



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections
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September 30, 2019

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Rodney R. and Angela D. Williams for a special use permit per Section 10-3-34(7) of the Zoning Ordinance to allow short-term rental within the R-1, Single-Family Residential District. The +/- 31,850 sq. ft. property is addressed as 511 Paul Street and is identified as tax map parcel 16-F-6 and 12.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: August 14, 2019

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
- West: Detached single-family dwelling, zoned R-1

The applicants are requesting approval of a short-term (STR) operation at 511 Paul Street, which is located about 500-feet from Martin Luther King, Jr. Way in the Preston Heights neighborhood. The applicants desire to rent for STR one accommodation space located in the basement of their home. ("Accommodation space" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The accommodation space can accommodate up to two 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 one accommodation space, the property should provide one off-street parking space. 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 two-car garage. The applicants have explained that lodgers will park their vehicles in the driveway. It appears that all the required off-street parking could be provided on the site in

the existing driveway area. 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 one STR guest room or accommodation space.
5. The number of STR guests at one time shall be limited to two 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 one. Condition #5 limits the total number of STR guests to not more than two. 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.

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.

Commissioner Finnegan asked what is the nearest approved STR to this one?

Ms. Dang said that the two closest are on Franklin and Campbell Streets. The next closest is East Fairview Avenue and East Weaver Avenue and are not far. I have also placed in front of you a petition that was dropped off by a neighbor earlier today.

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

Rodney Williams, 511 Paul Street, came forward to speak to the request and provided some materials to the members of the Planning Commission. I am the owner and occupant of the property. A letter came in from our neighbor to our left, if you are facing the house, William Hall. When I spoke with Mr. Hall's wife she mentioned the sound of a truck. That truck belonged to a long-term tenant, a year and a half ago. Neighbors did not know that we were doing Airbnb until the ordinance to meet the August 1, deadline. I spoke with them because I knew a letter was coming. Then Ms. Dang started receiving letters. What the first part of the letter says is that the master bedroom window directly faces the parking area. I gave you a picture that shows the garage, the rather large building next to our property, followed by a sun porch, then the main house. The letter says that the master bedroom directly faces the parking area, loading and unloading, entrance and exit of STR. My parking for one car with two guests is further away than his car that parks near the line.

The next letter was written by the first neighbor for the second neighbor to sign because he is 92 years old. I just sat with him the other day because he might have had to go into the hospital for pneumonia. We had a good talk and I shared the same thing with all of this. The letter stated that he had made complaints to local law enforcement about often times loud and disruptive events. I have never been contacted by the police. I did not know that.

The next letter, from Sergeant Monahan with Harrisonburg Police Department, states that a search of the calls for service (CFS) related to the address of 511 Paul Street in the City, from January 2017 and forward, resulted in zero CFS related to any noise violation and zero CFS related to disorderly conduct. I had to address a letter with false claims.

There is an additional article regarding whether Airbnb are a hindrance to property values. They are not a stigma. They increase property values because something that has value to rent that room or comply with this new ordinance gives that person confidence to pay the mortgage, the taxes, the utilities, and so forth. That ruling is a benefit and has been proven. There are many articles on the internet about the improvement of a property through that.

These letters addressed public safety. Paul Street is a four-vehicle width road. There are 25,000 students who come into the City every year. We are advertised as a tourist town. We love people coming here. I am half a block away from where people could go tailgate, enjoy a game, or something of that sort. In response to that, I attached a quick statement. When you are on Airbnb, we have that credit card of that person. We do not have that information on a person driving up and down our street at any time of the night. There are also background checks done on Airbnb guests and hosts, including regulatory terrorist and sanctioned watch list for hosts and guests in the United States. That creates a comfort for people coming to my place and it creates a comfort with me.

