



# City of Harrisonburg, Virginia

Department of Planning & Community Development  
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Harrisonburg, Virginia 22801  
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To: Kurt Hodgen, City Manager  
From: Planning Commission and  
Adam Fletcher, Director - Department of Planning and Community Development  
Date: March 14, 2017 (Regular Meeting)  
Re: 257 Old South High Street – Special Use Permit (Increased Occupancy Up To Four Persons)

## **Summary:**

Public hearing to consider a request from Ilex LLC with representative 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 site within the R-2, Residential District. The 5,908 +/- square foot property is located at 257 Old South High Street and is identified as tax map parcel 25-G-16.

## **Background:**

The Comprehensive Plan designates this area as Planned Business. This designation states that these areas are suitable for commercial development but need careful controls to ensure compatibility with adjacent land uses.

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

**Site:** Single-family dwelling, zoned R-2

**North:** Industrial warehouse/mercantile use; zoned M-1

**East:** Across Old South High Street, multiple tenant residential uses; zoned R-2 and lumber yard warehouse/mercantile use; zoned M-1

**South:** Multiple tenant residential uses; zoned R-2

**West:** Across South High Street (Route 42), James Madison University athletic fields; 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 5,908 square foot property is located on the west side of Old South High Street, a dead-end cul-de-sac street created when the current South High Street (Route 42) was constructed in 1968. The property is a through lot, meaning it has road frontage along Old South High Street as well as South High Street. The parcel is accessible from both public streets.

This property came to the attention of city staff after a complaint was filed regarding the number of persons residing in the house. Upon investigation, staff discovered there were five unrelated individuals living in the dwelling. The property owner received a certified notice of violation and was given 30 days in which to correct the violation. The owner is appealing staff's decision to the Board of Zoning Appeals (BZA), claiming that the property is not in violation of occupancy regulations and, at the same time, has

applied for the SUP for the increased occupancy herein described. The appeal will be presented to the BZA on February 6, 2017. Currently, the dwelling is still occupied by five individuals.

The R-2 zoning district shares the same occupancy restrictions as the R-1, Single-Family Residential District. Owner-occupied single-family dwellings 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.

This block of Old South High Street is a mix of residential housing, business, and industrial uses. The subject property is designated as Planned Business in the Comprehensive Land Use Guide. The remainder of the street to the south is designated Neighborhood Residential, a designation that more closely resembles the larger, older homes on small lots and often associated with the R-2 district.

The vast majority of dwellings along this street are rental properties, with many of the rental units occupied by James Madison University (JMU) students. A 2005 staff survey found that only six of the 35 residential properties within this block of Old South High Street were owner occupied; today the same survey indicates only four properties as owner occupied. Even though the neighborhood is zoned R-2, and given the amount of students often seen in the area, it looks as if many of the properties have occupancy levels that exceed the two-person limit; however, it is not known if all these properties are outside of occupancy regulations, nonconforming, or illegally occupied. The R-2 occupancy regulations were amended in December 1998, reducing by right occupancy in R-2 from 4 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.

In 2005, the property directly across the street from the subject parcel at 264 Old South High Street was granted approval for the same SUP as is presently being requested. However, the lot area of 264 Old South High Street is large enough to allow the single-family dwelling to be converted to a duplex by making structural changes to the building; thus allowing four occupants by right on the property. In 2005, staff and Planning Commission recommended approval of that SUP request, which was then approved by City Council.

The applicant purchased the subject property in 2013 to be used as a multiple tenant rental. However, this property is not nonconforming as it had been occupied by a single family prior to December 1998. Therefore, to have more than two unrelated tenants, a SUP is being requested by the applicant. If approved, only four tenants would be allowed to reside in the dwelling; therefore the applicant would need to relocate one tenant. The applicant stated that additional off street parking was created in the rear of the property, which can accommodate the required four parking spaces.

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. The rezonings to B-1, Central Business District at the Ice House property and associated parking lot across West Bruce Street, along with the Chesapeake Avenue train depot property rezoning, 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.

Staff recommends approval of the special use permit request with the condition that the owner, or owner's representative, shall follow the yearly inspection process as defined by the Zoning Ordinance for boarding and rooming houses. This involves an inspection by Community Development staff conducted between October 1<sup>st</sup> and October 31<sup>st</sup> to ensure compliance with the SUP and with the Virginia Maintenance Code.

The SUP may be revoked by the Zoning Administrator if the inspection does not take place every twelve months.

Furthermore, Planning Commission might consider whether the existing Land Use designations remain best suited for this area and could recommend that this block and surrounding area be considered for review during the Comprehensive Plan update. If a new land use designation is proposed, then it can be properly discussed and vetted with the community.

**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 conditions as presented by staff;
- (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. The advertisement was published as shown below:

*Special Use Permit – 257 Old South High Street (Section 10-3-40 (7) to Allow Occupancy of Not More than 4 Persons)*

Public hearing to consider a request from Ilex LLC with representative 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 site within the R-2, Residential District. The 5,908 +/- square foot property is located at 257 Old South High Street and is identified as tax map parcel 25-G-16.

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 (b) to approve the special use permit request with the following condition:

- The owner, or owner's representative, shall follow the yearly inspection process as defined by the Zoning Ordinance for boarding and rooming houses. This involves an inspection by Community Development staff conducted between October 1<sup>st</sup> and October 31<sup>st</sup> to ensure compliance with the SUP and with the Virginia Maintenance Code. The SUP may be revoked by the Zoning Administrator if the inspection does not take place every twelve months.

**Attachments:**

1. Site maps (2 pages)
2. Application, applicant letter, and supporting documents (4 pages)

**Review:**

Planning Commission voted in favor (7-0) to recommend approval of the special use permit for 257 Old South High Street (Increased Occupancy Up To Four Persons) with the following condition:

- The owner, or owner's representative, shall follow the yearly inspection process as defined by the Zoning Ordinance for boarding and rooming houses. This involves an inspection by Community Development staff conducted between October 1<sup>st</sup> and October 31<sup>st</sup> to ensure compliance with the SUP and with the Virginia Maintenance Code. The SUP may be revoked by the Zoning Administrator if the inspection does not take place every twelve months.