



City of Harrisonburg, Virginia
Department of Planning & Community Development

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Building Inspections
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May 31, 2018

TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from ILEX 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 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: May 9, 2018

Chair Way read the request and asked staff to review.

Mrs. Banks said in February 2017, Planning Commission heard this same special use permit (SUP) request for the subject property. At that time, the property had been cited for being in violation of occupancy regulations for the R-2, Residential District by having five individuals residing in the dwelling. The applicant appealed staff's decision regarding occupancy to the Board of Zoning Appeals (BZA), and at the same time, applied for the SUP for occupancy of not more than four (4) persons. The BZA denied the appeal regarding occupancy; and while city staff and Planning Commission recommended in favor of the SUP for increased occupancy, City Council ultimately denied the request.

Section 10-3-127 (b) of the Zoning Ordinance states – "If the request for a special use permit has been denied by City Council, a request in substantially the same form shall not be resubmitted within one year of the date of denial." The previous SUP request was denied by City Council in March 2017 and the applicant reapplied in April 2018.

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: Vacant warehouse building; zoned M-1
- East: Across Old South High Street, multiple tenant residential uses; zoned R-2 and lumber yard warehouse/mercantile; 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, and is a through lot, meaning it has road frontage along Old South High Street as well as South High Street (Route 42). The parcel has vehicular access from both public streets. The site is non-conforming to lot size and setback requirements for a single-family dwelling in the R-2 district.

The Old South High Street cul-de-sac is a mix of residential housing types and almost all the dwellings are rental properties, with many units appearing to be occupied by James Madison University (JMU) students. The subject parcel is designated as Planned Business in the Comprehensive Plan's Land Use Guide, while the remainder of the street to the south is designated Neighborhood Residential, a designation that more closely resembles the area's larger, older homes on small lots, and is often associated with the R-2 district.

Within the proposed draft Comprehensive Plan's Land Use Guide, it is recommended to expand the downtown Mixed Use land use designation further west from Liberty Street to South High Street, and extending from Grace Street to West Wolfe Street; if approved, this would include all of Old South High Street. The Mixed Use land use designation is often associated with the B-1, Central Business District, where occupancy is allowed to be up to four individuals per unit.

Recent rezonings to B-1, Central Business District and redevelopment 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. Within the last five months, two SUPs for increased occupancy along Old South High Street (333 and 352 Old South High Street), have been approved by City Council, after favorable recommendations from both staff and Planning Commission.

As part of the SUP request for increased occupancy, the applicant is required to provide one on-site parking space per tenant. As previously noted, the subject parcel is a through lot and has a driveway that extends from Old South High Street to South High Street, with a large area available for parking. 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 must 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.

The proposed use will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted in the district.

Staff recommends to approve the special use request with the following condition:

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

Chair Way asked if there were any questions for staff.

Mrs. Whitten asked if there will be a fence or vegetation or anything planted to prevent cars from moving in that way and backing out.

Mrs. Banks said no there is no requirement for that, as a matter of fact as a single-family home you are allowed to back vehicles in to the street. We do not want to prohibit access onto South High Street, we

just want the tenants to know that they should physically maneuver their car on the parcel and drive out, not back out.

Mrs. Whitten said living on Mason Street I would say that is going to be tough.

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.

Glenn Loucks, 1057 South Dogwood Drive, said I agree with the recommendations of staff and Mrs. Banks has done a very good job of explaining the issue. We currently have the restrictions for our tenants that they cannot back on to South High Street and I think that is a wise restriction for this. I have no issues with that restriction to be put on the special use permit. The tenants currently can turn around and they can go out either direction, but generally choose to leave on Old South High Street because it is much easier access.

This is a property very similar to the one that has come in the last two months to you for special use permit; except for the fact that it is a much larger house. This is, I think, a very reasonable example as to why this ability was put into the zoning code, it allows for four unrelated, it allows the City to do annual inspections and allows for additional parking to be off street, which is definitely needed on Old South High Street.

Mrs. Whitten said I just want to be clear that you had five in it without permission for five, and it should have been two. I want to be clear that this special use permit is only for four persons.

Mr. Loucks said correct and that will be assured with the City's annual inspection.

Mrs. Banks said I just want to clarify that staff is not recommending a condition of a required yearly inspection. Some of Mr. Loucks' previous special uses may have had that as a condition; however, we are not suggesting that as a condition for this property.

Mr. Loucks said but you are still free to do so.

Mrs. Whitten clarified by asking that it is still only for four persons.

Mrs. Banks said yes, it is.

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

Mr. Finks said I am looking over the minutes from City Council when this property last came up, Mr. Baugh can you expand more. From what I am seeing in the minutes here, some of the reasons were to stay consistent and what Council approves in that area, at least that was one of the comments that was made. I do not know if that was the consensus.

Mr. Baugh said as we said what is consistent in that area is evolving and it has evolved since that decision. I actually do not think that was the main issue. I think the main issue, really with one Council member who felt strongly about this, and persuaded the rest of us, was the issue the applicant had been in violation, that was really the issue. Which we talked about when I came back here and did this. That in itself may be a little bit of a change with Council's orientation. I do not fault staff or this body for not taking that into consideration, because that has not really been a message that has come from Council in the past. I think that was the issue and everything else was peripheral. There might have been a few other things said, but it really was "hey this applicant was in violation let us not approve this now to correct the violation, he should have asked for permission before he asked for forgiveness."

Mrs. Whitten said a little bit of flaunting with the law I would say.

Mr. Baugh said that was the thrust of discussion at City Council. As evidence by the action that has taken place on other properties in that neighborhood since then, the actual “use” issues certainly have moved in the direction consistent with this application.

Mr. Colman said I will also comment that even though the applicant has this letter here more of chastising us for saying “this is what you should do to react to it, the evolution of the neighborhood,” and all that we are doing that. The Comprehensive Plan is looking at what is going on there and, as Mrs. Banks presented, we are looking at that area for mixed use. This is something that we have been looking at for a long time. It is not new to us. I know that the reason why it was rejected last time had probably nothing to do with this and that is something like Mr. Baugh said there were other reasons for that as you know. I would like to know if the applicant or representative was involved in any way with the Comprehensive Plan. We are looking at that area, were you involved in that process.

Mr. Loucks said I made application for several committees and I did not make it on any of the committees.

Mr. Colman said the meetings were open to all, but at least you made an effort to be part of it. I say that because I think we get people here complaining about things and well, we have given the opportunity to everybody to come and speak and what they want their City to be like and this is one of the areas.

Mr. Loucks said I did talk to some of the people that were on the committee, to get some feedback as to what people’s interest was and it looks as though the committee is also in support of higher density in this area.

Chair Way asked if there were any motions.

Mr. Colman moved to approve the special use permit at 257 Old South High Street (10-3-40 (7), Increased Occupancy) as presented by staff.

Mrs. Fitzgerald 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 (7-0) to approve the special use permit at 257 Old South High Street (10-3-40 (7), Increased Occupancy) as presented by staff.

Chair Way said this will go forward to City Council on June 12, 2018.

Respectfully Submitted,

Alison Banks

Alison Banks
Senior Planner