



# City of Harrisonburg, Virginia

## Department of Planning & Community Development

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Building Inspections  
Engineering  
Planning & Zoning

July 1, 2019

**TO THE MEMBERS OF CITY COUNCIL**

**CITY OF HARRISONBURG, VIRGINIA**

**SUBJECT:** Public hearing to consider a request from Nicholas and Abigail Einstein 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 +/- 3,920 sq. ft. property is addressed as 58 Easthampton Court and is identified as tax map parcel 10-M-2A.

**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 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: Duplex dwelling unit; zoned R-2
- North: Multi-family dwelling units; zoned R-3
- East: Duplex dwelling unit; zoned R-2
- South: Across Easthampton Court, duplex dwelling units; zoned R-2
- West: Duplex dwelling unit; zoned R-2

The applicants are requesting approval of a STR operation at 58 Easthampton Court; which is located in the southwestern section of the City. The subject property is one half of a duplex building that has frontage within a cul-de-sac. The applicants describe the property as their primary residence and desire to rent for STR an open basement accommodation space, which they refer to as an “in-law quarters” and includes a bed and a blow-up mattress, for a maximum of four guests at a time. The accommodation space has access through the home, as well as an exterior separate entrance at the back of the dwelling unit. The applicants do plan to be present during the lodging period.

While the property is only +/- 0.12 miles from Central Avenue, a minor collector street and +/- 0.26 miles from South Avenue, a major collector street, staff believes it is located too interior to the neighborhood. It is unlikely that the cul-de-sac street would have pedestrian and vehicular traffic that is not from relatives or friends of the applicants or neighbors who live on Easthampton Court and their 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 believes that STRs should not negatively impact a community or an individual's quality of life or to an individual's often biggest investment: their home and property. Given the location of the property within this residential area of the City, staff believes a business operation of this nature should not be promoted at this location and further 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 to City Council, staff recommends the following conditions be placed on the SUP:

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principle dwelling.
4. There shall be no more than one STR guest rooms or accommodation spaces.
5. The number of 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.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway and parking area 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 protects the neighbors by ensuring that there is on-site accountability with operators being 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. ("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 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. Additionally, it appears that the basement was finished without obtaining building permits. The applicant is aware that a building permit and final inspection will be required by Building Code Officials prior to their 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 one accommodation space within the dwelling for STR, the property would be required to provide one off-street parking space 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. The duplex currently has five off-street parking spaces; two for each dwelling unit and one shared parking space with the adjoining dwelling unit. Regardless, staff believes that if the request is approved, the applicant should be provided the flexibility to meet the off-street parking requirements by allowing STR guests to park on the existing driveway 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 are any questions for staff.

Commissioner Whitten said that she drove to the sites on Sunday afternoon around 4:00 or 5:00 p.m. That parking lot was jam packed with vehicles. Some vehicles were double parked. I would say that there are some serious parking issues there. The parking in front of the home was full, and the entire cul-de-sac was full.

Commissioner Finks asked how many bedrooms the apartments on Vale Circle had. Since adding traffic is a concern, I want to know how many units are on Vale Circle.

Ms. Banks said she did not know how many bedrooms the apartments on Vale Circle had, but they were only concerned with the traffic on the Easthampton Court cul-de-sac.

Mr. Fletcher said some surprising and concerning information he learned the previous night was that there is a perception that when we are making a recommendation for denial of requests deep within neighborhood, there might be an elitist perception. It never entered our consciousness to think that way. I was glad to hear that perspective and learn how it is being perceived. We are trying to balance what it means to preserve neighborhoods. One of the commissioners talked about that threshold and how far do you go in limiting STRs in neighborhoods. There is no right answer, so I want it out in the public realm so that it can be discussed. It is about that difficult decision and we have talked about what it means to preserve neighborhoods and protect neighborhoods. We are a college town and we get concerns about over-occupancy. When you have more occupants in a space it is a de facto overoccupancy of what the underlying zoning district is. I want us to keep that in mind. I do not want people to feel that we are trying to be elitist. Every neighborhood has its own culture and expectations. It is a balancing act of trying to figure that out.

Vice Chair Colman said that the issue is equity. Why some would have the opportunity to have STRs while others do not. When we recommended the STR Ordinance to City Council there was the homestay by right option and the option of the STRs by SUP. City Council approved the STR by SUP only version. My intent was that STRs would be allowed, but with the opportunity for city staff and for neighbors to voice any concerns. Not to establish a matrix of where we can or cannot have an STR, but to allow them. If there are issues, the neighbors would complain and, if the concerns were valid, we would have the option to terminate the SUP. It was not to limit the use throughout the City, but to open it up and allow the neighbors to speak.

Commissioner Finnegan said the question is, are we going to approve STRs in a traditional neighborhood development on a grid but deny STR on cul-de-sacs?

Commissioner Whitten said it is case by case.

