



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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April 17, 2023

**TO THE MEMBERS OF CITY COUNCIL  
CITY OF HARRISONBURG, VIRGINIA**

**SUBJECT:** Consider a request from BISAPACA, LLC for a special use permit to allow occupancy of not more than 4 persons at 511 East Market Street

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION  
MEETING HELD ON: March 8, 2023**

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said the applicant is requesting a special use permit (SUP) per Section 10-3-40 (7) of the Zoning Ordinance to allow occupancy for up to four persons within each unit of a duplex dwelling, zoned R-2, Residential District. The property is located at 511 East Market Street. The property has a duplex and the applicant states that there are three bedrooms in each unit. In the R-2 zoning, a family or no more than two unrelated persons may occupy a dwelling unit. In the applicant's letter they are requesting a SUP to allow for three unrelated persons per unit, for a total of six possible tenants. The property has a parking lot on site that will be able to provide adequate parking for tenants.

*Land Use*

The Comprehensive Plan designates this area as Mixed Use and states:

“The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a

Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.”

While surrounding properties have requested rezonings to R-3C, Multiple Dwelling/Medium Density Residential Conditional and R-5C, High Density Residential Conditional, they typically have either proffered to have only professional office uses, or if dwellings were allowed, they had proffered to limit the number of unrelated persons that are allowed in a single unit.

While not an exhaustive list, examples of nearby rezonings and SUPs through the years include:

- In April 1995, City Council approved a rezoning at 510 East Market Street (TM 27-B-1) from R-2 to R-3C. That rezoning included proffers prohibiting all uses except for professional offices.
- In April 2001, City Council approved a rezoning at 503 East Market Street (TM 27-E-3) from R-2 to R-3C. That rezoning included proffers that allows any uses permitted by right in the R-1 and R-2 districts, restricts occupancy of dwelling units to a family or not more than two persons, and allows for professional offices to occupy the building.
- In July 2013, the property owner of 632 East Market Street (TM 33-V-5) applied for the same SUP as being requested herein. Staff and Planning Commission recommended denial and City Council denied the request.
- In February 2021, the City approved a rezoning for 518 East Market Street from R-2 to R-3C. The proffers prohibited a number of uses allowed in the R-3 district and did not restrict occupancy, which allows the property to have the by right ability of having a family or not more than four persons per unit. The property has a mixed-use building with professional offices and one dwelling.
- In February 2022, City Council approved a rezoning request at 50 and 52 Reservoir Street from R-2 to R-5C with proffers that limit the occupancy to a family or not more than three unrelated persons.

The R-2 zoning district shares the same occupancy restrictions as the R-1, Single-Family Residential District. Owner-occupied dwellings may be occupied by a family (regardless of the number of individuals in the family) plus two tenants. Non-owner-occupied dwellings may include rental space for occupancy by not more than one person. In other words, when a dwelling is non-owner occupied, by right, property owners can rent to a family (regardless of the number of individuals in the family) plus one other person or they may rent to two tenants.

While the applicant has described to staff that they do not intend to rent this property to college students, staff understands that there are concerns that the property could be rented to college students and could cause an increase in traffic, parking, noise, and less accountability of the property. When comparing student housing and non-student housing units, there is typically a difference in lifestyles and schedules. These lifestyles sometimes have clashing elements that can cause tensions between neighbors.

However, staff is also aware of the housing needs within the City. According to the City’s Comprehensive Housing Study that was completed in January 2021, the property is located in Market Type C and these neighborhoods are among the fastest growing neighborhoods in the city and are characterized by a large number of college-aged persons (age 18-24). In this particular

situation at this property, staff feels that the need for more housing in the community outweighs some of the concerns that are surrounding the idea of student housing. As noted below, staff has added a suggested condition that if Planning Commission or City Council feels that the property becomes a nuisance, the special use permit can be recalled for further review.

#### *Recommendation*

Staff recommends approval of the SUP request with the following conditions:

- Dwelling units may be occupied by a family or not more than three (3) persons.
- If in the opinion of Planning Commission or City Council, the increased occupancy becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Note that the number that is conditioned is the maximum number of occupants requested by the applicant.

Chair Finnegan asked if there were any questions for staff.

Vice Mayor Dent asked is the not more than three persons a proffer or a condition.

Ms. Rupkey said it is a condition. It is called a condition if it is a SUP. They requested the three in their letter.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Paul Riner, agent for the applicant, came forward regarding the request. I am also the son of the applicant, but more importantly I am the managing agent, the leasing agent for the property. I do not have a lot to add. I want to thank Ms. Rupkey for her help and walking us through this process. Initially there was discussion about rezoning. It was settled that what we were looking for was really a SUP for the allowance of the three individuals or a family on each level of the duplex. Over the past three years, extensive renovations were done to the property, both interior and exterior. It included paving of the right-of-way alley which is used by the adjacent property, 50 and 52 Reservoir Street which received the R-5C rezoning request last year. This is something that we did as part of the paving of the parking for our building to make it more accessible to our residents, knowing that is a shared alley. We have put the work into the duplex to make it fully functional on their own. Because of the square footage in both of those units, we feel that the use is affirmed for three individuals or a family, as opposed to the current zoning which allows two individuals or a family.

Vice Mayor Dent said you say that the last neighboring property (50 and 52 Reservoir Street) did not share this availability of parking. you say that as a reason for this added density. That building or those units are a special case from Our Community Place because they are housing people who were formerly homeless who do not have cars. That is why we waived the requirements for the parking minimums. We appreciate that there is a right-of-way along your property to get back to that property should they ever need parking there.

Mr. Riner said we put that in our letter as an understanding that as the rezoning to R-5C, if the use ever changed away from OCP, they would still hold the ability to not require those parking spaces. It was an affirmation that we have plenty of parking because there was discussion about parking during that rezoning request. We wanted to put forward that we have adequate parking.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Vice-Chair Byrd said I was surprised that the current density was so low having driven by that location many times. I see no issue with increasing to the three persons per unit.

Chair Finnegan said a lot of the houses along that stretch are pretty big houses. A lot of them show up on that map from 1873 or something. There is a map where Old Town does not exist. A lot of these houses were built with different sizes of families in mind. I think this is an appropriate request. I would support it.

Vice-Chair Byrd moved to recommend approval of the SUP request with the stated conditions.

Commissioner Baugh seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Baugh	Aye
Vice-Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend approval of SUP passed (7-0). The recommendation will move forward to City Council on April 11, 2023.