



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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May 2, 2022

**TO THE MEMBERS OF CITY COUNCIL  
CITY OF HARRISONBURG, VIRGINIA**

**SUBJECT:** *Consider a request from Bradley M. Cohen for a special use permit to allow short-term rental at 293 Newman Avenue*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION  
MEETING HELD ON: April 13, 2022**

Chair Finnegan read the request and asked staff to review.

Ms. Dang said that 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 UR
- North: Across Newman Avenue, single-family detached dwellings, zoned UR
- East: Across Ott Street, single-family detached dwellings, zoned R-1
- South: Across Bruce Street, single family detached dwellings, zoned UR
- West: Multi-family dwelling, zoned UR

The applicant is requesting approval of a short-term rental (STR) operation at 293 Newman Avenue and describes the property as their primary residence. The property is located in the Old Town area of the City, at the intersection of Franklin Street and Ott Street. The property is a through lot, which means it has public street frontages on the front and rear of the lot. In this case it has frontage along Newman Avenue to the front and Bruce Street to the rear.

As stated in the applicant's letter, they desire to convert a detached garage in the rear of their property into "living space with a kitchenette, without a stove, to use as a short-term rental." The applicant states that they would rent to a maximum of three individuals. While the proposed operation is similar in scale to a homestay, the requested operation is not classified as a homestay because the space in which the property owner wants to operate the transient use is not within the principal building.

The applicant has been informed that if the SUP is approved, they will need to work with the Building Code Division to ensure that all Building Code requirements are met to convert the detached garage into living space. This will require a building permit or other trade permits be issued for the space and inspected and approved prior to its use as a STR.

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 one accommodation space, the property should provide one off-street parking space. In addition to the off-street parking space required for the STR, the ZO requires one off-street parking space for the non-transient dwelling unit. Therefore, if approved, a total of two off-street parking spaces would be required. Currently, there is a driveway on the property that has a portion under a carport. Measured from the edge of sidewalk to the detached garage, the driveway is about 70 feet in length, which would be acceptable space to accommodate both of the required off-street parking spaces.

If the request is approved, staff recommends the following conditions:

1. All STR accommodations shall be within the detached structure described in the application.
2. There shall be no more than one STR guest room or accommodation space.
3. The number of STR guests at one time shall be limited to three.
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 items identified in 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.

It should be acknowledged that while the applicant has explained their operation plans for the STR, the SUP is not restricted to the applicant because the SUP transfers to future property owners. If the applicant was to sell the property, future property owners could operate a STR so long as they meet the conditions for the SUP as approved. How the STR could be operated by any future property owner should be considered when deciding on SUP conditions.

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 suggested conditions. Staff believes that the proposed use is consistent with good zoning practice and 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 within the district.

There were two letters that came in and were forwarded to the Planning Commissioners today. You also have copies of those in front of you, as well.

Chair Finnegan asked if there any questions for staff.

Commissioner Armstrong said I have a long driveway at my house in Purcell Park. I was told by the parking permit folks that it only counts as one because you do not require a car to be moved in order to enter and exit another car. Clearly that would have to occur on this one, too. It is not the length so much. It is that there is only one entrance. If you are serving two households, that seems not adequate.

Ms. Dang asked for clarification about the parking permit folks.

Commissioner Armstrong said we have permitted parking. I was told by them that although it is long and can accommodate multiple vehicles, we can only count that as one parking place and therefore qualify for another parking permit.

Ms. Dang said I do not know what the context was in that situation. Zoning staff's interpretation of the Zoning Ordinance is that a driveway for a single-family residential home, we would allow those stacked vehicles [in a long driveway to count for more than one parking space]. If you have a townhouse or multi-family dwelling units, we expect those spaces to be delineated where you do not have to have vehicles...

Commissioner Armstrong asked would that not be the case here? You essentially are having two households, if you have the main house and the STR. Is that not two households?

Ms. Dang said we consider this as one household. It is one dwelling. The accessory use is a STR.

Commissioner Whitten said I do remember there being instances where we were told in neighborhoods that you could not count a space if you had to move a car to accommodate. It was not about permits. It was about off-street parking spaces. I do not know that it ever got changed. There was something in the ordinance that said that you could not have to jockey cars. That makes sense especially if there are two different entities using that same space. That can be problematic. Someone needs to move, and the other person is not there. I think that is a good point.