Commissioner Finks said we have been trending towards denying those on the cul-de-sacs.

Commissioner Romero said this STR would have up to four occupants. This would typically be a family or at most two cars. I know this neighborhood because I visit families here for my job. There is some movement happening in those cul-de-sacs. There are a lot of families that live there. It would be in the best interest of the property owners to provide those two parking spaces in front of their home to allow for the renters to use them and they may find parking elsewhere.

Commissioner Whitten said that on Sunday afternoon there were not two extra spaces.

Commissioner Romero said that he is sure there was something going on Sunday. It is typically busy, but not as busy as you experienced on Sunday. I do not see the impact on the neighborhood.

Commissioner Finks said he has family that lives near Southampton. I see many cars in and out of Vale Circle and Central Avenue. Has it already impacted the neighborhood at this point?

Commissioner Finnegan said there are deeper philosophical questions regarding property rights. Do renters get to have a say? Is it only property owners? Do your property rights end at your property line? We are making certain assumptions in general. We assume that in a residential neighborhood you should be able to find parking close to your house. We may be entering a period with density increasing where you do not necessarily find parking in front of your house. When I visit friends in other cities, I have no expectation of finding parking within three blocks of their house. I have lived downtown and had to carry groceries three blocks. We spend a lot of time talking about parking. I am leaning towards not factoring in the parking in this particular request.

Commissioner Whitten said why do we not throw out all of the conditions. Let us not have any conditions at all. In a neighborhood where people live closely together, there are top issues: noise, trash and parking.

Commissioner Finnegan asked are those the three top issues for you?

Commissioner Whitten said that it was across the board. Trash does not get put out on the right day. Trash is on the street. Too much trash, etc. Same thing with parking. We got the blue, brown, red, purple zones in Harrisonburg because of parking. It is a problem. It is a point of friction and a point of pressure. Density leads to all of those things. While you think that is not a big deal in a small cul-de-sac, there is a thing called a domino effect. If you start adding people and cars to an already dense place, you are going to have problems.

Commissioner Finks said condition eight exists to remedy problems that may come up.

Commissioner Whitten asked Mr. Russ if it is simple to take away a SUP by using condition eight.

Mr. Russ said that it is not something that has been tried. I do not know how much push back there would be. I have no idea what a judge would say if there were an appeal.

Commissioner Finks asked if they should strike condition eight, if it will be ineffective.

Mr. Fletcher said the fact that it has not been tried does not mean that it would be ineffective.

Vice Chair Colman said condition eight concerns would be managed by the Planning Commission and City Council. In some of these requests, we have neighbors speaking up. We voted against the SUP where the neighbors spoke up. There is an opportunity for the neighbors to speak up. It is advertised and posted on the property. I understand that if it is a rental situation, some people might not feel free to speak up, however, they should. I do not think we have anyone that has spoken against this request up to now. If there are concerns, then we can consider imposing additional conditions or deny the request.

Commissioner Finnegan said if we approve this request, does everyone else on that cul-de-sac have equal opportunity to do the same thing with their house?

Vice Chair Colman said at this point we do not have a measure to approve any particular number of STRs or to whom they are granted. It becomes unfair and potentially illegal. We need to be careful. That is not a reason for us to deny a request.

Vice Chair Colman opened the public hearing and invited the applicant to speak to the request.

Nicholas and Abigail Einstein, 58 Easthampton Court, came forward to speak to their request.

Mr. Einstein said they are happy to be compliant with all the regulations that legalize STR in Harrisonburg. We do not see why the location of our house prevents us from operating a STR. We have three main points that were identified in staff's report that we will discuss.

Ms. Einstein said that when you live in a cul-de-sac, you know what you are dealing with. We have friends that come, and if we have a lot of people come to our home, people can park down the street. There is a lot of space before coming up the hill. We have had friends park down the hill for our neighbors' benefit. We have two cars. They fit in one spot. For the STR, we have a spot that is just for them. I do not know what the situation was on Sunday, but typically that is not a problem for us. Our neighbors have kids, and they have a lot of cars. We understand that. We live on a cul-de-sac.

The first main concern we identified from the staff comments was that our home was too interior to a neighborhood. Last night, City Council approved the SUP for 981 Summit Avenue which was over a mile from a major collector street. Our home is only 0.26 miles from South Avenue. We recognize that distance is not the only factor that you are considering, however, similar to that neighborhood, we have visitors to our street. It is a great first-time homebuyer neighborhood. It is close to the center of town. People come up our street.

The second concern is that it might introduce a high turn-over of people who are unknown to the neighbors. The property that is behind us is Grand Duke, which is an R-3 complex which is accessed right off our main street. There are cars that come up our street. In addition, one of our neighbors on our cul-de-sac operates a small business from his house. On the weekends, his employees come to pick up checks: it creates vehicle traffic. It does not bother us. He is our neighbor. We do not see the difference between that situation and a car occasionally coming up the block for a STR.

