

**LEXINGTON PLANNING COMMISSION**

**August 10, 2023 - 5:00 P.M**

**Rockbridge County Administrative Offices – First Floor Meeting Room  
150 South Main Street, Lexington, VA 24450**

**AGENDA**

- 1. CALL TO ORDER**
- 2. APPROVAL OF THE AGENDA**
- 3. APPROVAL OF MINUTES**  
Minutes from July 27, 2023\*
- 4. CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**
- 5. NEW BUSINESS**
  - A. CUP 2023-02: An application by Lorelei Pisha requesting approval of a conditional use permit to allow an educational facility, primary/secondary at 10 N. Lewis Street, (Tax Map #25-4-B & 25-4-C), owned by Lorelei and Jonathan Pisha.
    - 1) Staff Report –
    - 2) Applicant Statement –
    - 3) Public Comment –
    - 4) Commission Discussion & Decision –
  - B. CUP 2023-03: An application by Sarah Dudley requesting approval of a conditional use permit to allow the first floor of an existing building at 221 S. Main Street, (Tax Map #23-1-129) to be used as a residential dwelling unit, owned by Tenacious Properties, LLC.
    - 1) Staff Report –
    - 2) Applicant Statement –
    - 3) Public Comment –
    - 4) Commission Discussion & Decision
  - C. ZOA 2023-01: Annual Zoning Ordinance Amendments. Accessory Dwelling Units (A.D.U).
    - 1) Staff Report\* and continued Commission Discussion
    - 2) Public Comment

**6. OTHER BUSINESS**

A. Zoning and Planning Report – If applicable

B. Key Annual PC Milestones: Ongoing. Remaining items:

- 1) Zoning Text Amendments: Ongoing. Remaining items:
  - a. Cottage Housing
  - b. What else, if any?
- 2) Comp Plan Review: Ongoing
- 3) Major Project Update

**7. CITY COUNCIL REPORT**

**8. ADJOURN**

\*indicates attachment

## MINUTES

**The Lexington Planning Commission**  
**Thursday, July 27, 2023 – 5:00 p.m.**  
**Rockbridge County Administrative Offices – First Floor Meeting Room**  
**150 South Main Street, Lexington, VA 24450**

### **Planning Commission:**

Presiding: Shannon Spencer, Vice-Chair  
 Present: John Driscoll  
 Gladys Hopkins (arrived 5:06 p.m.)  
 Blake Shester  
 Matt Tuchler, Vice-Chair

### **City Staff:**

Arne Glaeser, Planning Director  
 Kate Beard, Administrative Assistant

Absent: Pat Bradley  
 Leslie Straughan, Counsel Liaison

### **CALL TO ORDER**

Vice-Chair Spencer called the meeting to order at 5:00 p.m.

### **AGENDA**

The agenda was unanimously approved as presented. (B. Shester / M. Tuchler)

### **MINUTES**

The minutes from the July 13, 2023 meeting were unanimously approved as presented. (B. Shester / M. Tuchler)

### **CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**

None

### **NEW BUSINESS**

#### **A. ZOA 2023-01: Annual Zoning Ordinance Amendments. Accessory Dwelling Units (A.D.U.).**

##### 1) Staff Report & continued Commission Discussion –

Director Glaeser reviewed the progress made thus far and pointed out that the draft text had been reformatted to more closely resemble how it will be included in the zoning ordinance. He indicated his goal for this meeting was to get through the section concerning existing nonconforming structures which would result in a full first draft of the ordinance.

He reminded the Commission that draft use and design standards for new detached ADUs had been developed and the focus now was to determine whether/how an ADU would be allowed in existing structures that do not comply with those standards, particularly with regard to setbacks. He reviewed the existing standards for nonconforming structures contained in Article 16 of the zoning ordinance referenced in the draft ADU text, provided some examples, and reiterated the existing standards would apply to ADUs. He requested the Commission consider whether additional provisions specific to ADUs in nonconforming structures should be added to the use and design standards in Article 11, to

provide additional clarity. He responded to a question from M. Tuchler by suggesting that, should a provision be considered for a detached ADU that diverges from the provisions of Article 16, language could be added to the ADU standards that specifies any proposal meeting the use and design standards included in the ADU ordinance would not violate Section 16.1. Responding to a question from B. Shester about what would constitute an enlargement of a nonconformity, A. Glaeser said the footprint of existing structure that was nonconforming with respect to setbacks could only expand into the internal portion of the lot and could not create further encroachment into the setback. He pointed out items 1-8 under detached nonconforming accessory buildings in the staff report and noted they were topics discussed during the last ADU discussion. He also noted that during that discussion there seemed to be consensus to allow the entirety of an existing structure to be used as an ADU, even if it exceeded the size allowed for a new ADU. B. Shester then suggested that a provision be added specifying that an existing structure cannot be enlarged to exceed the maximum square footage of the main dwelling. Responding to a question from S. Spencer, A. Glaeser confirmed the maximum area of a new ADU, as currently written, was based on a percentage of the square footage of the main dwelling rather than a percentage of the footprint. There was general agreement to add a provision that limited the area of an accessory dwelling in an existing structure to less than the size of the main dwelling.

