



PUBLIC NOTICE
WILLIAMSBURG PLANNING COMMISSION

The Williamsburg Planning Commission will hold a public hearing on Wednesday, July 19, 2017, 3:30 P.M. in the Council Chambers of the Stryker Center, 412 North Boundary Street, to consider the following:

PCR#17-014 Amend the Zoning Ordinance by adding Section 21-623 to Article IV – Supplemental District Regulations to allow duplex dwellings existing in residential districts prior to January 1, 2004 to apply for a special exception from the Board of Zoning Appeals to demonstrate the existence of a legal non-conforming use, so long as the owner meets certain conditions contained in the ordinance.

Additional information is available at www.williamsburgva.gov/publicnotice or at the Planning Department (757) 220-6130, 401 Lafayette Street. Interested citizens are invited to attend this hearing and present their comments to Planning Commission.

If you are disabled and need accommodation in order to participate in the public hearing, please call the Planning Department at (757) 220-6130, (TTY) 220-6108, no later than 12:00 noon, Wednesday, July 12, 2017.

Carolyn A. Murphy, AICP
Planning and Codes Compliance Director



CITY OF WILLIAMSBURG
MEMORANDUM

TO: Planning Commission

DATE: June 9, 2017

SUBJECT: PCR#17-014
Zoning Text Change adding Section 21-623 to Chapter 21, Article IV,
Supplemental District Regulations for duplex dwellings

City Council members have requested that staff look at the issue of nonconforming duplex dwellings in the City and examine how the code could be amended to allow nonconforming duplexes which have been used as such for decades to continue to exist even if the owner is not able to demonstrate the property is legally nonconforming, and to do so in a way which does not expand the existence of duplex dwellings in the City's single family neighborhoods.

The City's zoning ordinance has not permitted duplex dwellings as a use by right since 1966 in residential districts RS-1, RS-2 and RS-3. Duplexes in existence prior to 1966, which have continued to be used as duplexes, are legally nonconforming; that is the use may continue as it exists, but not expanded, so long as the use continues without interruption for a period of more than two years. The attached ordinance does not affect that right. As a college community, there are numerous duplex dwellings in the City, many of which have been in existence for decades.

The City staff has identified 46 duplexes. Of those 46, 7 have provided evidence that the use is legally nonconforming and have obtained a zoning administrator's opinion recognizing that legal nonconformity. Those duplexes therefore, are "vested" and may continue that use notwithstanding any action of the City. Of the remaining structures being used as duplexes, all but two were constructed prior to 1966 and therefore any of those structures *may* be legally nonconforming.

The City's records are inadequate to determine whether or not those structures were constructed as duplexes, and if not, when the structures were converted to duplexes. The Virginia Uniform Statewide Building Code was adopted in 1973, and has changed numerous times since then. Conversions could have and certainly did occur without the owner obtaining a building permit, legally or not, and so the City's building records are not definitive on this issue. Most of these properties have changed hands, likely multiple times, since 1966.

While the burden is on the property owner to demonstrate the existence of a legal nonconformity, the burden is quite high given the need to produce records dating back more than 50 years. Council is concerned about the inequity that creates for

subsequent purchasers, who purchased the property with the belief, rightly or wrongly, that the property could legally be used as a duplex, and in particular, for those properties which have been used as duplexes for decades.

One alternative would be to amend the zoning ordinance to permit duplex dwellings as a use by right. This is not desirable unless council determines that it wishes to allow the conversion of existing single family dwellings to duplex dwellings as a matter of right.

Another alternative would be to allow the continued use of existing duplexes as a special exception, under limited conditions which specifically address these properties long existing as duplexes, but not creating duplexes as a new use or allow more recently illegally converted duplexes eligibility for the special exception. Additionally, in order to obtain and continue the special exception, prior to the application, the property must have been largely in compliance with public safety and order provisions of the City Code – specifically the nuisance ordinance, the building and fire codes, and the occupancy limitations of the zoning ordinance (simply referred to as city code hereafter) in order to ensure that the nonconformity for extremely problematic properties is not perpetuated by the existence of the special exception. The special exception would run with the land, but the special exception would terminate if the use of the property as a duplex ceases for a period of two or more years, consistent with Virginia law regarding legal nonconforming uses.

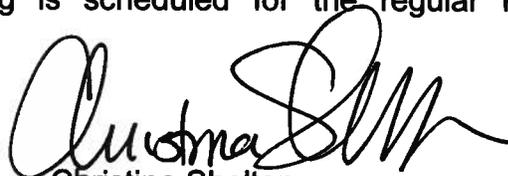
The attached ordinance provides for such a special exception and the conditions staff recommends the code contain with respect to the granting of a special exception under these circumstances. The conditions are quite specific and do not allow for significant amounts of subjectivity. Of note, the conditions require that the duplex must have existed prior to January 1, 2004, which is when the City began its rental inspection program. Second, the special exception is available only to subsequent purchasers. If the existing property owner created the nonconformity, the property is not eligible for a special exception. In that vein, the conditions also preclude a property from obtaining a special exception if on September 1, 2017, nonconformity was created by the current owner, even if a subsequent owner obtains the property thereafter, which will prevent currently non-qualifying properties from participating in the future. Third, the property cannot have had more than three code violations in the last four years. Finally, if the city staff has already determined that the property is not legally nonconforming, the special exception is not available. The ordinance further provides that the nonconformity cannot be expanded pursuant to the special exception. The ordinance also provides that the special exception can be revoked by the Board of Zoning Appeals if there are three or more violations of the city code within a rolling twelve month period.

