



City of Harrisonburg, Virginia
Department of Planning & Community Development

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Building Inspections
Engineering
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August 3, 2018

TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA

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

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING
HELD ON: July 11, 2018

Chair Way read the request and asked staff to review.

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

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

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

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

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

North: Across West Market Street, Single-family detached dwellings, zoned R-2

East: Single-family detached dwellings, zoned R-2

South: Single-family detached dwellings, zoned R-2

West: Duplex, zoned R-2

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

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

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

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

The Comprehensive Plan designates this neighborhood as Neighborhood Residential, which means this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. (Note: At this time, the draft 2018/2019 Land Use Guide has this neighborhood planned to remain designated Neighborhood Residential.) Further, infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. Given the mixed residential nature in this neighborhood, one could argue a multi-tenanted single-family structure is compatible with the existing character of the neighborhood. With so many rental properties already within this area, approving this request sets up the opportunity for other rental properties to expect to exceed the by-right occupancy of the R-2 zoning district. Staff does not promote the furthering of this use in this area of the City.

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

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

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

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

Glenn Loucks, 206 South Avenue, said I am the applicant and owner of this property. I would like to clarify a couple of things on this discussion here about the property, and I appreciate you all coming out yesterday to take a look at it on site. I want to go over what we are requesting and clarify a little bit more of the time table of what occurred to this property. This property was purchased by Donna Kelley about 30 years ago. She lived there as a single-family house. When she got married she then became Donna Laffey, she created a duplex there by putting a second kitchen in. She had enough square footage to have a duplex there and operated that as student housing.

When I purchased the property 20 years ago the students were existing in that property. I have continued that use ever since, but six months ago it was brought to my attention that there was never a permit pulled by the previous owner and therefore, by new definition of City Code, that is no longer a duplex. It is not that I could not prove that I used it as a duplex, it is not that it was not being used for close to 30 years as a duplex, but under the current interpretation if there is no building permit or occupancy permit, then it is an illegal duplex.

As I look at the property here and we look at the site on West Market Street we can see how that area has changed over the last 100 years. This house has been there for 100 years, since the 1920s, back in the 1920s less than 6,000 people lived in Harrisonburg. Market Street was a one lane road each way and both these houses (423 and 433) had accessory buildings. In fact, the accessory building for the white house next door still exists, it has a stable area and a place for a horse and carriage. When I bought the property there was a place for a chicken house and other things on the site, it was rural at that point when it was built 100 years ago.

Obviously, a lot has changed in 100 years here in Harrisonburg and all we know is that it will continue to change. Now it is a four-lane road, there is a big plastic factory on this street where many houses used to be. Each of the houses that have been removed from this street have been replaced with one story stick-built houses, which are not in character with the grand style houses that were built 100 years ago on that property. I would like to preserve that house and its use.

I am told that there are three ways that I can use this property for four individuals. One way is to demolish the house and build a duplex and I can have two individuals on each side or two families. The second way would be to separate it and get a building permit to make it into a duplex. Based on the way that building was built 100 years ago, to meet the structural and the building and zoning codes of today, it is cost prohibitive. The third way is the special use permit, which I have applied for today. I think that

using the special use permit does the least impact to the property and it allows this property 10 to 30 years in the future to remain a grand house, to remain the character that it was built for over 100 years ago and not become an apartment building or some other type of duplex building that is there.

What I am asking for is not to increase density, four people for a house this size is not high density. Mrs. Banks, I appreciate the history you have given on this, but I think when you say things like we want to keep things from creeping into the neighborhood, four individual people living in a house, is that saying I do not want students there? What is it that we do not want about four individuals that are not a family living there? Is it that they are students and that is why you do not want them there? I think that this limits the occupancy to four, it would be a legal limit on this that could be enforced by the City, it is a right, under the current zoning, to allow this special use permit. I am not asking for a rezoning, I am not asking for anything special other than one of the permitted special use permit rights and that is why I am coming to you today and I am so happy to answer any questions for you. But again, my goal is to preserve this house as a house, not to chop it up into a duplex, not to chop it up physically by tearing the house down and building another structure that meets the current codes.

Mrs. Whitten said it does also have a legal use as a single-family house.

Mr. Loucks said it does have that as well.

Mrs. Whitten said and it could be grand as that.

Mr. Loucks said it could be, but there is a tremendous amount of traffic that is there. I do not think there is a pull for people wanting to live in a single-family house at this location once they widened West Market Street. When they did the widening they took all the front yards and made them half the distance from the house. I am not saying we should not have widened West Market Street, but it changes the character of those houses right on there. I think that the special use permit is a reasonable way of doing a case by case basis. I have to come to you on this case by case basis to talk about this house as opposed to a blanket zoning, which allows every property within a zoning district to do a certain thing. This is a case by case basis, which is the whole purpose of a special use permit.