A. Glaeser requested the Commission develop setback standards for nonconforming structures that could be used as placeholders in the first draft of the ordinance. S. Spencer recalled there had been prior discussion about limiting windows on building facades that are within the setback and expressed concern about fire safety. A. Glaeser encouraged the Commission to not concern itself with fire and building codes. He said the final draft of the ordinance would be reviewed by the Building Official and Fire Marshal before its adoption, and any new dwelling would be inspected and would be required to comply with fire and building codes. J. Driscoll suggested the Commission consider P. Bradley's previously voiced concern that some flexibility would be needed for existing buildings that do not conform to setback requirements as they are likely in the majority of the existing structures. He said he hoped to find a compromise that allows for accommodation for those existing structures that does not adversely impact adjacent properties. A. Glaeser reminded the Commission that a suggestion had been made to include a provision for existing structures that required a minimum distance from the neighboring structure in lieu of a setback requirement. He also reminded them that the suggestion to restrict windows on exterior walls within the setback had included a restriction on the placement of HVAC/mechanical units. He asked if either was an acceptable compromise.

Following discussion that involved the consideration of visual aids representing different lot types and varying placements of a three dimensional "ADU", there was general agreement to allow dwellings in nonconforming accessory buildings within the setbacks with the following stipulations: 1) no new fenestration, including bay window encroachments, or mechanical/HVAC units may be located along any exterior wall within 5 feet of the property line, unless the wall faces an alley or side street, 2) new windows may be located on walls that are at least 5 feet from the property line, unless the wall faces

an alley or side street, in which case windows may be located within 5 feet of the property line, and 3) new exterior doors may be located in walls that are at least 10 feet from the property line.

A. Glaeser said he had not yet received word on how addressing for ADUs would be handled, but would update the Commission when he had. Responding to queries about ADU access requirements, he stated there were no requirements for driveways or walkways and suggested the parking provisions, discussed previously, could be reviewed and finalized once the first draft of the ordinance had been completed.

With the reminder that the discussion was still focused on existing structures, the Commission considered whether to institute a maximum height restriction for accessory buildings to be used as ADUs. The Commissioners considered the 25 feet / 1 ½ story limit proposed for new detached ADUs and questioned the dimensions of Lexington’s existing stock of accessory structures.

2) Public Comment – Lee Merrill, 2 Randolph Street, stated there were plenty of existing knee wall buildings in Lexington that are 4 or 5 feet at the eave, and he encouraged the Commission to allow ADUs in existing 2 story buildings. He said if flexibility was being sought to allow the conversion of existing structures to a different use the Commission should not overly restrict height.

3) Continued Commission Discussion -

There was general agreement not to impose a height restriction on existing, nonconforming structures but to prohibit additional height from being added to such structures. Following additional discussion there was also agreement to strike the final proposed provision allowing a nonconforming post and beam structure to be converted into a dwelling and to include slightly more inclusive language about the types of accessory structures exempted from the conversion to a dwelling.

Director Glaeser invited Commissioners Tuchler and Shester to share their parting thoughts about ADUs prior to the end of their last meeting as Planning Commissioners. B. Shester noted that while the draft text was less unwieldy than it had been there were plenty of issues remaining to be finalized and he encouraged the Commission to take advantage of the work done by other jurisdictions rather than trying to reinvent the wheel. He also offered a reminder that the intent was to be more flexible and less prohibitive. M. Tuchler added that while there was not necessarily a right answer to everything, the Commission had reached the point when decisions had to be made.

## **OTHER BUSINESS**

A. Zoning and Planning Report – Director Glaeser reported the following:

- An HD COA application was received for the demolition of the structure at 201 N. Jefferson Street. That application will be heard by the Architectural Review Board on August 3<sup>rd</sup>.
- The Building Official has recently encountered contracting work being performed in the City by unlicensed individuals. He wanted the public to be aware that he is available to answer questions about licensing requirements and to confirm what type of license an individual contractor has.

- He attended the County's July 19<sup>th</sup> Board of Zoning Appeals meeting.

**CITY COUNCIL REPORT -**

None

**ADJOURN**

The meeting was adjourned at 7:21 p.m. with unanimous approval. (B. Shester / M. Tuchler)

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S. Spencer, Vice-Chair, Planning Commission





*photographs of 10 N. Lewis Street*







Lorelei Pisha is requesting a conditional use permit for an *Educational Facility, Primary/Secondary* to allow the House Mountain Learning Cooperative (the “Co-Op”), a homeschool cooperative, to operate out of the upstairs unit of the two-family dwelling located at 10 N. Lewis Street. The applicant reports there is an active search for a permanent location for the Co-Op and envisions its use of the Lewis Street location would not extend beyond the 2024-2025 academic year. The Co-Op would generally meet at the Lewis Street property no more than three days per week, primarily between the hours of 10am and 2pm, and would enroll no more than 12 children and their families.

The subject parcel fronts on N. Lewis Street for a length of 118 feet and this amount of frontage equates to approximately 5 to 6 on-street parking spaces. Additionally, the demand for on-street parking is limited in this block because the adjacent Sigma Nu headquarters provides off-street parking for all of their employees and guests. Sufficient on-street parking should be available for the residents of the downstairs unit of the subject parcel as well as those on-street parking spaces needed for the limited drop-off and pick-ups generated by a school with only 12 students that are on flexible schedules.

### APPLICABLE ZONING ORDINANCE SECTIONS

#### §420-1.6. Establishment of Districts

For the purposes of this chapter, the area within the incorporated City, as it exists at the time of the enactment of this chapter, is hereby divided into classes of districts, which are established as follows:

##### *General Residential District (R-1)*

This district is composed of certain moderate-density residential areas, plus certain open areas where similar development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district and to promote and encourage, insofar as is compatible with the intensity of land use, a suitable environment for family life composed of a family population. For this reason, the number of unrelated individuals permitted to constitute a household unit is limited to a maximum of three in this district. Residential structures for both permanent and transient occupancy, including institutions, may be authorized.

#### §420-20.1 Definitions

##### *EDUCATIONAL FACILITY, PRIMARY/SECONDARY*

A public, private or parochial school offering instruction at the elementary, junior and/or senior high school levels in the branches of learning and study required to be taught in the public schools of the Commonwealth of Virginia.

