



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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January 2, 2024

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

**SUBJECT:**

*Consider a request from Devon Lane LLC to rezone 716, 720, and 722 Foley Road*

*Consider a request from Devon Lane LLC to preliminarily subdivide 716, 720, and 722 Foley Road*

**EXTRACT FROM THE DRAFT MINUTES OF HARRISONBURG PLANNING  
COMMISSION MEETING HELD ON: December 13, 2023**

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in December 2021, City Council approved a special use permit (SUP) to allow multiple-family dwellings of up to 12 units per building on property addressed as 716 and 722 Foley Road. The conditions of that SUP include:

1. All newly constructed multiple-family units shall be efficiency, or one- or two-bedroom units.
2. Prior to issuance of any certificate of occupancy for multiple-family dwellings, the property owner shall dedicate necessary public street right-of-way to encompass curb and gutter plus 0.5-ft., and deed a public sidewalk easement to include the remainder of the two-foot-wide grass strip, a five foot wide sidewalk, and 0.5-ft behind the sidewalk. The future curb and gutter location shall be equidistant from the street centerline similar to what exists across the street.
3. The entrance at Foley Road to serve multiple-family building(s) on the site shall be no greater than 30 feet wide.
4. The special use shall be established, or any construction authorized shall be commenced and diligently pursued within five years from the approval date of the special use permit.

It was understood that to be able to build the multifamily units that were planned, the dividing property line separating 716 and 722 Foley Road had to be vacated so that lot area requirements could be met for the existing single family detached dwellings and the multifamily dwelling units. SUP condition #2 also required the owner to dedicate necessary public street right-of-way and a

sidewalk easement prior to the issuance of certificates of occupancy for the allowed for multi-family units.

In May 2022, City Council approved a special use permit to allow for a reduction in parking. The conditions of that SUP include:

1. Reduction in required parking shall only be permitted for efficiency or one-bedroom multi-family units up to a total of 11 such units, where one parking space per unit may be provided.
2. The special use shall be established, or any construction authorized shall be commenced and diligently pursued within three years from the approval date of the special use permit.

Then in December 2022 the property owner applied for building permits to construct an 11-unit multi-family building. Ultimately, the permits were approved and construction commenced. These units, however, do not yet have certificates of occupancy as the necessary minor subdivision was just recorded on December 5, 2023. City tax map and geographic information system (GIS) maps will be updated to show the area as one parcel. While those updates are pending, this staff report will describe the property as two parcels.

The applicant is requesting to rezone a +/- 26,000-square foot portion of a +/- 1.06-acre area from R-3, Medium Density Residential District to R-5C, High Density Residential District Conditional. The property is addressed as 716, 720, and 722 Foley Road and is identified as tax map parcels 84-B-15 & 16. The applicant intends to build three, one-bedroom or efficiency units behind the existing building addressed at 716 Foley Road. Although not proffered, the applicant intends to construct these units as three fully accessible ADA units.

Additionally, the applicant is requesting to subdivide the +/- 1.06-acre parcel addressed as 716, 720, and 722 Foley Road (tax map parcels 84-B-15 and 16). The applicant is proposing to subdivide the property to place each single-family detached dwelling on its own lot and to place all multifamily units on one parcel. Additionally, the applicant is requesting a variance to the Subdivision Ordinance to allow the proposed +/- 25,782 square foot multi-family lot to not have public street frontage.

#### *Proffers*

If the rezoning is approved, it would supersede and replace the existing R-3 (Medium Density) zoning and associated SUPs.

The applicant has offered the following proffers (written verbatim):

1. Dwelling units on the referenced property shall be one bedroom or efficiency units only.
2. Dwelling units on the referenced property may be occupied by a family or no more than three (3) individuals per unit.

The submitted conceptual site layout is not proffered.

The R-5 district allows by right dwellings to be occupied by a family or not more than four persons. Proffer #2 reduces the allowable occupancy of dwelling units to either a family or not more than three persons. With this proffer, because the minimum off-street parking requirements of Section

10-3-25 (7) allows for reduced parking when occupancy is restricted, only one parking space per unit is required by the ZO.

#### *Land Use*

The Comprehensive Plan designates this site as Medium Density Residential and states:

These areas have been developed or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.

While the applicant did not proffer a maximum number of dwellings units, with R-5's minimum 1,800 square foot lot area requirement per multi-family unit, and because they are requesting to rezone +/- 26,000 square feet, the allowable number of units in the R-5 area would be 14, which is what the R-5-zoned area would contain if the applicant built the three planned units. If the rezoning is approved, and if the subdivision is approved, the maximum density of the subject properties could be 18 units. In this case, staff believes such unit types and density would be in conformance with the Land Use Guide.

#### *Transportation and Traffic*

A traffic impact analysis (TIA) was not required for the rezoning request.

#### *Public Water and Sanitary Sewer*

Staff has no concerns with the requested rezoning regarding water and sewer matters. With the approval of the proposed subdivision, the applicant would be providing a 20-foot public sanitary sewer easement.

#### *Subdivision Variances*

The proposed subdivision includes a variance request to deviate from the Subdivision Ordinance Section 10-2-42 (c), which requires "[a]ll lots shall front on a public street and no lot shall embrace any portion of a street or alley." As part of the subdivision, the applicant would provide an appropriate access easement for the parcel that does not have public street frontage.