I think this is a reasonable use, four individuals living in a house of this size is not overoccupancy, even though it is marketed as I am asking to increase occupancy, I do not think anybody looking at that house, looking at the land space would think four individuals living in that property is too dense of a space. That is why I am asking for this special use permit, I understand the reaction of saying we would really like it to go back to where this was a one lane road each way, we would like to go back to 1920 when this was a desirable place to be on the busiest street in the City, it is just not that place right now.

Twenty years from now who knows, as electric cars come, as public transportation and other things being right downtown, might not be as noisy and dirty from the turkey trucks that come through. It is not a place where people would want to make a grand home on a very busy street and that is why the changes that have occurred on this street have not been in that direction. There are industrial uses, again, multiple houses were razed for a plastic factory on that street one block away. There are other businesses there as well, I think this is the least impact on a community by having this house remain as a house. The exterior of the house remains the same and it does not harm the character of the neighborhood.

Mrs. Whitten said the duplex use that you talked about, that was never a legal use, right.

Mr. Loucks said well, under my impression it was a duplex.

Mrs. Whitten said the way you told the story, it sounded like it was legal because she put the second kitchen in so therefore it was okay to go ahead and have the second kitchen and use it that way; but it really was not. I just want to establish that point that it was not.

Mr. Loucks said I was not aware when I purchased the property. I checked the size of the lot and it was large enough to have duplex.

Mrs. Whitten asked did you ask in Zoning.

Mr. Loucks said no, I did not.

Mrs. Whitten said that would always be a good idea.

Mr. Loucks said I understand that and I am aware at this point. Although, there are no public records that you can look at that show that.

Mrs. Whitten said they are very helpful in the Zoning office to be able to answer those questions. I need you to know that.

Mr. Loucks said I understand that now. When I purchased the property, I did not do enough due-diligence on my part to do that.

Mrs. Whitten said that was 20 years of six people.

Mr. Loucks said correct, we continued the use throughout.

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

Mr. Finks said as someone who lives near this area I do struggle with this one a little bit. The staff's characterization of that side of Market Street with the continuous neighborhood down to Brook Avenue and Bruce Street, for someone who lives there I see the roads that front West Market Street all to their own and not part of that neighborhood behind it. I have a lot of friends that live in that neighborhood and I do not see a lot of connection with the houses on Market Street, mainly probably because of that alleyway behind it that does a good job of separating the houses that front Market Street to those neighborhoods behind. I personally see it as two separate things and not all one neighborhood.

It does seem to me, as someone who has lived in the area my whole life and have been up and down that street, that has been the character of that road. I have known, that it has been a denser zone, not necessarily zoned that way, but there is a lot of rental properties on that street. I was surprised to find how many owner-occupied houses that were on that street, because I have always assumed that it was all rentals for the majority of it. To me it feels as a neighbor that it is already the character of that area of Market Street and that trying to take it back from that seems almost out of character with what the neighborhood is now to me. I do not know what would be protected, because to my wife and I we think about that area as student rentals.

I never thought of that area as a place where there was encroachment on to neighborhoods, because it seems like a world on to its own. In saying all that, it does not mean I disagree with the argument of wanting to stop encroachment, wanting to protect our neighborhoods, not wanting to allow uses that would be detrimental to neighborhoods, but the way I see it, this usage was already going on for 20 years, so legal or not, it was happening. By not allowing this to happen I do not know what would really be affected, what would be encroached on by allowing this.

Mr. Colman said I think the other thing also is that even though staff is recommending against it, I agree with the applicant. The special use permit is a legal request. We have the opportunity to say yes you can do that or not. Also, in terms of the number of occupants if you have a family in that house, I would imagine if a family would want to rent that house a large family would be at least four people if not more. So, in terms of the number of people that makes sense it seems reasonable. From that standpoint I kind of agree with what Mr. Finks said. It does not change the character of what it is right now, maybe for the better compared to what it was in terms of a violation.

Another point as we discussed the Foley Road property on the mix of uses there, I do not know if uses is the word, but of densities it kind of gives character to a neighborhood and in that case, is pushing in one direction almost too much. Here it is not, so I understand the argument of let us stop this right here, but at the same time it is what is happening right there. The question is, can we keep that from going farther into the neighborhood? I think that is the reason why the denial is there, we just do not want that creeping in. At the same time, I do not think it is necessarily unhealthy for this property specifically, because it has been used that way for 20 years and actually as matter of fact, given the removal of the illegal occupancy that it had, now it is only going to be reduced to four people instead of six. It would have a legal occupancy in other words.

