



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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October 31, 2022

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

SUBJECT:

Consider a request from Mosby Opportunity Fund LLC to rezone parcels addressed as 2492, 2494, 2496, and 2498 Millwood Loop

Consider a request from Mosby Opportunity Fund LLC for a special use permit to allow townhomes at 2492, 2494, 2496 and 2498 Millwood Loop

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: October 12, 2022**

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this site as Medium Density Residential. 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.

The following land uses are located on and adjacent to the property:

- Site:** Property under construction, zoned R-3C.
- North:** Property under construction for townhomes and existing multi-family dwellings, zoned R-3C and R-3, respectively.
- East:** Multi-family dwelling units, zoned R-3.
- South:** Multiple-family dwelling units, zoned R-3.
- West:** Townhome development under construction, zoned R-3C.

The four subject properties together total +/- 0.29 acres of property and are part of a planned 39-unit townhome development, which is now under construction. To allow for the townhome development, the subject properties, along with the remainder of the townhome project acreage,

were rezoned in August 2018 to R-3C, Medium Density Residential District Conditional. In November 2019, the property owners preliminarily platted the 39-unit townhome complex and received approval to deviate from the Subdivision Ordinance Section 10-2-42 (c) so that townhome parcels did not have to front along a public street. Four months later, in March 2020, the engineered comprehensive site plan for the project was approved. Then, in December 2021, the property owner submitted the final subdivision plat to officially create the townhome parcels.

During the review of the final plat, staff noted that the parcel for Unit 54 did not meet the depth requirements of the R-3 district and communicated to the developer that the parcel could not be created as shown. At that time, the developer chose to combine the areas of planned Units 54 and 55 so that the final plat could be approved to then move forward with construction of the other areas of the townhome community. The hope was that new Zoning and Subdivision Ordinance regulations would have been approved by the time the developer reached that section of the project and that the townhome community would have been zoned to a new district that could accommodate lesser depths for townhome parcels. Unfortunately, the regulations have not yet changed and the developers are now ready to begin construction of that section of the community. Staff and the developer met to discuss options for them to be able to construct the five-unit row of townhomes that Unit 54 was planned to be a part of since the beginning phases of the project. It was determined that the only option to allow for the planned buildings was to rezone the site to the R-8 district, which allows for townhome parcels with lesser depths than the R-3 district. However, since townhomes are only permitted by special use permit (SUP) in the R-8 district, they would also have to apply for the SUP to allow for townhomes. The information below describes the details for the rezoning and SUP requests.

The applicant is requesting to rezone four parcels totaling +/- 0.29 acres of property from R-3C, Medium Density Mixed Residential Conditional to R-8, Small Lot Residential District while simultaneously applying for a special use permit (SUP) per Section 10-3-59.4 (1) for the same acreage to allow for townhomes within the R-8 district. Approval of both applications would allow the developer to maintain their plan of development, which is to build a row of five townhomes within the +/- 0.29 acres of land.

As noted in the Background section of this report, the four subject properties are part of a larger townhome development and are currently zoned R-3C, Medium Density Mixed Residential District Conditional with the following proffer:

1. If rezoned to R-3, Medium Density Residential District, the 3.47 acre portion of the subject property will be developed in no greater density than 39 units, as shown on the "Rezoning Exhibit" dated June 29, 2018 and submitted in connection with the application.

If the rezoning is approved, the above noted proffer would no longer be applicable to the subject properties, however, all remaining R-3C-zoned properties of this development would continue to be regulated by that proffer. It should be understood, however, that it does not grant approval for those remaining properties to somehow find areas to create five additional units on the R-3C-zoned areas that are capped to a total of 39 units.

While four properties are part of the rezoning and SUP permit requests (tax map parcels 7-E-55, 56, 57, and 58), in reality, parcel 7-E-55 is the parcel that prompted the need for these applications.

Approval of both requests would allow this parcel to be subdivided to create Unit 54 and Unit 55 as illustrated in the attached exhibit, where Unit 54 would have an average lot depth of 101.94 feet rather than 112 feet, which is what is required if the parcel were zoned R-3. The developer could have chosen to apply for the rezoning and SUP only for tax map parcel 7-E-55, but because the impacted unit is part of a five-unit building, they chose to rezone all properties associated with the five-unit structure.