This process would be an alternative to the owner having to prove a legal nonconforming use, although it will require the owner to provide some documentation back to 2004 demonstrating the conditions of the special exception can be met, but those are far less onerous than the current burden of demonstrating 51 years of continued nonconforming use. The process will not expand the existing inventory of

duplexes beyond the current number but it will allow those existing duplex uses to remain, provided the conditions are met. If the owner chooses not to obtain a special exception, or the special exception is revoked, the owner will still have the option of proving the legal nonconforming use, as the City cannot extinguish vested rights by the issuance or revocation of a special exception.

PLANNING COMMISSION PUBLIC HEARING

The Planning Commission public hearing is scheduled for the regular Planning Commission meeting on July 19.



Christina Shelton
City Attorney

ORDINANCE # _____
PROPOSED ORDINANCE # _____

AN ORDINANCE ADDING SECTION 21-623 DUPLEXES TO CHAPTER 21, ARTICLE IV OF THE CODE OF THE CITY OF WILLIAMSBURG

WHEREAS, there are a number of existing duplex dwelling units in the existing single family residential neighborhoods of the City which have been in existence for decades and which have not historically detracted from the neighborhoods in which they exist; and

WHEREAS, duplex dwellings have not been permitted as a use by right in single family residential neighborhoods of the City since 1966; and

WHEREAS, the City does not have a comprehensive list of which duplexes are legally non-conforming and which duplexes are not due to the age of the properties, the lack of building records from such time, and the nature of the use; and

WHEREAS, the City Council desires to create certainly to the extent possible with respect the City's zoning ordinance and the rights associated with these properties, without harming those property owners who purchased existing duplexes which have been in existence for decades, but for which records may no longer exist which demonstrates such legal nonconformity, and further to do so without also harming the single family neighborhoods in which such duplexes are already located; and

WHEREAS, the council does not desire nor intend to create a use by right for those properties which are not otherwise legally non-conforming, but does intend to permit many of such properties to continue to be used as duplexes, with conditions, by creating a special exception for those properties which qualify pursuant to the conditions of the special exception.

NOW, THEREFORE BE IT ORDAINED that Section 21-623 is hereby added to Chapter 21, Article IV of the Code of the City of Williamsburg, as follows:

CHAPTER 21

ARTICLE IV – SUPPLEMENTAL DISTRICT REGULATIONS

Section 21-623. Duplexes.

(a) Intent. These regulations are established to allow duplex dwellings existing in residential districts prior to January 1, 2004 to continue to be used as duplex dwellings notwithstanding the owner's ability to demonstrate the existence of a legal non-conforming use, so long as the owner meets certain conditions.

(b) Continued use of a dwelling as a duplex dwelling, though nonconforming, shall be contingent upon approval of a special exception for such use by the Board of Zoning

appeals, subject to the following conditions:

1. The dwelling was being used as duplex at the time the record owner making application for the special exception purchased the property. Properties transferred after September 1, 2017 and which are transferred from an owner creating the nonconformity shall not qualify for the special exception.

2. The dwelling was used as a duplex prior to January 1, 2004 and the use as a duplex has continued without interruption for a period of more than two years thereafter.

3. The use of the property as a duplex dwelling will not have an adverse impact on the neighborhood. In determining adverse impact, the Board of Zoning appeals shall only consider whether or not the property has had three or more complaints, substantiated by the City staff, within the four years prior to the date of the application for violations of any of the Virginia Uniform Statewide Building Code, the Virginia Statewide Fire Prevention Code, Chapter 12 of the Code of the City of Williamsburg related to nuisance, or the zoning ordinance related to occupancy in excess of the number of unrelated persons permitted to reside in a dwelling unit.

4. City records do not otherwise clearly establish the property is not legally nonconforming.

(c) The special exception shall run with the property. A nonconforming use permitted by the special exception may not be expanded.

(d) The special exception may be revoked by the Board of Zoning appeals upon a showing that the property has had three or more violations confirmed by city staff of any of the Virginia Uniform Statewide Building Code, the Virginia Statewide Fire Prevention Code, Chapter 12 of the City Code regarding nuisances, or the zoning ordinance regarding the number of unrelated persons permitted to reside in a dwelling unit, within a twelve month period measured backwards from the date of the most recent violation.

(e) The special exception shall terminate upon the cessation of the property's use as a duplex dwelling for two or more years.

Secs. 21-624 - 21-700. Reserved.

Except as otherwise herein amended, the city code shall remain unchanged.

Adopted: _____, 2017

Paul Freiling, Mayor

Donna Scott, Clerk of Council