



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Planning Commission
From: Department of Community Development
Date: March 10, 2021 (Regular Meeting)
Re: Rezoning – 518 East Market Street (R-3C, Multiple Dwelling Conditional to R-3C, Medium Density Conditional – Proffer Amendment)

Summary:

Public hearing to consider a request from Margaret Sheridan to rezone a +/- 16,624 square foot parcel from R-3C, Multiple Dwelling Residential District Conditional to R-3C, Medium Density Residential District Conditional. The property is addressed as 518 East Market Street and is identified as tax map parcel 27-B-2.

Background:

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: Mixed use building containing office use and a single-dwelling, zoned R-3

North: Across Elizabeth Street, single-family detached dwellings, zoned R-2
East: Multi-family dwelling units, zoned R-2
South: Across East Market Street, duplexes and multi-family dwellings, zoned R-2
West: Office and commercial uses, zoned R-3C

Key Issues:

The applicant is requesting to rezone a +/- 16,624 square foot parcel from R-3C, Multiple Dwelling Residential Conditional to R-3C, Medium Density Residential District Conditional with amendments to existing proffers that were approved when the property was rezoned in 2005. If approved, the applicant plans to maintain the existing uses, which are a real estate office and a single dwelling unit making the structure a mixed use building. The proffer amendments would allow the applicant to increase occupancy within the dwelling from a family or not more than two persons to a family or not more than four people.

In 2005, the property was rezoned from R-2, Residential District to R-3C, Multiple Dwelling Residential District Conditional. At that time, the applicant lived in the 2-story frame building and when the rezoning to R-3C (Multiple) was approved, the applicant relocated their real estate office into a portion of the building. In 2005, the property was designated in the Comprehensive Plan as Professional, which was described as areas designated “for professional service oriented uses with consideration to the character of the area. These uses are found in the residential areas along major thoroughfares and adjacent to the Central Business District.” The property remained designated in the Comprehensive Plan as Professional until the 2018 Comprehensive Plan Update when the designation changed to Mixed Use.

The approved and existing proffers (from the 2005 rezoning) include the following (written verbatim):

1. Any use permitted by right in the R-1 and R-2, residential districts
2. Dwelling units may be occupied by a family or not more than 2 (two) persons, except that such occupancy may be superseded by building regulations;
3. Medical, convalescent or nursing homes, medical and professional offices as defined within the zoning ordinance;
4. Adult daycare
5. Uses permitted by special use permit.

It is important to know that in August 2007, City Council amended the Zoning Ordinance and created Article J.2 – R-3, Medium Density Residential District (City Code Sections 10-3-48.1 through 10-3-48.6). The existing Article J – R-3, Multiple Dwelling Residential District (City Code Sections 10-3-43 through 10-3-48) remained, and is now often referred to as “old R-3,” but was amended to apply only “to multifamily buildings constructed by or with Comprehensive Site Plans approved before August 14, 2010.” It also noted that “[e]ffective this date, all other construction must comply with Article J.2.” There are only two ways in which “old R-3” is recognized; the first is if multi-family units meet the 2010 parameters as noted, and the second is if an R-3 property was conditionally zoned prior to the 2010 date – such as the case herein. Properties cannot rezone to the “old R-3.” By default, properties become recognized as “new R-3,” which is officially the R-3, Medium Density Residential District, which does

have different regulations than “old R-3.” The attachment titled “Excerpts of Uses permitted by right from the R-1, R-2, R-3 (Multiple), and R-3 (Medium) Districts” shows the similarities and differences between the by right uses within certain zoning districts.

In November 2020, the applicant contacted city staff with questions about their property and it was discovered that the property is in violation of the occupancy proffers as the applicant had been renting the dwelling to four individuals. After discussing options to correct the zoning violation, the applicant decided to request a rezoning to amend proffers to remove the restriction that limits dwelling units to be occupied by only a family or not more than two individuals. However, because of the “old R-3” and the “new R-3” zoning described above, the applicant could not simply request removal of the original proffer #2, but needs to rezone to R-3, Medium Density Residential. The applicant worked with staff to draft a new proffer statement that reflects what was proffered in 2005, translated to the R-3, Medium Density Residential regulations, and removes the occupancy restriction, which would allow the property to have the by right ability of having a family or not more than four individuals occupy the dwelling.

The new proffer statement includes the following (written verbatim):

In connection with the rezoning request for the property located at 518 E Market St and identified as tax map parcel 27-B-2 the following uses are proffered to be prohibited:

1. Attached townhomes.
2. Churches or other places of worship.
3. Public schools or a private school having a function substantially the same as a public school.
4. Other governmental uses, such as community centers, parks and playgrounds.
5. College and university buildings and functions.
6. Hospitals.
7. Child day care.
8. Private clubs and golf courses.
9. Cemeteries.
10. Public uses.
11. Community buildings for associated townhouse and multiple-family developments.

Special use permits shall be permitted as approved by City Council.

Note that instead of listing the uses that would be permitted, the uses that would be prohibited are listed in the new proffer statement. The reason for prohibiting churches, schools, and governmental uses is because the 2005 proffers references uses permitted by right in the R-1 district. The R-1 district only allows these uses within buildings located at least 50-feet from adjoining property lines. The subject property’s dimensions would not make it possible to comply with this requirement.

The applicant is aware that they are currently not in compliance with off-street parking regulations. Regardless of whether the rezoning request is approved or not, they must comply with the off-street parking regulations by delineating six parking spaces; five for the office use and one for the single dwelling and must comply with handicap accessible parking requirements.

As noted above, the property remained designated in the Comprehensive Plan as Professional until the 2018 Comprehensive Plan Update when the designation changed to Mixed Use. The Mixed Use designation describes, among other things, that the areas “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.” The current use combines residential and non-residential uses in a single building. Combined with surrounding land uses that are professional offices, commercial, and multi-family dwellings, staff has no concerns with the applicant’s request to amend the proffers to increase occupancy to the by right ability of a family or four persons.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Recommend approval of the rezoning request; or
- (b) Recommend denial of the rezoning request.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing. The advertisement was published as shown below:

Rezoning – 518 East Market Street (R-3C, Multiple Dwelling Conditional to R-3C, Medium Density Conditional – Proffer Amendment)

Public hearing to consider a request from Margaret Sheridan to rezone a +/- 16,624 square foot parcel from R-3C, Multiple Dwelling Residential District Conditional to R-3C, Medium Density Residential District Conditional. The Zoning Ordinance states the R-3, Multiple Dwelling Residential District is intended for medium- to high-density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The R-3, Medium Density Residential District is intended for medium density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; duplex, 4,000 sq. ft. minimum/unit; townhouses, 2,000 sq. ft. minimum/unit; other uses, 6,000 sq. ft. minimum and by special use permit multifamily, 3,000 sq. ft. minimum/unit. The Comprehensive Plan designates this site as Mixed Use. Mixed Use areas are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. 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. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings. The property is addressed as 518 East Market Street and is identified as tax map parcel 27-B-2.

In addition, adjoining property owners were notified of the public hearing; the property was posted with signage advertising the request; and a notice was provided on the City's website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends alternative (a) approval of the rezoning request.

Attachments:

1. Site maps
2. Application, applicant letter, and supporting documents
3. Proffers from 2005 Rezoning
4. Excerpts of Uses permitted by right from the R-1, R-2, R-3 (Multiple), and R-3 (Medium) Districts
5. Public comment received as of March 5, 2021

Review:

N/A