CITY OF HARRISONBURG
COMMUNITY
DEVELOPMENT

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January 30, 2025

TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Consider a request from the City of Harrisonburg to amend the Zoning Ordinance, Article E. - Nonconforming Structures and Uses

EXTRACT FROM THE DRAFT MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: January 8, 2025

Chair Baugh read the request and asked staff to review.

Ms. Rupkey said 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=.)

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]henever 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.[1]

Key Issues:

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.

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 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 though 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.

Chair Baugh asked if there are any questions for staff.

Commissioner Alsindi said thank you for the presentation. I do understand this is an arrangement and I welcome it in principle for such situations. I have a question with regard to the two unrelated individuals. Does that mean this treatment will still enable people to rent such units and if so, is this in line with the main goal of this treatment in terms of we still want to turn it to M-1, correct? But this is a fair treatment for cases that are pending in such situations. Allowing people to rent, which again, in principle, I do welcome this. But I am looking at it from a general point of view and the implications in the future. Would this still allow people to use the nonconformance for keeping it nonconformed without being changed to M-1, which is our goal but without being unfair to the situation as such is being presented today?

Ms. Rupkey said the property would remain…I will just continue using the North Liberty Street property as an example for this one. In this situation the property would remain M-1. It just has a nonconforming use that had lost its nonconformity meaning that they have to now do what is allowed in the M-1 district. Does this help answer your question?

Mr. Fletcher said first to answer your question this has no impact on whether or not the property can be rented. Whether it is owner occupied or it is not owner occupied is irrelevant. If you own the property and you want to rent to somebody, they can absolutely rent it. The situation that we have is, typically, if you expand upon a nonconforming use, you usually lose everything. The best option we thought was to just go to the baseline most restrictive occupancy because we have different occupancies in different zoning districts. Because the M-1 does not specifically have one then we are just saying that you have to comply with this single-family or two unrelated individuals. That is the most restrictive occupancy in the City which mimics the UR district, which is our downtown district. Other options could have been to mimic what is in R-1, which gets a bit complicated, but it is like single-family. If it is owner occupied, you get an additional two boarders. If it is not owner occupied, you get an additional one border. The reason you often times hear people misstate “oh it is just two unrelated” is because you end up having someone rent to one person and then because that one person counts as a family, they only get one more boarder and that is where the two comes in. You oftentimes have this situation, especially for us in a college town, where you end up with just two people residing in a unit that has relatively restrictive

occupancy. If Planning Commission wanted to, you could amend it to have up to four [unrelated individuals] if you wanted to do that. We just went to the most restrictive because you are still granting this property the ability to have residential occupancy. Otherwise, it would have be no occupancy because the residential use would not be permitted.

Commissioner Alsindi said even if we say only single-family without adding the two unrelated, we still have that opportunity. We are restricting it in a positive way. There is no restricting the freedom of renting it, but renting it in certain situations in a limited form that I would call a positive limitation.

Mr. Fletcher said whether it is owned and lived in or rented…maybe I am not understanding your concern but the occupancy remains the same.

Commissioner Alsindi said I understand opening the door for rental in this way by saying reasons for extending the nonconformance. I do not think that is the intention of this amendment here. In the future we still look forward to M-1, but without disadvantaging people who are in such cases who have purchased a unit or is living there as a single family. By saying to individuals, we are giving more reasons to extend the nonconformance beyond this specific situation.

Chair Baugh said are you saying that you would like it better if it just said one family?

Commissioner Alsindi said yes.

Chair Baugh said I think what staff is saying is that you can do that. That would make it the absolute most restrictive thing that we have. We do not have anything that restrictive.

Councilmember Dent said if I can reflect from what you were saying that the R-1 [occupancy] is so complicated. If it is the owner they get two, if it is not they get one. Rather than going into that detail just keep it either a family or two unrelated.

Mr. Fletcher said the other component to this was that when we have these nonconforming properties, we do not know what the occupancy is. It could have been four, could have been six, could have been eight, could have only been a single family. We do not know. So, when they lose their nonconformity you have to decide what you want to allow and what you want to go back to or establish. I think as staff, and we did not get into this detail, but I would suggest what we have proposed to not further limit it to a single family only but to keep it at a single family or two [unrelated persons]. I think that does create more flexibility. If you wanted to do the R-1 stuff, that is even more flexible. It is not like it is so complicated, but to the public it gets a little confusing. We did not get into the discussion about any other types of occupancy. This seemed to be the most straightforward way for us to enforce the regulation because we are essentially reestablishing an occupancy for them to abide by.

Councilmember Dent said what would you do if you found out that there were four unrelated people there? Do they lose the nonconformity?

Mr. Fletcher said that is what this is saying.

Ms. Rupkey said are you asking if they lose their nonconformity again? Like they get a notice of nonconformity, they go through this process, we find out that they can keep their nonconformity and then they would do it again. Was that your question?

Councilmember Dent said or if they exceed the limits we are proposing here.

