



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 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.

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

Chair Finnegan read the request and asked staff to review.

Ms. Dang said that 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

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.

Chair Finnegan asked if there any questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to the request.

Margaret Sheridan, 518 East Market Street, spoke in support of her request. I have Sheridan Real Estate on the first floor. I was renting to more than two people, so I was in violation. There are

multi-family dwellings around me and business beside me. My usage of the property has been in harmony with the street and compatible with what the houses are used for here. I think that the housing that I supply to people benefits the City. The people to whom I rent are people who have been responsible, who need a way to go downtown or have access to City transit. I do not rent to fraternities, nor do I plan to. I think that would be disruptive to the community. I have had no complaints from any of my neighbors regarding my tenants. I look upon myself as an asset to this street. The people whom I served, the tenants, have benefitted from housing and from an atmosphere that they have enjoyed and feel safe in. Some have lifted themselves out of situations where perhaps they would not have had had they not had this place to come to. I do make an income and it is very reasonable. I will say proudly that I have helped people. I work with people who have had bumps in their life. One person who was on drugs is now a drug counselor. I was in violation. I do request the medium density designation for four people.

Chair Finnegan asked if there were any questions for the applicant. Hearing none, he invited the public to call. As there were no callers, he closed the public hearing and opened the matter for discussion.

Commissioner Whitten asked how long the violation was ongoing. There was one letter that was included in the packet and one letter that was received from a neighbor on Elizabeth Street with complaints about the property. How long did the violation occur?

Ms. Dang said that she would refer the question to the applicant.

Ms. Sheridan said that she cannot give a specific number, but it has been a number of years.

Chair Finnegan asked if the comments that were received should be read into the record.

Ms. Dang said that they are included in the agenda packet and will be forwarded to City Council as received public comment. I typically have not read items into the minutes unless somebody specifically requested that they be read into the minutes. There was one from Arthur Hamilton and a second letter that was received that was anonymous. The person did not identify who they are.

Commissioner Whitten said that person spoke as a nearby resident, correct?

Ms. Dang said that they said that they lived on East Elizabeth Street for five years.

Chair Finnegan said that some of the issues that are pointed out and that come up again and again when we do SUP and rezoning requests are that it is owner specific. If we vote to rezone this today, I encourage us to think of the next owner. The rezoning does not go away when the ownership of that building changes hands. I am not dismissing the letter from Mr. Hamilton, but this rezoning will continue on to the next owner of this property. That is something to keep in mind as we are discussing this.

Chair Finnegan continued, saying that he is generally in support of this request. Having more occupancy, particularly close to downtown, is something that we should encourage. This is next to several business along that corridor and that is one of the oldest parts of town. These are some

old houses that were around before old town existed. Those are some big houses and increasing density there along that corridor makes a lot of sense to me. I would vote in favor of this.

Commissioner Whitten said that on its face, it is part of the problem that the adjoining neighborhood has with it. They have concerns about the noise, the cars and the lifestyle... *[inaudible recording]* ... probably would be just fine. That would be more than four people. Four unrelated people just lends themselves to another lifestyle. I can appreciate it, having lived in what was an R-2 and now a different zoning category with a lot of mixed uses surrounding. The difference between two and four may only be two in an arithmetic sense, but it certainly causes a lot of disruption in a neighborhood when there are four people that want to disrupt. I do have a true appreciation for the concern. I also have a concern for a landlord that, while honest, has already told us that she has been renting to more people than allowed and she is a realtor.

Councilmember Dent said that if it has already been functioning relatively harmoniously before, even though it was not in compliance, says to me that it can reasonably continue. I saw in one of the letters that people were concerned that this might become a frat house. It has not and it does have four people. Several doors down there is, in fact, a frat house. It has a lot more cars, a lot more people and a lot more noise. I used to live in that neighborhood. Higher density is not unknown in that neighborhood and is not a danger in this case. My question for the applicant is in light of the other letter. What is the use of the two accessory buildings in the back? One looks like an old barn. The other like a newer, smaller, garage-type building.

Ms. Sheridan said that the two buildings need maintenance. The two story building might be worth talking with the historical society regarding the historical register. Maybe not. It is one of few in the City that have survived. I do not know what it was, a carriage house or a barn. I do not intend on demolishing it. I do intend on improving it in some form or fashion.

Councilmember Dent said that she did have the concern that it may be a historic building. The other concern was about the lower building. I noticed that it has a wreath on it. Does somebody live there? Is it storage?

Ms. Sheridan said that it is used for storage.

Commissioner Byrd moved to recommend approval of the request.

Councilmember Dent seconded the motion.

Commissioner Baugh said that there is a lot of relevance in this matter to some other things that we are going to be talking about later. I want to push back on almost everything that has been said here. When an applicant comes in and says that they want to do something that moves in the direction of what we have in our Land Use Guide, that is generally a reason to vote for it. Maybe it shifts burdens. If we have said in our Land Use Guide that we want particular development in a spot, and a property owner comes in wanting to do something consistent with that, it has been my understanding that the burden is on us to be able to articulate why not if we intend to oppose it. I think that courts would say that it is inherently assumed that the Land Use Guide reflects the public interest. We have a spot here where we changed the designation in the Land Use Guide in the last

update of the Comprehensive Plan. We have had some requests for things like this in this corridor in the prior years when it was designated as professional buildings in the Land Use Guide. I think we always voted them down and I think they might have all been split votes, but we upheld the idea that the residential use of those buildings, when they had been planned for professional offices, was not consistent. I agreed with that and voted accordingly. Now, we have said that we want this type of mixed-use and staff has said that this is consistent with it. I find myself being concerned. It is relevant what goes on around these properties, but on some level if this is requesting to move in accordance with the Land Use Guide, then we should say yes. The reasons for not doing it would be extraordinary. It is interesting to see how we apply that logic to other items we have tonight. I appreciate Commissioner Whitten's thoughts on it. That position is consistent with views that she has expressed over the years. I appreciate that. I think that I am going to vote for this unless I hear more of an articulation that it is not consistent with planning. That is what would get my attention to vote against this, if we say that we goofed. We should not have called this mixed-use. It is not compatible with the adjoining neighborhood. We got carried away. If that is the case, I could vote no. You expect some people in the vicinity to be concerned about change. That is normal. If it is consistent with the planning, then the issues with neighbors is more about buffering the transition, not "can they do it?" If it is not consistent with the planning, then the burden is higher for the applicant. I am happy to hear other arguments. Because it is consistent with what we have said we want for this area in the Land Use Guide, it seems to me that I should vote for this.

Chair Finnegan called for a roll call vote.

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

The motion to recommend approval of the request to rezone a parcel addressed as 518 East Market Street passed (7-0). The recommendation will move forward to City Council on April 13, 2021.