



**PUBLIC NOTICE
WILLIAMSBURG CITY COUNCIL**

The Williamsburg City Council will hold a public hearing on Thursday, August 10, 2017, 2:00 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 City Council.

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, Thursday August 3, 2017.

Donna Scott
Clerk of Council



CITY OF WILLIAMSBURG

MEMORANDUM

DATE: July 21, 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 47 duplexes. Of those 47, 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. After Planning Commission's meeting, staff proposes amending subsection (b)(3) to correct and clarify that the Board of Zoning appeals should consider the history of code violations at the property, and how to assess those in relation to the question of impact on the neighborhood. 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.

STAFF RECOMMENDATION

That Planning Commission recommends to City Council adoption of the proposed ordinance.

PLANNING COMMISSION RECOMMENDATION

Planning Commission held a public hearing on July 19 and three citizens spoke at the public hearing. Planning Commission recommended to City Council by a vote of 6-1 approval of the proposed ordinance #17-15.

REVISED STAFF RECOMMENDATION

After Planning Commission's meeting, staff proposes amending subsection (b)(3) to correct and clarify that the Board of Zoning Appeals should consider the history of code violations at the property, and how to assess those in relation to the question of impact on the neighborhood and recommends approval of proposed ordinance #17-15A.

CITY COUNCIL PUBLIC HEARING

City Council public hearing is scheduled for Thursday, August 10 at 2:00 p.m. in the Council Chambers of the Stryker Center, 412 North Boundary Street.


Christina Shelton
City Attorney

ORDINANCE # _____
PROPOSED ORDINANCE #17-15

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

ORDINANCE # _____
PROPOSED ORDINANCE #17-15A

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.

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(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~~ *the history of 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. *Three violations within that four year period shall be considered a significant number of violations leading to disqualification. Notwithstanding the above, if the Board of Zoning Appeals find that the violations were fully and appropriately corrected as provided in the notice(s) of violation, they may approve the special exception, provided the applicant meets all of the other qualifications.*

