



**City of Harrisonburg, Virginia**  
**Department of Planning & Community Development**

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Building Inspections  
Engineering  
Planning & Zoning

December 28, 2017

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

**SUBJECT:** Public hearing to consider a request from 4G Properties LLC for a special use permit per Section 10-3-40 (7) of the R-2, Residential District to allow occupancy of not more than four (4) persons provided one (1) off-street parking space per tenant is provided on site. The 3,700 +/- square foot property is located at 333 Old South High Street and is identified as tax map parcel 25-G-4.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING**  
**HELD ON:** December 13, 2017

Chair Way read the request and asked staff for a review.

Mr. Baugh recused himself from the Planning Commission meeting at 8:06 p.m. and did not return for the remainder of the meeting.

Mrs. Banks said 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: Unoccupied single-family dwelling; zoned R-2

North: Multiple tenant residential uses; zoned R-2

East: Across Old South High Street, multiple tenant residential uses; zoned R-2

South: Single-family, detached dwelling; zoned R-2

West: Across South High Street (Route 42), James Madison University athletic fields and parking lot; zoned R-2

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 property is located on the west side of Old South High Street, approximately 200-feet north from the end of the cul-de-sac, and is a through lot, with road frontage along Old South High Street, as well as along South High Street. The subject parcel is only 3,700+/- square feet in size; therefore, it is non-conforming to lot size for the R-2 zoning district, which requires 7,000 square feet of lot area for a single-family dwelling.

Currently, the R-2 zoning district permits owner-occupied single-family dwellings which may include rental of space for occupancy by not more than two persons. Nonowner-occupied single-family dwellings may include rental of space for occupancy by not more than one person. In other words, when a dwelling is nonowner-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. The R-2 occupancy regulations were amended in December 1998, reducing by right occupancy in R-2 from four tenants to the same occupancy as R-1. Nonconforming occupancy may legally continue until the use is discontinued for a period of 24 consecutive months or more, after which time the occupancy must conform to the regulations of the zoning district in which it is located.

The subject property is designated as Neighborhood Residential within the Comprehensive Land Use Guide; a designation more associated with larger, older homes on smaller lots, and is often coupled with the R-2 district such as the subject property. This portion of Old South High Street is a mix of residential housing types – single-family detached dwellings, duplexes, and apartments. Most dwellings along this street are rental properties, with many of the rental units occupied by James Madison University (JMU) students. In 2005, a staff survey observed that only six of the 35 residential properties within this block of Old South High Street were owner occupied; today, staff’s review indicates only three properties are owner occupied, not including the subject parcel. Of the three owner occupied properties, one is currently vacant and for sale. Although the neighborhood is zoned R-2, given the number of students often seen in the area, it appears that many of the properties have occupancy levels that exceed the two-person limit; however, it is not known if all these properties are nonconforming or illegally occupied.

The area around West Bruce Street, Chesapeake Avenue, Martin Luther King, Jr. Way, and South High Street has changed over the last 10 – 15 years. JMU now owns the properties across South High Street and Martin Luther King, Jr. Way from this block. Recent rezonings to B-1, Central Business District along South Liberty Street, West Bruce Street, and Chesapeake Avenue, have brought the City’s “downtown” closer to this area; making it convenient for residents of Old South High Street to walk to shops and restaurants. The expansion of the B-1 district combined with the easy access to JMU facilities across Martin Luther King, Jr. Way and South High Street, have made this area desirable for JMU student housing and higher occupancies.

In February 2017, Planning Commission reviewed the same type of SUP request for 257 Old South High Street; both staff and Planning Commission recommended in favor of that request. However, the request was ultimately denied by City Council. During the Planning Commission public hearing, it was discussed whether the existing Land Use designations remain best suited for this area and if changes should be proposed during the Comprehensive Plan update. Currently, there is a proposal within the draft Comprehensive Plan to designate this area for Mixed Use, a land use designation often associated with the B-1, Central Business District, where occupancy is allowed to be up to four individuals per unit.

As part of the SUP request for increased occupancy, the applicant is required to provide one one-site parking space per tenant. The subject parcel is narrow with only 36+/- feet of lot width and the existing dwelling is situated such that there is no space available for vehicles to access the rear yard from Old South High Street or for front yard off street parking. Therefore, all parking must be accommodated within the rear yard, which is accessed from South High Street. The applicant has provided a site sketch showing where parking spaces would be designated. During staff review of the request it was discussed with the applicant that all maneuvering of vehicles shall take place on the property because of concerns with vehicles backing out onto South High Street. If approved, staff recommends the following condition:

- All vehicles shall be able to turn around on the property and cannot back out onto South High Street.

Staff recommends to approve the special use request with the suggested condition.

Chair Way asked if there were any questions for staff.

Mrs. Whitten asked if they tore this house down what can they build back.

Mrs. Banks said a single-family detached house.

Mrs. Whitten said one family.

Mrs. Banks said a single-family dwelling, just what is there now.

Mr. Finnegan asked about the mixed use ability.

Mrs. Banks said they are still zoned R-2; Mixed Use is the proposed Land Use Guide designation for the Comprehensive Plan update.

Mr. Fletcher said I think the connection with mixed use, we go down the line thinking that when it is mixed use we typically associate it with B-1. B-1 carries the option of four occupants.

Chair Way asked if there were any more questions for staff. Hearing none, he opened the public hearing and asked if the applicant would like to speak.