Mrs. Fitzgerald said I do not know if this could be answered by staff. The idea of somebody even preceding the applicant having used this as a duplex for many years and then it coming to light that the use that has persisted over the space of two different owners is illegal, has this come up every once in a while, or is this a really unusual kind of thing.

Mr. Fletcher said it has come up quite a bit recently. We have to react to the concerns that are brought to our attention. Once information is known, we cannot unknow it. We just ask the questions and once we have some type of answer we do the research. There are other cases that are ongoing similar to this one.

Mrs. Fitzgerald said this is for many years. I have been on Planning Commission for a while now and I know that complaint driven issues surrounding occupancy, and particularly in residences, has been going on since I have been on Planning Commission and probably way before that. This is a particular use that seems to have been going on for decades now.

Ms. Dang said the BZA cases that we heard last month, all of them had to do with occupancy, including this one.

Mr. Fletcher said we do not have to rehash the whole BZA case, there is significant research and reports that are written. The points are that whether people know or not when they are buying the properties, if somebody converts something to an illegal use, it does not make it right. Then, there are other things come into play like building code and safety issues.

Mrs. Fitzgerald said more have been coming to light, we do not know whether more are actually happening, but more are coming to light.

Mr. Fletcher said right.

Mr. Colman said one of the key arguments I guess has been, assuming the property was permitted at some point to be that way, the caveat is if that use is discontinued for more than 24 months then that use is terminated. It is no longer in compliance or nonconforming, then it has to comply with the current zoning requirements and that has been the hardest thing for most of the applicants bringing that to BZA.

Mr. Fletcher said there are so many ways to look at it. One could be, a use gets converted, no questions were asked as to whether it was legal to be converted, then it operates for several years. Then a next-door neighbor might be upset about how it is operating and they say, "I am going to start doing it too." They sell the property, and then the next person does continue the operation, and then overtime, that is when the transitions begin to occur and neighborhoods begin to breakdown, the community breaks down, and all of those sorts of things. It just depends on what angle you want to look at it.

Mrs. Whitten said and we are always talking about affordable housing and the fact is when you break a house up into four, you can get a lot more rent from four individuals than you can from a family. It makes the cost of doing business in that neighborhood as a family unapproachable.

Mr. Finks said I agree with that, but looking at this individual property I could not imagine any way where you can convert this into a single-family home that would be affordable for a family starting out.

The square footage alone would be cost prohibitive for anyone in my generation to really be able afford this as a starter house or the next house or the third house.

Mrs. Whitten said there have been houses on that street that have sold to families recently. I know we talked about Collicello Street not long ago and that is what I said about it. This is a neighborhood where families are moving in, why would we want to make it denser in that area, but we did.

Mr. Colman said I think the density here, we are talking about four people, it would not change the density.

Mrs. Whitten asked what are you going to say to the next people that come for the special use permit behind it.

Mr. Fletcher said I just want to make sure you are talking about the preliminary plat request on Collicello Street that was infill development, density from a unit perspective and not density of human occupancy perspective.

Mrs. Whitten said yes, and changing the character of the neighborhood, which potentially will be the case there.

Mr. Finnegan said I tend to agree with Mr. Finks on your comments earlier about this neighborhood. I feel like when you look at neighborhoods, West Market Street is a major dividing line that breaks up those neighborhoods. Families used to be bigger when they built houses 100 years ago. I feel that two of the biggest impacting events in that neighborhood would have been the widening of the road and also the building of the plastic factory across the street. It feels like we are kind of rearranging deck chairs when it comes to talking about how this is going to impact the neighborhood in a negative way.

I understand the argument for and against, but I do not see this as majorly detrimental to the neighborhood. As Mr. Colman was saying, there are fewer people living there now, then what were living there for the last 10 to 20 years, if this gets approved.

Chair Way said this is not an opinion but just an observation that it is a really interesting discussion to listen to, especially about what we do with the edges of neighborhoods. What we do with the borders around there and you can make an argument both ways. Number one, it is different from the central core of a neighborhood where it has the circumstance there with the road. You can also make the argument that it is at the edges where you need to defend things more because that is sort of a starting point and you want to make sure you maintain the integrity from the outside in. It is just very sensitive in those kind of echo tones or what you would like to call them. Edge areas in a neighborhood is an interesting thing to think about how we treat them and defend them and all adapt to change in those areas and what it does to the rest of the neighborhood.

Mr. Finks said I can agree with that, but you also have to look at there are some areas, some edges of neighborhoods, where it is never going to make any sense.

Chair Way said it is all about context.

Mr. Finks said right. There are some of those edges that we have not been trying to defend such as the edges of South Main Street.