### CONDITIONS OF ISSUANCE OF A CONDITIONAL USE PERMIT

Section 420-1.11., *Conditional use permits*, in part

#### C. Conditions of Issuance

- (1) Conditional use permits may be issued for any of the uses for which a conditional use permit is required by the provisions of this chapter, provided that the governing body, upon a recommendation by the Planning Commission, shall find that:

- (a) The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use. *The proposed educational facility with limited enrollment and limited hours and days of operation will not adversely affect the health and safety of persons residing or working in the neighborhood.*
  - (b) The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood. *The proposed educational facility with limited enrollment and limited hours and days of operation will not be detrimental to the public welfare.*
  - (c) The proposed use will not be in conflict with the policies and principles of the City's adopted Comprehensive Plan. *The proposed educational facility will not be in conflict with the policies and principles of the Lexington Comprehensive Plan.*
  - (d) Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use. *Adequate public services are available to support the proposed educational facility and sufficient on-street parking is available for the limited drop-off and pick-ups generated by a school with only 12 students on flexible schedules.*
- (3) In granting any conditional use permit, the governing body shall give due consideration to factors relevant to the findings required by Subsection C (1) and (2), as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this chapter, and the governing body shall designate such conditions as it deems necessary to carry out the intent of this chapter. The application for such conditional use permit shall be accompanied by such written and graphic material as may be necessary to enable the Planning Commission and the governing body to make the recommendation and findings set forth above.

### STAFF RECOMMENDATION

Based on the aforementioned findings and opinions, the Staff recommends the proposed Conditional Use Permit be **APPROVED WITH CONDITIONS**, as follows:

1. This conditional use permit for an Educational Facility, Primary/Secondary for the House Mountain Learning Cooperative in the upper level of the building located at 10 N. Lewis Street shall be valid for the 2023-2024 and 2024-2025 academic years and will expire on June 1, 2025.
2. The proposed educational facility building shall be occupied and used by a maximum of 12 students ages 6 and up at any one time; however, in no case shall the number of students be allowed to exceed the maximum occupancy or limits established by all applicable state and local building codes.

3. The educational facility shall operate primarily between 10 a.m. and 2 p.m. with occasional activities outside of those hours.
4. The educational facility shall not be open or hold any events prior to 8:30 a.m. or after 4:00 p.m. Monday through Friday.
5. The educational facility shall operate generally not more than 3 days per week (Monday through Friday) unless there is extended inclement weather.
6. The educational facility shall allow flexible drop-off from 8:30 a.m. to 10 a.m. and pick-up from 2 p.m. to 3:30 p.m.
7. The building will be at all times used, in full conformance with the 2009 Virginia Unified Statewide Building Code and the 2009 Virginia Statewide Fire Protection Code.
8. No change in the design or use of the building shall be undertaken unless such change is in full compliance with the above referenced building and fire codes.

**PLANNING COMMISSION RECOMMENDATION**

*Pending*

**SUGGESTED MOTION:**

I move to approve Conditional Use Permit number CUP 2023-02 for an educational facility at 10 N. Main Street with the staff recommended conditions.





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Planning & Development Department  
300 East Washington Street  
Lexington, Virginia 24450  
Phone: (540) 462-3704 Fax: (540) 463-5310

### APPLICATION FOR CONDITIONAL USE PERMIT

#### Applicant<sup>1</sup>

Name: Lorelei Pisha Phone: (703) 772-7857

Company: n/a Fax: n/a

Address: 216 Catalpa Pl. Lexington VA 24450 Email: lorelei.pisha@gmail.com

Applicant's Signature: \_\_\_\_\_ Date: 07/13/23

#### Property Owner

Name: Lorelei Pisha Phone: J - (917) 969-4302  
L - (703) 772-7857

Address: J: 10 N Lewis St, Lexington VA 24450  
L: 216 Catalpa Pl, Lexington VA Email: J: jpisha@gmail.com  
L: lorelei.pisha@gmail.com

Owner's Signature: [Signature] Date: 07/13/23

#### Proposal Information<sup>2</sup> (attach list of properties if request includes multiple properties)

Address (or location description): 10 N Lewis St, Lexington, VA 24450 upstairs unit

Tax Map: 24-5-B + 24-5-C Deed Book and Page #: 210003452 pages 22, 23

Acreage: 2.1 acres Zoning (attach any existing zoning conditions or proffers): Residential

Description of Proposal<sup>3</sup>: see attached

1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
2. Any application deemed incomplete by staff will not be accepted.
3. Please refer to page 3 of this application for the conditions of issuance for all conditional use permit applications. Submitting a sketch plan or other visual detail of your request is highly encouraged.



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 300 East Washington Street  
 Lexington, Virginia 24450  
 Phone: (540) 462-3704 Fax: (540) 463-5310

## Conditions of Issuance

§ 420-11.C of the City of Lexington Zoning Ordinance outlines the conditions under which a conditional use permit may be issued. These conditions are as follows:

- 1) Conditional use permits may be issued for any of the uses for which a conditional use permit is required by the provisions of the zoning ordinance, provided that the governing body, upon a recommendation by the Planning Commission, shall find that:
  - a. The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use.
  - b. The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood.
  - c. The proposed use will not be in conflict with the policies and principles of the City's adopted Comprehensive Plan.
  - d. Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use.
- 2) Where the provisions of this chapter require conditional use permits for certain parking lots and drive-in facilities in the Commercial District (Central Business) C-1, due consideration shall be given in general to the purposes of the C-1 District and specifically to the effect of such parking lot or drive-in facility on the historic pattern of buildings and, in particular, on the maintenance of a compact, efficient and attractive retail facade and arrangement of buildings; on the use of off-street circulation ways, including use of alleys; on the location of access points and relationship to traffic and pedestrian flow; and on the adequacy of off-street waiting area at drive-in facilities.
- 3) In granting any conditional use permit, the governing body shall give due consideration to factors relevant to the findings required by Subsection C(1) and (2), as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this chapter, and the governing body shall designate such conditions as it deems necessary to carry out the intent of this chapter. The application for such conditional use permit shall be accompanied by such written and graphic material as may be necessary to enable the Planning Commission and the governing body to make the recommendation and findings set forth above.