We got an additional letter, a document with names of different people in the neighborhood. You will see on the front note where it is highlighted exhibit one and exhibit two. You can see, again, the distance between Mr. Hall's house and my house. Behind that bush that you see in exhibit two, there is vinyl

fencing. I put that fence in as a courtesy because both went in mutually to remove a tree. There is an eight-foot vinyl fence. I also moved it right beside my driveway to allow Mr. and Mrs. Hall to have an additional three-foot more that I could have claimed because their corner sits at an angle and I was giving them more room to move around. He appreciated that. That shows that the master bedroom is not right beside my house. I make that statement of a false claim and ask for that letter to be removed and disallowed.

The next one is Cecil Gilkerson, 507 Paul Street, exhibit three and four. If you look at exhibit three, that is his house. Exhibit four shows the greenery and hedges between his driveway and my car. That driveway is not the one guests would be using. The driveway for guests is shown in exhibit two. He has never known about any renters, nor has seen anyone coming and going.

Next, there is an adjoining neighbor. Exhibit five shows standing in the center of the driveway where an Airbnb guest would pull in. You can hardly see their house. They were probably unaware until they were approached by Mr. Hall to sign a document.

Finally, he got a signature from 560 Myers Avenue. Exhibit six is their house. To the right you see the very back corner of my property. I would dare say they did not know that I had guests. They cannot even see the back of my house, and at that point, you can see that I have an additional lot on the back. There is a lot of footage between those properties.

I was made to respond to letters and signatures. Were they even considered adjacent property owners? I do not know who the letters were sent to.

Ms. Dang said that the letters get sent to anyone who has property touching the applicant's property or across the street from the property.

Mr. Williams said that he spoke with Mr. Anderson's wife before the meeting. She told me that she did not realize that her husband had signed this. He signed it not knowing exactly what it was. He was told that it was going to make my house a duplex and create a duplex effect, which is of course not true.

Chair Way asked if there were any questions for Mr. Williams.

Commissioner Finnegan said there were some claims about noise. I am not addressing the validity of the claims. If I am an Airbnb guest and there is a lot of noise coming from upstairs, I am probably going to write a bad review.

Mr. Williams said that he is a "super host." I got that rather quickly because of the reviews. The super host status means that I am five star. We have had the best compliments, the best accommodations. I go above and beyond. I have green tea, a super foam mattress with high quality linen, a Keurig with all the K-cups. I offer quality. I did take some offense to the comment "degrading the neighborhood" because I pride myself on my home. My guests are enjoying the space. They are not creating any issues. I have not made any complaints against any of them. They are complying with the house rules. One neighbor made the claim that cops were called, several times. That is not true. I am standing here, speaking more than I should to false claims from people that I do not think truly understood that I was already doing it up until this point.

Commissioner Finnegan said that he is interested in knowing the root cause of the noise concern, traffic, etc. What is included in your house rules?

Mr. Williams said that the house rules include where to park and noise. I have never had a problem. Most people, when they pull in with one car, are going to a wedding, an event, or downtown to eat. A lot of time I do not even know they are there. It is not a party pad. They are either coming or going. They usually have a destination within the City.

Chair Way asked if there was anyone else wishing to speak to the request. He also asked that anyone speaking limit their comments to three minutes.

William Hall, 515 Paul Street, came forward to speak in opposition to the request. I am the person who submitted the "false claims" that Mr. Williams referred to. I should have three other people beside me. The people who live directly across the street, who is the director of the Marching Royal Dukes, has obligations and is with his band tonight, so he is not here. The people in the house right beside him, across the street, are on vacation in Delaware and are unable to be here. The other person who has been referred to, on the left side of Mr. Williams house, is Cecil Gilkerson. I live on the east side of Mr. Williams' house. I would like to give you a little more face to my letter. I am not going to repeat my letter and I do not feel that I need to defend the comments that I made in my letter, but if you would like me to defend them, I would be glad to.

Chair Way asked what the primary concerns are.