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

	A	B	C	D	E	F	H	P	R	T
1	NEIGHBORHOOD #	ZONING	TAX MAP NO	STREET #	STREET NAME	TYPE OF UNIT	OWNER	OWNED	BUILT	
2	QUARTERPATH	RS-2	495-06-00-A3	14	BASSETT DR	DUPLEX	PAPARIS & PAPARIS	PRE 80		
3	COLLEGE TERRACE	RS-2	434-13-00-A	110	BROOKS STREET	DUPLEX	SKINNER, WILSON F JR & HOPE S, TR	PRE 80	1950	
4	BURNS LANE	RS-2	524-13-00-013	313	BURNS LANE	DUPLEX	JONES, GEORGE T & DENISE A	2016	1952	
5	CAPITOL HEIGHTS	RS-3	468-01-01-003,4	406	CAPITOL LANDING ROAD	DUPLEX	BLAND, WILLIAM R	1983	1930	
6	CAPITOL HEIGHTS	RS-3	468-01-08-001,2,A	602	CAPITOL LANDING ROAD	DUPLEX	SHELLY, GARY L	1998	1941	
7	CHANDLER COURT	RS-2	495-02-00-007*	130	CHANDLER CT	DUPLEX	BARRETT, GENEVIEVE T, TR	1989	1949	
8	COLLEGE TERRACE	RS-2	464-01-04-031	620	COLLEGE TERRACE	DUPLEX	SLAYTON, GLENN R & LILI H	2000	1958	
9	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-01-07-023,24	101	GRIFFIN AVENUE	DUPLEX	MORKEN, P DENNIS & MARTHA	1998	1920	
10	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-01-01-011,12	118	GRIFFIN AVENUE	DUPLEX	MEDVENE, MARK I & LAURA C	2012	1920	
11	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-01-04-015,16	228	GRIFFIN AVENUE	DUPLEX	HOLMES, DAVID & CAROLYN	1988	1951	
12	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-01-05-012->14	302	GRIFFIN AVENUE	DUPLEX	RAMSEY, BARBARA	1983	1931	
13	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-13-00-002	404	GRIFFIN AVENUE	DUPLEX	POWER, MICHAEL F	2008	1940	
14	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-05-05-002*	415	GRIFFIN AVENUE	DUPLEX	WILLIAMSON, FORREST W & CHRISTINE L	1980	1962	
15	WEST WILLIAMSBURG HEIGHTS	RS-2	434-09-05-025B,26	203	HARRISON AVENUE	DUPLEX	STEELE, JOSEPH H III & ABBITT, STEPHEN M	2005	1931	
16	WEST WILLIAMSBURG HEIGHTS	RS-2	434-09-06-035	208	HARRISON AVENUE	DUPLEX	SHELLY, GARY	2001	1950	
17	WEST WILLIAMSBURG HEIGHTS	RS-2	434-09-05-029	211	HARRISON AVENUE	DUPLEX	MIDAS INC/DEMETRIOS FLORAKIS	2011	1943	
18	WEST WILLIAMSBURG HEIGHTS	RS-2	435-02-00-001	215	HARRISON AVENUE	DUPLEX & SFR ON LOT	CUMMINGS, EMILY SUE	1985	1930	
19	WEST WILLIAMSBURG HEIGHTS	RS-2	435-02-00-002	217	HARRISON AVENUE	DUPLEX	MIDAS INC/DEMETRIOS FLORAKIS	2012	1940	
20	INDIAN SPRINGS	RS-2	525-01-00-062A	130	INDIAN SPRINGS ROAD	DUPLEX	HEYMAN, JOSEPH S & BERNA L	1980	1950	
21	INDIAN SPRINGS	RS-2	525-01-00-056	211	INDIAN SPRINGS ROAD	DUPLEX	MCCONNELL FAMILY TRUST	2014	1947	
22	INDIAN SPRINGS	RS-2	494-14-00-001	302	INDIAN SPRINGS ROAD	DUPLEX	DAVIS, WILLIAM F, JR & MARLENE	1983	1950	
23	INDIAN SPRINGS	RS-2	524-12-00-8	310	INDIAN SPRINGS ROAD	DUPLEX	PERKINS, BRAD A & LOLA R	2012	1963	
24	ROLFE ROAD	RS-2	523-06-00-007,8	902	JAMESTOWN ROAD	DUPLEX	LONE-G INC	2002	1950	
25	CAPITOL HEIGHTS	RS-3	438-01-00-028->30	105	JEFFERSON STREET	DUPLEX	THOMPSON, CHARLES FLEMING	1995	1965	
26	WEST WILLIAMSBURG	RS-3	434-01-02-015,16	804	LAFAYETTE STREET	DUPLEX	LONE-G INC	2006	1945	
27	WEST	RS-3	434-01-07-035,36	809	LAFAYETTE STREET	DUPLEX & SFR ON LOT	OLIVER, ROBERT & KATHRYN	2004	1951	
28	WEST WILLIAMSBURG	RS-3	434-01-07-029,30	905	LAFAYETTE STREET	DUPLEX	MORKEN, P DENNIS & MARTHA	2005	1953	
29	WEST WILLIAMSBURG	RS-3	434-01-07-026->28	907	LAFAYETTE STREET	DUPLEX	MORKEN, P DENNIS & MARTHA	2005	1968	
30	SKIPWITH	RS-2	342-05-00-006	112	LONGHILL ROAD	DUPLEX	ESCOBAR, ROBERT & FLOEGL, JODY & SCOTT	2006	1953	
31	SKIPWITH	RS-2	341-04-00-002	219	LONGHILL ROAD	DUPLEX	CITY OF WILLIAMSBURG	1985	1960	
32	MATOAKA COURT	RS-2	433-07-0A-002	120	MATOAKA COURT	DUPLEX	CYPHERS, ROBERT T	2004	1951	
33	MATOAKA COURT	RS-2	433-07-0A-001A	124	MATOAKA COURT	DUPLEX	MORKEN, P DENNIS & MARTHA	2004	1957	
34	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-14-00-003A,4	504	NEWPORT AVENUE	DUPLEX	BERG, SVEN DAN & SUSAN	1988	1950	
35	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-14-00-005	506	NEWPORT AVENUE	DUPLEX	MAINOR, ELIZABETH C & THOMAS F	2002	1950	
36	CARY-GRIFFIN-NEWPORT- BOUNDARY	RS-2	495-14-00-006,7	508	NEWPORT AVENUE	DUPLEX	ELLIS, VIRGINIA C	1993	1950	
37	WEST WILLIAMSBURG HEIGHTS	RS-2	434-0A-00-013	727	RICHMOND ROAD	DUPLEX	CASEY, ROBERT	PRE 80	1900	
38	WEST WILLIAMSBURG	RS-3	434-01-04-017,18	126	SHIRLEY AVENUE	DUPLEX	ALBERT, GRAHAM	2011	1946	
39	COLONIAL EXTENSION	RS-2	496-04-05-010	403	TYLER STREET	DUPLEX	HUGHES, GENEVIEVE O	1962	1962	
40	COLONIAL EXTENSION	RS-2	496-04-05-008	407	TYLER STREET	DUPLEX	HUGHES, GENEVIEVE O	1962	1962	
41	COLONIAL EXTENSION	RS-2	496-03-08-010	505	TYLER STREET	DUPLEX & TRIPLEX ON LOT	TYLER STREET PROPERTIES	2012	1948	
42	WEST WILLIAMSBURG HEIGHTS	RS-2	435-02-00-016	224	VIRGINIA AVENUE	DUPLEX	COSTA, CHARLES	1972	1950	
43	CAPITOL HEIGHTS	RS-2	438-01-08-031,32,P	111A	WASHINGTON STREET	DUPLEX	BARRY, JOHN S JR	1986	1966	
44	CAPITOL HEIGHTS	RS-3	438-01-08-023->25*	117	WASHINGTON STREET	DUPLEX & SFR ON LOT	COE, THOMAS	1980	1951	
45	WEST WILLIAMSBURG	RS-3	434-01-04-011,12	109	WESTOVER AVENUE	DUPLEX & SFR ON LOT	REVOCABLE TRUST	1996	1948	

