



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

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To: Ande Banks, City Manager  
From: Adam Fletcher, Director, Department of Community Development and Harrisonburg Planning Commission  
Date: January 9, 2024 (Regular Meeting)  
Re: Special Use Permit – 660 Walnut Lane (To Allow Boarding and Rooming Houses in R-3)

## **Summary:**

Project name	N/A
Address/Location	660 Walnut Lane
Tax Map Parcels	25-L-8A
Total Land Area	+/- 16,486 square feet
Property Owner	Craig D. Smith and Sue W. Smith
Resident Leasee	Brinton Harbison
Present Zoning	R-3, Medium Density Residential District
Special Use Permit Request	Section 10-3-48.4 (1) to allow boarding and rooming houses
Staff Recommendation	Denial
Planning Commission Recommendation	October 11, 2023 (Public Hearing) Denial (5-2)
City Council	January 9, 2024 (Public Hearing) Note: Public hearing was postponed by the applicant from the November 14, 2023 City Council meeting

## **Background:**

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

Site: Single-family detached dwelling, zoned R-3

North: Multifamily dwelling, zoned R-3

East: Single-family detached dwellings, zoned R-3

South: Across Martin Luther King Jr. Way, house of worship and residential uses, zoned R-3

West: Across Walnut Lane, multifamily dwellings, zoned R-3

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 October 11, 2023, Planning Commission held a public hearing to consider the SUP and recommended denial (5-2). On November 7, 2023, the applicant requested to postpone the SUP request from the November 14 to the December 12, 2023 City Council meeting. On November 21, 2023, city staff issued a notice of violation of over occupancy on the property (copy attached herein).

On September 29, 2023, the property owner was issued a notice of violation for illegal fraternity use taking place on the property. This violation was closed on October 12, 2023 following receipt of an agreement between the property owner and tenants stating that there will be no fraternity sponsored events at the property (copy attached herein).

**Key Issues:**

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 1<sup>st</sup> and October 31<sup>st</sup> 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 31<sup>st</sup>, 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.

**Environmental Impact:**

N/A

**Fiscal Impact:**

N/A

**Prior Actions:**

N/A

**Alternatives:**

- Approve the special use permit request as submitted by the applicant;
- Approve the special use permit request with suggested conditions;
- Approve the special use permit with other conditions(s); or
- Deny the special use permit.

**Community Engagement:**

As required, the request was published in the local newspaper twice advertising for Planning Commission's public hearing and twice advertising for City Council's public hearing. The advertisement was published as shown below:

***Special Use Permit – 660 Walnut Lane (To Allow Boarding and Rooming Houses in R-3)***

Public hearing to consider a request from Craig D. Smith and Sue W. Smith for a special use permit per Section 10-3-48.4 (1) of the Zoning Ordinance to allow boarding and rooming houses, complying with conditions as defined and limited in occupancy by one person per designated bedroom unless otherwise specified within the special use permit. The +/- 16,486 square foot property is addressed as 660 Walnut Lane, is identified as tax map parcel 25-L-8A, and located in the R-3, Medium Density Residential District.

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 (d) denial of the special use permit.

**Attachments:**

1. Extract from Planning Commission
2. Site maps
3. Application and supporting documents
4. November 21, 2023 Notice of Violation Letter for Occupancy
5. Agreement between the property owner and tenants

**Review:**

Planning Commission recommended denial (5-2) of the special use permit request.