



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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November 6, 2023

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

SUBJECT: *Consider a request from Craig D. Smith and Sue W. Smith for a special use permit to allow a boarding and rooming house at 660 Walnut Lane*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: October 11, 2023**

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said in August 2023, Harrisonburg Police Department informed the Department of Community Development's Building Inspections Division about unsanitary conditions at 660 Walnut Lane. After investigation, the structure was deemed and posted "Unfit for Human Habitation" by the Building Inspections Division. Since that time, the property maintenance and unfit for human habitation violations have been remedied. However, Zoning staff has determined that the single-family detached dwelling was over occupied (they had 15 unrelated individuals residing in the unit), and the property owner was unable to prove nonconformance.

The applicants' submitted letter explains the building contains 15 bedrooms and six bathrooms. While the special use permit (SUP) request is being reviewed by Planning Commission and City Council, 10 individuals continue to live in the dwelling. If the SUP is denied, the applicant is aware that they must comply with the Zoning Ordinance's occupancy regulations, which allow a family or up to four unrelated individuals in the dwelling.

On September 29, 2023, the property owner was issued a notice of violation for illegal fraternity use taking place on the property. The applicant has provided a template of an agreement they are working to have their tenants sign stating that there will be no fraternity sponsored events at the property.

The applicant is requesting a special use permit (SUP) per Section 10-3-48.4 (1) of the Zoning Ordinance (ZO) to allow for a boarding and rooming house in the R-3, Medium Density Residential District. The +/- 16,486 square foot property is addressed as 660 Walnut Lane and is identified as tax map parcel 25-L-8A.

A boarding and rooming house is defined in the ZO as:

A single detached dwelling, where the property owner or property lessee/operator resides on the premises, and where for compensation and by prearrangement, for definite periods, lodging and/or meals are provided for three (3) persons to a maximum of ten (10) persons. The resident property owner or resident property lessee, who operates the boardinghouse or rooming house, shall be responsible for making an application for any required special use permit. A boardinghouse or rooming house must obtain an annual business license as required by the Harrisonburg City Code and the boardinghouse or rooming house shall also be in compliance with the Virginia Maintenance Code (VMC). The responsible party shall schedule a yearly inspection that shall be conducted between October 1st and October 31st to ensure compliance with the current VMC and other applicable regulations. Should the property not comply with the VMC or other regulations, a specified time shall be given to make corrections. If the corrections are not made within the allotted time, or if the responsible party fails to have the property inspected by October 31st, the special use permit shall automatically expire and become null and void. Operation of a boardinghouse or rooming house shall not be deemed a home occupation.

The applicants' letter explains they have been operating this building as a rental for over 30 years. Prior to receiving the SUP application and as part of the investigation for the illegal fraternity use, staff reached out to the Harrisonburg Police Department to provide a report of service requests to the property for the period between July 31, 2021 and May 1, 2023. There were a number of service requests to the property for noise, alcohol, suspicious activity, and extra patrol. The applicant has further described in their submitted letter that they are "grandfathered" to have ten tenants to live on the property. Staff believes what the applicant is trying to convey is that they believe the property has "nonconforming" occupancy for up to 10 individuals. At this time, the applicant is unable to provide evidence of such nonconforming occupancy. Nevertheless, even if they were able to prove nonconforming occupancy, the property owner violated Section 10-3-21 (a) because 15 occupants were residing on the property. 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.

If the SUP is approved, the applicant is aware that the structure would need to meet all Building Code requirements such as, but not limited to, installing a sprinkler system. The ZO would also require 10 parking spaces to be delineated on the property.

Land Use

The Comprehensive Plan designates this site 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.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the rezoning request.

Public Water and Sanitary Sewer

The structure is served by a one-inch water service and meter. If the boarding and rooming house SUP is approved, then Harrisonburg Public Utilities has requested the applicant to work with staff to verify adequate meter sizing.

Housing

Approving the SUP for this property will not impact the number of available dwelling units, which is one. However, not approving the SUP will require the occupancy to be a single family or not more than four persons.

Recommendation

While boarding and rooming houses can provide an affordable and efficient form of housing, given the known irresponsible upkeep of the building and the reported Police Department calls for service associated with this property, staff does not believe it is in the best interest of the community or the long-term plans for this area of the City to approve a boarding and rooming house at this location. If the property owner is interested in maintaining some level of higher occupancy for the property, they have the by right ability to convert the single-family detached structure to a duplex, where four unrelated individuals could reside in each unit.

However, if there is a desire to recommend approval of the SUP, staff recommends the following condition:

- If in the opinion of Planning Commission or City Council, the boarding and rooming house use becomes a nuisance, the special use permit could be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Chair Finnegan asked if there were any questions for staff.

