



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Master

File Number: ID 19-267

File ID: ID 19-267 Type: PH-Special Use Permit Status: Approval Review

Version: 1 Agenda In Control: City Council

Section:

File Created: 09/03/2019

Subject:

Final Action:

Title: Consider a request from Thomas W. and Taricia L. Pippert Trustees for a special use permit to allow short-term rental at 551 Myers Avenue.

Internal Notes:

Sponsors:

Enactment Date:

Attachments: Memorandum SUP (551 Myers Avenue), Site maps, Application, applicant letter, and supporting documents

Enactment Number:

Contact:

Hearing Date:

Drafter: thanh.dang@harrisonburgva.gov

Effective Date:

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Planning Commission	09/11/2019	recommended to full council	City Council	10/08/2019		Pass

Action Text: A motion was made by Finnegan, seconded by Finks, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 10/8/2019. The motion carried with a recorded roll call vote taken as follows:

Notes: Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site as Low Density Residential. These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre. The low-density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

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

- Site: Detached single-family dwelling, zoned R-1
- North: Detached single-family dwelling, zoned R-1

- East: Detached single-family dwelling, zoned R-1
- South: Detached single-family dwelling, zoned R-1, and across Martin Luther King Jr. Way, James Madison University student housing owned by the University, zoned R-3
- West: Detached single-family dwelling, zoned R-1

The applicants are requesting approval of a short-term (STR) operation at 551 Myers Avenue, which is located on a street that ends in a cul-de-sac in the Preston Heights neighborhood. The applicants desire to rent for STR four accommodation spaces; three bedrooms on the second floor and one bedroom in the basement. (“Accommodation space” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The accommodation spaces can accommodate a total of up to eight guests. The applicants describe that the property is their primary residence and that they would be present during the lodging period.

Section 10-3-25(28) of the Zoning Ordinance (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 for STR four accommodation spaces, the property should provide four off-street parking spaces. 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 unit. The property has a large driveway and a three-car garage. The applicants have explained that lodgers will park their vehicles in the driveway. 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.

If the request is approved, staff recommends the following conditions be placed on the SUP:

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 four STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to eight people.
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.

Condition #1 helps to prevent the City's housing stock from being purchased by investors and then being reallocated from homeownership and long-term rentals to STRs. Condition #2 helps to protect neighbors from nuisances arising from absentee operators. Along with condition #1, for property owners operating the STR for whom this property is their primary residence (and to be consistent with Planning Commission's recommended conditions on other applications), they are not required to be present during the lodging period. However, long-term tenants operating a STR would be required to be present during the lodging period. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for 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 STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to four. Condition #5 limits the total number of STR guests to not more than eight. Condition #6 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. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress. Condition #7 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. Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicants have 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 as approved. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

As of the last City Council meeting on August 13, 2019, the City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations. On August 14, Planning Commission reviewed a STR SUP request for 511 Paul Street, which resulted in no action (in other words, no recommendation) due to a tie vote (3-3). There was one Commissioner absent from the meeting. The item has been tabled by the applicant and will not be received by City Council at their September 10, 2019 meeting.

The City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations. Considering those approvals and the suggested conditions, staff recommends approval of the special use permit request with the suggested conditions.

Chair Way asked if there were any questions for staff. Hearing none, he opened the public

hearing and invited the applicant or applicant's representative to speak to the request.

Tom Pippert, 551 Myers Avenue, came forward in support of his request. The house was built with a bathroom with every bedroom. It can accommodate a group this size.

Commissioner Romero asked what the feedback has been from the neighbors.

Mr. Pippert said that it has been positive. In fact, we have a supportive neighbor with us.

Chair Way asked if there was anyone else wishing to speak to the request.

Rodney Williams, 511 Paul Street, came forward to speak to the request. As a neighbor, and an applicant last month, I support this request. I tabled my request because I had a hate mob in opposition to my request. My property reaches Myers Avenue and I support the request.

Chair Way closed the public hearing and opened the matter for discussion.

Commissioner Whitten said that this is a lovely home and a lovely neighborhood. I am not hearing any complaints from neighbors, but I have the same concern that I had last month. That is about residential zoning. If we are allowing more people in a house because of a STR SUP than we would allow according to our zoning laws, then there is something wrong. We have no control of who comes next. I am sure that this owner will be responsible and would maintain decorum and character for their home by being there. We have no way of knowing what is going to come next. I think eight sounds like too many people. Certainly, that home can accommodate eight people. I want to be very clear because I do not think that I was clear enough last month. It certainly did not get communicated to City Council why I have the feeling that I do about this. It is a bad idea to legally allow more unrelated people than our Zoning Ordinance would allow.

Commissioner Finks said I assume that you mean the by right ability because we have plenty of SUPs that allow more than that in plenty of houses. You are just talking about the by right ability.

Commissioner Whitten said that is correct. There are SUPs that allow more people than that.

Commissioner Finks said that we have plenty of SUPs that allow more people in the house than the by right ability.

Commissioner Whitten said that it is not in those kinds of numbers.

Commissioner Finks asked so that it is a specific number?

