



City of Harrisonburg, Virginia

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March 6, 2017

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: 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.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: February 8, 2017

Chair Way read the item and asked staff to review.

Mrs. Banks said 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

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

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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 1st and October 31st 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.

Chair Way asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if anyone would like to speak in favor or against this request.

Glen Loucks, 1057 South Dogwood Drive, said I am the applicant for the special use permit. I feel like this is the poster child for what this special use permit is for, taking a property and making it available for four unrelated tenants. It would match the use of the majority of houses on that street; almost every house on that street with the exception of three or four are tenant occupied and almost all those tenants are students. The student housing desires on this street are not likely to change in the future as JMU continues to expand in the surrounding area. We think this is a good use for that property and we are happy to comply with the regulations and stipulation of the annual inspection.

Chair Way asked if there were any questions or if anyone 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.

Mrs. Whitten said I have a hard time not speaking up on this one. The statement I would like to make is that I would like to see people that are in the rental business be a little more vigilant about what the use of a property is before they purchase so we do not get to this place.

Mr. Colman said I have a comment related to that. A suggestion from the BZA regarding property that has been illegally occupied by tenants, or more than the allowable numbers, was for those landlords to be fined if they are in violation and they are advertising the property for five tenants. It might take some education before we go to that extent, but it might be something we may consider.

Chair Way asked if there was any more discussion or a motion on the request.

Vice Chair Fitzgerald moved to approve the special use permit for 257 Old South High Street (10-3-40 (7) Increased Occupancy up to 4 Persons) as presented by staff.

Mr. Finks seconded the motion.

Mr. Colman said I think that the idea about reviewing this area during the Comprehensive Plan update to get community input as to what that area should be and not what is right now. Right now, it is by default what it is, but I do not know if that is what the City really wants for this street.

Vice Chair Fitzgerald said I am kind of guessing along those lines that we all have a list of areas in the City. From a couple meetings ago there was the Port Republic Road corridor between JMU and the Hospital, this is probably another one, plus five or six more that should be just added to the to do list for looking at with the Comprehensive Plan.

Chair Way said I have often felt that these sort of neighborhoods on the margins of campus have particular issues along these lines going on with them. I think we all have kind of these areas in mind and for me that seems to be a very increasing question.

Mr. Finnegan said one thing I would like to say about this area is there is, in my mind, a cultural significance to Old South High. There was a website named after it and that was not just arbitrary. Old South High in my history in Harrisonburg has been a place of arts and culture on that street, and yet it is

not a business like an art gallery, but it is part of the culture of the City in my opinion. I do not know if the Education and Culture Committee could just bring it up in the Comprehensive Plan, I know it is Land Use but it also might tie into arts and culture.

Mr. Finks said I would say even more than arts and culture, it is economics. I know a lot of people that from their experiences either living on Old South High Street or being part of events that happened there, stuck around in Harrisonburg. I would say there is a lot of connection between the things that have happened on Old South High Street over the years, as far as the student population and the revitalization of Downtown, a lot of the business that are in Downtown now were ideas in basements on Old South High Street 10-15 years ago. I would say it is not just culturally, it is economically, it has been a big part of helping that area stay vibrant and have events going on.

Mrs. Whitten said I would say that is kind of a stretch.

Mr. Finks said I do not think it is, I can name at least three businesses that came from Old South High Street.

Mrs. Whitten said the way that street looks now, it is horrifying. It is awful looking, it looks like a slum and it should not. We do not need areas in the City that are allowed to just be completely run down and have trash all over, garbage cans everywhere, and sofas on the front porch. We have talked about that and a lot of the violations can be addressed; but it is not ok to just say “it is cute and campy” and they are good people. It just simply should not look the way it does. If you went back 30 years, the people that lived there had a culture of their own and they were families and they were working.

Mr. Finks said and they left, they moved away, not because they were driven out they decided to move out.

Mrs. Whitten said in some cases they were driven out. I think this most recent family that left probably was driven out, they were older people. I think it is not fair to characterize it as artsy and I do understand all of that about the culture of that street, I do; but I also know that it looks like a slum.

Vice Chair Fitzgerald said I can think of a couple of Comprehensive Plan committees that this could fit into. It is one area that was something, became something else, and now it is becoming something else again. Talking about it in that particular setting with other members of the community would be a very useful thing to do.

Mr. Finks said arts, culture, and music come out of the slums. Every important music and art artist in this country has started in low income slummy neighborhoods.

Mrs. Whitten said not every.

Mr. Finks said a majority of them.

Mrs. Whitten said I will give you that there are some yes.

Mr. Finks said I think it is hard to look at something on the outside, saying this does not look good, and then determine its worth by one person’s view of what a street looks like.

Mr. Finnegan said there may be a way of approaching the issues that you brought up, that are not in a law and order enforcement way to do it; there might be a community block grant. There might be people living on the street who might want to be a part of some kind of beautification project, arts project, it might be worth approaching somebody in the Arts Department, these are just ideas.

Chair Way said we can certainly engage with the students to remind them to care about the City that they are in and to uphold the standards which we, as long term residents, expect here; while still allowing for the creativity and innovation to come through. That street has some interesting historical architecture. The old paper warehouse building to me that is one of the oldest buildings in the City, or at least one of

the oldest industrial buildings in the City. That street is interesting in many different ways. I think it is very important we got all these things out here in the official minutes.

Chair Way asked if there was any other discussion. Hearing none, he called for a voice vote on the motion.

All voted in favor (7-0) to recommend approval of the special use permit for 257 Old South High Street (10-3-40 (7) Increased Occupancy up to 4 Persons) as presented by staff.

Chair Way said this will go forward to City Council on March 14, 2017.

Respectfully Submitted,

Alison Banks

Alison Banks

Senior Planner