



# CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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July 5, 2022

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

**SUBJECT:** *Public hearing to consider a request from Phone Phonelath for a special use permit to allow for a short-term rental at 41 Port Republic Road*

## **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 8, 2022**

Commissioner Baugh read the following disclosure and left Council Chambers.

The Virginia State and Local Government Conflict of Interests Act requires that I make disclosure, to be recorded in the City records, in any matter in which I am prohibited by law from participating. Therefore, I make the following disclosures:

1. The transaction involved is the item taken up on the June 8, 2022 Harrisonburg Planning Commission Agenda as Item 4(a), a request for special use permit.
2. My personal interest in this transaction relates to the ethical requirements to which I must adhere as a licensed member of the Virginia Bar.
3. I affirmatively state that I will not vote or in any manner act on behalf of the Planning Commission in this matter.

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher said 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: Single family detached dwelling, zoned R-1

North: Across Port Republic Road, single family detached dwellings, zoned R-1

East: Single family detached dwellings, zoned R-1  
South: Single family detached dwellings, zoned R-1  
West: Single family detached dwellings, zoned R-1

The applicant is requesting a special use permit (SUP) per Section 10-3-34 (7) to allow for a short-term rental within the R-1, Single Family Residential District. The parcel is +/- 8,276 square feet and addressed at 41 Port Republic Road, which is located on the southwestern side of Port Republic Road between the intersections of South Main Street and Carrera Lane. The property is improved with a “wraparound” driveway, where two entrances are located on each side of the property’s frontage along Port Republic Road with the driveway wrapping around the rear of single family detached dwelling.

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the Zoning Ordinance. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time.

The applicant is the property owner, who will also be the operator of the STR with the site being their principal residence, the latter of which is required by the ZO. As explained in the applicant’s submitted letter they will have three accommodation spaces with plans to allow up to six guests at one time. While not necessary to operate a STR, the applicant plans to make improvements to the dwelling by adding a full bathroom on the first floor.

While the applicant has explained their operation plans for the STR, the SUP is not restricted to only the current applicant/operator. All SUPs transfer to future property owners; thus, if the applicant sells the property, any future property owner could operate a STR so long as they meet the requirements of the ZO and any conditions placed on the SUP. How the STR could be operated by any future property owner should be considered and evaluated as part of this request.

The ZO requires one off-street parking space for the single family detached dwelling. If the STR is approved as requested, the site must have three more off-street parking spaces—one for each approved accommodation space. Unless City Council allows for a reduction in off-street parking spaces as a condition of the SUP for the STR, the site must ultimately accommodate four off-street parking spaces—one for dwelling and three for the STR.

Typically, the ZO allows individuals at single family detached home parcels to utilize the public street right-of-way to maneuver in and out of the property (i.e. to back in and out of a driveway to and from a public street). In this particular case, since it is known that Port Republic Road has high traffic volumes, the City should do what it can to prevent individuals from backing in and out on to Port Republic Road, especially for individuals that would be staying at the short-term rental, who are not familiar with the property and the area. Since the site already has two entrances on Port Republic Road, where the driveway wraps around the house, staff believes a condition prohibiting lodgers from backing in and out of Port Republic Road is necessary. The existing

wraparound driveway should allow for individuals to enter one driveway and exit the other or that there is sufficient area on site to turn the vehicle around on the property so that vehicle movements are always in a forward motion when entering and exiting the property.

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, but only with the following conditions:

- a. All STR accommodations shall be within the principal building.
- b. There shall be no more than three STR guest rooms or accommodation spaces.
- c. The number of STR guests at one time shall be limited to six.
- d. 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.
- e. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
- f. All vehicle movements entering and exiting the property shall do so in a forward motion.
- g. 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.

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.

Chair Finnegan asked if there any questions for staff.

Chair Finnegan said I have a question about condition f, as suggested by staff. How would that be enforced? Since they are guests coming in, there would be people unfamiliar with it. I guess the instructions would go into Airbnb.

Mr. Fletcher said as with any type of conditions or many of our zoning regulations, we would likely have to go on a complaint basis. If there is some type of observation made by anyone saying that there were difficult scenarios, or they observed traffic situations where they were backing in and out. We believe that the applicants could at least inform their lodgers. They can put it as detail in their advertising, however they want to do that, but to make it known that they should not back out or into this site. It is for their safety.