Mrs. Whitten said my understanding was that they were not going to be able to be here tonight.

Mrs. Banks said the applicant is not able to attend, but he did ask if his letter could be read into the minutes.

*Dear Planning Commission,*

*I want to thank you all first for taking the time to hear our special use permit application. Secondly, I would like to apologize for not being able to be here in person tonight to answer any questions that you might have. My business partner and I Jimmy Higgs have our annual company Christmas dinner for R.S. Monger and Sons and felt that our presence was needed.*

*We are applying for this special use permit to allow four unrelated persons to reside in the house at 333 Old South High Street at this time for a couple reasons. First, we feel that the overall culture and environment on the street tend to be rentals and students and this house with a special use permit would fit into that environment better than a single-family home. Secondly with the close proximity to JMU's campus and JMU continuing to expand on Grace Street we feel that the house will be better suited to house students close to their classes.*

*The house in its current state is in need of major remodeling before it is inhabitable for anyone being a single family or multiple unrelated persons. We are trying to go through this process before we remodel the house so that we can better suit the house for the end user. It currently does have four bedrooms so no additional bedrooms would need to be added if the special use permit is granted. The one drawback or reservation that has been brought to our attention concerning the special use permit is parking. There is enough room in the back yard that will be converted to a parking lot to park four vehicles. I know there is a concern of backing onto Route 42 from that house but I do feel there is enough room to do a three-point turn to turn around and pull onto Route 42. As well as the back-yard parking, there are many people and seems to be the overall trend that people park on the side of the street on Old South High Street. There should be room for two cars to park in front of the house on Old South High Street. As an overflow parking option Jimmy Higgs and I own the house across the street, 332 Old South High Street, that has multiple unused parking spots behind it that we were going to allow 333 Old South High Street to use. We would probably create a parking pass to be displayed on the dash to be able to us that private lot.*

*Again, we want to thank everyone for taking the time to consider this application.*

*Sincerely,*

*John Monger IV and Jim Higgs*

Chair Way asked if anyone else would like to speak in favor or against this request. Hearing none, he closed the public hearing and asked Planning Commission for a motion on the request for the purpose of discussion.

Mr. Colman said I think the condition should say more than just that each vehicle be able to turn around on the property and not back out onto South High Street. It should be that parking be provided on site.

Mrs. Banks said they must provide four parking spaces on site by code. Now, if the residents chose not to park on site and park across the street or on the street that is fine.

Mr. Fletcher said it is part of the special use permit requirement; it is already built in the Zoning Ordinance.

Chair Way asked have we heard from the immediate neighbor that is a single-family home.

Mrs. Banks said we have had no comments from anyone.

Mr. Finnegan said I can definitely see with the high speed of traffic on that road there is just not great visibility for oncoming traffic with cars backing out of there.

Mrs. Whitten asked do we not know who the bamboo belongs to.

Mrs. Banks said no, I do not know exactly where the property boundary is.

Mr. Finks said the last time we looked at something like this was in February, for 257 Old South High Street. That was ultimately voted down by City Council. In the report, you mentioned they had discussed changes, that there may be some proposed changes in the Comprehensive Plan that the land use designations that are there now are not best suited. Do we have more elaboration on what City Council's thoughts were on what proposed changes should be made to the existing land use for that area, was it for mixed use?

Mrs. Banks said I think it was discussed by our Planning Commission.

Mr. Finks said I am sorry I read it as if City Council made the comment.

Mrs. Whitten said we voted for it and City Council voted against it.

Mr. Fletcher said I am trying to remember what City Council rationale was. I know that there was some discussion about a concern that there was no permission requested before they went ahead and put the people in the unit. If you recall the last one was brought to our attention because of a concern and then we found out there was a violation. I do not want to put words in people's mouth, but I remember that being a relatively thoroughly discussed matter.

Mrs. Fitzgerald said like a forgiveness versus a permission. This is permission for a house that is yet to be renovated. 257 Old South High Street was forgiveness after a house was already occupied.

Mr. Finks said this one would be set apart from that, because they are asking before they even renovate it.

Mrs. Whitten said the other house is much larger and much more suited probably for four people if you wanted to look at the logistics of it.

Mr. Colman said regardless of the house, it is more about land use. Back to land use, what it is now, and what we envision it to be, and it seems to make sense that we would approve the special use permit as the property there, or that section of the City is moving in that direction towards Mixed Use designation.

Chair Way said Mrs. Whitten you have mentioned this before, it seems to often happen, that people buy a property and then ask to increase occupancy. Then they act surprised when they cannot. I do not know if that is the case with this one.

Mr. Finks said I lived there for two years. I can tell you with Route 42 behind you, the traffic, the train, and then the lumber being cut at Monger's, it is not conducive to raising children.

Mrs. Fitzgerald said students are a good fit there.

Chair Way asked if there are any motions regarding this request.

Mrs. Fitzgerald moved to approve the special use permit for 333 Old South High Street (10-3-40 (7), Increased Occupancy) with the suggested condition as recommended by staff.

Mr. Finnegan seconded the motion.

Chair Way said we have a motion and a second for approval. He called for a voice vote on the motion.

All voted in favor (6-0) to approve the special use permit for 333 Old South High Street (10-3-40 (7), Increased Occupancy) with the suggested condition as recommended by staff.

Chair Way said this will go forward to City Council on January 9, 2018.

Respectfully Submitted,

*Alison Banks*

Alison Banks

Senior Planner