



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections
Engineering
Planning & Zoning

To: Eric Campbell, City Manager
From: Adam Fletcher, Director – Department of Planning and Community Development and Harrisonburg Planning Commission
Date: September 10, 2019 (Regular Meeting)
Re: Special Use Permit – 165 New York Avenue (Short-Term Rental)

Summary:

Request from Orange Sky Investments LLC for a special use permit per Section 10-3-40(8) of the Zoning Ordinance to allow for a short-term rental within the R-2, Residential District. The +/- 11,250 sq. ft. property is addressed as 165 New York Avenue and is identified as tax map parcel 24-O-13.

Background:

The Comprehensive Plan designates this site as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. 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 desired character of the neighborhood.

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

- Site:** Single-family detached dwelling, zoned R-2
North: Single-family detached dwellings and duplexes, zoned R-2
East: Single-family detached dwellings, zoned R-2
South: Single-family detached dwellings, zoned R-2
West: Single-family detached dwellings, zoned R-2

Key Issues:

The applicants are requesting approval of a short-term rental (STR) operation at 165 New York Avenue, which is located approximately 175-feet east of South High Street. The applicant desires to rent for STR a whole home, seven-bedroom, single-family detached dwelling to a maximum of 14 STR guests during the lodging period. The applicants explained to staff that accommodation spaces will be offered within each of the seven bedrooms. There is a large parking area in the rear of the property, which can accommodate five vehicles and an additional three vehicles can park within the driveway, for a total of eight off-street parking spaces.

The property is not the applicant's primary residence and there will be no STR operator present during the lodging period. The applicant states in their letter that the property is professionally managed by Evolve Vacation Rentals and while they are not present during the lodging period, Evolve Vacation

Rentals are on call 24/7 to accommodate any guest requests or concerns. The applicants also describe that they reside in the City, less than one mile from the subject property.

Allowing whole home rentals where it is not an operator's primary residence, such as this request, decreases the housing stock available for long-term rentals and decreases the number of homes available for owner-occupied homeownership. While some applicants may not consider themselves investors who are purchasing multiple homes to operate STRs, this home could be sold to an investor and the SUP and associated conditions would convey.

At this location, and based upon previous approvals in other areas in the City, staff believes a STR could operate in one of two ways. The first is to have the STR be owner-occupied, where at times the whole home could be rented and the operator briefly resides at another location. The second option is when the operator is a tenant, who would be present during the lodging period. These scenarios are consistent with previously discussed positions, where the belief is that if the STR is owner-occupied, this person has a greater interest in maintaining the property. Since this property is known to not be the owner's primary residence, and because there will not be a tenant to provide on-site accountability, there is a greater chance of nuisance activities occurring on the property and negatively impacting neighbors.

When someone purchases a home in a residentially zoned neighborhood, there is usually a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential situation is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Staff believes if a whole home STR where the property is not the operator's primary residence is approved within this neighborhood at this location, there is a greater chance that there would not be long-term permanent neighbors (either homeowners or long-term tenants) residing on the property, which could result in community instability because STRs introduce high turnover of people who are unknown to the neighbors or could leave a house vacant for periods of time while the home is not being rented as a STR.

Given the size and nature of the request, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If there is a desire to allow a STR at this location where the property is not the applicant's primary residence, then staff recommends the following conditions be placed on the SUP:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than seven STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to 10 people.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
5. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
6. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant

later wishes to create living spaces within an accessory building for a STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 limits the total number of guest rooms and accommodation spaces on the entire property to seven. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #3 limits the total number of STR guests to not more than 10. Condition #4 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present.

Condition #5 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional off-street parking spaces. Section 10-3-25(28) of the ZO requires STRs to “provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.” With a request to rent seven accommodation spaces within the dwelling for STR, the property would be required to provide seven off-street parking spaces unless conditioned otherwise. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. Regardless, staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces.

Condition #6 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Recommend approval of the special use permit request as submitted;
- (b) Recommend approval of the special use permit request with suggested conditions;
- (c) Recommend approval of the special use permit with other conditions(s); or
- (d) Recommend denial.

Community Engagement:

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

Special Use Permits – Short-Term Rentals

Public hearings to consider requests for special use permits to allow short-term rentals. A short-term rental is defined in the Zoning Ordinance as “[t]he provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” Short-term rentals are further regulated by Article DD of the Zoning Ordinance.

- ***165 New York Avenue*** – Request from Orange Sky Investments LLC for a special use permit per Section 10-3-40(8) of the Zoning Ordinance to allow for a short-term rental within the R-2, Residential District. The +/- 11,250 sq. ft. property is addressed as 165 New York Avenue and is identified as tax map parcel 24-O-13.

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.

Attachments:

1. Planning Commission extract
2. Site maps (2 pages)
3. Application, applicant letter, and supporting documents (31 pages)
4. Public comments received as of August 8, 2019 (2 pages)

Review:

Planning Commission recommended denial (6-0) of the special use permit request.

On August 28, 2019, the applicant submitted an email explaining that since the August 14, 2019 Planning Commission meeting, the applicant/property owner would be moving to 165 New York Avenue and will make it his primary residence. The owner does not intend to be present during the lodging period. The applicant has also reduced the requested number of STR guests at any one time from 14 to 12. The email is included as an attachment.

Given that the circumstances of this request have changed and made it similar to previously approved requests, staff’s recommendation has also changed. Because the City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations, staff recommends approval of the request with the following conditions:

1. The site shall be an operator’s primary residence.
2. If an operator is not the property owner, then an operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than seven STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to 12.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.

8. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.