



City of Harrisonburg, Virginia  
Department of Planning & Community Development

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Building Inspections  
Engineering  
Planning & Zoning

To: Eric Campbell, City Manager  
From: Adam Fletcher, Director – Department of Planning and Community Development and Harrisonburg Planning Commission  
Date: August 14, 2018  
Re: Special Use Permit (Increased Occupancy) 423 West Market Street

**Summary:**

Public hearing to consider a request from Glenn Loucks for a special use permit per section 10-3-40 (7) of the Zoning Ordinance to allow occupancy of not more than four (4) persons, provided one (1) off-street parking space per tenant is provided on the site within the R-2, Residential District. The 14,000 +/- square foot property is located at 423 West Market Street and is identified as tax map parcel 35-U-3.

**Background:**

The subject property came to the attention of City staff when a concern was received from the Harrisonburg Police Department. Community Development personnel performed an inspection and confirmed that six individuals lived in the dwelling structure. The applicant claimed the structure on the property was a duplex; however, there are no building permits or City records on file showing the conversion of the structure from a single-family detached dwelling to a duplex, and the owner was unable to provide evidence to substantiate the claim that the subject property is a duplex. Ultimately, staff determined that the dwelling is a single-family detached dwelling and was occupied illegally with six tenants.

The property owner appealed staff's decision to the Board of Zoning Appeals (BZA), stating that the property was purchased as a duplex in 1997 and had been continuously used as a duplex since that time. The BZA upheld staff's determination that the structure is a single-family detached dwelling and denied the applicant's appeal. Therefore, City staff informed the owner that the dwelling needed to comply with the permitted R-2 occupancy restrictions, and since this unit is a non-owner occupied single-family dwelling, only two unrelated persons could reside in the structure.

The Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. These are older neighborhoods, which can be characterized by large housing units on small lots.

The following land uses are located on and adjacent to the property:

- Site:** Single-family detached dwelling, zoned R-2
- North:** Across West Market Street, Single-family detached dwellings, zoned R-2
- East:** Single-family detached dwellings, zoned R-2
- South:** Single-family detached dwellings, zoned R-2

West: Duplex, zoned R-2

**Key Issues:**

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (7) of the Zoning Ordinance to allow occupancy of up to four persons within a single-family detached dwelling, zoned R-2, Residential District. The 14,000+/- square foot property is located on the south side of West Market Street, between Brook Avenue and South Willow Street.

The R-2 zoning district allows duplexes if a parcel has 11,000 square feet or more; therefore, the subject property could contain a duplex if all appropriate building permits were obtained and modifications were made to physically convert the existing single-family detached dwelling into a duplex or if the existing structure were demolished and replaced with a duplex. Conversion of the property to a duplex structure would allow a non-owner occupied occupancy of four unrelated individuals by-right; two persons per unit. Therefore, with the requested SUP it should be noted that should any change from a single-family detached dwelling to a duplex structure occur, the SUP would become null and void.

This neighborhood—bounded by West Market Street, South High Street, West Bruce Street, and South Dogwood Drive—includes a mix of residential units with single family detached homes, duplexes, and multi-family units. The neighborhood includes R-2 and R-3 zoned property; all parcels to the west of Academy Street are zoned R-2 and all parcels to the east of Academy Street are zoned R-3. Staff believes there is a mixture of owner-occupied and nonowner occupied (rental) dwellings in the neighborhood. To determine whether a property is owner-occupied, staff analyzes the designated address for a parcel and compares that address with the address where the property's tax bill is mailed. If the property address and mailing addresses match, then it is likely that the property is owner-occupied. Staff, however, acknowledges that while this method of evaluation is helpful for general analysis, further research should be done when necessary. Additionally, it is not possible to know exactly how many individuals live within each dwelling unit without interviewing each owner or occupants of the dwelling. If the R-2 properties have occupancy other than permitted by right, they are either non-conforming or illegal.