Vice Mayor Dent said when you say that the applicant is unable to provide evidence of nonconforming occupancy, what does that mean? The evidence that we had approved their nonconforming use earlier, what would that proof consist of?

Ms. Rupkey said it would provide that they have done their yearly inspections of the rooming and boarding house or that they have had the approval to keep up to 10 [tenants]. Even if they were able to provide that, they broke it by having more than 10 persons living in the house and having up to 15 people living there.

Vice Mayor Dent said that shows that if they break it then it becomes unlawful.

Commissioner Armstrong said what are the number of bedrooms and bathrooms there?

Ms. Rupkey said there are, I believe, about 15 bedrooms but the applicant can confirm the exact number of bedrooms and bathrooms.

Chair Finnegan said when we say 15 people were residing there, is that 15 people on the lease?

Ms. Rupkey said it would be best to ask the applicant that.

Chair Finnegan said my one last question was about the rooming and boarding houses, where else in the City...do we have any of those?

Ms. Dang said there are special use permits for increasing occupancy not rooming and boarding houses that have had conditions with that special use permit. So, like in R-2, to increase from two unrelated people to four unrelated people, there are conditions that have been adopted with the special use permit approval that requires that they meet all of the requirements with the inspection. I do not know the exact number of any legal rooming and boarding house that were legally established.

Mr. Fletcher said I will even back up a couple of decades really. So, rooming and boarding houses used to be a by-right use in many of our zoning districts. There were no special permissions that were needed. You just basically walked down to Community Development and say you wanted to apply for the building to become a rooming and boarding house. This all predates me, so what I have gathered over the years is that essentially then a building inspector would go to the site to ensure that the room number and the residents that were living there were matching because it was one per bedroom, from an occupancy perspective. Then making sure whatever safeguards were required, at that time when the building code, were applicable. We have, I think, somewhere around five nonconforming rooming and boarding homes that still exist in the City. We have one, what I call, a modern boarding and rooming house, which is Vine & Fig. There are some questions about that particular boarding and rooming house. We are working with a representative for that property to clarify some situations, but that is the most modern one that some of you might remember. There are very few. In fact, those properties that are a nonconforming rooming and boarding house know it and they annually call our office, or we are in contact with them, to do the annual inspection. Back in, I want to say, 2012 maybe even as late as 2015, we amended the boarding and rooming house definition to require the annual inspection to occur if you get a special use permit for a rooming and boarding house to occur every October. The property owner would call our office and set the inspection. October was a good time because school is in session and it

would be a good annual time to continue to renew those operations. Just to help maybe clarify a question that Vice Mayor Dent asked about how do you go about showing evidence of nonconformity? First off you have to remember that the rule for maintaining a legal nonconforming operation is that you must maintain that use that is nonconforming to the existing regulations in perpetuity. You can have some breaks but the break cannot be more than 24 consecutive months. If you have a break in operation for 24 consecutive months, you must revert back to having a use that is in compliance with the zoning district. Folks who know they have a nonconforming operation will maintain documentation, whether it is leases or something of that sort. There are even examples over the years where there was an individual who knew they had a nonconforming operation, and every single year they contacted our office to get a letter sent to have confirmation to go over the records so that they could maintain that nonconforming operation because it could be higher occupancy, it could be different things. It is specified in the code that it is the obligation of the property owner to maintain their documentation to show whatever evidence they can to the City that they have a nonconforming operation and they were unable to do that.

Vice Mayor Dent said there is no evidence of that annual inspection or contact with you.

Mr. Fletcher said they were not a boarding and rooming house, so they would not have contacted us to do any type of operation. If they had a nonconforming occupancy, I think the claim was they had 10, then if there are ever questions about it or if somebody had concern over occupancy, we would get in contact with them and they would say “oh yes, I have nonconforming occupancy of 10 and here is my evidence to prove that I have always maintained 10.” Our code also specifies that if you go over it, you immediately lose it. That is what was being conveyed, because you have gone above and beyond.

Vice Chair Byrd said under the current zoning, is someone allowed to have 10 unrelated persons?

Mr. Fletcher said this is the only one. He is wondering can you have 10 in any zoning district.

Ms. Dang said only if there is an approved special use permit for a rooming and boarding house.

Commissioner Alsindi said when we say for 30 years it has been rented, is there any historical data that shows the same type and pattern of renting or usage. Has there been a cutoff recently that has happened?