For all intents and purposes, if both requests are approved, physically there is little that will actually change when compared to what has been approved for construction. There are, however, a few regulatory differences that should be understood. One is regarding dimensional lot and setback requirements. In the table below, one can view the dimensional differences for townhomes in R-3 and R-8.

Zoning District	Lot Area Sq. Ft./Unit	Lot Width (ft.)	Lot Depth (ft.)	Front Yard Setback (ft.)	Side Yard Setback (ft.)*	Rear Yard Setback (ft.)	Maximum Stories	Maximum Height (ft.)
R-3	2,000	18	112	30	10	25	3	40
R-8	1,800	18	60	10	7 or 10 (depending upon number of stories)	20	3	40

*Shared walls have zero-foot setbacks; structures with more than four units have 15-foot side yard setbacks.

Minimum off-street parking requirements are also different for townhomes in the two districts. In R-3, off-street parking is based upon the number of bedrooms per dwelling—1.5 spaces for one bedroom, 2.5 spaces for two and three bedrooms, and 3.5 spaces for each unit with four or more bedrooms. Whereas the requirements for R-8-zoned townhomes is one parking space per unit.

Another difference is occupancy regulations. The R-3 district allows a family or not more than four persons per unit, whereas the R-8 occupancy regulations are the same as R-1, which is associated with whether the unit is owner- or non-owner occupied. Owner-occupied units may be occupied by a family plus two persons, while non-owner-occupied units may be occupied by a family plus one person. The developer is aware of this situation and was not concerned that occupancy of the proposed five unit R-8-zoned properties would have different occupancy regulations than the remainder of the townhome development.

Given the narrow circumstances of this situation, staff has no concerns with either of the requested applications and recommends approving rezoning the property from R-3C to R-8 and to approve the SUP to allow for townhomes.

Chair Finnegan asked if there were any questions for staff.

Councilmember Dent said I want to be sure that I understand. What I understand is that this is what will work so that they can have five units instead of four.

Mr. Fletcher said that is correct.

Commissioner Whitten said the complication was because the property in that little square is owned by condominium owners, correct? That makes it difficult?

Mr. Fletcher said that is correct. I have been working with Mr. Todd Rhea. He has a representative here this evening, if you have any questions. I cannot recall if they attempted to buy it or decided it would be too complicated. The end result was that they worked with us to find a potential solution.

Commissioner Byrd said in practical terms, does this mean that whoever eventually gets that unit will not own much concrete in front of their property?

Mr. Fletcher said based on the comprehensive site plan it will still be a paved space because it is part of the parking lot.

Chair Finnegan asked whether it had anything to do with fire truck access.

Mr. Fletcher said it is a very standard parking layout, probably 60 feet in width with 24-foot travel aisles, which is very standard for a fire apparatus.

Chair Finnegan asked if the parking lot would belong to the condominium association.

Mr. Fletcher said yes. There are probably some cross-easements and understandings between the two property owners and the two developments.

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

Quinton Callahan, attorney with Clark & Bradshaw representing the applicant, came forward in support of the request. My partner is Todd Rhea who has ushered this along to this point. He asked me to step in tonight as he is unavailable. I am familiar with the project. We have represented this client for a while. I agree with everything Mr. Fletcher said. It is the least complicated of multiple complicated options. For the reasons stated with that property being owned by a condominium association, it would be incredibly difficult to get that conveyed out. There were attempts to do that, but I do not know if there was an offer made. I do not know how far they got, but the decision was made that they could not go further. I understand that there are to be cross-access easements. It comes down to this one section of these four lots will have a different zoning. To anyone driving by there, these will look identical. It will all be laid out as it was originally, as it has gone through every phase. We just hit this one snag at the end which is why we had to come back today and ask for this rezoning. I would ask that you approve the rezoning and the SUP. Mr. Fletcher did not speak specifically to the SUP. The SUP is to allow townhomes in the R-8 zoning district which is not permitted by-right. I am happy to answer any questions.

Chair Finnegan asked if there were any questions for the applicant's representative. He asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, closed the public hearing and opened the matter for discussion.

Commissioner Whitten moved to recommend approval of the rezoning request.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the rezoning request passed (7-0). The recommendation will move forward to City Council on November 8, 2022.

Commissioner Whitten moved to recommend approval of the SUP.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the SUP passed (7-0). The recommendation will move forward to City Council on November 8, 2022.