Councilmember Dent said I wonder if signage could help. "Enter here" and "Exit here" so that it is a one-way loop.

Mr. Fletcher said that it could. It would just be signage on a property that would otherwise not be there. We are not promoting to enter one side or the other. Whatever is most accommodating for entering the site has to be in a forward motion. If you deem that worthy, that could be a condition that you would like to add. An issue with signage and lodgers coming in who are trying to locate and enter the site is that when they find 41 Port Republic Road, they may stop and then realize that it is the exit, and they have to maneuver and find the entrance. If they have that information ahead

of time, maybe when they are setting their lodging accommodations with the property owners, they can be informed that there are two entrances and that they should always move in a forward motion.

Commissioner Finnegan said the danger may be blocking through traffic at the end of that U driveway. It would force someone to have to pull in, then back out. They would have to not block the path of the U shape.

Commissioner Armstrong said that they are allowed to park in there, so it may be blocked.

Commissioner Finnegan said on the site visit yesterday, we were driving a standard sized SUV and it was taking up the majority of the back of the driveway. You could fit another vehicle back there, but only if people park tight up against the end of the fence.

Commissioner Armstrong said I am noticing this sentence is repeated across these SUP STR applications, “[b]ecause the City has approved multiple STR SUP applications in similar locations throughout the City... staff recommends approval of the request” with conditions. What is “similar locations”? What are we using to differentiate or not differentiate these applications?

Mr. Fletcher said that goes back to the 2017-2018 era when staff was offering recommendations for denial for the majority of the STR SUP applications. [Note: These recommendations were actually offered in 2019, not the incorrectly referenced 2017-2018 time period.] In early conversations, staff had a high threshold of where such uses should have been operated in the City. We believed that they should have been in locations that were,.. this is where that conversation got lost several years ago, not deep into single-family detached homes, or not deep into neighborhoods in general. We thought there should have been an awareness of what should be expected from the zoning perspective of what people buying properties and zoning protections that they have. We thought there should be somewhat of a high threshold for the specialness of where the STRs should be located.

Over the years, we did not have our recommendations followed. STRs had been approved all over the City. There has been a decrease in the specialness of them from our stance of what that threshold review criteria might be, as to where specifically they should be located. We recognize that the physicality of the site itself, where driveways are located, how big a space might be, how small a lot might be, will always be different. That statement that you reference is pointing to the fact that the precedent has been set. We have allowed them in many different areas of the City, and numbers of individuals that can lodge at one time. That is reminding folks and capturing what that precedent might be.

Chair Finnegan asked is another way of saying that, “we have approved them in R-1 neighborhoods”?

Mr. Fletcher said I would remove the zoning designation from where we have approved them, but that we have approved them almost in any kind of neighborhood that we have in the City. There was a request in the Park View area. In one of our staff reports, we were trying to bring to attention how far removed that particular property was from areas that the general bystander, individuals in

the area would recognize that the property is deep in the neighborhood. That it is far removed from a collector street, where it is acknowledged that there would be quite a bit of traffic on that street. That the property is far from transition zones from different styles of housing and where non-residential uses begin to get mixed in with residential uses. What we were trying to say got lost in the translation and it was stated that how far you are from a collector street should not really be a review criteria. Maybe our message got mixed up, but what we were trying to say is that it was not in the right location in a neighborhood.

Commissioner Armstrong said so prior to 2017-2018 you were recommending non-approval for most of them and City Council was approving them.

Mr. Fletcher said Planning Commission had also made motions to approve. I would have to go back and look at all the data.

Commissioner Armstrong said this is very interesting history because of the discussions we have been having. This is my dilemma. One of them is that I looked back at the Newman Avenue application and, to me, it is different from this one. This one is facing Port Republic Road. It is at the periphery of a neighborhood. Newman Avenue is a much older neighborhood. Long-term residents objected to it. Two wrote letters. There was cohesion across the convening street. This one, there is no way you would know what is happening on the opposite side of Port Republic Road in a routine way. I live there, so I know. To me, they are different. Where I would normally not be in favor of it, I am more in favor of this one because I do not think that it is going to erode social fabric in that neighborhood. But if I vote for this, the argument is that I should vote for all of them because "similar locations" is not really meaningful.