Ms. Dang said the claim of 30 years is the applicant saying that they have owned the property for 30 years. I would suggest asking the applicant about the history, but know that just because somebody has done an illegal use whether it is running a business in the building or over occupancy.... just because it is illegal, and it has been happening for a long time does not make it legal.

Chair Finnegan asked if there were any other questions for staff.

Craig Smith, the applicant, came forward regarding the request. He said I have been a resident of Harrisonburg for about ever. I have been renting to students for about 45 years. This is literally the first time I have had to ever come before Planning Commission. I would like first of all tell this entire group that the contact that I have had with Meghan, with Mike Williams, and Tom Hansen have been nothing but stellar. The nature of what we are talking about, I had no idea what to expect. Folks had told me off and on that “hey you start going in and dealing with building inspectors and this that and the other, you better eat your Wheaties because it is going to be a tough meeting for you.” Even Evan Winkler, the new Zoning Administrator has been nothing but stellar in the meetings. Any meeting I have ever called with them, they have been flexible, they have been willing to meet with me, they have been professional and anything we have had to do they have been flexible enough to meet with us. I have nothing but super strong comments to make despite the nature of what we are discussing and some differences we might have regarding how they have

conducted themselves. When you consult with them, you are dealing with good people from where I sit. Meghan had also asked me to present, or at least have to give to you guys, once we found out what was transpiring at one of our properties, a written statement from all of the present tenants, who are all individually fraternity members of the Sigma Nu fraternity. That operation has basically, for all intents and purposes, moved down the street. That ship has kind of sailed from where they were. They have been all over town and the nucleus of that is on the corner of South Main Street and Port Republic Road right now. These young men that are living in that house right now, yes they are all fraternity members, but there are not fraternity activities going on in that house. It is on that basis that when I was presented with the information I said, "let us take a look at whether or not this is to be defined as a fraternity house where 10 kids are living who coincidentally all happen to be in the same fraternity." We recognize all of the possibilities that can create in and of itself. When we became aware of what was going on I said "I can tell you right now I will go into the house, I want to make sure there are no more than 10 people living in that house." For years we have only allowed 10 people on our leases. I think you have raised the question of how many are on the leases, we have never allowed more than 10 people on the lease because when we bought the property in 1988, we were grandfathered in for 10 individuals in the house, and that is all we have had for 45 and a half years. I have rented that house every year for 10 students, to my knowledge. Now I am probably being a bit naive and have no credibility with you if I were to say, "do you think there could have been anymore kids in that house than that?" There is always that possibility we know students well enough to know what they will do. Did any of you all happen to go the inspection yesterday of the house? You went and saw it? The house is quite candidly oversized for just even ten kids. It has 16 bedrooms, 6 bathrooms, and 18 legal parking slots in front of it. We have ten fraternity boys living in that house right now with a signed statement that states "No fraternity sponsored events will be conducted at 660 Walnut Lane," the property in question. All City building and zoning regulations have been strictly adhered to. Infraction shutting down the house not only deobligate the tenants from their ongoing rental, but they will still be required to pay all of the financial commitments to us. They have all signed that gladly. Two of the young men are here tonight. Meghan had said you know what you might want to bring a couple of the ten guys in here in case any members of Planning Commission would care to question them regarding the quality of the house, any of those aspects in terms of living conditions, relationship with me as a manager and owner of the property, anything like that. The home is probably, from where I sit, oversized for the ten kids. A special permit quite candidly should be requesting 16 people for the 16 bedrooms that are in the house. We have ten-foot ceilings in it. No bedrooms are over occupied, there are no double kids crammed into bedrooms. Right this minute, six of the bedrooms are sitting completely vacant in the house. No events are occurring. I was aware that apparently in late August, they may have conducted an event over there erroneously thinking that they could do it. I think they would attest to the fact that absolutely nothing is occurring in that house and anything that is fraternity sponsored is occurring at the intersection of South Main Street and Port Republic Road at this point. I believe there are fifty or sixty members on that corner, that is the Mecca of Sigma Nu. These guys have enjoyed staying in that house. It is a house for ten kids, it could have been ten other kinds of kids throughout the campus. They just happen to be residual kids that have lived in it and have wanted to stay in the house and would love the opportunity to continue to stay in the house. We have a potential lease with these young men for next year for ten and only ten once again. I have told them that I cannot sign that lease until we go through this process here and then with ever blessings or no blessings you give this as it proceeds to City Council, that lease is strictly going to be contingent upon whatever you all

