



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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April 5, 2021

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

SUBJECT:

Public hearing to consider amendments to the Zoning Ordinance by modifying or removing the regulations contained in Section 10-3-55.6 (e) within the R-5, High Density Residential District. Section 10-3-55.6 (e) states that multi-family development special use permits may be approved if four conditions as determined by City Council are met. The four conditions are summarized as (1) existing multiple-family development, or land planned for multiple-family development according to the Comprehensive Plan is located in close proximity to the proposed multiple-family development; (2) the applicant has demonstrated that adequate vehicular, transit, pedestrian and bicycle facilities currently serve the site, are planned to serve the site with reasonable expectation of construction within the timeframe of need created by the development, 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; and (4) the applicant has shown that the site is environmentally suitable for multiple-family development.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: March 10, 2021**

Ms. Dang said that in the R-5 residential district, among other available special uses that can be applied for, the Zoning Ordinance allows for property owners to receive a special use permit (SUP) to construct multi-family buildings containing more than the by-right maximum of 12 units per building. Another SUP allows for multi-family structures to be taller than 52 feet in height and/or have more than four stories. Approval of either SUP requires that City Council evaluate and determine that specific criteria has been met to decide whether either of those SUPs should be approved. The criteria are listed within Section 10-3-55.6 (e).

The Zoning Ordinance amendments proposed herein originate from a project proposal that was presented to City Council on February 9, 2021. The proposal was for properties addressed at 161 and 241 Blue Ridge Drive and included two separate applications. The first request was to rezone two parcels from R-1, Single-Family Residential District to R-5C, High Density Residential District Conditional. Because the applicant's plan was to construct buildings with more than 12

multi-family units per building, the second request was a SUP per Section 10-3-55.4 (1), which allows for multi-family dwellings of more than 12 units per building in the R-5 district. Both of those requests were presented to Planning Commission on December 9, 2020. Staff and Planning Commission (4-2) recommended denial of the rezoning and the special use permit.

The staff memorandum prepared for the rezoning and SUP stated that staff believed the applicant had adequately addressed conditions #2 and #4 within Section 10-3-55.6 (e), but found it difficult to believe that conditions #1 and #3 were met. Staff also stated that “consideration should be given to whether or not the regulatory controls within Section 10-3-55.6 (e) should be alleviated or removed. These regulations were created in 2007 and could no longer be relevant or needed. Additionally, if Planning Commission desires, staff can also review the Land Use Guide and evaluate whether amendments should be made for this site. This may be appropriate to do after the housing study is completed in January 2021.”

During the February City Council meeting, the rezoning and SUP requests were tabled and referred back to the Planning Commission for review noting that the applicant had offered a new proffer and because the Comprehensive Housing Study & Market Assessment was completed since Planning Commission’s December 9th review. In addition, City Council directed staff to draft Zoning Ordinance amendments to remove conditions (1) and (3) and to draft any alternative recommendation staff might believe is necessary for Section 10-3-55.6 (e). Staff’s review and recommendation of the Zoning Ordinance amendment is explained below.

The R-5, High Density Residential District was drafted after approval of the 2004 Comprehensive Plan and ultimately approved and added to the Zoning Ordinance in 2007. The only residential housing types permitted in the R-5 district are townhomes and multi-family units. As noted above, the R-5 district allows for property owners to receive a SUP to construct multi-family buildings containing more than the by-right maximum of 12 units per building while a separate SUP allows for multi-family structures to be taller than 52 feet in height and/or have more than four stories. Both SUPs, however, require that conditions listed in Section 10-3-55.6 (e) be met as determined by City Council. The conditions outlined in Section 10-3-55.6 (e) consist of the following:

- 1) Existing multiple-family development, or land planned for multiple-family development according to the Land Use Guide in the Comprehensive Plan, is located adjacent to, across the street from, or in close proximity to the proposed multiple-family 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 has drafted two amendment options for consideration. The first option (Option #1) removes conditions (1) and (3), which was the option directed by City Council to draft. Option #2 removes all of regulatory controls of Section 10-3-55.6 (e). In other words, Option #2 removes all four conditions and amends Section 10-3-55.4 (1) and (2) to remove the references to Section 10-3-55.6 (e) because they would no longer apply. After much consideration and review of 10-3-55.6 (e), staff recommends approving Option #2 for the following reasons:

- 1) Regarding the application of all four conditions, staff questions why these conditions are only triggered when special use permits are requested for multi-family dwellings of more than 12 units per building and for multi-family buildings greater than four stories and/or 52 feet in height. For example, a developer could build a 60 dwelling unit complex with five buildings at four-stories in height by right and the four conditions of Section 10-3-55.6 (e) would not be triggered or relevant as to whether such a development should occur. But if a developer wanted to build one building with 60 dwelling units at four-stories, then these conditions must be considered. At this time, staff does not believe that there should be additional scrutiny for such differences in development types.
- 2) Concerning the recommended removal of conditions (1) and (3), with any rezoning or special use permit request, staff, Planning Commission, and City Council should consider existing conditions, surrounding land uses, and any planned future uses as envisioned in the Comprehensive Plan. These considerations are not limited to special use permits that are requested for multi-family dwellings of more than 12 units per building and for multi-family buildings greater than four stories and/or 52 feet in height.
- 3) With regard to condition (2), consideration whether a proposed project demonstrates adequate vehicular, transit, pedestrian, and bicycle facilities should not be limited to when special use permits are requested for multi-family dwellings of more than 12 units per building and for multi-family buildings greater than four stories and/or 52 feet in height. Staff, Planning Commission, and City Council should consider this with any rezoning or special use permit request, or could consider changes to other regulations (i.e. City Code

and design standards) to support or require vehicular, transit, pedestrian, and bicycle facilities for all development proposals.

- 4) Regarding condition (4), there are minimum regulatory requirements to meet erosion and sediment control, stormwater management, and floodplain regulations that all development must comply with that would not rely on this condition.

Ms. Dang said that as staff reviewed files associated with the changes to the R-3 district and creation of the R-5 district, we observed that the way our community thought about housing and development is different than where we are today. For example, in a February 2006 memo from staff for a Planning Commission work session, the memo identified topics brought up during the 2004 Comprehensive Plan's public input meetings, which included:

- Desire to reduce the amount of land zoned R-2, R-3, and R-4 in favor of R-1,
- And interest to explore options to limit the number of new apartments constructed in the City

We interpreted this to mean that there was desire in 2006 to reduce the opportunities for duplexes, townhomes, and multifamily housing and to increase single-family detached housing in the City and possibly to have more single-family detached homes on ¼-acre or larger sized parcels.

It appears now after the adoption of the 2018 Comprehensive Plan and recent discussions and input received for the Zoning and Subdivision Ordinance rewrite that there is more interest in creating opportunities so that we can reduce minimum required lot sizes and also get more housing units and mix different housing types.

Chair Finnegan asked if there any questions for staff.

Councilmember Dent said that she was impressed. We asked you to remove a couple of things and you took them all out. I appreciate your reasoning, that these are things we would have to go through in any case. They should not be triggered by the special use permit. Good work. Thank you.

Chair Finnegan said that he would like to echo that. Ms. Dang pointed out the 2004 comments. When we were doing this in the 2000s in favor of R-1. This is an important Planning Commission meeting. It feels like a major shift in direction in response to the Comprehensive Housing Assessment and Market Study that was done in the City. I commend staff for your work on this. I also favor Option #2. We are learning, collectively as a City, that the things that we did 10, 20, 30 years ago have long-term consequences. Now we are slowly going to turn that ship in a different direction. Good work.

Commissioner Byrd asked if items two, three and four are already in current regulations to perform these types of tasks, or is this in general practice?

Ms. Dang said that two, three and four are in general practice, but there are some items in number two that are triggered by subdivisions that might trigger requirements for constructing sidewalks, for example, but not in all cases is it required.

Commissioner Byrd said that number one seems to be an attempt to prevent extremely large complexes. Would there be a use in having something like that, if someone were to propose building a very large structure, like the example of one building with 60 units in it?

Commissioner Baugh said that this is important. I am not necessarily opposed to it. I think that staff's report about how we got here is incomplete. Commissioner Byrd's point is well taken. One of the things that has happened since we created R-5, Harrisonburg had nothing called a high density residential district. This is when that was created. It was created a little bit out of whole cloth, a little bit by looking at what other jurisdictions were doing. What you are seeing here are the concerns that people thought about it when they were writing it, not just the ones that have been expressed so far. One of them, going to the point of Commissioner Byrd, is that you are opening the door for eight story structures in a place where there is nothing around it that looks like an eight story structure or even rental units. And is that something that you ought to consider? That is what was driving that.

