



February 11, 2025 City Council Meeting

## Title

Zoning Ordinance Amendment, To Amend Nonconforming Use Regulations Associated with Residential Units Within the B-2 and M-1 Districts — Adam Fletcher, Community Development

## Summary

Zoning Ordinance Sections	Amend Sections 10-3-20 and 10-3-21
Purpose	To allow particular residential structures to remain a residential use.
Applicant	City of Harrisonburg
Staff Recommendation	Approval
Planning Commission Recommendation	January 8, 2025 (Public Hearing) Approval (6-0)
City Council	February 11, 2025 (First Reading/Public Hearing) Anticipated February 25, 2025 (Second Reading)

## Recommendation

Option 1. Approve the Zoning Ordinance amendments.

## Fiscal Impact

N/A

## Context & Analysis

At the August 2024 Planning Commission (PC) meeting, PC tabled a request to rezone 895 North Liberty Street from M-1, General Industrial District to R-8C, Small Lot Residential District Conditional and instructed staff to look into drafting an ordinance amendment that would allow residential uses in the M-1, General Industrial District by special use permit (SUP). (Details of that request are available at: [https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6824364&GUID=23B4ABBF-165A-4C1F-A6E7-94E3D714B85D&Options=&Search=](https://harrisonburg-va.legistar.com/LegislationDetail.aspx?ID=6824364&GUID=23B4ABBF-165A-4C1F-A6E7-94E3D714B85D&Options=&Search=;).)

Rather than drafting an ordinance that would allow residential uses in the M-1 district by SUP, staff has drafted an amendment to the Zoning Ordinance (ZO) to allow certain nonconforming residential uses that would have otherwise lost their nonconforming status due to an expansion in

the intensity of a residential use. Know that while researching and evaluating the idea of allowing residential uses by SUP in the M-1 district, staff also considered allowing the continuance of existing nonconforming residential uses that meet certain criteria in both the M-1, General Industrial District and the B-2, General Business District.

With regard to nonconforming uses and how they are lost, the Zoning Ordinance states that “[w]hen a nonconforming use is enlarged or extended beyond the size, character, or intensity of the use as it existed at the time that it became nonconforming, the nonconforming status of such use shall terminate and become unlawful.” Additionally, the purpose of the nonconforming principle is to preserve rights in existing lawful buildings and uses of land, subject to the rule that public policy opposes the extension and favors the elimination of nonconforming uses. Nonconforming uses are disfavored because they detract from the effectiveness of a comprehensive zoning plan.<sup>1</sup>

Staff is proposing to add subsection (e) to Section 10-3-21 as shown below:

In the B-2 (General Business) and M-1 (General Industrial) Districts, an otherwise nonconforming single-family detached dwelling that has been converted to contain multiple dwelling units or expanded beyond its permitted number of occupants may continue as a nonconforming single-family detached dwelling, notwithstanding subsections (a) through (c), provided that: (1) the total square footage of the structure has remained unchanged and (2) occupancy of the single-family home is reduced or limited to one family or two unrelated individuals. Nothing in this subsection shall be construed to prevent the building official from enforcing compliance with the Uniform Statewide Building Code.

Additionally, to improve clarity, staff is proposing to add subsection (d) to Section 10-3-20 as shown below:

Nothing in this section prevents keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted.

The entirety of Sections 10-3-20 and 21 can be found in the document titled “Current Ordinance Reflecting Recommended Amendments” that is included within the packet.

The amendment to Section 10-3-20 is to explicitly describe a practice that we allow, which is that repairs can be made to a nonconforming building and to a building in which a nonconforming use is conducted.

The amendment to Section 10-3-21 would allow for the continuation of a nonconforming single family detached dwelling use under specific situations. Examples of the application of this amendment can be seen at 895 North Liberty Street. The existing single-family detached dwelling was converted illegally into a “duplex.” Under current regulations, if a nonconforming use is expanded in intensity (in this case the number of dwelling units increased) the residential use must

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<sup>1</sup> Albemarle Land Use Law Handbook, <https://www.albemarle.org/government/county-attorney/resources/land-use-law-handbook>

cease because residential uses are not allowed in the M-1 district. Because the total square footage of the structure has not been enlarged (either horizontally or vertically), the proposed amendment would allow the structure to revert back to a nonconforming single-family detached dwelling.

It is important to note that if, for example, a once nonconforming single-family detached dwelling in the B-2 or M-1 district was changed to an otherwise permitted use for more than two years, then the nonconforming dwelling status would be lost per Section 10-3-20 (b) (2) and 10-3-21 (b).

As previously stated, staff evaluated an option to allow residential uses in the M-1 district by SUP but believed it would have unintended outcomes. In using the property at 895 North Liberty Street as an example, staff was unable to support that rezoning request for a residential use because not only is that site planned and zoned for industrial uses, but all properties on the west side of North Liberty Street extending from the North Liberty Street/Edom Road intersection north to the City/County jurisdictional line are also planned and zoned for industrial uses. Staff believed approving a rezoning to continue a residential use at that location, which would also allow for the expansion of the residential use with additions, would be inconsistent with the goals and intent of the Comprehensive Plan. Staff would likely also evaluate a SUP option for that same site in a similar fashion.

Also of note, is that if the proposed amendment is approved, property owners would not have to apply for a rezoning or SUP and go through the public hearing process, which should save property owners both time and money. Instead, a zoning determination would be made administratively by staff, and if it meets the noted criteria, can continue as a nonconforming use.

Staff recommends approval of the ZO amendments.

### **Options**

1. Approve the Zoning Ordinance amendments;
2. Approve the Zoning Ordinance amendments with modifications; or
3. Deny the Zoning Ordinance amendments.

### **Attachments**

- Extract from Planning Commission
- Current Ordinance Reflecting Recommended Amendments
- Application and supporting documents