decide and what City Council decides regarding the utilization of that house. I think from where I sit... I go all the way back to John Byrd, Wayne Lily, Jud Baldwin those are names you all may not know 40 or 45 years ago. John Byrd, we were absolutely in constant contact he said "yes, you can put ten in this house.", we have done it ever since. If there are more than ten at any point in that house, I have told the kids that sign a lease ever year, I said "we cannot have fraternity functions in the house" I said not only that but if repercussions come to the house through the lease, I am going to the ten people that are on this lease. If they have included anymore... when the City came in with the police after a robbery had occurred in a basement apartment during the two months we were not here over the summer, we would deal with that. When I came back into town as a result of the letter, I do not know if Meghan had presented it to us or Tom Hansen or Evan Winkler, whomever, it was City staff in Planning and Community Development. I went over to the house and I said do we have anyone moving into this house, which was a week and a half before the start of school. I said if we have any more than the ten that were on this lease, they are history, they need to be out of here I do not know where they could be, they are out of here. They were immediately removed, however many there were from the house at that point. There have been no more than ten. We have had the City staff through that house. We have done cosmetic things to the house beyond having Scott Graves and his staff from Graves Electric come through. Michael's Plumbing has come through. There has been nothing in that house that you or I would not be comfortable living in. I would encourage you all to see the home. If at this point Planning Commission rejects our request and basically from where I sit, despite being grandfathered in for the ten that we have honored for 35 plus years, you would be putting four kids in a 16-bedroom house with six bathrooms, ten-foot ceilings, all electrical, all plumbing, all City building codes completely met and improved by staff. Double, almost, the number of parking slots that are needed and the lot size is twice the size of what is required. I have even checked with Marshall Price who owns the fourplex right beside our building and I said, "Marshall have you had any complaints whatsoever being adjacent to our house for the years we have owned it?" he said "not one complaint." We back up to Cantrell Avenue [known today as Martin Luther King, Jr. Way] on one side and for two straight blocks there is nothing but rentals, there are no residential homes in this two block area. I have never been requested or aware that I needed boarding passes or licensure for the house. I cannot imagine there being anything in this home that will not meet boarding requirements. Replacement windows, it is a brick home. New roof. I think every condition has been met that needs to be met in the property. I just wanted an opportunity to let you know who I am and what I do. I have worked my entire life to build our student rental population and we have never had a complaint. I feel like if there had been a complaint worthy of needing to respond to, I live a block from the house, two blocks from there. We would have been contacted and expected to address anything. I have never received a thing from them. I am not saying if Meghan or someone said that police have not had to go by the property, but I have never been asked to come over, I have never been asked to respond to anything and I will go back and say for 45 years this is what I have done and I think I have done as well as anyone in this town. I think I have managed students on the property for longer than anyone. First time here, I did not even know where your office was to be quite candid with you. Evan Winkler and Meghan had to point out to me what door to enter to come in here tonight. Maybe I need to back off right now and listen to whatever questions you might all have for me.

Chair Finnegan asked if there were any questions for the applicant.

Vice Chair Byrd said sir, the City is talking about if the residence is considered a boarding home, you would need a sprinkler system. Is that currently being put in place?

Mr. Smith said no. I guess I question... like I have said I have owned the property for 35 years and I would suspect that whatever we need to be doing with this property would be based on what the requirements will be. By the way, to answer your question though most folks that I know within striking distance of here do not even install sprinkler systems anymore. Meghan or Mike Williams had said you might need to consider this. I called around and found the major company for all of Virginia, in Richmond, and they came out two days ago with Mike Williams and me and we walked through the house and looked at it to see if the house could be retrofit for a sprinkler system if we had to go down that route. At a price, yes it could be put in. My question though is quite candidly and maybe naively when I bought the property if anyone had been asked and told over the years what we might require of a property would require upgrades, I do not know if anyone would buy anything. If I had been told back in '88 that I might have to put a sprinkler...

Vice Chair Byrd said in line with that, I think you are operating a business and therefore as running business you should be keeping up with the laws that are related to your business. So, I would...

Mr. Smith said I feel that I have.

Vice Chair Byrd continued and said so, I would caution you that that type of argument is not going to help you at City Council.

Mr. Smith said well, let me ask you this, and I would like a response to having bought the property in '88 and feeling like I have kept the property in absolutely safe conditions for the tenants that are living in the house, why would we now be talking about needing to add a...to use this for an example. That does not include any and everything else. Are we required to move beyond what the City adapts over the years? I think if that were the case, I do not think anyone would buy a property for fear that the exorbitant cost of what is being expected would not make buying the properties reasonable.

Chair Finnegan said this body does not determine whether it needs sprinklers and meets building code so that is outside of our jurisdiction.

Mr. Smith said only because he brought it up, I mentioned that otherwise I would not even have addressed that. Thank you, Brent.