Mr. Hall said that they are safety, nuisance, traffic. There is a history here. Mr. Williams has been renting this space for many years. I thought at first that you were only allowed to have one unrelated person but then found out that there were two. He did have two. At one time, before his mother moved in to her quarters in the house, Mr. Williams had very loud parties. If you look back through the police record before 2017 you would probably find what he was referring to. My wife and I bought our lot about 48 years ago in Preston Heights with all the covenants and requirements and stipulations that went with that. I even walked behind the lot that we eventually bought to find exactly where Martin Luther King Jr. Way was actually going to be placed. Paul Street ended at my lot. There was one house on another corner. One of those people is here tonight. It is an established, stable, single-family dwelling neighborhood. I appreciated the comment regarding the closest Airbnbs to this location. It seems as though we are changing the character of this neighborhood, if you agree with this. Our garage is on the side of Mr. Williams house. We have a New England salt box and the garage is attached to the house by a breezeway, but that still does not stop the sound from his house.

Commissioner Finnegan said you mentioned covenants. Is there a neighborhood covenant that the property owners signed?

Mr. Hall said that at the time, 48 years ago, there was. I want to stress the fact that it is a stable, established single-family dwelling neighborhood.

Paula Caldwell, 417 Paul Street, came forward to speak in opposition to the request. We have lived there since 1977. I looked at some codes today, in an effort to educate myself. We live two doors up from Mr. Gilkerson, that is three doors up from Mr. Williams' home. Over the years, we have heard the noise, at 11:00 p.m., midnight, on into the wee hours. We have let it go. I do not know if Mr. Gilkerson called the police, but I do know that he called us many times. I do know that he called us the day before yesterday. He was concerned about the prospect of an Airbnb next door to him and in our neighborhood. It is a good neighborhood. It is an R-1, family, residential neighborhood. As all neighborhoods, we are cycling through. We have older residents and we have new families. We have a lot of new families, new kids, strollers everywhere. It is wonderful. I can see how it will benefit the Williams. How is it going to benefit Preston Heights? What is it going to do for my neighborhood? I live next door to 407 Paul Street, which if you do not know the history of that, we do not have the time tonight. For too long, I did the same thing. I

looked the other way. A couple of times I did call the zoning office and got nowhere. I am not going to look away tonight. I hope you will consider this being an R-1 neighborhood that wants to stay there. I know you say that the SUP can be revoked, but how efficient is that process? I am asking based on my recent experience with 407 Paul Street. There have always been many cars at Mr. Williams' home coming and going all hours of the night. Some of them are not particularly people who I want to be around; and I was out at 4:00 a.m.

Commissioner Ford-Byrd said you mentioned noise and traffic, are you agreeing with safety and nuisance, as well?

Ms. Caldwell said yes. I just heard Mr. Williams talk about background checks and having driver's licenses, but then said that he does not know their names coming and going. Which is it?

Cosette Johnson, 486 Andergren Drive, came forward to speak in opposition to the request. I have two children, 13 and 11 years old. There are younger children in the neighborhood. We did not want to rent in Old Town because there are a lot of students, so we settled in Preston Heights. It is an R-1, single-family home neighborhood. We want to have a family neighborhood. I know all the cars in and out of our street. Paul Street is a busy street, a high traffic area and that is a concern. I am also concerned with safety. With an Airbnb, we will not know the people coming in and out of the home. I did not realize that it was an Airbnb. I thought he was having renters. I thought that this permit was to add the Airbnb. It comes as a surprise to me with this meeting that he has the potential to have renters in that house, two for the Airbnb, and then two unrelated individuals in the house. It would not just add the two. You could potentially add four. That means more people in and out. There was an incident where a third grader was walking home. A car had pulled over to talk to the little girl. Luckily the crossing guard was there and aware of who the children and their parents were. She was able to scare the driver off. Safety is a concern knowing what cars belong to who. With the Airbnb, we will not know which cars are supposed to be there.

Ms. Caldwell said that she looked at the STR requirements in the Code of the City of Harrisonburg and it complies with the Code of Virginia 15.2. Number two on there says that "no ordinance shall require a person to register pursuant to this section if such a person is licensed by the Real Estate Board." Does that mean that Mr. Williams does not have to register because he is a licensed real estate agent? And, if so, is that some sort of concern or loophole that we should be aware of?

