



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

August 1, 2022

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

SUBJECT: *Consider a request from McDorman Properties LLC to rezone 209 and 211 Broad Street*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: July 13, 2022**

[Note: This item was listed incorrectly on the meeting agenda under “New Business – Other Items” and should have been listed under “New Business – Public Hearings.” A public hearing was held during this meeting for the request.]

Chair Finnegan read the request and asked staff to review.

Ms. Dang said currently, the property is zoned R-2, Residential District, where, among other uses, single-family detached homes and duplexes are allowed by right. Conforming single-family detached home lots must have a minimum of 7,000 square feet of lot area while conforming duplex parcels have a minimum of 11,000 square feet of lot area (or 5,500 square feet per lot if the duplex structure is divided in to two, separate fee simple parcels). The current R-2 district regulations do not allow three- or four-unit structures. Per the City’s Geographic Information System (GIS), the subject property has over 6,500 square feet of lot area. If the property were undeveloped, while the parcel has less than the required 7,000 square feet of lot area needed for a single family detached home, because the parcel is a lot of record, the site is still allowed to have no more than one single family detached home. It appears the building was constructed in 1955 as a four-unit apartment building; given this information, up to this point, the property was presumed nonconforming.

In April 2022, the current property owner applied for electrical and mechanical permits to install four heat pump systems to prepare the building for occupancy and stated that the property had been vacant for some time. As stated within Section 10-3-20 (b)(2), among other things, nonconforming uses may be continued so long as such use is not discontinued for more than two years. Furthermore, Section 10-3-21 (b) then explains that if a nonconforming use is changed to a more restricted nonconforming use for more than two years, “the original nonconforming use shall be deemed abandoned and the use shall not thereafter be changed back to the original

nonconforming use.” Eventually, it was determined that three units were vacant and discontinued for more than two years; thus, the four-unit multi-family structure had lost its presumed nonconforming status and would only be permitted to have one unit on the property.

In recognizing this unfortunate situation and in knowing the City’s great need to provide and maintain existing housing, staff advised the property owner of two options to gain the ability to maintain or to re-establish the four-unit building. The first option was to appeal the Zoning Administrator’s decision with the Board of Zoning Appeals. In knowing that the property was designated Mixed Use by the Land Use Guide, which is the designation often associated with the B-1 district, and in knowing that the B-1 district offers flexibility with residential density, setbacks, and off-street parking requirements, staff informed the property owner of a second option, which was to request rezoning the property from R-2 to B-1.

As noted above, the Comprehensive Plan designates this site as Mixed Use. The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

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

- Site: Multi-family building, zoned R-2
- North: Single-family detached dwellings, zoned R-2
- East: Across Broad Street, single-family detached dwellings, zoned R-2
- South: Multiple-family dwellings, zoned R-2
- West: Residential and non-residential uses, zoned B-1

The applicant is requesting to rezone the property from R-2, Residential District to B-1C, Central Business District Conditional. The property is located on the west side of Broad Street between the intersections of East Wolfe Street and East Rock Street. The existing building is a four-unit multi-family structure. However, as noted above, staff has determined that the property has lost its ability to have a four-unit multi-family building and thus the property must conform to the R-2 district, which, residentially, only allows one single-family detached home on the parcel.

With the requested rezoning, the applicant has proffered the following (written verbatim):

1. The property shall only be used for residential dwellings, except that any allowed special use permits shall be permitted as approved by City Council.
2. Dwelling units may be occupied by a single family or no more than two (2) unrelated persons.
3. Structures/buildings shall be no taller than 52 feet in height and limited to no more than four stories.

The B-1 district allows many types of non-residential uses including, but not limited to, retail, restaurants, offices, and hotels. If approved, proffer #1 eliminates the property's ability to contain, by right non-residential uses.

The B-1 district also allows dwelling units to be occupied by a family or not more than four persons, however, proffer #2 restricts dwelling units to be occupied by a single family or not more than two persons, which is similar occupancy to the UR, Urban Residential district.

The B-1 district allows a maximum building height of 75-feet. While the applicant has no plans to construct a new building on the property, proffer #3 is intended to address any concerns someone might have that if in the future a new building is constructed on the property; the building's maximum height would be limited to 52 feet and no more than four stories.

While the applicant has not proffered a minimum number of off-street parking spaces, there is an alley behind the property that gives residents the ability to park behind the building. Residents can also park on city streets. Given the parcel's size, location, alley access, on-street parking abilities, and the submitted proffers, staff does not have concerns with off-street parking matters.

The B-1 district is commonly known for the massing of large commercial or mixed use buildings along street frontages; but, B-1 also provides opportunity for flexibility with setbacks and parking requirements. B-1 properties can also contain only residential uses (single-family detached, duplex, townhomes, and multi-family), which is exactly what the by right permissions would allow via proffer #1. The subject property and all properties on the west side of Broad Street are designated in the Comprehensive Plan as Mixed Use, and as previously noted, this designation is often associated with the B-1, Central Business District. Furthermore, properties to the west of the subject property are already zoned B-1.

Staff believes the outcome of the rezoning would be in compliance with the Comprehensive Plan and promotes the retention of much needed housing in the City. Staff recommends approval of the rezoning from R-2 to B-1C.

Chair Finnegan asked if there any questions for staff.

Commissioner Whitten asked do we know the period of the vacancy?