Chair Finnegan said I would also say and correct me staff if I am wrong... the triggering event, why we are here today is the over occupancy, the 15. When that happened that is when it changed so that is the conversation right now.

Mr. Smith said I think a couple of things happened. I was on the Outer Banks enjoying a vacation and got a wonderful phone call on a Friday afternoon indicating that the house was being condemned and that it was out of compliance and this, that, and the other. So, I came back into town at that point. I checked my lease to make sure that we have ten listed on the lease there. We had not been there for two months. Apparently, the kids in the house had allowed other fraternity brothers that had been moved out of homes to throw all of their stuff in the house, it looked repulsive. That is what stimulated everything. We do not go by our homes, any of them, and count heads in bedrooms any more than your building inspectors' barge into bedrooms and count beds and this that and the other. I do tell kids in any home that we buy, if we ever have an issue, if there is ever an overage of any sort that goes beyond normal building and zoning regulations, we will deal with it. We do not put our head in the sand. Whoever they had in the house that was planning on moving in we said it cannot happen and I said to Tom and Mike "I do not care when you come day, night, 24/7, I welcome you to come into this house and see more than the exact number that are there. I will escort you. You can come whenever you want." They said we cannot come into the bedrooms [unintelligible]. You just need to know from where I sit, my position is quite candidly we know that we cannot put more than ten people on the lease. If for any reason they decide to

manipulate that, they are going to take the risk on that. If we have to expel them, we will. It does not de-obligate them from their obligations and we will go back next year and put ten kids in the house.

Chair Finnegan said in the interest of moving the public hearing along, do we have any other questions for the applicant at this time? At the end of this hearing, we may ask you to answer or respond to something.

Connor Devins, a former resident at 660 Walnut Lane, came forward to speak to the request. He said yes, we did have ten people on the lease last year. We knew that we were only supposed to have ten people on the lease. At times, I would say there were some other people that would come in and stay at the house. There are six extra bedrooms, why would we not do that? You have kids coming back for half semesters to take a couple classes to graduate. We have kids who were abroad and switching in, so why would you buy two leases when you both are not going to be there. There were definitely situations where there might be other people coming through. I would also say Criag's one big problem that he might have is that he loves to cut the grass too much. He is there probably once or twice a week cutting the grass. He is always on top of the house. Thank you.

Chair Finnegan asked if anyone else would like to speak to the request. He also said before I close the public hearing do we have any last questions for the applicant.

Vice Mayor Dent said when you say you had the ten people grandfathered in, what were you referring to?

Mr. Smith said I was referring to when I purchased the house from Joe Glick, a psychiatrist in town, I went to John Byrd, I said "John, I have purchased this house and it is my understanding that we can put ten people in this in the R-3 zoning." He said "yes you can. Do not put any more in it"

Vice Mayor Dent asked do you have that in writing?

Mr. Smith said from 35 or 40 years ago, I do not think I own anything that I have kept for that length of time. John was a member of our church, his wife Joan and him sat right in the pew in front of us in church. All I can tell you is that I met with John. I met with John as we were looking at other properties. Of course, John's life was taken somewhat suddenly. I had a working relationship with John and a number of his building inspectors, that they would send out to look at our properties, but I am telling you if they came out and looked...Anyone know Stacy Turner? Stacy used to be a zoning coordinator, I think, before Evan Winkler. I came in with Stacy probably 20 years ago and she said let us go over what you are doing at 660 Walnut Lane. To answer your question kind of peripherally, I took her to the house, we looked at it and she said "yes, you are fine with your ten people." No word was given to me about sprinkler systems. At that time of course there were not any major issues regarding parking spots or any of that other kind of stuff. She looked at it and said [unintelligible] There is correspondence with her and that was probably 20 plus years ago, at least if not 30.

Chair Finnegan said I just want to make sure we are not going down a rabbit trail here because whether there was nonconforming status or not what has been established is that nonconforming status was broken when there were 15 people there, that is what this conversation is about. That is not us determining that.

Mr. Smith said more me with you, that is not who we need to convince at that point. I think it is a talking point for someone.

Commissioner Armstrong asked for what reasons was it designated condemned?

