



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections
Engineering
Planning & Zoning

To: Board of Zoning Appeals
From: Rachel Drescher, Acting Zoning Administrator
Date: May 6, 2019 (Meeting Date)
Re: Appeal – 501 South High Street

Summary

A request by BISAPACA LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-39, Uses permitted by right within the R-2, Residential District. The appeal is specific to the number of dwelling units permitted on the property. The property is located at 501 South High Street and identified by tax map parcels 24-K-1 and 2.

Relevant Definitions per Zoning Ordinance (ZO) Section 10-3-24. - Definitions:

Nonconforming use: Any lawful use existing at the time of the enactment or subsequent amendment of this chapter which does not conform to the current zoning regulations prescribed in the district in which it is situated.

Dwelling, duplex: Two (2) connected dwelling units where each is designed for one (1) family or occupancy as described by the specific zoning district.

Relevant Code Sections

ZO Section 10-3-39 Uses permitted by right (R-2, Residential District)

- (1) Any use permitted by right in the R-1 single-family residential district.
- (2) Duplex dwelling units with limitations as required by area and dimensional regulations (section 10-3-41).
- (3) Accessory buildings and uses clearly incidental to the above. (Refer to section 10-3-114, Accessory Buildings.)
- (4) Public uses.
- (5) Small cell facilities. Wireless telecommunications facilities are further regulated by Article CC.

Background

The property located at 501 South High Street is currently zoned R-2, Residential District. City records indicate that in 1975 the structure at the above referenced property was converted from a 2-unit dwelling

to a 3-unit dwelling (Exhibit A). At the time, a 3-unit dwelling was permitted by right within the R-2, Residential District if the parcel had a minimum of 15,000 square feet of lot area. 501 South High Street has a lot area of 16,420 square feet.

In 2002, the property was recognized as having three dwelling units within the building (Exhibit B). Currently, as confirmed by the property owner, the structure on the property is being used as a four-unit apartment building. There are no building permits or certificates of occupancy indicating this structure was converted legally into a four-unit apartment.

Zoning Ordinance Section 10-3-21(a) states:

Whenever 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. Any subsequent use shall conform to the regulations applicable in the district in which it is located. When a use is regulated by this chapter in a quantifiable manner, including but not limited to regulations limiting the number of unrelated occupants permitted in a dwelling unit and limiting the density of dwelling units, any quantifiable increase shall constitute an enlargement or extension beyond the size, character, or intensity of the use.

Since the nonconforming 3-unit structure was illegally enlarged to a 4-unit structure, the property shall now conform to the current R-2 District regulations. Per Zoning Ordinance Section 10-3-39, Uses permitted by right within the R-2, Residential District, the maximum number of units permitted on the property is two (see Section 10-3-24 for definition of a duplex).

Note the appellant also references that taxes were paid in excess of 15 years, and thus he has a vested right to continue to rent the property as it exists today. The appellant is referring to State Code Section 15.2-2307(D). The Board should note that 15.2-2307(D) is not related to and does not address how a structure is used. This section refers to the characteristics of the building or structure itself, such as height or setbacks. Section 15.2-2307(D) is not relevant to this case.

Staff Determination

Since the nonconforming 3-unit dwelling was illegally enlarged to a 4-unit dwelling, according to Zoning Ordinance Section 10-3-21(a), the property shall now conform to all applicable regulations of the R-2, Residential District. The structure can be used as a single-family detached dwelling or duplex, with occupancy of a family plus one additional boarder per dwelling unit.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for the Board of Zoning Appeals public hearing. The advertisement was published as shown below:

“A request by BISAPACA LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-39, Uses permitted by right within the R-2, Residential District. The appeal is specific to the number of dwelling units permitted on the property. The property is located at 501 South High Street and identified by tax map parcels 24-K-1 and 2.”

In addition, adjoining property owners were notified of the public hearing; the property was posted with signage advertising the request, and a notice was provided on the City’s website at <https://www.harrisonburgva.gov/public-hearings>.

Attachments:

1. Site maps (1 page)
2. Application, applicant letter (16 pages)
3. Exhibit A – Application for Building Permit, 1975 (1 page)
4. Exhibit B – Service Request Form (1 pages)
5. Violation notices (2 pages)
6. Notification of adjoining property owners (3 pages)