There were a couple of technical things with this. One of them is that we created R-5 before we amended R-3. It was commented on indirectly in the oral report, but it was in the written report, the seeming confusion about why that limit was there. The answer is because that is where the line was for what was of right under old R-3. When R-5 was created, there was no old R-3 and new R-3. That was still to come. What it was and was meant to do is a recognition that this is a high density category, meaning that it would be more dense than the medium density. The cap of medium density was that traditional 12 units, four story business. You can still, under new R-3, apply for it as a special use permit. The thinking on it was that R-5, by definition, would be for things that were beyond what could have been done under R-3. Whether we need to keep that or not, that is what we are going to discuss.

To me it ties into some of the points that were made before. In my ideal world, I am voting for or against things by first looking to see what our planning says. That is what I ought to be doing, not focusing on whether I like the applicant, whether I know the applicant or the neighbors. Those things are relevant, but presumably they are relevant in extreme cases. If we said, in planning, that the property is suitable for a particular use, then that is what we do. Some of these things that were put in for R-5, now in hindsight has people asking why the bar is a bit higher for R-5. Some of it was the mechanics of intermingling with the R-3 as it existed and as we did not know how it was going to evolve.

I will say this, as someone who was around when this happened. When the R-3 change originally went to City Council, it was kicked back to Planning Commission in the hopes that it would die. The only instruction that Planning Commission got from City Council was whether we should proactively recommend certain properties for rezoning to R-5. The point being was that R-5 was a major expansion of anything that we had allowed up to that point and the use of a word like "privilege" is probably too strong, but the R-5 was something where you needed to come in and make your case as to why you needed to go R-5 because we were taking on buildings of a scope

beyond what the City had ever had. We saw that the future was in that direction. We were also trying to recognize that there were going to be some rough spots and transition if you went to that adjacent in an existing, established development.

This was a high density district and it was envisioned that this would be used for big buildings. What we have 15 years later is that we do not have a lot of those buildings. Most of our R-5 applications seem to be people who need flexibility and that is zoning category that we used. That is what R-5 has been, in fact, rather than building big buildings. That it was intended for and that is what people were shooting for. Things were said about liking R-1, but there were discussions about how we can create this in a way that makes sense. As we are going to these larger buildings, since this is the category that allows it, maybe we think now that it is sufficient to leave it to the discretion of Planning Commission and City Council to weigh all the pros and cons, but there was concern about that when it started. That is where these extra conditions for R-5 come from.

Chair Finnegan asked if staff knows how many R-5 requests have been approved or denied in the past several years. To Commissioner Baugh's point, we do not have a lot of R-5 buildings. I wonder how many of them got denied versus how many were requested. I realize this is a complex question and you might have to get back to me.

Mr. Fletcher said that he can think of one R-5 proposal that was denied. It was on Lucy Drive. That was in the past two years. I do not recall many R-5 proposals in general. Looking at the map, I see six or seven.

Ms. Dang said maybe closer to ten. Recently, we have had rezonings on Reservoir Street, Stone Suites, the one on Peach Grove Avenue and a couple of others. It is not a lot.

Mr. Fletcher said that he was trying to recall how many ideas came to staff in a preliminary or conceptual fashion that never got off the ground because they were not comfortable moving forward or they could not bring their ideas to fruition. There are lots of people who come to City staff and get feedback and general guidance. Either we never hear from them again or they let us know that they are no longer interested and move on to different properties. Out of the ones that have come to Planning Commission for a vote, I can only think of one that was not approved.

Commissioner Baugh said that if we want to consider that the thinking on this is evolving, that is the type of thing we are supposed to consider. Look at your Land Use Guide. What was originally thought on this is that the area that we have designated for High Density is Port Republic Road. The original thinking is that was it. That was the area where we wanted to see redevelopment in that direction. That is still our plan. Our Land Use Guide still says that. The other spots are the ones that have come into it. The idea was that anybody else who wanted to do something like R-5, we knew that we were comfortable with it in the Port Republic Road area, but anywhere else, we would look at on a case by case basis. We were not encouraging people to do that. That is the way that I remember it.

