



# City of Harrisonburg, Virginia

## Department of Planning & Community Development

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Building Inspections  
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Planning & Zoning

July 1, 2019

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

**SUBJECT:** Public hearing to consider a request from Katrina and Ernest Didot 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 +/- 19,595 sq. ft. property is addressed as 845 College Avenue and is identified as tax map parcels 125-A-16 and 17.

### EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 12, 2019

Vice Chair Colman read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this area 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 and a second, non-conforming single-family detached dwelling; zoned R-2
- North:** Single-family detached dwelling fronting Hillside Avenue; zoned R-2
- East:** Across College Avenue, single-family detached and duplex dwellings; zoned R-2
- South:** Single-family detached dwelling; zoned R-2
- West:** Duplex and multi-family dwelling units, fronting Hillside Avenue; zoned R-2

The applicants are requesting approval of a short-term rental (STR) operation at 845 College Avenue. On the property are two single-family detached dwellings, one of which is non-conforming. The non-conforming single-family detached dwelling is located on the second floor of a detached garage. The applicants desire to rent for STR the non-conforming single-family dwelling. The dwelling has two-bedrooms for a total of two accommodation spaces and a maximum of four STR guests at a time. The property is the operator's primary residence and they will be present during the STR lodging period.

The property is located in the northwest area of the City, in the Park View area, about 0.5-miles from the nearest arterial or collector street (Chicago Avenue) and 225-feet from the end of College Avenue, which is a dead-end street.

It should be understood that this property was annexed into the City in 1983 as a single-family detached dwelling with the second, non-conforming dwelling above the detached garage. A non-conforming use is

defined as “any lawful land, buildings, and structures and the uses thereof existing at the time of the enactment or subsequent amendment of this chapter which do not conform to the zoning prescribed for the district in which they are situated. Non-conforming land, buildings, and structures and the uses thereof may be continued only so long as: the then-existing or a more restricted use continues; such use is not discontinued for more than two (2) years; and, the buildings or structures are maintained in their then structural condition.” In 1983 and still today, the R-2 district does not allow more than one single-family detached dwelling on a property. Duplexes are allowed if minimum lot size requirements are met. The non-conforming dwelling has been rented out to long-term tenants since its annexation into the City.

The applicants have described in their letter that they are able to provide up to six off-street parking spaces within the driveway for the STR. There is a separate driveway to accommodate parking for the applicant’s principal dwelling.

This portion of College Avenue is unlikely to have pedestrian and vehicular traffic that is not from residents of the street, their relatives, friends, or other visitors. Staff believes that introducing a STR at this location could create neighborhood instability because STRs introduce high turnover of people who are unknown to the neighbors and could change the character of the neighborhood with increased vehicle trips. Staff also feels that approving a STR for this separate dwelling unit removes an available unit for long-term tenants from the City’s housing stock.

Given the location of the property within this residential area of the City, 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 Planning Commission, however, desires to recommend approval of the applicant’s request to City Council, staff recommends the following conditions be placed on the SUP:

1. STR accommodation shall be within either the principal dwelling or the non-conforming dwelling unit above the detached garage.
2. The site shall be the operator’s primary residence.
3. An operator shall be present on site during the lodging period.
4. There shall be no more than two STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to four.
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. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
7. 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 additional structures on the property 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 additional buildings for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 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 #3 protects neighbors by ensuring that there is on-site accountability by the STR operators. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to two. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #5 limits the total number of STR guests to four. 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. 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 two accommodation spaces within the dwelling for STR, the property would be required to provide two 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 #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. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

Vice Chair Colman asked if there were any questions for staff.

Vice Chair Colman asked how this request is different from the previous request. It is an apartment or unit within the same property.

Ms. Banks said this request is different. They are physically two separate buildings. That is what is making it non-conforming. In the R-2 zoning district, you may not have two single family detached dwellings on a parcel. You may have a duplex, if you have the lot area. The non-conformance is that the dwelling units are separated.