Commissioner Whitten said the width of the driveway to the left of the house, if you are facing the house, is unbelievably narrow. You could clip the corner of that house. When you drive into the back, that is not a large area to park four cars. If you have four cars, there could be three rooms, six guests, you could really have more than four cars. If somebody comes in the wrong driveway, headed the opposite direction, I am not sure that can even happen back there, moving cars past each other. It is very narrow. If someone is coming out and someone is coming in at the same time, it is a dangerous situation. I am concerned about the width of the pavement on that side.

Mr. Fletcher said it is providing two driveway entrances. Would it be best to only have the one on the north which is wider? Then you could go around the back and park and maneuver in any other part of the backyard and pull out.

Commissioner Whitten said I do not know how you could maneuver in that back yard. I think it is dangerous.

Mr. Fletcher said that never came up as a concern. Clearly vehicles can come in and out of there and it is better having the two driveways, rather than the one. I do not know how we would have evaluated this any differently if it was only an entrance on the north side. If there was only one entrance on the site and it was here, the question of the width of the driveway would not have come up.

Commissioner Whitten said it is wider.

Mr. Fletcher said my point is that if this driveway did not exist at all, if it was just grass and stopped here, would there be any concern about them coming into the space and parking four vehicles.

Commissioner Armstrong said the turning around would be hard.

Mr. Fletcher said referring to Commissioner Armstrong's comment about the idea that there are so many of these across the City. It is not that staff would never recommend denial of any one of these, but we did not see anything particularly different about this site from all of the others that have been approved.

Commissioner Armstrong said I did. If the criteria... and it sounds like, from your suggestion about deep in the neighborhood versus not, you really were thinking about the social fabric and the nature of it.

Mr. Fletcher said maybe we miscommunicated. This one would be one that we would have looked at very differently when you are comparing the physical location. There are properties along East Market Street, Port Republic Road, West Market Street, South Main Street, and Liberty Street, all over the City, where I would have thought if someone would have applied there, it makes sense. If you go to a lot of our memos from 2018 to 2019, we talked about community building and what happens when you invite these types of units. This one had a lower threshold from that perspective. When I say we do not see it any differently, it is because we have already approved these others that are nothing like this site. It sounds like you and I are agreeing.

Commissioner Armstrong said I think we are agreeing.

Chair Finnegan said if you go back and read those notes, early on staff was recommending denial of most of the STR SUPs that we received.

Mr. Fletcher said there was a point where we said, we flipped. It was hard for us to continue down that path because we believed the precedent had been set.

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.

Phone Phonelath, 41 Port Republic Road, came forward in support of her request. I know you are concerned about the *[unintelligible]*. Where I put my picnic table, I can remove that table. They can park one more in there. Then they can move out that way more easily. They can turn and go out.

Commissioner Whitten asked is it by the patio or by the garage?

Ms. Phonelath said it is by the patio. I put a big table there. It sits about eight people. I can move that table out. I usually park over there, too. It is easy to get out. I can turn right and get out. It can

park a lot. On the grass there, I can have two parking spots and one where the picnic table is. Then they can park one more, about four parking spots. It is easy to get in and out.

Chair Finnegan said you did state in the application that this is your primary residence. Is that correct? You do live here?

Ms. Phonelath said yes.

Chair Finnegan asked if there were any questions for the applicant's representative. 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 dilemma that the planning department had is now my dilemma. I have a lower threshold for this one, too. I would be inclined, for the reasons I have already stated, to approve this. I do not want to then be held to a precedent that does not distinguish between this kind of location and, for example, the Newman Avenue location, which had two people writing in. We are not recognizing differentiation because that sentence is in here on all of them.

Chair Finnegan said that is staff's recommendation. It is in our purview to agree or disagree with staff.

Commissioner Armstrong said it is compelling. This is our planning department, and their applications are really so good.

Chair Finnegan said I will say, as a footnote, the Community Development planning staff is down several members. I do want to recognize that you all are operating five people down.