#### *Housing Study*

The City's Comprehensive Housing Assessment and Market Study (Housing Study) places the subject site within Market Type A. Among other things, this Market Type is characterized by high population growth. The study notes that Market Type A has "above median overall access to amenities such as public transit within walking distance, full-service grocery stores, and multiple parks and recreation facilities." The study also notes that "policies that are appropriate to Market type A areas include an emphasis on increasing density through zoning changes, infill development and housing rehabilitation to maintain the quality of housing."

#### *Public Schools*

Harrisonburg City Public Schools does not anticipate the three planned units impacting student generation numbers.

#### *Recommendation*

Although staff would typically expect for the applicant to construct street frontage improvements of curb, gutter, and sidewalk, decisions were previously made to forego such improvements at this location. Staff believes the proposed rezoning is conforming with the Comprehensive Plan and speaks to appropriate policies and actions identified by the Comprehensive Housing Assessment and Market Study. With regard to the proposed subdivision, aside from the requested variance, the subdivision would meet all other Subdivision Ordinance requirements. Staff recommends approval of both the rezoning and the plat variance request.

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

Frank Gordon, the applicant representing Devon Lane LLC, came forward to speak to the request. He said I was just thinking to myself that was in the ALICE part of the program now. We do not have a team of 12 or a budget of tens of millions but hopefully we will be able to still do something useful for our community. This application has grown out of a conversation with the Planning Director regarding practical ways of achieving meaningful responses to the Harrisonburg Housing Report. In that report the consultants recommended that zoning changes be made to increase density in type A neighborhoods of which this is one given its location to amenities, sources of employments, healthcare, recreation, etcetera. Also, the housing report recommended an increase in efficiency units due to their inherent affordability and this will provide three additional of those units. I did not hear any talk this evening or recently of any other developers looking to actually build efficiency units, so I hope that even with the small size of this... I think it will make a meaningful contribution to the number of those units available on the market. Also, in initial discussions with stakeholders who have residents who might like to occupy the nearly completed building, as my certificates of occupancy are obtained, it has become clear in my discussions with them that the more accessibility we can provide, the better that will be particularly given the aging of our population which was also mentioned in the housing report. An additional benefit of this is that currently the two single family homes are rented and if the rezoning and subdivision is not approved, then for all practical purposes, they will remain rental houses forever because to buy one you would have to buy both plus the apartment building being on one lot. So, this subdivision would also allow for the possibility of owner occupancy down the road. Houses tend to outlive their builders and this will probably be no exception in my case. As a special note of congratulations to Councilwoman Dent for her recent environmental post appointment, I wanted to just point it out as a brief note and brag on myself for a moment to say that the 716 Foley Road hosts a voluntary rain garden, which this gentleman over here referred to as a microbiome which I thought was also very interesting, which has been in place almost 10 years and was developed with cooperation with the Department of Environmental Quality. I will also say that I was not overwhelmingly impressed by two level two chargers for 140 parking spaces at this giant building and that the 11 unit building here and the three anticipated each unit will have a level three charging and the available electrical infrastructure will support that for everybody there. In the interest of time, I am not going to try to anticipate all possible objections because I trust that I will also be granted the opportunity that the team of 12 were given to respond thoroughly to any objections. If that is in fact the case, then I will wait.

Vice Mayor Dent said as I saw on the site there is a wonderful tree there, are you keeping that?

Mr. Gordon said the current layout for this anticipates that, however, I also will note that is a silver maple with a multi-stem habitus and I have been in consultation with my arborist about whether we would be better in the long term maintaining that tree or substituting it for one with a better structure and they have not given me a final report on that, but I appreciate your interest in that tree.

Chair Finnegan said as Vice Mayor Dent mentioned earlier the CPACE [program], there is also the HCAP program which the City can help reimburse for the planting of trees. So, that is something worth looking into.

Chair Finnegan asked if there were any questions for the applicant. 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.

Vice Chair Byrd said reviewing the preliminary plat, I see nothing that stands out. Reviewing the rezoning, I have also not seen issues with that.

Chair Finnegan said I have been on this commission for seven years now and we have approved a lot of things, City Council has approved a lot of things, this is one of the few multifamily buildings that has been approved that has gotten built during my time here. There was a lot that has been approved and ground is yet to be broken on many of them. I have a good feeling that if this gets approved that this will get built.

Vice Chair Byrd said Chair that is a good point. I remember when I was very new to the commission, I saw this one. The building that is there now, it just got finished being built just waiting for a Certificate of Occupancy, we were considering if that should even be and I remember approving that. So, to see it built, that is interesting and now to see these other things. Interesting is there is not as much resistance to this as much as the first one. If anyone has nothing else to say then I will make a motion to approve the rezoning.

Vice Mayor Dent seconded the motion.

Commissioner Baugh said I want to note for the record that I have not spoken on this. I do not intend to speak on this. I will, unless Mr. Russ has a better idea, submit to the clerk tomorrow the standard statement. For ethical reasons related to my sense as a member of the Virginia State Bar I am going to recuse myself. I have recused myself and will recuse myself from anything further on items 4i. and 5a.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Recused
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye

Chair Finnegan                      Aye

The motion to recommend approval of the rezoning request passed (6-0). The recommendation will move forward to City Council on January 9, 2024.

Vice Chair Byrd said I would like to make a motion to approve the plat variance as submitted.

Commissioner Armstrong seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Recused
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of the preliminary plat variance passed (6-0). The recommendation will move forward to City Council on January 9, 2024.