Ms. Banks added, I have provided you a letter of public input in support of this STR.

Commissioner Ford-Byrd said that the letter in support of the applicant. It praises their character and how they have operated in the past. It goes on to state that there is a single-family home behind the house and “when past or current owners were living in the house while renting out the apartment, there were no issues.” It does mention some issues that have occurred while others have been operating the home, but “in recent years, the homeowners are no longer in residence and there have been problems such as loud parties, neglected landscaping and even drug dealing”. I want to make sure that community members are understanding if you are coming forward in support of the current homeowner, you are also supporting those persons who may come behind them. I want to make sure that it is clear that as the applicant is going out and asking for support, make sure that they are understanding what it is they are coming to support.

Commissioner Finnegan said we have previously stipulated that “all accommodation spaces shall be within the principal structure”. Is the reason for that stipulation to prevent the removal of a rental unit from the housing stock? Are we calling this an accessory dwelling unit?

Mr. Fletcher said that they are both considered principal dwellings on the site. It is a non-conforming operation. What we are talking about is an accessory structure which may not be considered a dwelling unit. To be considered a dwelling unit you have to have living space, bathroom and kitchen. When we condition that it must be in a principal dwelling, it does not allow them to put an accessory structure on

there, with a bedroom and a bathroom, and rent it out. We do have those situations where people have renovated the upper floor of their garage for their high school or college aged child.

Vice Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

Katrina Didot, 845 College Avenue, came forward to speak to the request. One of staff's concerns is regarding additional traffic and we are located on a dead end. I believe that with the STR we are decreasing traffic. We have rented it long term for as long as we have been there, which is about 16 years. We are committed to our neighborhood and hope to age in place. When we have rented it long term, it has always been to a couple or a couple and a child. There have been at least two cars, sometimes three. People coming and going every day with two or three cars, that is a lot more than when a small family comes with one car. They would come with a purpose in mind, such as a graduation or a wedding or visiting family. They are not coming and going in the same way. We believe it will decrease traffic.

There are many homes and vehicles on the street. It is a rather marginal neighborhood. We love it, but there is quite a mix of demographics, economic and ethnic. It is a melting pot. That is what we love about it, but it is a large property to maintain. Because it was annexed, I do not believe it ever had proper drainage, so we all got flooded. For us, it is important as supplemental income to maintain our home. It is important, in a neighborhood like ours, to have the homeowners there maintaining their homes and their properties. Because it is such a mixed street, it could very easily turn into a rental only street that became a low income, not very nice neighborhood. It is marginal in some ways. The ability for us to be able to invest in our home in that way is very important.

I am a small business owner. I love the idea of being able to bring a new spending demographic into the City. When we limit people from using Airbnb, or those types of rentals, we are limiting what can come into the City as additional revenue, as well.

Commissioner Finnegan said he does not share the staff's concern about traffic or the neighborhood instability. Aside from the safety of guests, my main concern is about removing housing stock from a city where housing is becoming harder to find, renting or buying. Could you speak to that? It might be more income if you are able to have an Airbnb versus renting on a lease. Is that fair to say?

Ms. Didot said it is fair to say that the income can be more. I do not think that because there is a burden on the City for long-term housing that I need to carry that burden. I have provided that for the last sixteen years. My husband and I are moving into a situation where his father, who is 87 and has Parkinson's, will move in with us. We are extending our family, when we have just released our children who are now grown. For us, it is helping us to be able to do that for my in-law. You might say "that is not my problem", but I could also say that the housing problem in Harrisonburg is "not my problem". I share that burden, but this is a time where would like to be released to do it a little differently right now.

The Airbnb movement has allowed people in a different demographic to do things differently, spend their money, support neighborhoods. I went last year to Charlottesville to a conference. Ordinarily, I would get up early and come home that same night. I did not. I stayed Tuesday and Wednesday nights. I stayed in an Airbnb, and I could afford it. I spent Tuesday, Wednesday and Thursday in Charlottesville spending money. If our City is flourishing, then we should be figuring out our long-term housing concern. I would ask that you allow us to use the property that we have worked hard to maintain, over the years, to benefit us in a way that we can do what more families should be doing, and that is taking care of extended family.