Mr. Russ said that one of the options that the State gave jurisdictions was just creating a registry. Anyone who had a STR would pay an annual registration fee. This would allow us to monitor, largely for hotel and lodging tax purposes. What the City opted for was a land use option which is separate. In other words, no, he still would need to get a SUP.

Ms. Caldwell asked how are the STRs monitored and where is the accountability? If you are running an Airbnb, how are you accountable other than registering your place?

Chair Way said that you would have to get a SUP to do so legally.

Ms. Caldwell asked how would we know that they are abiding by the rules? How is it enforced?

Ms. Dang said that there are a couple of ways. One is complaint based. If someone has a suspicion that there is a violation of the conditions, they can make a complaint and our staff would investigate. We also investigate by logging into Airbnb or any other STR website that the home might be listed on to see if they are listed, and how they are listed. If they are listed as providing lodging for four people, for example, that would be evidence that they are in violation of the conditions.

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

Mr. Williams said that he hears that safety is a big concern. My comment was that what Airbnb does with the background check means that I know who they are, we have done checks and we are being safe. My comment about how I do not know who they are was referring to the people who go up and down our street and in and out of our neighborhood. I understand the concern with safety, but that is a different topic. Anyone can walk up and down our street from the college to downtown all the time. Safety is a side topic. I can assure the safety the people I know.

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

Commissioner Whitten said that Ms. Caldwell made a good point when she said that she knows what this is going to do for the applicant, by way of a financial benefit, but asks what it is going to do for her neighborhood. I think we need to be careful about how we treat neighborhoods in our city. We do not have many R-1 neighborhoods or cohesive neighborhoods. We have many that have been interrupted with a lot of uses that are not complementary to each other. I would also say that this police call for service is a fairly narrow period of time. I do not know how long the Williams have lived in that house. I do not know if there might have been calls for service before 2017. It does speak to the nature of the residents of the home if they did have a lot of disturbance. We have had testimony to that effect.

Commissioner Colman asked if we are saying that the Airbnb will make that situation worse?

Commissioner Whitten said that if you are giving someone a SUP, it is an acknowledgment that they will abide by the rules. If you already know that someone is not abiding by the rules of their own neighborhood, it might not be wise to do so. There are people who are hesitant to say anything about a problem which is ongoing. I recommend that people call the police if they have a problem.

Commissioner Ford-Byrd asked if staff is able to confirm that there is a potential for the applicant to rent to four people.

Ms. Dang said that in the R-1 and R-2 zoning districts, an owner-occupied property can have two unrelated long-term tenants. The point that is being made is that they can have two unrelated long-term tenants plus the two short-term renters and that would be up to four renters.

Commissioner Colman asked if there was the space to rent to a long-term tenant and also for the Airbnb.

Mr. Williams said that his mother lives with them upstairs.

Commissioner Finnegan said that the common issues for those in opposition were safety, nuisance, traffic, noise, parties and property values. We have been approving these in other neighborhoods and we have approved them over the objections of neighbors. We have approved them in R-1 neighborhoods. If we are going to deny this, I would like to know on what grounds. If it is because of the objections of neighbors, why did we not say no to the STR request on Franklin Street?

Commissioner Colman said that, in some instances, when we have a large number of people against a SUP and we have recommended that those people and the applicants get together and figure out their differences and come back to us with something that they all agree on. Part of a SUP is to allow the neighbors to come and speak for or against the request. We cannot turn a deaf ear to the people protesting this. We need to listen. This request is similar to the ones that we have approved in the past and, from that standpoint, there are no issues. The neighbors are bringing up issues that may or may not be directly related to this. We need to see if the issues are related to this or if they are issues that have happened in

general with the property and the applicant, which would not impact our decision directly. We have conditions and more conditions can be imposed on this application, if they are reasonable, and can give the neighbors an avenue beyond what we have here to question or bring it back to the City if the conditions are not being made. I do not know what that would be. It is an opportunity to add conditions that would give you additional tools to regulate it. You, the neighbors, are part of the regulatory process of these Airbnbs.