There are four R-2 properties in this neighborhood that staff is certain can have occupancy other than permitted by right. The first property is 323 West Market Street, which is classified as a boarding and rooming house and has been used as such since 1989 when R-2 zoned properties allowed boarding and rooming houses by right. Today, boarding and rooming houses are permitted only in the R-3 and M-1 districts and only by SUP. The second property is a single family detached dwelling located at 375 West Bruce Street, which in 1999 received the same SUP being requested in this application. The third property is located adjacent to the west of the subject parcel at 433 West Market Street which in 2000 also received approval of the same SUP. 433 West Market Street is a duplex with permission for three occupants in one unit and four occupants in the other unit. The last property is located at 301 West Market Street, which, although staff and Planning Commission recommended denial, received City Council approval of a SUP for occupancy by four unrelated individuals in 2012.

The Comprehensive Plan designates this neighborhood as Neighborhood Residential, which means this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. (Note: At this time, the draft 2018/2019 Land Use Guide has this neighborhood planned to remain designated Neighborhood Residential.) Further, infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. Given the mixed residential nature in this neighborhood, one *could* argue a multi-tenanted single-family structure is compatible with the existing character of the neighborhood. With so many rental properties already within this area, approving this request sets up the

opportunity for other rental properties to expect to exceed the by-right occupancy of the R-2 zoning district. Staff does not promote the furthering of this use in this area of the City.

It could be said that the subject parcel is located on a major travel corridor, along the fringes and not interior to the neighborhood; however, staff feels that the properties along the West Market Street corridor should be protected. Staff believes that approving this request is not in conformance with the Comprehensive Plan for this neighborhood and recommends denial.

If there is a desire to approve the SUP request, staff believes that the existing, large parking lot associated with the parcel does not fit within the design and intent of this neighborhood, nor the desires of the Comprehensive Plan, and suggests the following condition:

- Additional landscaping areas shall be provided within the existing parking area as indicated on “Exhibit A” of this report. A 20-foot travel way shall be maintained for vehicles to enter and exit the parcel. The landscape areas shall be visually defined by the use of curbing, landscape timbers, rail road ties, or other infrastructure or material as approved by City staff. Each landscape area shown on “Exhibit A” shall be landscaped and maintained with a tree and three shrubs, and the remainder of the landscape areas shall be landscaped that meets the definition of “landscaping” as defined by the Zoning Ordinance.

**Environmental Impact:**

N/A

**Fiscal Impact:**

N/A

**Prior Actions:**

N/A

**Alternatives:**

- (a) Approve the special use request as submitted by the applicant;
- (b) Approve the special use request with the following condition:
  - Additional landscaping areas shall be provided within the existing parking area as indicated on “Exhibit A” of this report. A 20-foot travel way shall be maintained for vehicles to enter and exit the parcel. The landscape areas shall be visually defined by the use of curbing, landscape timbers, rail road ties, or other infrastructure or material as approved by City staff. Each landscape area shown on “Exhibit A” shall be landscaped and maintained with a tree and three shrubs, and the remainder of the landscape areas shall be landscaped that meets the definition of “landscaping” as defined by the Zoning Ordinance.
- (c) Approve the special use request with other conditions;
- (d) Deny the special use permit request.

**Community Engagement:**

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing for the special use permit and twice advertising for City Council’s public hearing. The advertisement was published as shown below:

*Special Use Permit – 423 West Market Street (Section 10-3-40 (7) to Allow Occupancy of Not More than 4 Persons)*

Public hearing to consider a request from Glenn Loucks for a special use permit per section 10-3-40 (7) of the Zoning Ordinance to allow occupancy of not more than four (4) persons, provided one (1) off-street parking space per tenant is provided on the site within the R-2, Residential District. The 14,000 +/- square foot property is located at 423 West Market Street and is identified as tax map parcel 35-U-3.

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>.

**Recommendation:**

Staff recommends alternative (d) to deny the special use permit.

**Attachments:**

1. Exhibit A (1 page)
2. Site maps (2 pages)
3. Application, applicant letter, and supporting documents (5 pages)

**Review:**

Planning Commission recommended (4-3) alternative (b) to approve the special use request with the following condition:

- Additional landscaping areas shall be provided within the existing parking area as indicated on “Exhibit A” of this report. A 20-foot travel way shall be maintained for vehicles to enter and exit the parcel. The landscape areas shall be visually defined by the use of curbing, landscape timbers, rail road ties, or other infrastructure or material as approved by City staff. Each landscape area shown on “Exhibit A” shall be landscaped and maintained with a tree and three shrubs, and the remainder of the landscape areas shall be landscaped that meets the definition of “landscaping” as defined by the Zoning Ordinance.