still fine?

Ms. Dang said yes and remember also that there is also public right-of-way behind the curb to the property line and then there is also that 10 feet.

Chair Finnegan said I think to folks listening at home, I know it sounds like R-8 is eight times more dense than R-1 and that is not the case. There are times when I wish that we had called R-8

R-2Z or R-2X. I just wanted to clarify that. We are not increasing the density to eight times the density here. It is just the number that was available after R-7. So, that is unfortunate.

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

Vice Mayor Dent said to your point this is another of those weird mismatches of zoning that the reason for moving it to a higher density is strictly for the lower setbacks, but it is still one very large single home. I really appreciate what they say in here about aging in place with a single level dwelling. So, since that neighborhood is mostly 2 and 3 story houses, I think it can still fit and that is a good adaptation.

Chair Finnegan said the one other question I have for staff is by right without this rezoning...let's say this gets denied by City Council, what could go there by right is what we saw in that red boundary and how tall could that be?

Ms. Dang answered 35 feet.

Chair Finnegan opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Matthew Robertson, owner of The Stratford Companies and applicant's representative came forward to speak to their request. He said I grew up in Rockingham County. I have called this community my home for my wife and children for the past 28 years and I am here this evening representing Kathy Moran and Marcie Harris who are also in attendance. Our goal is to design and build a sensitive and thoughtful single family detached home which respects and reflects the existing development pattern and character of the neighborhood. We desire to design and build meaningful indoor and outdoor spaces where a family can thrive, and a neighborhood can be enhanced. We are designing a front porch where Kathy and Marcie can sit and interact with their neighbors and a functional backyard which is inherently more private. We are working with a challenge of steep grades on each street. We have therefore placed off street parking and driveway areas farthest from the corner in order to provide off street guest parking in a driveway with reasonable slopes. We have studied the rhythm of the existing homes along these two streets with regard to building heights, building setbacks and open spaces. The current zoning classification does not permit the continuation of this rhythm and overall structure of the neighborhood. We have heard and share the concerns voiced by some neighbors and staff concerning potential density in building setbacks. We have listened and responded to these concerns to the written proffers which are an integral part of this request. I had very productive and enjoyable conversation with Mr. Nathan Horst through the phone this afternoon. He is the adjacent property owner along Franklin Street. We were able to discuss and review some ideas as well as some of his concerns regarding this application. I would like to thank him formally for this spirit of citizenship and cooperation. We spoke with additional property owners on both Franklin Street and Monticello Avenue, some of whom are here tonight to show their support for this request. I am happy to answer any questions you may have. I appreciate your time and consideration.

Chair Finnegan asked if there were any questions for the applicant.

Chair Finnegan continued and said I guess my question is when you were looking at this, did you go to the Community Development office and just kind of say we would like to change the setbacks?

Mr. Robertson said we had discussed with staff over the phone the potential for a variance to reduce setbacks. There are topographic constraints to the property, right? It goes up in elevation as we go up Franklin Street and up in elevation as we go up Monticello. A corner lot with building setbacks in topographic constraints with the scale of this lot is very, very challenging but probably not challenging to the point in creating hardship approaching confiscation. So, the idea of a variance to reduce the setbacks was not likely and a recommendation that we pursue another method or another tool in the zoning code to allow for this type of building to be built here. Which is more representation of the structure of the neighborhood. We pursued the rezoning instead of a variance.

Chair Finnegan asked if there were any questions for the applicant. He then asked if there was anyone in the room or on the phone wishing to speak to the request.

Jared Burden, a resident of 343 Monticello, came forward regarding this request. He said I wanted to express my strong support for this rezoning because the plan of Kathy and Marcie is very harmonious with the street and the neighborhood. The use of the R-8 zoning to allow, among other things, the aging in place. Which I believe in very strongly. A workable backyard makes a lot of sense to me. I think that taking advantage of that setback possibility that arises from R-8 is very appropriate from a land use perspective. Most importantly this is a great plan. It is going to be a great house in a great neighbor for those of us along Monticello and Franklin. Thank you.