Ms. Dang said this condition, the way we have written it and staff's expectations are comparable to other STR SUPs in single-family homes. This continues to be a single-family home. It just so happens that the accommodation space is in a detached structure instead of in the same building.

Commissioner Armstrong said I disagree. Whether it is detached or attached is not the issue. The issue is having to move a vehicle for essentially two separate households. That primary house is supposed to be occupied when the STR is active.

Commissioner Byrd asked how many spaces does the driveway provide?

Ms. Dang said that it is 70 feet in length. The City's Zoning Ordinance, when we require spaces to be delineated, a space has to be 20 feet long. That is more space than what a typical passenger type vehicle would occupy. In this case, three to four vehicles would fit in that 70 foot long driveway.

Chair Finnegan said the average regulated parking space that we find in your average parking lot is nine by nineteen. Is that correct?

Ms. Dang said it is nine by eighteen. I said 20 feet in error. In this case the operator is the owner of the property. The operator does not have to be present during the rental period. Recall that our regulations state that if it was a tenant renting the space from the property owner and the tenant was operating the STR, that tenant would have to be present during the operating time of the STR.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Bradley Cohen came forward in support of his request. I have lived on Newman Avenue for a year now. I lived in Urban Exchange my first year out of college. I lived on Mason Street when I was in college. I serve on the HDR board as their president and have been connected to the community for the entire ten years that I have lived here. I chose to move Downtown again because I love it. I love being able to walk everywhere. I love the feel of the Downtown community. I love the old houses. The reason for asking for a SUP to create some ancillary income from it is the same reason that it is happening across the country right now. There is a massive move in real estate where people like to have some income coming out of their property, whether a basement, garage or attic apartment, or an accessory dwelling unit that detached from the structure, or multigenerational housing where families are combining an older generation that is trying to live more simply with people. It is a massive move across the marketplace, as a whole. Like any other person, I would like to have my mortgage offset. Why the garage as opposed to anywhere else in the house? It is a separate structure and that creates a bit of a buffer zone that, not only for my personal quiet enjoyment, also creates a quiet enjoyment for anyone who is going to be staying with me. As to the parking issue, we are a one car household. I have a street permit for my own vehicle. We fit four cars end to end in that parking area without any issues. I do not believe it is going to cause any additional street traffic issues or street parking issues if we do have anybody staying on the property.

Chair Finnegan asked if there were any questions for the applicant.

Councilmember Dent said when I went by to see the site, I noticed that it had a garage door. Is the garage door going to be the entrance or do you have a separate door?

Mr. Cohen said that it will be built out. In my discussions with Planning and Zoning and with the Building Official, prior to beginning this process, I wanted to be forthcoming with what I wanted to do. This is very in line with what we are trying to go through as a City with the Zoning rewrite to create more density, to create more flexible opportunities. I know that I may be ahead of the

times, but we discussed that in detail. I told them that I have this 20 x 20 square foot building that would make a great affordable housing unit, if it could. Unfortunately, zoning does not allow it to be that right now. I wanted to go ahead and proactively start moving towards that direction and build it out as a STR. That 20 x 20 unit stores a couple of shovels. Otherwise, it is useless to me. We are going to frame in the front of that structure and make it a doorway.

Chair Finnegan said, to clarify, there is no one living there right now.

Mr. Cohen said no.

Commissioner Whitten asked what the cost of the rental would be.

Mr. Cohen said that it would be in line with comparable rentals for a STR unit in the Downtown area. There is the yellow house on Campbell Street and the one that was just approved on Franklin Street. During non-peak times, the house on Campbell Street is \$100 per night. That can ebb and flow based on demand.

To address the email sent by one of my neighbors expressing concern about renting the entire house on the weekend, I attend every football game. I am a donor to the JMU Duke Club. I have a parking pass. We buy four tickets every year. It is not my intention to rent it out for the weekend. I also can very rarely, as a real estate agent in a busy market, step away for a weekend. It is a completely invalid concern. It is not going to be inside the primary residence. As is requested by staff, the limit of the use for the SUP is applied directly and only to the detached structure.

Chair Finnegan said to clarify some of the concerns, here, we are not questioning you or your role in the community. You will not own the house forever. This [special use permit] will convey with the house.

Commissioner Whitten said being realistic, you can appreciate this. When you add something that adds value to a home, it also adds to the price tag of the home, causing everybody else's property value to go up. Which seems like a good thing, but when you are concerned about affordability, it is not always a good thing.