Mr. Fletcher said let us say that there were four individuals living in a residence and somewhere along the line they decided that they wanted to take the unit and convert it into two. Where two people would live downstairs and two people would live upstairs, that expansion of creating an additional unit in that structure made them lose the ability to have four in total. The situation that I just described would be very unusual. It would more likely be that you had four people living in a unit and somebody created an additional unit in that structure and went to put more people in that second unit. Thanh, Meg, or Wesley do you have any other thoughts to help clarify.

Ms. Dang said if we found out on an M-1 zoned property there was a single family dwelling that there had ten people living there and we determine there has never been a time where ten people could have lived there, and they would have, under typical, current day circumstances, lost their nonconformity. This new change as we have proposed would allow them to not lose their nonconformity, they can be a single family detached dwelling and go down to the occupancy prescribed in this text.

Mr. Fletcher said if you are trying to capture the ability where somebody had ten people and then they added an eleventh, now they have lost their nonconformity. Under the current rules that house can no longer even be a house. It just has to be M-1 or B-2 property and follow whatever nonresidential uses apply. We are creating an exception to keep the unit on the market. If you are trying to figure out a way to allow the ten to go back in, that is where we had so much debate. Our Zoning Administrator was really challenged even with the exception that we have created because we are starting to erode into the purpose of nonconforming law. If you are trying to say well you had ten you went to eleven, shame on you go back to ten, it kind of defeats the purpose of the nonconforming ordinance and people might start to take advantage of those things.

Councilmember Dent said I guess what I am getting at is the two unrelated seems overly restrictive to me, I am not sure about that. It seems like the more normal is four, right? I do not know where the right number is.

Mr. Fletcher said I do not know what normal is. There are just different occupancies for different zoning regulations.

Vice Chair Finnegan said to Councilmember Dent you are saying making it more like R-1 rather than UR?

Councilmember Dent said I guess so. What is UR?

Mr. Fletcher said Urban Residential. It is much of what most people might refer to as Old Town. It was rezoned back in 2001 from R-2 to the Urban Residential designation and there were concerns

at the time about over occupancies and properties converting into student housing. They worked as a community with Planning Commission, City Council, and staff during the early 2000s to change the regulations to kind of get a bit more control over their neighborhood because of the infiltration of over occupancy of students.

Councilmember Dent said well, in that sense it makes a certain amount of sense for it to match UR because it is industrial, potentially urban, at least in this case. I do not know. I am just sort of debating what is the right number.

Vice Chair Finnegan said I think in my mind my recollection of the August meeting was Chair Baugh that said could we maybe find an exception or a special use permit. This is kind of the compromise. In my mind, this is a good compromise. We are keeping someone in a house. At least in this particular case we are not saying this house can no longer be occupied by a person living here. I hear staff's concerns about are we just encouraging more people to continue living in a place where ultimately want to match with the Land Use Guide.

Councilmember Dent said I am fine with it. I just wanted to commend staff for the creative solution. I remember I said "find a way to make it work."

Mr. Fletcher said it took all of us, literally. We debated it and had many meetings with many different iterations.

Chair Baugh said I will throw in too that while it is a fair general statement and I think tons and tons of examples where we have nonconforming uses and we grit our teeth and we curse the existence of that and say man I hope the day will come and I can not see that it ever will come where this property loses it nonconforming status and can come in compliance with the current zoning. You see that a lot, but it is not 100 percent of the time. Some of the time, and I think this is maybe that we also have these ones where, let us face it, what we have in the zoning is we know that it is in an area that is probably in a certain amount of flux or change. We do not have enough information, vision, confidence, or whatever to be really proactive with it. It ends up being kind of more of a placeholder situation that we have been, correctly, not quick to then proactively start trying to tinker. For an area that you know is probably going to change…I feel confident it is not going to look like this in 50 years. I am less confident that I know what it is going to look like in 50 years. In those situations, I think the argument that we always want nonconforming properties to move in the direction of the zoning is not true. Sometimes we do like the fact that there is some flexibility.

Mr. Fletcher said I will also add too, not that you need to get into our heads in every situation, but we tried to even make this more flexible for other situations. We really started to get much broader in trying to help situations so people would not lose residential units, but it just got so complicated and there was a domino effect and then we just went back to the narrowly tailored situation. We tried and we even went beyond what was asked of us but we came back to this.

Chair Baugh said I am not surprised that the number that you came up with also feels like at one time or another we went to talk to every one of these people. They also run a cross section. You have got some sort of very small dwellings where you are concerned with overcrowding and in

some cases you have an old house of some size. The way I am looking at this is saying is it really creating an exception that maybe falls into that no harm, no foul aspect. If you are caught and you would have lost your nonconforming use under what we have right now. If you put it back, you have not expanded the footprint, you go forward and of course now you are on the radar. I do not want to be putting words in anybody's mouth, but I am sure that part of what we are thinking is since in our system we do not have a database of all the properties... there are properties out there that we know nothing about until a complaint or something comes forward. That is then the issue. That is where you have the argument about have you really had ten people in here constantly. We can all think of examples and property owners that we think push the envelope every place else. Presumably they would be willing to push the envelope here. I certainly agree with staff's conclusion. Again, I said special use permit as food for thought, not because I was into that idea. I think this approach makes more sense than just opening the door. I can totally see that just opening the door and saying well if you are in the M-1 now you can just apply for this, that is too much.