Attachment to Application for Conditional Use Permit

(Applicant – Lorelei Pisha)

(Property Owners – Jonathan Pisha and Lorelei Pisha)

**Description of Proposal**

July 13, 2023

**Summary:**

This proposal is for the operation of a homeschool cooperative located at the upstairs unit of 10 N Lewis St. (the "Property") as a temporary location for the 2023-24 academic year and possibly the 2024-25 academic year. The Property consists of a duplex residential dwelling and includes two separate but adjacent parcels of real estate, as noted in the application to which this description of proposal is attached. A copy of the recording receipt and deed for the Property is attached for reference. The downstairs unit of the Property is used by Jonathan Pisha as his residence. The name of the homeschool cooperative (the "Co-Op") will be House Mountain Learning Cooperative.

**Explanation of Homeschool Cooperative:**

Children of families participating in the Co-Op will be registered as homeschoolers following the procedures established by each family's respective Local Educational Agency (LEA). Accordingly, the Co-Op will not operate as a traditional school. Each participating family is responsible for (i) educating their own children and following applicable LEA guidelines set forth for homeschooling, and (ii) providing adequate evidence of their child's academic progress. The core purpose of the Co-Op is to give participating children and their families the opportunity to participate in an active and close-knit social community that is engaged in learning opportunities together.

**Qualifications:**

Lorelei Pisha has a doctorate in Special Education from the George Washington University. She will be responsible for homeschooling her children, Georgette (age 10) and Seren (age 8), and will be the primary organizer of the Co-Op. She will use a project-based learning format to support deeper understanding of VA SOL requirements along with fostering and promoting positive social and emotional learning for the Co-Op students. She has decided to homeschool Georgette and Seren after multiple interventions failed to support Georgette while she was a student at Waddell Elementary School. Georgette has significant anxiety and executive function issues.

**Intent -- Address Gap Left by Closure of Earthsong's Upper Elementary Program:**

The Co-Op will address and fill the educational gap left by the closure of Earthsong Community School's upper elementary program, which was announced in April of 2023. Most of the children participating in the Co-Op were scheduled to attend Earthsong's upper elementary program for the 2023-24 academic year and the announcement of the closure of that program was a sudden and unexpected change for these children and their families. The Co-Op was established in response to that closure with the primary objective of providing educational opportunities for students in the fourth grade and older. However, considering the convenience and transportation concerns of participating families with younger siblings and the educational benefit of a diverse group of ages, the Co-Op will include children ages six and older who have older siblings participating in the Co-Op.

**Short-Term Use:**

This request is for a Special Use Permit for a maximum of 2 years, it being understood that the Co-Op is actively looking for a permanent location in the City of Lexington or Rockbridge County from which to operate and expects to have secured such a location prior to the start of the 2024-25 academic year. The Co-Op would like to begin operating not later than September 15, 2023.

**Hours and Frequency of Use; Maximum Enrollment:**

The Co-Op will gather at the Property two to three days per week during the 2023-24 academic year, primarily from the hours of 10am - 2pm, with occasional activities outside of those hours. The Property will serve as the Co-Op's "home base" and will generally operate from the Property not more than three days per week unless there is extended inclement weather. On days when the Co-Op does not operate at the Property, the Co-Op intends to operate at other satellite locations throughout Rockbridge County, with an emphasis on outdoor learning and educational field trips. The Co-Op will enroll not more than twelve children and their families.

**Mitigation of Congestion on Lewis Street:**

Recognizing the concerns regarding traffic congestion resulting from pick-up and drop-off activities near Earthsong Community School on Lewis Street, the Co-Op has devised measures to minimize its impact. To mitigate the Co-Op's traffic footprint, the typical learning day will run from 10:00 AM to 2:00 PM, while a flexible pick-up and drop-off window will be in place from 8:30 AM to 10:00 AM and 2:00 PM to 3:30 PM, respectively. The Co-Op is committed to operating in a manner that is considerate of, and conducted in cooperation with, its neighbors.

Jonathan and I are excited about the Co-Op and strongly believe that it will provide an invaluable educational resource for participating children and their families and fill the acute void left by the closure of Earthsong Community School's upper elementary program. I have reviewed the provisions of Section 420-11.C of the City of Lexington Zoning Ordinance and believe this proposal and request satisfies such requirements.

I welcome and appreciate any opportunity to discuss this request with the Planning and Development Department and address any concerns or questions you may have.

Please do not hesitate to contact Lorelei Pisha ([lorelei.pisha@gmail.com](mailto:lorelei.pisha@gmail.com); (703) 772-7857) to arrange a meeting or discuss any aspect of this request in further detail.

Sincerely,

Lorelei E. Pisha, Ed.D.