Commissioner Ford-Byrd said that, if we are taking these on a case by case basis, I wonder how much weight prior applications should carry. If we are stating that we are trying to be consistent, then why do we not have some conditions created so that we do not have these across our desk?

Commissioner Whitten said that is a good point. They are supposed to be on a case by case basis. I would also like to remind the commissioners that on Franklin Street there were no complaints of previous noise or issues regarding noise. The concerns were about property values and the historical character of the neighborhood.

Commissioner Finnegan said that we are separating issues that are not related to the actual concerns. It sounds like safety is a recurring issue that people brought up. I assume that relates to not knowing who the guests are. I approved an STR a block away from where I live in an R-2 neighborhood. There were no objections from neighbors. I think that a lot of the noise complaints may actually be mitigated by having an Airbnb. Having stayed at Airbnbs, I would write a very bad review if there was noise all night. The noise seems to be a separate or tangential issue.

Chair Way said that one of the things that we do within this process is to get a read of the neighborhood, to be sensitive to the local interest and get a sense of what is important to people who live in the neighborhood. I have no doubts that Mr. Williams' family is conscientious in trying to create a nice home for themselves and pursue this opportunity, but, clearly, we are hearing from the neighborhood here that there are some perceived challenges with what has happened before and some uncertainty with what will happen in the future. We want to be thoughtful about what is happening in R-1 neighborhoods and single-family home neighborhoods generally. We are particularly sensitive to these places because the essence of what a single-family neighborhood includes; family, stability, and continuity. One of the things that an Airbnb potentially brings is a sense of change and instability that may come with a more transient population in that area. The grounds on which we are making decisions here is about balance. None of these things are cut and dry. We have to balance the individual concern and neighborhood concern. The rights of the private individual and the common good. In the R-1 neighborhoods like this, that neighborhood interest is significant, and people have a vision and understanding of what that neighborhood is. I think that the neighborhood here has clearly articulated what they believe that neighborhood to be. Specifically, Paul Street is a cut-through. One of the things that concerns me is that Paul Street has a potential to become another negative to the neighborhood. I am worried about what is going on with that street in terms of protecting the neighborhood because of some decisions that are made on that street. I am not saying that this Airbnb will add to the traffic, but I want to be thoughtful of what goes on. It is the same principle that we have addressed on the edges of neighbors. What happens on the edges of neighborhoods can have an impact on what goes on. We have to stand firm somewhere. Having said that, there is a lot to balance here. I am not inclined to support this request in the interest of the stability of the neighborhood, given its location between old town and JMU on the other side of Martin Luther King Way. It is an interesting position and it is not easy or clear cut.

Commissioner Colman said that we have considered giving more emphasis on what the zoning requirements are in regard to non-related occupancy in a home. In this case, my concern is that this house could have other non-related people living there, if part of the house were to be rented. It is not the case right now, but it could be in the future. Then you will have the four unrelated individuals that we are

talking about. Perhaps there are conditions that we can impose, so they could not do that. We have not discussed these issues. We have, in fact, approved some STRs with large numbers of guests, which I now second-guess that decision. My concern is how many unrelated people could be in the residence.

Commissioner Romero said that he is considering whether the neighbors do not want the STR because of the history that they are sharing with us. Is that the main reason they are opposing this request? If another neighbor were to submit an application, would they be opposed? Is it the history? Is it the noise, traffic, safety, or the stability of the neighborhood? Is it that they would oppose any application? That is something that we need to consider. If we were to recommend denial tonight and someone else in the neighborhood submits an application, what are we going to do next?

Commissioner Whitten said that it is case by case.

Commissioner Finnegan said that he agrees with Commissioner Romero. Will there be the same opposition if another house somewhere else in this neighborhood puts in a similar application? There is one a few blocks away, on Franklin Street. There are other applications that we have approved in nearby neighborhoods.