Ms. Dang said there are four apartments. The applicant may be able to correct the information I have here. The information I have is based on consumption data from the Public Utilities Department. It appears that one of the apartments had no consumption between 1998 and 2007. [Correction: there was consumption between 1998-2007, then no consumption until March 2022] There was another apartment that had consumption between 2016 to November 2019, and there was a period of no consumption that followed that. Another apartment had about period of about 10 years of no consumption. They were all at different periods of time. Three of the apartments had vacancies of greater than 24 months at different periods, therefore we determined that it had lost its non-conformancy.

Commissioner Whitten asked has it been occupied in the last couple of years?

Ms. Dang said it appears that there has been occupancy in the building. Again, the applicant can describe how it has been operated.

Chair Finnegan said on the site visit, there was someone living in one of those units.

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.

Joe McDorman came forward in support of his request. I am the owner of the property that you are looking at. I bought the property in October of last year. I am very new with the ownership of it. The inside units have all been remodeled and updated. The floors were sanded and finished. All the outlets, light fixtures and plumbing fixtures have been replaced. There is new vinyl flooring in the kitchen and bathrooms. We repainted everything. They are fixed up. All four are rented. I do not know... the previous owner... I do not know any more than that since I just bought the property.

Commissioner Whitten said I am glad that you have done repairs. Obviously, if it had gone vacant for so long, it was in disrepair.

Mr. McDorman said yes. Some of the decking out back was redone. I brought a plumber in and fixed some leaks. Everything is operational. I would like to eventually put air conditioning units in. I also replaced natural gas furnaces. They are all updated.

Councilmember Dent said I think I saw in here that you were looking to install heat pumps. Is that instead of or were you looking to supplement the air conditioning and natural gas?

Mr. McDorman said the pumps outside are for the air conditioning.

Councilmember Dent said, yes, but a heat pump can replace the heating as well.

Mr. McDorman said it is natural gas heat. The natural gas heaters are set up for air conditioning. The unit outside, when it kicks on, it blows the air conditioning into the units. It is not electric heat.

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.

Commissioner Whitten said I have a concern about the height. Four stories on that street, in a residential neighborhood where the houses across the street are... It is completely different, the rest of that neighborhood. I think the height would also impact the parking. If you tore down an old house and put up a four-story building there, which is what you could do, and it certainly has been done. It happened in my neighborhood. It makes space for a lot more people. Twice as many, total. I do have a concern about the 52 feet. I realize that is under the B-1 zoning, but this is a different situation than this B-1. All the rest of the conditions are certainly very different from anything we would see in B-1, the restrictive nature of it. I would really like to see the height be a little more restrictive.

Commissioner Armstrong asked when you talk about height are you talking about the height of the building as it is now, or the potential height?

Commissioner Whitten said the potential height. If he tore down one of those buildings, there are three along there that are the same. Any one of those with this zoning could be torn down and a new building be built to four stories. You would have three buildings in a row that would be four stories high. I want you to imagine. Could you show us that picture of the street again?

Mr. McDorman asked if he could respond to the concerns. Chair Finnegan explained that the public hearing is closed. He further explained that the concerns are not specific to the applicant. The concerns are due to the permanent nature of the rezoning, which means that subsequent owners would have the right to make the changes described.

Commissioner Whitten said we have to look at that because that certainly has happened. If you have gone to the beach lately, you might notice that the cute little house that you would rent is not there anymore and there is a McMansion. That happens and is pertinent to this. Imagine that this house, instead of two stories with four apartments, was four stories with eight apartments. The one next door is very similar in design. The one on the corner is the same footprint.

Councilmember Dent asked is this really 211? We are looking at 209 and 211. Are they both in the same building?

Ms. Dang said that the building is 211, but our tax map system has two addresses for it. As far as mailing goes it is 211 units A, B, C and D. We always identify what our mapping shows in case anyone has that number on their records.

Commissioner Byrd asked if a theoretical future building was built to that height and likely would have more dwelling units, would that run into a conflict with another ordinance about parking?

Ms. Dang said no, because the B-1 district does not require off-street parking.

Commissioner Whitten said it could run into a problem with the neighborhood because there are certainly not enough spaces behind or on the street to accommodate it. In theory it could be all three of those buildings. If that happened, you could have a parking issue.

Commissioner Orndoff moved to approve the rezoning request, as submitted.

Councilmember Dent seconded the motion.

Chair Finnegan said (addressing Commissioner Whitten), before we vote on this, I hear your concern. This has come up before about on-street parking. I think that either now or very soon, Harrisonburg is going to be at a place where we are going to have to understand that on-street parking is not something that you are entitled to for free. That is going to be really hard for a lot of people. I know that in your neighborhood you have parking permits. That is something that I think we are going to have to expand the parking permits to more places in the City. I hear your concern and I understand the conflict that it would create but I also can say that the folks who are parking on the street, those spots do not belong to those properties.

Commissioner Whitten said I understand that. I understand that four stories is four stories and it does not have to have anything to do with parking. It has to do with the esthetic and how does that mesh with the rest of this neighborhood.

Chair Finnegan said I would argue that if you look at those units there and look down the street, there are only a handful of units that look like that. Most of them are single-family houses down that street.

Commissioner Whitten said you are making my case.

Chair Finnegan said they already do not conform to the rest of the neighborhood.

Commissioner Whitten said I think four stories is a lot different than two.

Chair Finnegan said it is twice as big. I intend to vote for this because I think... I understand the concerns that Commissioner Whitten has brought forth. I think that I agree with staff in their recommendation that we need to keep these as housing units. I intend to vote for this.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye, I was thinking a lot about the height thing.
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Abstain
Commissioner Whitten	Aye, with the suggestion that City Council consider the height of the buildings in this neighborhood.
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 10, 2022.