Enclosure: Property deed and recording receipt

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<b>Project Name</b>	Conditional Use Permit at 221 South Main Street
<b>Property Location</b>	221 S. Main Street, Tax Map #: 23-1-129
<b>Zoning</b>	C-1 (Center Business), Downtown Historic District
<b>Owner / Applicant</b>	Tenacious Properties, LLC / Sarah Dudley
<b>Applicant’s Intent</b>	CUP for dwelling on the first floor in the C-1 District

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*PLANNING COMMISSION RECOMMENDATION: Pending  
STAFF RECOMMENDATION: Approval*

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### OVERVIEW OF REQUEST AND BACKGROUND

The subject application is a request for a Conditional Use Permit to an unfinished space at the rear of the first floor of an existing building at 221 S. Main Street (TM# 23-1-129) to be converted into a residential apartment for use as a short term rental. Dwelling units occupying the first floor of any structure in the C-1 zoning district shall only be allowed with a conditional use permit. First floor residential units should not be visible from a public street, and if the building fronts on a public street, the residential portion of the first floor shall be required to be shielded by office or retail space or a lobby that maintains a commercial appearance per Section 420-11.1.3 of the Zoning Ordinance.

*photograph of front of 221 South Main Street*

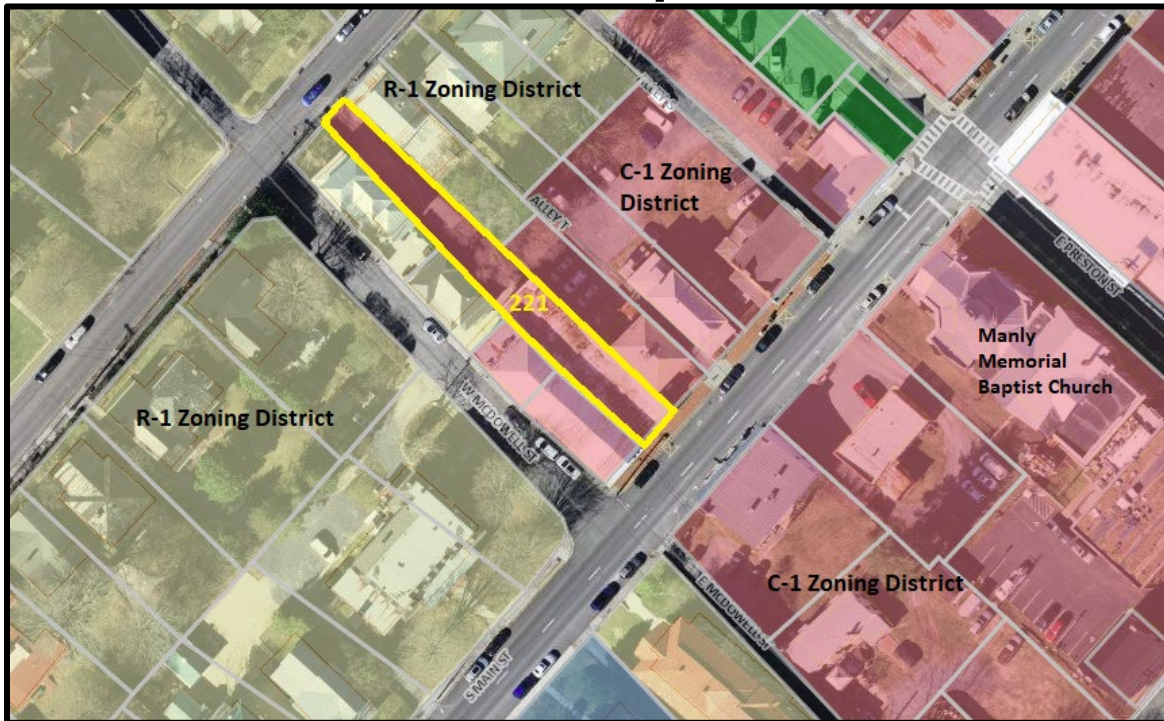




*photograph of rear of 221 South Main Street*



*location map*



The subject parcel runs the length of the block with the front of the building facing Main Street and the rear of the building facing a driveway entrance to Jefferson Street. The front of the building contains the Alcova Mortgage office and the applicant's proposal envisions renovating an unfinished space located behind the office into an apartment. The apartment would not be visible from Main Street and would be accessed from the Jefferson Street side of the building. There is no off-street parking requirement in the C-1 zoning district.

### CONDITIONS OF ISSUANCE OF A CONDITIONAL USE PERMIT

Section 420-1.11., *Conditional use permits*, in part

C. Conditions of Issuance

- (1) Conditional use permits may be issued for any of the uses for which a conditional use permit is required by the provisions of this chapter, provided that the governing body, upon a recommendation by the Planning Commission, shall find that:
  - (a) The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use.  
*(Staff believes the requested first floor dwelling unit will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.)*
  - (b) The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood.  
*(Staff believes the requested first floor dwelling unit will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood. Consideration should however be given to the benefit, if any, of the addition of residential units downtown versus the corresponding loss of commercial space.)*
  - (c) The proposed use will not be in conflict with the policies and principles of the City's adopted Comprehensive Plan.  
*(Staff believes the requested first floor dwelling unit would not be in conflict with the policies and principles of the City's adopted Comprehensive Plan. One goal of the Housing Chapter of the Lexington Comprehensive Plan states that the City should stimulate the development of new housing units for both rental and homeownership.)*
  - (d) Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use.  
*(Staff believes adequate public services are available to support the requested first floor dwelling unit.)*
- (3) In granting any conditional use permit, the governing body shall give due consideration to factors relevant to the findings required by Subsection C (1) and (2), as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this chapter, and the governing body shall designate such conditions as it deems necessary

to carry out the intent of this chapter. The application for such conditional use permit shall be accompanied by such written and graphic material as may be necessary to enable the Planning Commission and the governing body to make the recommendation and findings set forth above.