Mr. Cohen said ultimately my hope would be that in the next couple of years, as the zoning rewrite goes through, you could retrofit and add a stove and then you could have accessory dwelling unit that could be rented as an affordable housing unit for \$500 to \$600 per month. That could be a longer stay. Unfortunately, because of where the zoning sits currently, I am not able to do that. That was my goal in the long term and when I first started the process. I did not want to go through the process of doing a STR. I was thinking about the fact that there are no small apartments for people to rent. Unfortunately, I am a little ahead of the times on that. If the concern is affordability, I would hope that as we amend the Zoning Ordinance, that is going to be a more attractive thing for people, in the long term. The rise of the trend across the country of having accessory dwelling units and having ancillary properties occur within the four corners of your property that create income for people, it does increase the affordability. That could be cross-leverages through the mortgage process as income from the property.

Chair Finnegan asked if there were any questions for the applicant. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Armstrong said the last comment that was made twice and cited that this is a national trend equated STR with dual rentals on the same property. They are not the same thing. I did a quick search. I want to clarify that we got two letters from the neighborhood, not just one letter. I did a quick search and found a peer-reviewed journal that found an increase in crime with the proportion of households that have STR on site because of a fragmenting of the neighborhood cohesion and communication. It is really pointing to a fragmenting of the fabric of the neighborhood. It was not the number of people who rented. It was not the frequency of the rentals. It was proportion of homes, properties, that have STR permits. I wanted to bring that up. I think that at a time when we need more cohesion, more civic responsibility, more civic engagement, this is not the direction to go.

Chair Finnegan asked Commissioner Armstrong to share the article with the commissioners. I would be interested to see that. Having not seen it, I would be interested to know if those are STRs that are not occupied as a primary residence by the owner. Does it make a distinction?

Commissioner Armstrong said I read it quickly. I do not know.

Commissioner Whitten said I am not sure how you would know that. That would be a hard thing to know. I will note that one of the letters came from one of the neighbors right across the street. That is pretty close for someone who has concern. The other one, was from someone on Ott Street. It may be the other direction across the street. He does reference Savannah, Georgia and some of the horrible things that have happened to historic homes. When we are talking about historic homes in Savannah, it is a whole different level of historic home. That is my hometown. I know it has been a negative in so many ways there, as short-term rentals taking away from the fabric of the neighborhoods. I would be remiss not to mention that.

Chair Finnegan said the one just down the street from this, on Franklin Street, came up in January. I do think that one distinction for me is that applicant said that he “inherited a renter that was in the unit when we bought the residence. She had a lease, so we could not immediately evict her.” That stood out to me. All of these are different. This one is currently occupied by shovels and mice. To me that is a distinction. We are not taking housing off of the market and turning it into STR.

Commissioner Byrd said that when we consider these, we tend to have the condition that mentions that City Council has the option to revoke it if it becomes a nuisance. Since someone mentioned that there was a study done, it makes me wonder if that was a perfect opportunity to know more about how that city considered if that is a way to evaluate if that is a nuisance. We always wonder how we will know if it is a nuisance or not. Do the neighbors complain about the residents in that property? If it is really becoming a nuisance, then the neighbors are going complain and then City Council can consider whether the STR is becoming a nuisance in the neighborhood and invoke the condition that is in the SUP.

Chair Finnegan said the City does track zoning complaints. We can ask staff, when we get to that, how we are tracking that.

Commissioner Byrd said we keep speaking of these things as if they will create problems. People say they have created problems. I wonder, what was the response? If we can just take it away, if it is viewed as a problem.

Chair Finnegan said I do not think that it is that easy. Mr. Russ, can you talk about this? What is the process?

Mr. Russ said that we have never had to do it. It could come up in different ways. If someone complained to a City Council member, City Council could direct staff to look into it and begin the process. If Planning and Zoning received multiple complaints, attempted to abate the violation and it continues happening, we would bring it to Planning Commission's attention. Planning Commission could make a recommendation to City Council to revoke. Basically, you would have to go through the same steps as you would when you are issuing a SUP. You would need a public hearing and it would go to City Council. I suspect the more difficult thing would be... Let us say that you are a neighbor and there were large parties on the weekend. You would call ECC and complain. You might reasonably suspect that you have alerted the City to the issue. You might not realize that you need to call Planning and Zoning and let them know that there is a land use issue with the property, not a non-emergency police issue. That is my concern. Those complaints may not filter their way to the people who need to know about them. We do not have a great process to make sure that every department knows everything that they need to report to other departments.