Jim Anderson, a resident of 356 Franklin St, came forward regarding this request. He said we are opposed to this going into an R-8 because after reviewing all the different I guess inadequacies of control in the R-8 district. There are tremendous opportunities there to absolutely distort that site into something that it should not be. There is more restriction in there saying that they cannot have multiple people coming and staying nights and basically a bed and breakfast type of set up. There is nothing that says that you can go through and have it change to something else other than what it is now as a residence. It is a challenge of the purposed zoning for the way that it is set up in the R-8 section. I do not know what they can do about that. When we called in, they said they could not get setbacks because it is not allowed to have a review and change in Virginia. It surprised me they could not change the setbacks on something by getting a variance. We have lived in several different and that just shocked me that you guys do not have that here. Yes, driveway proposed on Franklin Street will eliminate at least two parking spaces on the street. Why not use the parking spaces that are on the street currently that people actually utilize to let that stay there rather than putting another parking space in there for guests where that could be part of a bed and breakfast side. I have no idea what the proposal is on this with the long-term expectations is. New owners come in, buy the property and decide to change it. It says right in the R-8 district that it is a right and a right in real estate is a right. I do not know if you guys have a different setup for Virginia, but in Michigan and Florida a right is a right, you can do these things. The variance probability, from what it was originally proposed to be, could be different in 10 years. That is why we are opposed to it. It just does not make sense to do that. Looking at the actual plan that they have set up, they would lose probably, and I do not have the exact measurements because the site plan does

not show exact measurements, but it appears to be that they lose about 150 to 200 feet on the main floor. Why not put that on the second floor that they have already proposed to have on that and eliminate the part that is extending over that to the other property to the neighbors on Monticello and then shift the house back to be the current setbacks. They would be right inside of that bracket. We have talked to several of our neighbors, I hope you got the responses in writing, you should have. Everyone that we have talked to was opposed to it. So, I am not sure where you have got on the positive things but everybody that is right around there, we are not real happy with the idea of having it happen. Now, there is another more significant problem that has to do with the Public Works Department. That is something that we personally experienced in the spring because the main line that goes through and down the middle of Franklin Street which also is ran into by Monticello is only a four-inch sewer line. Now, I have been involved with Dennis Lambert, he told me that more than 10 years ago that was supposed to be changed and expanded. He put in a proposal more than 10 years ago. He acted like he was kind of surprised that had not happened. We had a problem because we had the opportunity to have several of our neighbor's stuff that they were sending down the line in the sewer come into my home. It took the City three surgeries in the middle of a street to get that taken care of. When they literally had to come in, dig up a chunk of the road, repair all the pipes that were there, and run it to my house. They got to my house, and we ended up, because of the problems we were experiencing, having a contractor come in and put an entire new sewer line all the way into my home. The difficulty is if you have other residents going in, what is going to happen with the sewer lines. As it is, the neighbors right directly across the street from us have expressed to me and there was supposed to send a thing over to you, that they have been having problems with their sewer and the same type of thing that we have been having. Now we are fixed and they are having more problems. That is something that needs to be taken care of. In the process during this time I talked with Doug, the field manager from the City. He expressed the same concerns and the problems with not having a main line that is supposed to be the requirements for zoning is. I talked to both City Engineers, Zach and Micaela, and they were boring through trying to figure out what to do as far as their proposals for expanding that line to the street because that is the whole thing. If you are down inside the manhole cover, whether at the end of Monticello, there are three four-inch lines coming in-to that and one four-inch line coming out of that. Taking care of the entire residential area and that creates a major headache. So, if they are going to put another house in there, they probably ought to consider doing something about the street, two at the same time. I do not know what the R-8 district is, it says they cannot add a kitchen to a property, but if you are building a new property, why don't you just put in two kitchens at the same time and that way you can have your bed and breakfast setup or your weekly rental. Again, I do not expect that is their proposal, but in five, ten years or they moved to something else, somewhere where they can actually do that. I do not know how you guys personally can limit what the new owners can do on it when it says it is their rights to do these things. That is my spiel. Thank you very much.

Nora Anderson, also a resident of 356 Franklin Street, came forward to speak to this request. She said what I am saying is R-8 we are not happy with that designation in this area because we have no other ones and we are afraid that other lots that are available would be allowed to have R-8 with all the R-8 things that they can have. We know one person on Ott street is thinking about selling her property which is three lots. Now, who is to say that the person that buys that says "I want R-8 there because I want to put duplexes in, I want two houses and you have allowed it over here on Franklin Street and Monticello why can I not have it. Just like you have said on other ones." Why

are we fitting what is an R-1 area, and since it is not complying with what the owners of the property want to do, we just want to give it this other zoning so that they can have what they want but we cannot have what we want. I am not happy with the setbacks that are posed in the proffers. I think that they are too close to the road. They look terrible. Why should we suffer because these people did not look at their due diligence when they purchased the property on what could go on that property? We bought it as a R-1 and we did not expect somebody to come in and say “we are not happy with the variances so change it to R-8 so I can have them.” I do not agree with that. That is all I have to say.