Mr. Einstein said the third point was that the STR would have adverse effects on other residents in our neighborhood. The character of our neighborhood cannot be defined by looking at a zoning map. We live there. We understand it. We love our neighborhood. We bought there. It is our first home. It is a family oriented and culturally diverse neighborhood. Everyone works hard for what they have. We can see that with our direct neighbor as well as the neighbors across the street. We have regular open communication, especially with our two direct neighbors, the one with whom we share our building and the one with whom we share the property line. Both have voiced no concern at all. We have talked with them and they appreciate the value that we are bringing to the neighborhood.

The transient occupancy tax money that the City collects from the STR can then be reinvested into the community to address parking issues. We also promote local businesses and restaurants. We have no issues with the eight conditions.

Mark Scott, owner of 55 and 57 Easthampton Court, came forward to speak against the request. My wife and I purchased that property because we wanted to be in the community. A community that supported close knit neighbors. It must have limited traffic because it is a short cul-de-sac with limited parking. It is not in close proximity to any business or commercial enterprises. We wanted a sense of community without so much commercialism. Even though steps are to be taken to screen renters, we have read and heard of incidents where this type of thing has eroded that sense of community due to increased traffic, noise, disrespect for neighboring properties, other situations. There are many kids playing on Easthampton Court. When there is no school, there are many children. People who do not live on a cul-

de-sac may not understand that there will many children and that they will have to be careful. We have seen speeding, which the police are now monitoring in other locations. We oppose the issuance of any SUP for STR on Easthampton Court anywhere.

Commissioner Finks asked if the property was his primary residence.

Mr. Scott said that it is not his primary residence. They did not move there.

Commissioner Finnegan asked what Mr. Scott meant by “screening renters”.

Mr. Scott said there are supposed to be vetting processes for people who rent. We have known of situations where those vetting process were met without the desirable results that were intended.

Commissioner Finnegan asked if he meant through the sites, such as Airbnb.

Mr. Scott said yes.

Barbara Weirich, owner of 62 Easthampton Court, came forward to speak in favor of the request. I own the adjacent building to the applicants. I do not live there, we rent it to our adult children. We are not opposed to the STR. Their building has the best parking in the entire cul-de-sac. They said they can park in one spot is because it is deep enough that they can have two vehicles in one spot. They already have a nice spot reserved for the guest. Our concern with the cul-de-sac has to do with the other buildings and the double and triple parking. It is horrible and is not due to STR. It is the double families, or too many renters in the house. When we purchased the property and knew the zoning, we could not rent to more than two unrelated people because of the two cars parking only. There are probably many rules broken due to the parking, and it is into the street. I do not think that STR is a problem. Their building is the best one. I give them credit for the property and the preparations that they have made already. It is difficult for first time homeowners.

Mr. Giannakaouros came forward. I was surprised to hear the word “elitist” come from Mr. Fletcher, the Director of Community Development. I was present and participating in the discussion to which he referred, and the term was “exclusionary”. That is a technical term in zoning and it relates to creating situations that make property inaccessible in such a way that leads to de facto segregation. Segregation is about race, which is correlated with other things that can be selected for, that then lead to de facto segregation. If we look at the Weldon Cooper map of Harrisonburg, we see that our neighborhoods are very segregated. When you find the neighborhoods with large lots, far away from collector streets, it ends up collecting blue dots. That is the concern that I heard being expressed by people on City Council.

Mr. Fletcher said that he had a conversation with someone else today who used the word “elitist”. I was not doing a direct quote. It was a term that was used in a conversation with me today.

Commissioner Whitten said the comments should remain on topic.

Vice Chair Colman said that the concern is valid. We want to try to stay away from it being exclusive from certain groups of people or certain groups of housing. That is what concerns me in terms of equity.

Ms. Einstein said that she is sorry for Mr. Scott’s concerns, however, he does not live on the block. We cannot control speeding. I do not believe that a STR has anything to do with speeding on the block. I am from Queens, New York. I grew up in the city. I played in a street. I can assure you that cars will not stop a child playing in the street. There are long-term rentals on our block that produce more traffic because you have someone coming to and from work, whereas a STR is not going to be rented out every night. We are not going to have cars there every single night. We do not want to upset anyone in our neighborhood, but we do feel it is unnecessarily preemptive.

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 Finks moved to recommend approval of the SUP, as presented.

Commissioner Finnegan seconded the motion.

Vice Chair Colman called for a roll call vote on the motion.

Commissioner Romero: Aye

Commissioner Finks: Aye

Commissioner Whitten: No

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: Aye

Vice Chair Colman: Aye

The motion to recommend approval of the SUP, as presented, passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Respectfully submitted,

*Alison Banks*

Alison Banks  
Senior Planner