Commissioner Armstrong said I want to clarify. I think there was a bit of a misunderstanding. The study I was talking about was looking at a neighborhood. It was comparing neighborhood crime rates overall. It was not that individual properties were a nuisance. It was not complaints about the STR. It was looking at the crime rate overall for neighborhoods and in neighborhoods that had a higher proportion of STRs. The theory was that the STRs are disrupting some of the cohesion of the neighborhood that allows for a certain amount of neighborly crime watch and so on that happens in neighborhoods. It was talking about the social fabric across neighborhoods with the introduction of these. This is academia. This is a peer-reviewed journal. This is not a city report.

Chair Finnegan said that because we do not have that document in front of us and we have not had a chance to review it, I would like to not refer to a document that none of us have read, at this time. I would like to see it. I am interested in seeing it.

Commissioner Armstrong said I have read it. We do not have to refer to it. We just have to consider the issues that I am raising.

Chair Finnegan said I would be interested to see it.

Commissioner Armstrong said the issue still remains, whether you have read it or not.

Chair Finnegan asked Commissioner Byrd does that answer your question?

Commissioner Byrd said I am not going to comment on something that I have not been able to read.

Councilmember Dent said what strikes me as unique, or a first in this one, is the reverse path from the other request that went from a long-term to short-term rental. This is a path to a long-term rental by way of a STR because that is what you can do now. Since we know that we are working on the Zoning Ordinance, which is still under debate, the goal is towards greater density and allowing accessory dwelling units and so on. I would support that path.

Chair Finnegan said I would agree. I lean in support of this.

Commissioner Whitten said I would challenge that thinking because I think it would be quite unique for someone to want to rent a space for less money than they could rent it for. If the intent was to supplement their mortgage, it seems like you would go for the higher number which would be the STR. It is probably three times what you could rent a small, efficiency apartment for. I do not think that we should necessarily consider that with so much weight. I think, realistically, this owner is not going to live there forever and whoever does live there may very well think they want to rent it for the most that they can without regard to whether the zoning has been changed.

Councilmember Dent said the STR would be sporadic, so I could see wanting the continuity of the long-term rental. A question for staff, would there be a change from the STR to the long-term rental in the hypothetical future when we allow accessory dwelling units, or could it still be used for either depending on the owner?

Chair Finnegan said if they are getting a STR agreement, that would be the use for this. If the City does a blanket rewrite of the zoning, that would not change the fact that there is a STR here. It would allow, if they wish to, for them to rent year-round. Is that correct?

Ms. Dang said whether this property can convert the detached garage into a long-term rental is yet to be determined. It would depend on what minimum lot sizes we might establish, what regulations we would have in place, and what zoning district we would allow it in. In general, what you say is true. The STR SUP would remain with the property. I cannot speak to this property what the new ordinance would allow or not allow for the long-term rental.

Chair Finnegan said that there are a lot of “ifs.”

Commissioner Baugh said there are a lot of “ifs,” but it would be not impossible. A property owner could decide to do this. In the marketplace, it would be unusual for somebody to voluntarily change when they have already established a pattern and an income level to go back to something else. I think that if we like the idea of this being a long-term rental down the road, subject to zoning changes, then it probably does not make sense to let it be a STR now. I am skeptical that, even as a general proposition, somebody who is making X-plus on it for whatever they are doing, there will be a lot of movements to go back and say, well I will just take X because I like that better. You might see an instance, but I do not think you could expect to see that.



Chair Finnegan said that is a valid point. We do not know what is going to happen with the zoning rewrite, so we are dealing with the realities of what is before us now.

Commissioner Whitten said I agree. It is the same as an article that you have not read.

Commissioner Armstrong said the point I was bringing up were the points that are in these two letters from the neighbors. This is not a remote issue.

Commissioner Whitten said in the case on Franklin Street, he had it rented long-term and did not love that. He had a tenant that was not so great.

Chair Finnegan said I intend to vote in favor of this request. I have several STR on my street and I have not seen that breakdown on my street. I am not saying that it is not happening elsewhere in the City or elsewhere in the country.

Commissioner Byrd moved to recommend approval of the SUP request with the suggested conditions.

Councilmember Dent seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	No
Commissioner Baugh	No
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Whitten	No
Chair Finnegan	Aye

The motion to recommend approval of the SUP request passed (4-3). The recommendation will move forward to City Council on May 10, 2022.