Mr. Smith said when I met with Meghan, Mike Williams, I think it was Christopher Perez at the time, Tom Hansen and myself when we came back from the beach to go over all of this. The first

thing I told them was “guys, this is not an adversarial relationship, I agree with what transpired.” We had a break in in the basement. Generally speaking, the house is not even occupied for four months, kids leave, it is just vacant. One of the basement areas was broken into. Police came by, filed the report and in the process of filing the report they decide, I am sure as I would have to, in their investigation said let us look around and see if there are any other clues of how this could have happened. In the process of doing that they could not even get through the rest of the house. The tenants, some saying they knew about it and some said they did not, allowed their other fraternity brothers who were moving out of other houses to store all of their stuff in the house. Ten feet to the ceiling, they could not even get through. The kids that had been there during the past year had despite written notices given to the kids had let food in the refrigerator roast all summer, it smelled like dead bodies in the house. They came through and said this is despicable and so they called, I think, Tom Hansen or Mike and said you all need to get over and look at this house, it is horrible. So, they instantly condemned it because it was uninhabitable at that point. We met the following Monday or Tuesday. I said I have the resources that I can come in, I will do whatever is necessary I have kids that are trying to start school. Within seven days the City came back twice, looked at everything that had progressed. They gave a complete passing report on what had happened. All that mess had been removed from the house, cleaning. The electricians and plumbers confirmed that everything was up to standard. It was just getting cleaned out. I would have condemned it too, it was unlivable.

Chair Finnegan asked Commissioner Armstrong does that answer your question?

Commissioner Armstrong said that answered my question.

Chair Finnegan closed the public hearing and opened the request for discussion.

Vice Chair Byrd said having collected some of my thoughts, I am concerned with this. Looking at the location and the type of business that is supposed to be operating there, I do not see an issue with there being a boarding house in that area. I am a renter so when I was looking for a place there were certain places available in that area. I am aware of the renting nature of that particular area of the City. Being a renter, and I am old but not that old to forget college, I knew some people who tend to be unwise and during the summer they treat their full leases as saving people from having to go to other storage units. That people were complaining about people building in the City and just use someone else’s residences, they are like “you are not there I am going to store my stuff there.” So, I can see how the problem can be created by tenants not thinking about the ramifications of their actions. The structure is a large structure. It being zoned for a family is...I guess one could argue that you could renovate the internal rental structure to make it two or three more residences, I can understand that. I see the nonconforming situation as it has caused this to appear before us. We are always talking about when are we going to get into these nonconforming properties, and you now see one of the situations where we went into one. Therefore, from what the City’s argument was for the denial, I do not see why I should be against a boarding house being in this location.

Commissioner Armstrong asked how many properties is this owner managing with students? He mentioned being very invested. I just wondered how spread out.

Ms. Dang said I know he owns a number of properties throughout the City.

Mr. Smith said I probably rent...Are you counting like individual apartments as one property?

Chair Finnegan said just how many houses.

Mr. Smith said I would probably say 75. A pretty good number.

Chair Finnegan said as people collect their thoughts, I will just say I react to mention Vice Chair Byrd’s comments, I agree that having 16 bedrooms seems like a lot for ten people. Or is it four?

Ms. Rupkey said four unrelated or family.

Chair Finnegan said so if this gets denied by City Council, only four people can live there?

Ms. Rupkey said or a family.

Commissioner Armstrong said or they can make modifications that would allow an additional different SUP.

Ms. Rupkey said by right they can do a duplex which would allow for four persons or a family in each but would require the fire rating systems. Or there is another SUP that could be requested for multifamily up to four units for that.

Commissioner Baugh said that is a theoretical possibility at this point.

Vice Mayor Dent said that would require physical renovations to split it.

Commissioner Armstrong said that is going to be the case anyway because to make it a conforming boarding house, it is going to need physical renovations.

Chair Finnegan said it does not seem like there is a path forward where there are no physical additions to be made.

Mr. Flecher said Chair Finnegan can I ask a question to staff? In conversations with Mike and Tom and Christopher Perez and all of the folks that have been involved, are their 16 legal bedrooms? This is the first I am considering that angle of I heard 16 bedrooms but are they 16 spaces that are legally bedrooms?

Vice Chair Byrd said Director Fletcher that is a great question because I was operating under thinking that most of those rooms are legitimate bedrooms. If that is not the case, that is a question I wish to ask.

Mr. Fletcher said it may not be relevant for the special use permit, it was just something that was being discussed and I was not sure if staff had understood that situation.

Chair Finnegan asked to be a bedroom it needs to have a window?

Mr. Fletcher said I mean there is more to it than that. It is the window, the size of the window, the height of the window, you cannot just have a window. You have to be able to escape from it, you have to be able to get to the window. Think of like a sixties era rancher in the basement you have those narrow windows that are really high up. There are a lot of things that people do not think about whenever they are living in spaces on whether or not they are in a legal bedroom that allows for their safe space.

Chair Finnegan said the applicant is raising his hand. If you just want to say how many windows there are I would like to keep it as brief as possible.