Christopher James Robinson, 847 College Ave, came forward in support of the request. I have lived there for about three years. It is different there. I went from a trailer park to an environment where every year they have block parties. I get to meet all my neighbors. I value diversity. I like being around new people, unique people. I think this is a great opportunity for them. They are good people. I see them every day. What they do every day is a blessing. They have been a good help to me. Prior to here, I lost my trailer to

a fire. Forrest Hundley, the prior owner, rented his house to me. When he sold the home, I did everything I could to own that home because of the neighborhood. The people come and go. Everyone is unique.

Poti Giannakaouros, Harrisonburg resident, came forward to address questions by Commissioner Ford-Byrd and Commissioner Finnegan. In this context of the economic model that might potentially motivate taking the units off the market, we heard, before the Community Criminal Justice Board a few days ago, an economic model that might fit in this type of situation from the McShin Foundation. They operate recovery homes where you could have a short term stay and that is an economic model. They touted a thousand beds in Richmond and touting Harrisonburg as a potential recovery destination. It would be great if this body could think about some of those issues. Those are some the areas, rather than the disruption of neighborhoods, where we should be spending our effort and coming up with good policy.

Vice Chair Colman asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said this is the first request where we are potentially removing housing stock, which was one of the primary concerns when we started talking about this two years ago.

Commissioner Whitten said most of the people we have spoken to tonight could have rented out one bedroom. It is not really different. It is just a free-standing apartment.

Commissioner Finnegan said renting a bedroom and renting an apartment are two different things.

Commissioner Finks said we are talking about single family, affordable housing. When we are talking about renting out a bedroom, you are not renting a bedroom to a family. You rent it to an individual. This structure seems like it is enough to handle a small family. I do think that that is the difference.

Commissioner Whitten said you just approved a house that could accommodate twelve people.

Commissioner Finks said it could have been turned into a long-term rental, as well.

Mr. Fletcher said once he converts it to a duplex, the answer is yes. Once Mr. Miller converts that home to a duplex, then there is no difference.

Vice Chair Colman said his concern is with units that are bought for the purpose of STR or are currently being rented and then turned into a STR. That effectively removes a unit that was used as long-term housing. In this case, we are defining it as a single-family home, but I do not know how much it is.

Commissioner Finks asked if there was a difference between potential and what already exists. In the sense that it is already a rental, rather than has a potential to be a rental.

Vice Chair Colman said when a unit that is being occupied by a family is taken out of the market specifically for this purpose, is what I have an issue with. In this case, you could interpret it that way. At the same time, this almost seems like it is part of the house in some way. At least, by perception.

Mr. Fletcher said any property that is zoned R-2 or R-3 that has enough lot area, if you approve a SUP for a STR in a single-family detached home, that does not preclude them from building an addition to that structure to add another unit.

Commissioner Whitten said this request worries her less because of where it is located. It worries me less because it is a mixed neighborhood and people are on board with the people who own the home and they are accepting of the idea in general. It is for four people, not twelve, which is less concerning.

Vice Chair Colman asked the applicant how she felt about the condition two “operator shall be present during the lodging period”.

Ms. Didot responded said that she would prefer not to have the condition. We have a large extended family in the City. I do not see any time that there would not be someone to respond to concerns. I would

like to be able to go away for the weekend and not have to stay home when my aunt lives a few houses down. I would rather remove it, but I do not want it to keep us from getting an approval.

Commissioner Whitten moved to recommend approval of the SUP, with conditions, as amended.

Commissioner Finks seconded the motion.

All members voted to recommend approval with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

Respectfully submitted,

*Alison Banks*

Alison Banks  
Senior Planner