



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

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To: Board of Zoning Appeals (BZA)
From: Frank Hopkins, Zoning Inspector
Date: December 2, 2019
RE: Appeal – 398 East Elizabeth Street

Summary

A request by Blind Squirrel Investments LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-39, Uses permitted by right in the R-2, Residential District and Section 10-3-20, Continuance of nonconforming use of building. The appeal is specific to the potential nonconformance of the occupancy. The property is located at 398 East Elizabeth Street and identified as tax map parcel 34-RR-11.

Relevant Sections and Definitions

Nonconforming use: Any lawful use existing at the time of the enactment or subsequent amendment of this chapter which does not conform to the current zoning regulations prescribed in the district in which it is situated.

Section 10-3-20. - Continuance of nonconforming use of building.

- a) Any lawful land, buildings, and structures and the uses thereof existing at the time of the enactment or subsequent amendment of this chapter which do not conform to the zoning prescribed for the district in which they are situated shall be considered nonconforming.
- b) Nonconforming land, buildings, and structures and the uses thereof may be continued only so long as:
 - 1. The then-existing or a more restricted use continues;
 - 2. Such use is not discontinued for more than two (2) years; and,
 - 3. The buildings or structures are maintained in their then structural condition.
- c) The burden of establishing nonconforming status shall be that of the owner of the property.

Section 10-3-39 – Uses permitted by right (R-2, Residential District)

- (1) Any use permitted by right in the R-1 single-family residential district.

Section 10-3-33 – Uses permitted by right (R-1, Single-Family Residential District)

- (2) Nonowner occupied single-family dwellings, which may include rental of space for occupancy by not more than one (1) person, providing such rental space does not include new kitchen facilities.

Zoning Ordinance of 1994 Relevant Code Sections

ZO 1994 Section 10-3-38 Use regulations (R-2, Residential District)

- (2) Dwelling units may be occupied by a family or not more than four (4) unrelated persons, except that such occupancy may be superseded by building code regulations

Background

The property located at 398 East Elizabeth Street is zoned R-2, Residential District. An anonymous occupancy complaint was received by City staff and an inspection was conducted. The house was found to be rented to four individuals. Staff researched the past occupancy of the house and found the house was occupied by a couple, and then widower, from 1969 until 2008. The timeline of this ownership extends beyond the December 1998 date when the Zoning Ordinance was amended to restrict non-owner occupied dwellings in R-2 to a family plus one unrelated individual, which is the regulation today.

Property records indicate that Joseph and Fleta Shifflett owned the property until 2008 when it was sold to Brian Mayes. City staff contacted Mr. Mayes, who explained he rented the house to more than two unrelated persons until he was stopped by City zoning staff. Once Mr. Mayes learned that he could not rent to more than two unrelated individuals, he sold the property in 2016 to Buddy-Bob LLC, which is an LLC registered to Glenn Loucks. Mr. Loucks owned the house from 2016 until August of 2019 when it was sold to the current owner, Mr. Meyer. As Mr. Meyer states in his letter, Mr. Loucks rented the property ‘consistently to four students’ during his ownership and continues to serve as the property manager for the house. The property management advertisements show the house has the potential to be rented to five individuals, which is above what could be allowable even if the occupancy was nonconforming.

Staff Determination

The property was never nonconforming to occupancy regulations because at the time of the Zoning Ordinance amendment in December 1998, the house was owner occupied by a family, which is in conformance with the current regulations.

It is staff’s determination that 398 East Elizabeth Street is a single-family dwelling and shall conform to the current regulations of the R-2 District. The non-owner occupied dwelling shall be occupied by no more than a family and one unrelated person.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for the Board of Zoning Appeals’s public hearing. The advertisement was published as shown below:

“A request by Blind Squirrel Investments LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-39, Uses permitted by right in the R-2, Residential District and Section 10-3-20, Continuance of nonconforming use of building. The appeal is specific to the potential nonconformance of the occupancy. The property is located at 398 E Elizabeth Street and identified as tax map parcel 34-RR-11.”

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>.

Attachments:

1. Site map
2. Application, applicant letter
3. Supporting documents