Mr. Smith said Dan Calahan from Valley Windows has come by the house. Every single one in that house is a thermal pane one that you would love to have in yours. All bedrooms have ten-foot ceilings. I think every single bedroom is larger than traditional student [housing]. That is why I wanted folks to come into the house.

Vice Chair Byrd said sir, the exact question is about each room, does it have an escapable window?

Mr. Smith said yes.

Chair Finnegan said we can go on this, but we would need verification from the building code inspector I would imagine. What I was saying was reacting to Vice Chair Byrd's comments about it does seem like a waste of bedrooms. I would also say every time we give a special use permit for an Airbnb we always have that clause "if this becomes a nuisance" well there have been multiple calls to this property and now there is a contrition that okay sorry we will not do that again, but we write this into almost all the special use permits if in the opinion of Planning Commission this becomes an issue of a nuisance. I feel stuck between it does feel like there should be more people living in this house than four and also that they should be consequences for actions.

Commissioner Armstrong said that is true for our zoning. I mean, I live in a R-1 zone and there are houses and people feel like they should be able to have unrelated people living there. This is not the only example of “well I want to be able to do this and I am not zoned for it.” It is a wider problem.

Vice Mayor Dent said I had that feeling about the nuisance clause. In that if this is already been shown to be a nuisance, why would we approve it ahead of time. I share the consternation about what a huge house, there has to be a way to make the most of it without it becoming a nuisance. It seems to me that the only way forward is to deny this as is and allow for the applicant or whoever to make whatever renovations might be necessary to make it a duplex or a multifamily or something else that could be conforming because it seems like this is not going to work for the benefit of the community as boarding house because it has been shown not to already.

Vice Chair Byrd said I understand that someone got caught doing something but my issue with that is that I am a renter and so I look at a lot of these things from the perspective of a renter. Move in a place and you start operating as if it is your place. You do things as if it is your place and so people are saying someone is a nuisance, who are we saying are the nuisance? Is this the owner who rented it to someone or the renters who are causing the issue? It is the one part about that issue that I recognize that a nuisance occurred but who was responsible for that? How does zoning address that? Mostly, to be honest with you, I have been looking at this application as is there a reason to not have a boarding house here in this particular area of the City that is extremely close to the university that has always had some questionable renting places and that is why the rents are relatively low on rent. That part I just struggle with. Yes, a nuisance occurred but are we saying it is because it is a boarding house, and it was rented to ten separate individuals?

Commissioner Armstrong said that is not the question I am asking. I am not asking if there should be a boarding house here. What troubles me is I do not have confidence that this will not repeatedly be a nuisance. I do not think there is the oversight that it will not continue to have incidents of being a nuisance. It does not matter whether it is a short-term rental or this application. The point is, is it reliably complying with the SUP. It is not whether or not there should be a boarding house there, it is this going to comply, and I do not have confidence that it is not going to continue to repeat.

Commissioner Washington said going off of what was just said, I feel like the owner was blissfully unaware of all the things that need to be done to be in compliance and with that I would have to say that giving him the opportunity to rectify these things to move forward with a boarding house, giving him the chance to do that in order for folks to live there is important. If he did not know any of these things were happening, alright nuisance, but now that he knows and now that we are here today and this is his first time in front of Planning Commission moving forward, does he know to check in yearly? Does he know how to do these things? Absolutely. As students being here knowing that they might lose housing or mess it up for potential renters in the future kind of would scare someone straight enough to alleviate any of the issues that have been spoken about today. As a member of a sorority, I have been in a space, not a sorority house but living in a space with sorority sisters knowing that people travel and knowing that people stay. It is kind of a part of the culture but knowing that that is in contradiction to zoning laws and what needs to happen, there is an opportunity to fix that and keep it pushing. Are there extra bedrooms that could be used as storage? Maybe even a study space? What can the owner do if there is spoiled food in the fridge if he is not there. Some of these things are like are we going to penalize the owner for operating a space that students are being students in. Neither one of them are really knowledgeable of the rules.

Vice Chair Byrd said I want to clarify something what I am saying when I look at the application is that the nuisance has caused the applicant to lose their nonconforming, that is gone. This is now just a R-3 zoning and the question is will it have an SUP that makes it a boarding home. When staff was going if you were to consider not denying it and approving the SUP, they wanted to highlight that it would cause the structure to have to meet all of these building permits things. I feel like an SUP would put more restrictions on the owner now knowing that nonconforming use that they thought they had has been lost due to whosever fault that was. That is how I have been looking at this application.

Chair Finnegan said there is no path back to the way things were. That is gone. That nonconforming status is lost forever. So, the question is, what does it become now? It sounds like there may not be consensus.