Mr. Fletcher said that Commissioner Baugh is correct about what our Land Use Guide calls high density. I try to remind people that when you look at the Land Use Guide, do not just focus on the word "residential." Mixed use means a lot. The density in Mixed Use is equivalent to High Density

Residential. If you were to compare our current Land Use Guide map, which was last approved in 2018, with the 2011 Comprehensive Plan, it looks very different. The Land Use Guide in the Comprehensive Plan in 2011 did not have as many Mixed Use categories along our major thoroughfares. In our major thoroughfares, when you focus in on it, we are pushing for quite a number of properties to go high density even though it is not actually called High Density. I always enjoy the conversations with people about what the maximum density is downtown because they are always thinking that high density is in Port Republic Road. It is not. Our downtown district is our most dense because there is no maximum density. When we talk about 24 dwelling units an acre, that is not a high density category when compared with other localities. We have come a long way from where we were in 2004 about what density means. Twenty-four units an acre is not considerably high. Urban Exchange is almost 100 units an acre. When you look at that building, it is big, a large massing, but it is downtown. The density is four times what our high density is. We have to keep it in perspective where we are pushing for mixed use. We are looking for mixed use adjacent to the Port Republic Road corridor, adjacent to the Peach Grove Avenue corridor, Reservoir Street, Country Club Road. We were just talking about mixed use at 518 East Market Street. We are capturing that mixed use near the intersection by the Sheetz at Vine Street. We are starting to push for high density there, along the entire corridor, all the way downtown, up North Main Street, down South Main Street. In 2018, we talked about how we are being quite aggressive. I do not know that people picked up on it because they saw mixed use and were not thinking about density. We were. We knew that. We knew what the numbers were. Still, it is not really high density. It is 24 units an acre.

Commissioner Baugh said that is really the last point to this. I gave the history of how it started. If you want to look at the most recent iteration of the Comprehensive Plan, and say “What is the biggest change between it and the prior one?”, it is the point you just made. We proactively moved a lot of property into the Mixed Use category in the Land Use Guide. I understood what we were doing when we did that. I wonder sometimes in my conversations whether others understood, too. Your planning and your Land Use Guide has opened the door for some of these things that right now the only zoning category that allows some of it is R-5. In some respect, I cannot help but wonder, if there is pushback on this, whether the pushback is more properly stated as have we gone too far with what we have said is Mixed Use in the Land Use Guide. If you do not think that, we have said that these developments belong here and they do have some of these characteristics to them.

Commissioner Byrd said that he is trying to see the difference between option one and option two, functionally. In option two, if we are removing that whole section, these are still required a special use permit and therefore the Planning Commission is still going to hear these applications, correct? Something that would be more than 12 units per building or greater than 52 feet in height, correct?

Ms. Dang said yes, you are correct. The special use permits that have to be requested in order to do those two things would not go away. What would go away, what is proposed to be removed, is the list of conditions that must be determined by City Council as being met. If someone wanted to have a multifamily dwelling that is greater than 12 units per building or greater height, they would have to request a special use permit and it would have to go through a public hearing process through Planning Commission and City Council.

Commissioner Byrd said that then, functionally, Planning Commission and staff are still going to be doing the things that are being removed anyway. They are listed here to encourage people to do that beforehand.

Commissioner Baugh said that the concern back then was that if it was not spelled out, then people might not do it. The one on transportation is a great example. It shows how we have evolved in the time period because at that point, even though we were already doing this, the public did not think we were. That was put in there to let everybody know that we are looking on that and the burden would be on somebody else to change that. Those were things that people were concerned about then. Except for the few places that are already R-5 because they have rezoned, everybody who wants R-5 has to come in for a rezoning, as well. There is a good chance that you are going to take a look at it.

Chair Finnegan asked if there were any questions for staff. Hearing none, he opened the public hearing. There were no callers, so he closed the public hearing and opened the matter for discussion.

Commissioner Byrd said that it sounds like Option #2 is recognizing that members that have joined the Planning Commission in recent years have gotten accustomed to following a lot of the items that are suggested to be removed. I would see no harm to future generations operating under these ordinances to consider these items without having to be told in the ordinance. I would be in favor of Option #2. I move to recommend approval of Option #2.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Orndoff	Aye
Commissioner Whitten	Aye
Commissioner Baugh	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Hull	Aye
Chair Finnegan	Aye

The motion to recommend approval of the Zoning Ordinance amendment passed (7-0). The recommendation will move forward to City Council on April 13, 2021.