**PLANNING COMMISSION RECOMMENDATION**

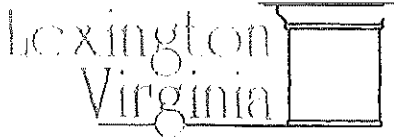
*Pending*

**SUGGESTED MOTION:**

I move to approve/deny Conditional Use Permit number CUP 2023-03 to allow the rear portion of the first floor of the building located at 212 South Main Street in the C-1 zoning district to be used as a residential dwelling unit with the following condition.

1. The uses and layout of the first floor of the subject building shall be in substantial compliance with floorplan dated 7.25.2023 and included in the application.





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Planning & Development Department
300 East Washington Street
Lexington, Virginia 24450
Phone: (540) 462-3704 Fax: (540) 463-5310

APPLICATION FOR CONDITIONAL USE PERMIT

Applicant¹

Name: Sarah Dudley Phone: 540-784-0120

Company: Tenacious Properties LLC Fax:

Address: 221 S. main St Lexington Email: sdudley@alcorva.com

Applicant's Signature: [Signature] Date: 6/14/23

Property Owner

Name: Tenacious Properties LLC Phone: 540-784-0120

Address: 221 S. main St Lexg Email: sdudley@alcorva.com

Owner's Signature: [Signature] Date: 6/14/23

Proposal Information² (attach list of properties if request includes multiple properties)

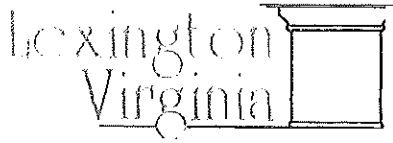
Address (or location description): 221 S. main St

Tax Map: 23-1-129 Deed Book and Page #: 210002641 p. 0074

Acreage: 1.395 Zoning (attach any existing zoning conditions or proffers): C1

Description of Proposal³: renovate unfinished space located in the back of the building on the first floor to be used as a short term rental

- 1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
2. Any application deemed incomplete by staff will not be accepted.
3. Please refer to page 3 of this application for the conditions of issuance for all conditional use permit applications. Submitting a sketch plan or other visual detail of your request is highly encouraged.



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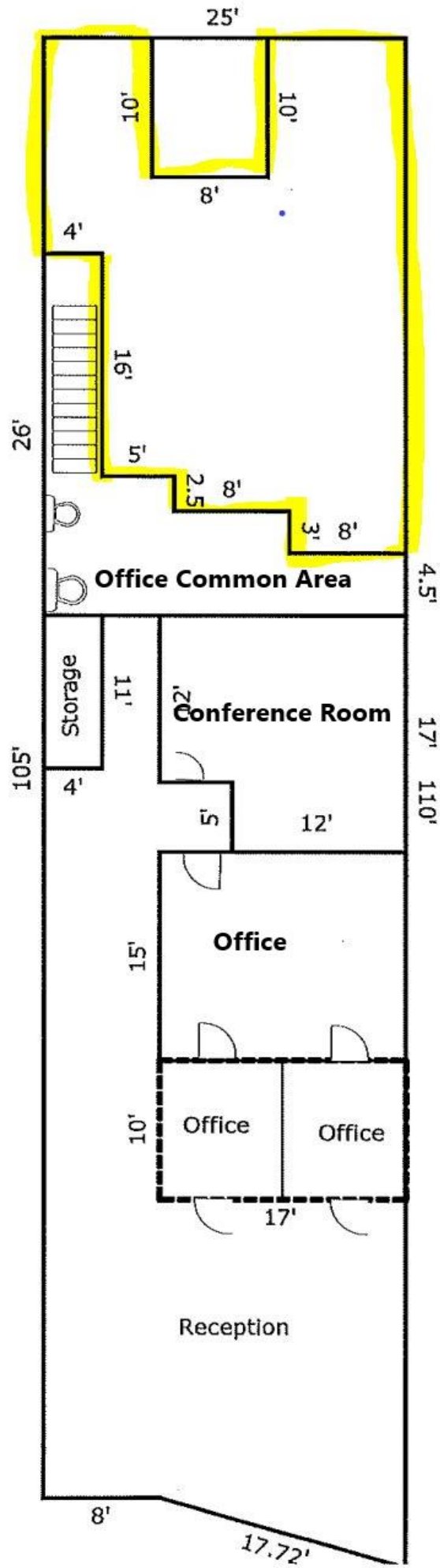
**Planning & Development Department**  
 300 East Washington Street  
 Lexington, Virginia 24450  
 Phone: (540) 462-3704 Fax: (540) 463-5310

## Conditions of Issuance

§ 420-11.C of the City of Lexington Zoning Ordinance outlines the conditions under which a conditional use permit may be issued. These conditions are as follows:

- 1) Conditional use permits may be issued for any of the uses for which a conditional use permit is required by the provisions of the zoning ordinance, provided that the governing body, upon a recommendation by the Planning Commission, shall find that:
  - a. The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use.
  - b. The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood.
  - c. The proposed use will not be in conflict with the policies and principles of the City's adopted Comprehensive Plan.
  - d. Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use.
- 2) Where the provisions of this chapter require conditional use permits for certain parking lots and drive-in facilities in the Commercial District (Central Business) C-1, due consideration shall be given in general to the purposes of the C-1 District and specifically to the effect of such parking lot or drive-in facility on the historic pattern of buildings and, in particular, on the maintenance of a compact, efficient and attractive retail facade and arrangement of buildings; on the use of off-street circulation ways, including use of alleys; on the location of access points and relationship to traffic and pedestrian flow; and on the adequacy of off-street waiting area at drive-in facilities.
- 3) In granting any conditional use permit, the governing body shall give due consideration to factors relevant to the findings required by Subsection C(1) and (2), as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this chapter, and the governing body shall designate such conditions as it deems necessary to carry out the intent of this chapter. The application for such conditional use permit shall be accompanied by such written and graphic material as may be necessary to enable the Planning Commission and the governing body to make the recommendation and findings set forth above.