Sarah Jones, a resident of 334 Monticello Avenue, came forward to speak to this request. She said I am the house to the south side of this lot. So, the setbacks that Marcie and Kathy are asking for will be very close to my home. I am all in favor for what they are doing and have suggested. I think they are very honorable people. They have been in this community a long time. I can understand your concerns Mr. and Mrs. Anderson, I know. They have been in this community. They have a small business here. They hope to move Kathy’s own business to downtown Harrisonburg because they want to be able to walk from this potential new home down to their place of business in several years, that is their hope and plan to do. This lot is a bit difficult. It does have some very steep hills but in one respect it makes it very agreeable for a lesser setback in my opinion and that it is raised up above Franklin Street and it is actually raised up above the better part of Monticello. So, it sits up, it is not right down on the shoulders of both of those streets. They are right on my shoulder, but I know these folks. They have been very forthright and honorable in everything that they have done. Matt Robertson, you could not find a better contractor available. He is impeccable. Does impeccable work. Kathy and Marcie could have gone to some lesser quality home builder plan and certainly probably put in something there that would have been a lot less in value and prestige and look and price, but they chose to go with Matt, and I think it is a wonderful choice. I do not think you could get any better. So, I think they are offering to put it on this lot. I trust them, I take their word. I do not understand totally about proffers. If it says it can only be one dwelling, I guess that also conveys to another purchasers, should they decide to buy it. That is a protection that it is a single-family home then. Without that proffer I still stand because they have the decency and commitment and honesty to come to me and ask if they can meet with me personally, talk to me in my home, show me their plan, ask me how I felt about it and what was my concern. They have always been more than upfront and more than willing to try and work with you and they want to be good neighbors. I am all for it. I look forward to having them in our community and I honestly think that they will increase the value in many ways. With their presence and the landscape that Matt does, he is a landscape architect. I cannot wait to see what he does. I am going to be jealous as I can be, but that is okay. I get to look on to it. I am all for it. I would like to see them there close in our community.

Chair Finnegan 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.

Vice Chair Byrd said without proffer number one, I would not even be anywhere near close to being in favor of this. So, with that present I feel it alleviates a lot of the concern of extra dwellings and all entails. That also addresses a concern about some Public Works issues that we always tend to hear about in zoning for any reason because the current zoning is for one dwelling and if it is limited to one dwelling, we are not increasing the amount of dwellings that are currently zoned to

that area. The variance route, as I learned as a member of the BZA, it is very hard to prove hardship. And because of options like this, a person would have a hard time getting a variance through the BZA because we would go “why did you not just do other avenues?” So, hearing peoples’ concerns but seeing the two proffers, I would be more in favor of this than initially at first glance.

Commissioner Washington said just to clarify, the proffers do transfer over to the next?

Chair Finnegan said the only way, and correct me if I am wrong, those proffers could get removed is if they came in for another rezoning. That is true of any property. That is true for my house, your house, anyone’s house. Any house can be requested to be rezoned but it conveys when it gets sold.

Commissioner Baugh said it becomes part of the zoning of that tract.

Chair Finnegan said that is why the “C” part is important, R-8C, its conditional. I do not know if it possible to bring the one that shows all the properties and lot lines going back down the hill, is that one in this presentation? It is hard to see on this one, but you can see, this is just an interesting note about zoning, if you look going down the hill at the corner of Ott and Franklin, the setbacks are very small. In a way, when you are going down the hill you are going back in time, not exactly but you are going back to when the setbacks were less. I did ask staff when these were zoned R-1 and they were zoned R-1 from the previous designation of A-1 in 1963.

Ms. Dang said 1963 was when this particular property was zoned R-1 and, presumably if I recall correctly looking at the zoning map from that time, the other properties too. At that time in 1963 the area and dimensional regulations basically have not changed. The maximum number of stories is now 3, right? So, it went from two to three and prior to that it was zoned A-1 residential district that did allow for smaller setbacks and then who knows before 1939, I think is when the first record that we have in our office of the zoning ordinance in the community, I do not know if it was allowed then.

Chair Finnegan said it is important that we not think when Harrisonburg was founded that R-1 did not exist and when a lot of these houses were built, R-1 did not exist.