Chair Way said he hopes that he made it clear in his remarks that he was talking generally. There are some particular issues that people perceive with this property's history; but we do not want to litigate that here. I was trying to make a general point that I hope we would be thoughtful and serious about it (other applications for STR in this neighborhood) as we have been for all the cases so far.

Commissioner Whitten said that she has done a lot of reading regarding Airbnb. There are many articles, in professional journals and in reliable news sources, that talk about the detrimental aspects of Airbnb. They can reduce property values and they can also reduce community. There are some cities, much larger than Harrisonburg, that have this problem. In Barcelona, Amsterdam, London there are neighborhoods that used to be neighborhoods with community that are now Airbnb neighborhoods. I do not think that we want that to happen in Harrisonburg. I do not think that we are in peril of that happening. We have people in the room who live on the end of Paul Street when Cantrell Avenue was being planned and not in existence. We do have to think about that. We do have to protect neighborhoods. That is well-founded in fact, in factual publications, that do say that it can reduce property values. It depends on what you want to do. If you want to turn it into an Airbnb neighborhood, maybe the property values will go up, but nobody who has children and who live and work and go to school there may want to live there.

Commissioner Finnegan said that they can also increase the value of properties, as well. I have spoken with friends who are realtors, who say that although they cannot quite afford the house but can supplement their income with Airbnb income, then maybe they can afford the house. There is an argument to be made the other way, as well.

Commissioner Romero said that Mr. Williams has been running this Airbnb for about a year. Now that there is an ordinance in place, I am curious as to how long it would have taken the neighborhood to say something or call the police. It seems that in the last two years they have not been problems. My concern is that there are no complaints on record.

Commissioner Ford-Byrd said that she was interested in including the number of renters on the property in the conditions, to ensure that there are not four people renting at one time.

Ms. Dang said that the idea would be that when they are operating a STR, they could not have long-term tenants.

Mr. Fletcher said that they would waive their right to rent to two boarders.

Commissioner Ford-Byrd asked if there is interest in amending the conditions.

Commissioner Finnegan said that he is not sure that it would address the concerns that they have heard regarding this request. It might address one fraction of the concern. The concern is not having too many people in the house, it is not knowing who those people are.

Commissioner Colman said that he agrees with the concept of limiting the number of tenants. It somewhat addresses some of the concern in terms of how the number of people affects noise. In general, we have been talking about R-1 neighborhoods and how the number of people coming and going impacts the character of the neighborhood. I think it is worth considering.

Chair Way asked if there was proposed language.

Commissioner Whitten said that in R-1 they would be able to have two unrelated people, but they would not be able to have four unrelated people. It makes sense to me to look at what the zoning restrictions would be on a property if you took it at face value in R-1, setting aside the STR. My point has been why would we give somebody the right to do more than they could do by right on the property in terms of density? I do not think we should. That is detrimental to a neighborhood.

Chair Way asked whether or not the commissioners would like to pursue the suggestion.

Commissioner Whitten said that the condition would have to be agreed to by the applicant. Maybe they would not be interested in waiving their ability to have two longer term tenants.

Mr. Fletcher said that if the Planning Commission believes that a condition is necessary for the SUP to operate according to how you want it to operate, it does not require the applicant's consent. The proposed condition was not a condition on any of the other similar applications. They all maintained those abilities.

Commissioner Whitten said that it has not come up before. It was brought up because there were long-term renters at this address.

Mr. Fletcher said that, at the time that the ordinance was being discussed, the fact that they would maintain those abilities was discussed. In the SUP applications that have come up, that particular matter has not been discussed, but it was considered during the creation of the ordinance.

Chair Way asked if the proposed condition would help the commissioners be supportive of the request.

Commissioner Ford-Byrd said that it would help.

Commissioner Colman said that he would like to hear some proposed language.

Commissioner Finnegan asked if they were proposing adding to condition #5.

Commissioner Colman said that we have to consider unintended consequences. We want to make sure that STRs do not infringe or limit the number of available rental spaces. By doing this, we are limiting that in this case. If we continue this into other STR requests, we will be limiting the number of available long-term rentals. We need to be careful how this impacts the availability of housing.