Commissioner Whitten said that it is fourteen or eight. How many people are allowed in an R-1 neighborhood beyond a family? That would be two.

Commissioner Finks said that he is trying to clarify that it is not that it is more than the by right ability, it is the actual number that is being allowed in the SUP. It is not that it is more, it is the fact that it is eight.

Commissioner Whitten said that it feels like a density problem. You have heard me talk about density of people, density of cars, density of trash. That is where it bubbles over. That is where it creates problems in neighborhoods. I hope it is clear.

Commissioner Finks said that the difference, as I see it, is that in this type of SUP we assume that there is not going to be that density every day of the year for the entire year. Compared to other SUPs where we assume that they will be renting the space for the entire year. I would be surprised if anyone is able to keep that many rooms filled every day of the year.

Commissioner Whitten said that it is an unknown.

Commissioner Finnegan said I voted in the affirmative for the STR request for the 511 Paul Street property. These houses are large houses. I can speak to this house (551 Myers Avenue) in particular because I've been in that house. When I worked at WVPT, we had whole film crews come in there. We had lots of people and there is a lot of space in that driveway. The off-street parking is not a concern for me. I voted in the affirmative on 511 Paul Street, against the wishes of some of the neighbors. I intend to vote in the affirmative on this one.

Commissioner Colman said that the question here is, with what number of guests would we feel comfortable? What would be a number that seems reasonable for an R-1 neighborhood? If it is a family, it could have eight people.

Commissioner Whitten said that it is a different situation. It is not a business.

Commissioner Finnegan said that it would vary from house to house. If we are talking about a two-bedroom house, like my house, I would not say more than two people. If a house can accommodate four accommodation spaces, each with its own bathroom, it can accommodate a lot of people.

Commissioner Finks said that we have already approved other SUPs with more than eight in similar neighborhoods.

Commissioner Finnegan said I cannot recall what we did with the one last month. Did we put some sort of restriction, an either-or restriction?

Mr. Fletcher said no.

Ms. Dang said that it was voted on. It was split.

Commissioner Finnegan said that it failed, so it does not matter.

Commissioner Whitten said that it was in regard to not being able to rent to borders and operate a STR at the same time.

Commissioner Finnegan moved to approve the STR with conditions as presented.

Commissioner Finks seconded the motion.

Chair Way said I am going to vote in the same way, and for similar reasons, as Commissioner Whitten. I think the presence of the owner makes a difference for me in this one, as well. Holding to the single-family residential concerns that we have had, I am going to be voting against the motion.

Commissioner Whitten said that, going forward, I want it to be clear that, just because this owner will be there, future owners would not have to be there.

Chair Way said that is one of the concerns with the SUP.

Commissioner Finnegan read “[t]he site shall be an operator’s primary residence. If an operator is not the property owner, then an operator shall be present during the lodging period.”

Chair Way said that the owner does not have to be present during the lodging period. That is my concern.

Commissioner Whitten said that when it is a property owner, we do not expect them to be there. That is very confusing.

Chair Way said that in single-family neighborhoods there should be a higher standard.

Mr. Fletcher said that it is not that we do not expect them to be there. It is that they do not have to be there.

Chair Way said that when we talk about these requests, or are skeptical of the requests, it is not necessarily because of the present owners but because SUPs convey to future owners.

Commissioner Finks said that it is supposed to be their primary residence.

Ms. Dang said that you have the ability to recommend amending the conditions if you are not comfortable with them. That is how we ended up with this condition. It is not like proffers that have been offered by the applicant.

Commissioner Colman said that these are the conditions that we have applied throughout; after we discussed and figured that we wanted those conditions #1 and #2 to be the way they are right now.

Commissioner Finks said, to clarify, is your issue not with this? Is it the conditions overall that we have put on each one of these requests? Those specific conditions, not because of this property? Or those conditions specifically, with this property?

Commissioner Whitten said no. It is any property. It is my understanding that the property owner does not have to be there. We went through, at the very beginning of all of this, the first permits that came before us. You all were asking, "Do you want to be there?" Remember that I said that no one is going to say that they want to be there? It removes that responsibility of somebody actually being there.

Commissioner Finks said I disagree with the concern there. If it is their primary residence, they are going to be back if there are any problems. Whereas if it were not their primary residence, I would have to be concerned because who knows when they are going to be back in the neighborhood.

Commissioner Whitten said that you are not reading the same articles that I am.

Commissioner Colman said I agree with Commissioner Finnegan. The conditions depend on the adequacy of the residence. In this case, it seems to be adequate, including parking. I have no concerns of adequacy, but I am concerned in terms of the numbers. At some point, we need to draw the line and say how many people can be reasonably accommodated.

Chair Way called for a roll call vote.

Commissioner Romero:	Aye
Commissioner Whitten:	No
Commissioner Colman:	Aye
Commissioner Finks:	Aye
Commissioner Finnegan:	Aye
Chair Way:	No

The motion to recommend approval of the SUP, with conditions, as presented passed (4-2). The recommendation will move forward City Council on October 8, 2019.

Yes:	4	Colman, Finnegan, Finks and Romero
No:	2	Whitten and Way
Absent:	1	Ford-Byrd