rear of building facing alley way



Front of the building facing Main Street  
Entrance to Alcova Mortgage

## Draft Accessory Dwelling Unit ordinance language (7.27.2023)

### Article III. Use Matrix.

Zoning District	FP, Floodplain Overlay	P-OS, Parks and Open Space District	R-1, Residential General	R-2, Suburban Residential	R-M, Residential Multifamily	R-LC, Residential- Light Commercial	C-1, Central Business District	C-2, General Commercial District
<i>B = By-right uses, C = Conditional uses</i>								
Use Types								
Residential								
Accessory <del>apartment</del> Dwelling Unit - Attached			B	B	B	B	B	
<a href="#">Accessory Dwelling Unit - Detached</a>			<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>		
Dish Antennas (not meeting use and design Standards in §420-11.1.1)			C	C	C	C		
Family Health Care Structure, temporary			B	B	B	B		
Fraternity/Sorority House, University Administered			C		C			
Group home			B	B	B	B		
Guest room			B	B	B	B		
Live-work dwelling					B	B	B	B
Multi-family dwelling					B	C	B <sup>1</sup> , C <sup>2</sup>	
Single-family dwelling, attached			B	B	B	B		
Single-family dwelling, detached			B	B	B	B		
Townhouse					B	B	B	C
Two-family dwelling			B		B	B		

## §420-11.1. Residential Uses.

### 1. Accessory Dwelling Unit (ADU).

A. Purpose. In Lexington, accessory dwellings are intended to provide additional housing options ~~in the City for the benefit and convenience of families and households with changing economic conditions and/or family structure.~~ Accessory dwellings are expected to increase housing opportunities for individuals and households who might have difficulty finding housing in Lexington. In addition, these provisions are provided to formally recognize previously established apartments and provide for improved safety and physical appearance

B. Definitions. The following words and phrases, as used in this subsection, shall have the following meanings:

“Accessory Dwelling Unit - Attached” means a complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **? persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained within the principal structure of a single-family dwelling, such accessory dwelling unit constitutes an “attached accessory dwelling unit,” for which a separate entrance and street address are required.

“Accessory Dwelling Unit - Detached” means a complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **? persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained in a separate, fully detached structure from the principal structure of a single-family dwelling, such accessory dwelling unit constitutes a “detached accessory dwelling unit,” for which a separate street address is required.

C. General standards. Accessory Dwelling Units shall be subject to the following minimum standards:

- (1) No more than one ADU shall be allowed per parcel, **provided the parcel meets the minimum lot size and the structure meets the minimum setback requirements for the district.** *(with exceptions for C.(5), E.(9), and any others?)*
- (2) Accessory dwelling units must comply with all applicable building code regulations.
- (3) Same minimum lot size for the accessory dwelling unit as the minimum lot size for the primary dwelling.
- (4) The underlying zoning district **development standards** for lot coverage, height, setbacks and ~~floor area ratio~~ that apply to the primary dwelling shall also include the accessory dwelling unit in the calculation of these standards.
- (5) Accessory dwelling units may be created within or attached to an existing primary dwelling located on a lot that is smaller than the minimum lot size provided the primary dwelling is a legal nonconforming use.
- (6) The owner of the principal building or lot shall be the occupant of the principal dwelling or of the accessory dwelling unit.
- (7) The separate sale of an accessory dwelling unit is prohibited.
- (8) Only one short term rental registration shall be allowed per parcel.
- (9) **Accessory dwelling units shall not be included in calculations of density.**
- (10) Allowable square feet for accessory dwelling units shall be calculated as the sum of the total horizontal areas of all floors of the building, measured from the interior faces of exterior walls. **Rooms with structural headroom of less than 6’ 6” shall not be counted,** nor shall garage space, provided the area of the garage

does not exceed the counted floor area. Covered porches, balconies, etc. shall not be counted unless they are enclosed, but shall not exceed 50 percent (50%) of the area of the counted floor area. *(decks?)*

(11) Any accessory dwelling units shall comply with the following parking requirements:

- i. If no parking spaces exist prior to an application for approval of an ADU, 1 space shall be created, provided, however, that if an applicant can demonstrate to the Zoning Administrator that adequate on-street parking exists on the block on which the main dwelling is located, such new space may not be required.
- ii. Where either 1 or 2 spaces exist prior to the issuance of the accessory dwelling permit, all such space(s) shall be maintained.
- iii. Where more than 2 spaces exist prior to issuance of the accessory dwelling permit, at least two spaces shall be maintained.

-OR-

(11) One parking space per accessory dwelling unit shall be required in addition to the number of parking spaces associated with the primary dwelling existing as of the date of approval.

D. Accessory Dwelling Unit – Attached standards. Attached Accessory Dwelling Units shall be subject to the following additional standards:

- (1) The gross floor area of an attached accessory dwelling unit may not exceed forty (40) percent of the gross floor area of the principal structure in which it is located nor more than the total of 750 square feet *(possibly strike the square footage cap to allow flexibility for larger structures).*
- (2) No attached accessory dwelling unit with an entrance above the first floor shall have exterior stairs to that entrance on the side of the lot fronting a street. Accessory dwelling units facing an alley as determined by the Zoning Administrator may have external stairs on the side of the lot facing the alley.