Ms. Dang read a draft condition with the understanding that staff would have the ability to edit it as necessary to capture the intent of the Planning Commission.

With the approval of this SUP, the right of the property owner to rent space for occupancy by two persons, as permitted by Section 10-3-33(1) and (2), is waived.

Mr. Williams said that was his right, one that he did not know he had, and it is going to be taken away by the proposed condition. If they approve to remove something that he could do, then he will withdraw his application and keep his rights, by law, which is two unrelated people. Why would I give up my rights?

Mr. Fletcher clarified that the R-1 and R-2 zoning districts allow occupancy in two ways. Sec. 10-3-33, Subsection 1 of the by-right abilities includes: "Owner-occupied single-family dwellings, which may include rental of space for occupancy by not more than two (2) persons, providing such rental space does not include new kitchen facilities." In layman's terms what that means is that any person who owns and lives on a property could rent to two boarders on a permanent basis, such as a month to month or year lease. If it is non-owner occupied, it is a family plus one boarder. In the City of Harrisonburg, what often times happens in the R-1 and R-2 is that it ends up being two people because we are a college town. When you rent to one person, it counts as a family. The second boarder is the second person. It is often misquoted as a family or two unrelated. That is not the accurate way to explain the ordinance.

Ms. Dang asked, for the purposes of clarification, if this condition is recommended for approval with this application, does Mr. Williams lose his right to rent to two boarders completely, or is it only when he is operating the STR that he cannot have the two boarders, meaning that he would have those options in the future to choose one or the other?

Chair Way said that intent was that it would be just when there was a STR being operated.

Mr. Fletcher said that it would be self-regulating. If you approve the request, with the condition with the intent that I am understanding, it is self-regulating. If Mr. Williams is going to offer his space for STR, then per the condition he should not be signing a lease or renting month to month to other people. That is the way that I am understanding it. He could decide that for three months he will not operate the STR and then for those three months he can rent to someone month to month.

Chair Way clarified that this would not require him to give up the right to have the long-term rental. It is only when there is a STR.

Mr. Fletcher said that it is limiting because that condition was not placed on any other STR in the same situation when the Planning Commission allowed for nine occupants in other spaces and they also got the additional people.

Commissioner Colman said that in this case, if it moves forward and it is approved, the applicant does not lose his rights because he could choose not to operate the STR.

Chair Way said that the applicant can still withdraw between now and City Council.

Commissioner Colman moved to recommend approval of the SUP, with conditions, as amended. I would like to recommend that City Council pay attention to the comments and complaints from the neighbors.

Commissioner Ford-Byrd seconded the motion.

Chair Way called for a roll-call vote.

Commissioner Colman:	Aye
Commissioner Finnegan:	Aye
Commissioner Ford-Byrd:	Aye
Commissioner Romero:	No
Commissioner Whitten:	No
Chair Way:	No

The roll-call vote resulted in a tie (3-3).

Mr. Fletcher suggested that the commissioners voting against the motion clarify why they voted against it.

Chair Way said that the reason for his vote was the same as what he had mentioned before, and the condition was not enough to change his mind.

Commissioner Whitten said that the condition did not temper her vote.

Commissioner Romero said that he is in favor of looking at opportunities like this, but they received a lot of feedback from the neighborhood and that is something that they need to keep in mind. Between now and City Council, I will be discussing with people to get a better understanding.

Mr. Fletcher said that if positions are not changing, because there are only six members present, that action can move forward to City Council with the understanding there is a stalemate. Another motion is not necessary. When I take this to City Council, I will explain that the motion to approve with an additional condition resulted in a split vote.

The matter will move forward to City Council on September 10, 2019.

Mr. Fletcher addressed the audience saying that if anyone has any questions regarding the procedural matters regarding what happened tonight or beyond what happened, please give us a call.

Respectfully Submitted,

Alison Banks

Alison Banks

Senior Planner