Ms. Dang said your point being that some of the homes or many of the homes in this neighborhood are nonconforming to R-1 setback requirements and are thus closer to the property line.

Chair Finnegan said if you look at the corner of Ott and Franklin, that setback is pretty small for a corner lot. I do think it is important to kind of keep that historical context in mind. I also went through and looked up when a lot of these houses were built and the dates; 1955, 1925, 1957, 1928, 1962, 1900, and 1958 those are all kind of on that block. All of those were before R-1. I would also say I think there is a bigger discussion to be had about, I can see this becoming more common, these types of requests to rezone from R-1 or R-2 to R-8 to change the setbacks with proffers. I think we should keep these in mind as we are looking at the Zoning Ordinance revisions because I feel that this request in my opinion...one single family house is allowed by right on that property as is if this gets denied. Which does not address the very real concerns about the plumbing which is serious. It is just something that I think we should keep in mind and consider as we are moving

forward. We did this with short-term rentals. We said okay, there needs to be by right use. Trying to find some sort of compromise in this.

Ms. Dang said if I may just address just a little bit of the sanitary sewer main question, I did reach out to Micaela Smith and Zachary Hinch at the Department of Public Utilities after receiving the written comment from the Andersons here. The response that I received from Public Utilities is that they acknowledge that the sanitary sewer in Franklin Street is undersized by current standards. However, they have no record of capacity related issues in the area, and they acknowledge that there were structural problems with the pipe earlier this year, which they have resolved. It was more of a structural issue, not a capacity one. Although current standards today, they would build a larger pipe. Eventually, they would like to replace the sanitary sewer line with a larger line, but of course there are other priorities that they are focusing on throughout the City. There is adequate capacity for this dwelling to be there.

Vice Chair Byrd said well, that sounds like an old neighborhood of Harrisonburg with old pipes that are being replaced piecemeal. That must be a joy to live there. I would like to move us along. I will make a motion to approve with the two proffers as presented.

Commissioner Armstrong seconded the motion.

Chair Finnegan said if anyone is planning to vote against this, I would encourage you to just state your reasons why just so that City Council knows why.

Commissioner Baugh said unless somebody comes up with something I have not heard yet, I am going to support this. I just want to affirm for the Andersons here, and anybody listening, that with...and your point is well taken about what rights means and I understand it sounds like you have some familiarity in other states with this stuff, but I mean I will just say this proffer number one really is putting a position where anything else that they want to do they have to come back for a process like this to be permitted to do it. Everything from if they wanted to increase the density, if they wanted to put a duplex that is now two dwellings, if they wanted to do Airbnb there is a whole short-term rental thing they have to go through.

Chair Finnegan said just to clarify, if they want to do homestays, they can do that by right up to 90 nights.

Commissioner Baugh said that is right, but so can everybody else. With the big thing there being that they are owner occupied type thing. Just really wanted to confirm that. That and the piece to that I cannot speak to other states, but I can affirm that the Virginia Supreme Court has repeatedly for a long time said that at least in Virginia, variances that you get for setbacks through the Board of Zoning Appeals, hardship essentially means literally cannot find any way to do it. The bar is insanely high and in fact, the opinion that they end up having to write over about every 20 years is the natural slide of localities to start making decisions based on practical considerations. Maybe in another way, instead of putting it as if you were a disgruntled neighbor, I think your legal ability to challenge a variance is actually easier than your legal ability to challenge a rezoning. The Supreme Court is has just said that hardship is...the bar is just really high.

Chair Finnegan said one last thing that I will add is I went back through our discussions from when we created R-8 and I was trying to decide was this in keeping with the idea of R-8 and I think it is kind of borderline. The idea behind R-8 was to allow more flexibility for these lots, more infill development and more density. This can be considered infill development. It is on the line, but it is not increasing the density. I did not get anything from reading the old minutes.

Commissioner Baugh said I will go a step further, I never thought anything like this was what we would be talking about. Maybe I am more comfortable than you are I am going to go a little more with the mindset of if somebody can figure out how to do something that I could not think of, good for them. Really for the same reasons, that proffer number one we would be having a very different discussion if that was not there.

Vice Chair Byrd said I view variances as “eh, no”? and setbacks are a matter of safety and concern and visibility. As long as safety and visibility are maintained, slight changes to some setbacks can be reasonably accepted. That is my view on that particular subject.

Chair Finnegan said spoken like as a true member of the BZA. Any last comments before we do roll call vote.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	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 August 8, 2023.