E. Accessory Dwelling Unit – Detached standards. Detached Accessory Dwelling Units shall be subject to the following additional standards:

- (1) The gross floor area of a detached accessory dwelling unit may not exceed forty (40) percent of the gross floor area of the primary dwelling on the property nor more than the total of 800 square feet. Additionally, detached accessory buildings and structures cumulatively shall not occupy more than *??* percent of a rear yard.
- (2) Detached accessory buildings containing accessory dwellings shall exceed neither 25 feet nor 1 ½ stories in height.
- (3) Any detached accessory building approved after \_\_\_\_\_, containing an accessory dwelling shall comply with setbacks as follows:
  - i. For lots in the R-1 zoning district, the nearest wall of the accessory building shall not be located closer than fifteen *(or ten)* feet to a side lot line or fifteen feet to a rear lot line;
  - ii. For lots in the R-2 zoning district, the nearest wall of the accessory building shall not be located closer than twenty *(or fifteen)* feet to a side lot line or twenty feet to a rear lot line; and
  - iii. When a garage situated within a required rear yard is entered from an alley, the garage shall not be nearer than ten (10) feet to the property line adjacent to the alley or side street.
- (4) No detached accessory dwelling unit with an entrance above the first floor shall have exterior stairs to that entrance on the side of the lot fronting a street unless the accessory building was built prior to the date of the adoption of this ordinance.



- (5) A detached accessory dwelling unit located in the Residential Historic District must be reviewed by the Architectural Review Board for consistency with the Historic District Design Guidelines.
- (6) An accessory building in which the accessory apartment is located shall not be required to be separately metered for utilities from the principal single family home.
- (7) A modular dwelling affixed to a permanent foundation may be used as an accessory dwelling unit in any zone in which an accessory dwelling unit is permitted.
- (8) An accessory building in which the accessory apartment is located shall not be required to be separately metered for utilities from the principal single-family home.
- (9) Detached nonconforming accessory buildings **with the exception of temporary structures such as gazebos** existing prior to May 18, 2019, may be altered to make interior *(strike interior?)* alterations, whether structural or non-structural, in accordance with all requirements of Article 16, to create an accessory dwelling provided the detached accessory dwelling unit can meet the following additional requirements:
  - 1) **The maximum square footage of the accessory dwelling may not exceed that of the main dwelling.**
  - 2) ~~Maximum square footage of \_\_\_\_\_ (only so much can be used for the ADU)~~
  - 3) **Any entrance to an ADU located on an alley must be at least 5 feet from the property line adjacent to the alley.**
  - 4) **Fenestration, including bay window encroachments, or mechanical/HVAC units must be at least 5 feet from the property line unless it is located on a wall facing an alley or side street.**
  - 5) **Exterior doors must be at least 5 feet from the property line adjacent to an alley or side street and at least 10 feet from the property line in all other cases.**
  - 6) ~~On interior lots ... *the nearest wall of the accessory building shall not be located closer than five feet to a side or rear lot line UNLESS the nearest wall of the accessory building is at least 15 feet from the nearest wall of the neighboring structure. If an ADU is located in an accessory building that is within the setback, no window or HVAC unit shall be located on the wall closest to the property line.*~~
  - 7) ~~On corner lots ...~~
  - 8) ~~Some allowance for ADU reduced rear and/or side yard setback when adjacent to an "alley"~~
  - 9) ~~Bigger setbacks to road than to alley (see Arlington County B.3.)~~
  - 10) **There is no maximum height limit on a nonconforming accessory structure to be used as an accessory dwelling, however no additional height may be added to such a structure.**
  - 11) ~~Bay window additional allowance to encroach into setback (or just reference Article 4 that allows this additional encroachment for bay windows?)~~
  - 12) ~~A post and beam structure such as a carport that is located within a yard setback may have exterior walls infilled between the posts and still comply with this section provided the all other standards found in this section can be met. *(to allow carport and gazebo conversions)*~~
  - 13) **Except as otherwise provided in Section 420-16-1.C, a nonconforming accessory building may be changed to the accessory dwelling use in compliance with the standards contained in this section.**

#### F. Administration.

- (1) Illegal accessory apartments in detached structures are required to seek approval for the detached accessory apartment through the conditional use permit **and the accessory apartment must meet all requirements thereof.**
- (2) **Legal nonconforming ADUs may continue to exist as is.**
- (3) Reiterate the accessory cannot be constructed without the primary dwelling existing on the parcel.

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## §420-20.1. Definitions

### **ACCESSORY APARTMENT**

~~A residential use having the external appearance of a single-family residence in which there is located a second dwelling unit that comprises no more than 25% of the gross floor area of the building nor more than a total of 750 square feet.~~

### **ACCESSORY DWELLING UNIT - ATTACHED**

A complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **2 persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained within the principal structure of a single-family dwelling, such accessory dwelling unit constitutes an “attached accessory dwelling unit,” for which a separate entrance and street address are required.

### **ACCESSORY DWELLING UNIT - DETACHED**

A complete independent dwelling unit, with kitchen and bath, designed, arranged, used, or intended for occupancy by not more than **2 persons** for living purposes, and meeting the standards of §11.1.1. Accessory dwelling units are clearly incidental and subordinate to, and remain under the same ownership as the main dwelling on the lot. When contained in a separate, fully detached structure from the principal structure of a single-family dwelling, such accessory dwelling unit constitutes a “detached accessory dwelling unit,” for which a separate street address is required.

### **BUILDING ACCESSORY**

A subordinate structure customarily incidental to and located upon the same lot occupied by the main structure. ~~No such accessory structure shall be used for housekeeping purposes.~~

### **DWELLING UNIT**

A room or group of rooms connected together containing cooking, bathroom and sleeping facilities constituting a separate, independent housekeeping unit, physically separated from any other dwelling unit in the same structure.