Commissioner Baugh said here are three things. One, I mean I like the structure. It is kind of cool and it certainly has a lot of potential. The second one is these things do come up where we do have things that have been brought to our attention that this should have been and we have an application in front of us that has an element of asking for forgiveness and for whatever it is worth my sense certainly through the council level is that while it... I sort of cannot remember an exception to what I am going to say, although I think there probably has been once. I do not want to say it has been one hundred percent. I think there has been a fairly strong pattern within these situations, councils ended up saying no. We do not like the people who have said 'well, I just sort of did not know' and it went on for not months, but years and they pretended not to do it. I think what really ends up kind of nudging me over to the no part of this is I think we are agreed to just leave it where it is and vote the no. A 16-bedroom structure with four of them being used as bedrooms, we hate to do that. What is being requested is to take a 16-bedroom unit and say you are only going to use ten of them, which I think is actually what the issue to me is. From a planning standpoint is that the nature of the structure as it is right now, that pressure has always been there and as a boarding house we will always be there because you have six unoccupied bedrooms, nature abhors a vacuum. Regardless of the details of why it has not been policed but the extra six bedrooms have not been used, even if you disregarded that the nature of this structure is going to be going forward. It would require an above average amount of diligence and policing to keep from having it slide into the additional use, it is just natural for that configuration. I actually think if you look at it that way, that is relevant to some of the points about the applicant saying, "I did not really know" Give an instance you did not know, but you did know you had a 16-bedroom unit that only ten of them were supposed to be used, that apparently has been true. I am troubled that. While on one hand, nobody thinks straight R-3 is the future of this property, but settling here at the ten you are just going to have the same issue that maybe the rooming house may be the easiest way forward, but it may not be the best way forward. I think primarily for the reason that you have six empty rooms sitting there and apparently no plan for that other than they will just keep them around making sure nobody uses them in a way that they are not supposed to. I am happy to hear what anybody else has to say but that is kind of why I am leaning towards voting no and purging out future work for the City and see if we can take this core structure and make it into something that actually uses what you have there. You have 16 bedrooms, is there a way to find a way to use 16 bedrooms?

Chair Finnegan said so you are saying to have it divided into apartments?

Commissioner Baugh said yeah, as I said to me ten if better than four, but it is still a question of degree. You are still taking the structure and saying we are going to settle into something that is actually less than a full use of the structure. I mean, I get it that it is going to be the easier path for the applicant at this point, but I think it just seems obvious that the pressure for there to be issues

with that is just...that is why we are here. The details of how the zoning is does not really address that.

Chair Finnegan said I think those are all valid points and I think there are good reasons to vote both for and against this.

Vice Mayor Dent said I like the structure too; it is enormous. I can imagine an ideal situation where there are four 4-bedroom units to use all of them. That would require rezoning to multifamily or whatever it might be and renovations and such. But to make a better use rather than being on guard against the nature abhors a vacuum those six extra bedrooms are likely to be filled one way or the other.

Vice Chair Byrd said to move this conversation along I will make a motion that I will likely vote against. I will make a motion to deny.

Commissioner Armstrong seconded the motion.

Chair Finnegan said I will say that I struggle with this one, this is not an easy one. This is one of those 51/49 cases for me. I think I tend to fall where Commissioner Baugh does that all of these bedrooms should be utilized and that will take some work.

Vice Chair Byrd said I will be voting against this motion for the reason of I am not against a SUP of a boarding home being there, but the issue is about the amount of bedrooms that are utilized in the SUP. That number changing is not an issue to me. The idea of reconfiguring the internal areas without looking at the buildings internal structure in detail to know four different units those units would have to have their own bathrooms, their own kitchens, all of those types of things. That would take space so, not knowing the internal structure of the building, I do not know about making a clear statement of “there is 16 bedrooms now split into four” I do not know if that is a one-to-one type of operation, so I understand those arguments, but I will be voting against this currently. Commissioner Alsindi said I am also stuck in the favor of voting against it but I think they should be utilizing all of them and can work with the City but I am also not in the favor of changing it into a duplex. This structure I think is old and needs to be maintained. That building should remain the same status regardless of the occupancy for the time being. I think the composition of the residence, this time, that could probably be a nuisance. That composition might change, and nothing has shown that he is ready to incorporate in terms of stopping any fraternity activities over there.

Commissioner Armstrong	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	No
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Commissioner Washington	No
Chair Finnegan	Aye

The motion to recommend denial of the special use permit passed (5-2). The recommendation will move forward to City Council on November 14, 2023.