Mrs. Whitten said we have on East Market Street.

Mr. Finks said right, that is what I am saying it is situational, I do not know if you can say "we must defend all the edges."

Chair Way said I think the situational thing is very important because the context does definitely count, and then we stop and get into the corridor kind of question.

Mr. Finks said and that is why I said I struggle with this. In general, I agree with that argument, I want to not affect the neighbors, I want to defend the borders, but I also look here and see this is someone who is a few blocks over from this property and I am really thinking about what would be the impact here and what is my interpretation and view of that area. When I think about it, I do not see how this would make a change. I understand the argument that it can make a change or it sets a precedent, but I also see it as the precedent has already been set 20 to 30 years ago for this area.

Chair Way said I also would like to make the point that Mr. Loucks made as well, that it is a busy road and that makes it less attractive for various things. I think that is also a reminder to be very thoughtful about our transportation choices and our road widening choices in the City because it has these impacts on neighborhoods and I think we have been a bit cavalier in the past in terms of road widening and we have not thought through the residential impact of that. I think this is a good lesson for what happens to neighborhoods in these kinds of decisions once you widen roads like that.

Mr. Finnegan said my wife and I were looking at houses to buy a year and half ago and we looked at a house right across the street from there and the reason we said no was, it is too busy, there is too much traffic.

Chair Way asked if there were any motions or further discussions to the matter.

Mrs. Fitzgerald moved to approve the special use permit – 423 West Market Street (Section 10-3-40 (7) to Allow Occupancy of Not More than 4 Persons) with the conditions that staff presented.

Mr. Colman seconded the motion.

Chair Way said we have a motion and a second.

Mr. Baugh said I am not crazy about these special use permits. This is not a new position for me, in fact lately I have voted for a number of them, again I am not an absolutist about it, but when in doubt, as far as I am concerned, the answer should be no.

Mrs. Whitten said it is also not in conformance with our Comprehensive Plan. We need to really think about that one.

Mr. Baugh said there was a much stronger case for the one we just did that the request was in conformance with the planning. More so than this one.

Mr. Colman said the other comment I would have on that is that if we think that is not in conformance with the Comprehensive Plan then we need to remove those special use permits, especially for in this case, increasing the number of occupants. The special use permit allows for making that a legal option. If we think that should not be, then we do not do it.

Mrs. Fitzgerald said I am going to be in favor of it. I think it is one of those 52% to 48% ones for me, it is not a clear obvious yes, or a clear obvious no, but for me it decreases the density, it makes it legal, it keeps it in the use that it has been at for decades, but a little less impactful. I do not really think it is part of the neighborhood, I think that the two sides of the Market Street are, as Mr. Finks put it, a neighborhood into itself.

Mr. Finnegan said I will be voting similarly for similar reasons. I believe that is the edge of the neighborhood and I know I bring this up about every three or four months, but we need to define our neighborhoods. If I was drawing a neighborhood that line is exactly where one would begin and the other one would end.

Mrs. Fitzgerald said it is interesting to be voting on this right after you have done a house search and literally looked at homes along this edge.

Mr. Colman said another comment that I want to add to this is I thought about this many times and I thought well why did we leave this corridor here as neighborhood residential, why do we not have a band of “mixed use: like we did in other corridors. We still have an opportunity to change that if that is what we think.

Mr. Finnegan asked are you talking about the Purcell Park development from about a year ago.

Mr. Baugh said he is saying that we still have the opportunity in the Comprehensive Plan update to look at it.

Mr. Colman said I am not saying we need to go one way or another, but I am just saying that if we are divided on this, which is fine, I think we need to think that maybe we should create a buffer here to change the character.

Chair Way said I am on the other side of 52% to 48%, it is a close thing. I will be voting, similar reasons, but in the other direction from this. I suppose I am just thoughtful about that edge and thoughtful about the neighborhood integrity there. It is a close thing. I am very pleased that we brought all the perspectives out here and that will be taken up to Council. I think these divided votes we are having are actually healthy reflections to the nuances of all these issues and I hope that Council recognizes that.

Chair Way called for a roll call vote.

Commissioner Colman: Yes

Commissioner Whitten: No for the reasons stated previously.

Commissioner Fitzgerald: Yes

Commissioner Baugh: No

Commissioner Finks: Yes

Commissioner Finnegan: Yes

Chair Way: No

Chair Way said the final vote is four to three (4-3) to approve the special use permit at 423 West Market Street (Section 10-3-40 (7) to Allow Occupancy of Not More than 4 Persons) with the condition presented by staff.

Chair Way said the item will move forward to City Council on August 14, 2018.

Respectfully Submitted,

Alison Banks

Alison Banks

Senior Planner