Councilmember Dent said that was good brainstorming then.

Chair Baugh said it got us moving in this direction. Any additional questions for staff for points of discussion before we open the public hearing?

Councilmember Dent said I remember from the aerial maps, and the site in general, that this is one of those places that was annexed from the County. So who knows when it got there. There was also a string of a small trailer park next door, that has to be nonconforming. As you say no harm, no foul, unless they try to expand or whatever. There is a sense that it is already there, why single out this one person who came to you trying to improve their house or something. The other thought I had about it is that in some cases this might be a beneficial temporary arrangement or however long it lasts for people to live right next door to the industrial place they work and walk to work. If the slightest infraction makes them ousted, where are they going to go? While it is still temporary and only a certain compromised solution, I think it is a workable one.

Vice Chair Finnegan said this language is directed specifically at single family detached units. This does not apply to duplexes, townhouse, or apartments?

Ms. Rupkey said correct. As Mr. Fletcher brought up, we were going out a little far and it was harder to find an amendment that would work for all of these situations.

Mr. Fletcher said we went down that rabbit hole. We talked about duplexes, we talked about apartments above commercial spaces, all of those things. That is where we really were like "we are going to make a good thing here" and then it got much more complicated and we had to pull back. You are correct and good observation, this only applies to single-family detached dwellings. As Meg had pointed out earlier there is only a handful of these situations across the City. It is not just this 895 North Liberty Street situation. There are others and they would have to fit into the criteria. Did they increase the number of occupants or the number of units in the existing structure? Did they expand the structure? There is just so many different things. We just had to come back to what was the objective? What are we trying to solve? It just got way too complicated.

Chair Baugh opened the public hearing and invited 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 Finnegan said I just wanted to circle back to Commissioner Alsindi's question, I think UR is the most restrictive zoning that we have in the City in terms of single-family housing and in terms of how many people can live there. I mean just to answer your earlier question, bringing this in line with the most restrictive single-family housing zoning regulation that we have. I think it is a good compromise to saying no one can live here at all. I think making more restrictive than UR, I do not know that I would support that personally. I do not know if staff can speak to the plus one when we say no more than one family or two unrelated individuals. I do not know if staff can speak to that it is single-family housing. That is low-density single-family housing. What does the plus one come from?

Mr. Fletcher said what is the reasoning behind it? Well, that I truly do not know the answer to. It has probably been written that way since the 70's. It basically says owner occupied units can have a single family plus two boarders. Non owner occupied meaning you rent the place can have a single family, how many people are in your family or meets the family definition in the Zoning Ordinance plus another individual. That is where the plus one comes in. The reason why you end up with only two sometimes is because sometimes an individual counts as the family. They are not married, they have no dependents, then they could have one other person. I see no disadvantage to doing what we are proposing for you to adopt. I find myself similar to Commissioner Finnegan just in saying that there would be no reason to further restrict it. You would actually be hurting the community in a way because it is not creating those opportunities for the nuclear family situation.

Vice Chair Finnegan said often two roommates might…if the rent is $1500 a month or something that is a lot for one person but to split it in half...

Mr. Fletcher said you have situations where you might have a single parent and a child and they have a significant other, that would count.

Chair Baugh said I think, in some state of my mind, that some of the roots are kind of like that. That it was, when you go back 50 years, that an unmarried couple with children, I think everybody would say that sounds like a family, but the unmarried couple raised the question. I think that is some of the roots to some of the stuff. Oh, we are not married, we are not related, we are not a family. You two can do it, but you cannot bring anybody else in.

Ms. Rupkey said I am not sure if this would help but our definition of family is not just by marriage. It is the blood, marriage, adoption, fostering, guardianship.

Commissioner Alsindi said not to regret why I did not codify this more; I always go back to the Comprehensive Plan. For me that is The Constitution that I am likely to go back to. Referring back to the Chairman when he said 50 years, my intention is to make it in 15 years if possible and to expedite such kind of cases. To me it makes sense, so that is where my argument is coming from. To further restrict it... I do understand is against the flexibility that you are calling for and I do appreciate that. If it is in our hands and if it is possible not to add the plus two That was my question. Let us confine and limit was set for the single family as it would help in further expediting

and reaching lower comprehensive goals.. Meeting the Comprehensive Plan's goals and shaping the character of the City. While again being concentrated to people's need in terms of rental and so on. Sometimes to me that is a priority. There are other choices and opportunities for people to rent not necessarily in an M-1 and then turn the unit into becoming a reason for income rather than a single family that needs to live there as this whole case situation emerged from last time.

Chair Baugh said what is the pleasure of the group?

Vice Chair Finnegan said I will move to approve the Zoning Ordinance amendment as submitted by staff.

Councilmember Dent seconded the motion.

Chair Baugh called for a roll call vote.

Commissioner Nardi	Aye
Vice Chair Finnegan	Aye
Councilmember Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	Aye
Chair Baugh	Aye

The motion to recommend approval of the Zoning Ordinance Amendment passed (6-0). The recommendation will move forward to City Council on February 11, 2025.