Commissioner Armstrong said that is the dilemma I have right now. I am very reluctant to approve any of them because I think that someone is going to come back and say that there are similar locations. How can you approve that one and not approve this one?

Commissioner Whitten said the word "similar" in that sense is unfortunate. I think that choice was unfortunate.

Commissioner Byrd said in defense of that sentence, I think it is good that the staff, who interacts with the applicants more than we do, are trying to help give the applicants the best foot forward on these discussions, since we are the ones who have to make the decision.

Commissioner Armstrong said it is not about the applicant. It is about the location.

Commissioner Byrd said we were discussing what the staff wrote in the report. That is what I am commenting on. The language that people were discussing, what the staff was saying. I am saying that the staff are trying to give the applicant their best foot forward on any presentation.

Commissioner Armstrong said that statement is boilerplate. It is exactly the same.

Chair Finnegan said it is staff's purview to have discussions among staff and make the decisions that they make and make their recommendation. It is our realm to agree or disagree with staff. I have gone both ways on these STRs. Something to keep in mind is, and it is not a SUP, right now the City does allow STRs called Homestays. These allow up to 90 nights. All of these SUPs are for anything over that.

Commissioner Whitten said I think the use of the word "similar" is unfortunate. "Similar" makes it sound like that they are all kind of alike. They certainly are not.

Chair Finnegan said all locations are different. There have been two STR applications in Old Town in the last six months. I said "no" to one of them and "yes" to another for different reasons. That is why Homestays are by-right and these are SUPs, where we have these discussions and make decisions.

Commissioner Byrd said in that light I tend to view Homestays and STRs in a different light. If someone said that they did the Homestay for a while and now they are trying to ramp up, I would evaluate that differently. You might say that it is the same situation that I previously voted on, but that slight difference changes how I view things. As it comes to this parcel, it reminds me of a parcel that I voted no on because I did not like how the driveway and parking situation would work. That one was on a side road and not on a main thoroughfare like this one. It bothers me because the STR is basically us recognizing that they are putting a business there while also saying that it is a residence. Having seen that back area, that is very... will require "hands on" from the resident to manage that parking. The City cannot effectively observe if that is going to become a nuisance on that road or not until someone has to hit their breaks hard because they are not paying attention. Then we notice. That is the issue with this particular application. If it just had more space, I would be more inclined to vote in favor of it. It does not, so I could not approve of this with it allowing six. I do not think that four parking spaces can be reasonably occupied there and allow for significant movement. I do understand that the applicant was referring to changing the placement of certain things on the property, but that is connected to the same thing that I voted against the other application.

Chair Finnegan asked are you suggesting alternative (c) with different conditions? If so, what conditions? Homestays are limited to 90 nights and four guests. This is six guests. If we were to say limited to four guests, is would change the 90 night part of it?

Mr. Fletcher said if you limit it to four guests, then they would only get the ability to have more than 90 nights. It would not be a Homestay. It would still be a STR. They would still get the flexibility to have a limitless number of nights per calendar year.

Commissioner Armstrong asked is it limitless. I thought that on some prior STRs there were conditions put on the number of weekends and nights.

Mr. Fletcher said yes. There were conversations that Planning Commission might have limited that number at one time. I do not recall if staff ever gave that recommendation.



Ms. Dang said I recall it with Maplehurst. The applicant had requested up to 12 guests for certain weekends or number of nights during the year because they were thinking of graduation weekend or certain events. If I recall correctly, once it got to City Council... My recollection is that Planning Commission and staff were not comfortable with up to 12 guests. I think that everybody was in agreement to reduce the number. I believe it got reduced to eight.

Mr. Fletcher said I do not recall any conditions that limited the exact number of nights per year.

Commissioner Byrd said from my evaluation of the space there, I can clearly see how you can make three parking spaces work, even if it is not delineated, and still be reasonable. All these calculations are based on number of guests.

Chair Finnegan said we do not know for sure how many cars the guest will bring. We could be talking about six guests and six cars. We could be talking about six guests and one car.

Ms. Dang said based on your conversation, you could offer another condition that could limit the number of vehicles. We have done that before with 150 Crescent Drive. You could say no more than three guest vehicles, or whatever the number might be.

Chair Finnegan said if you feel that you might be supportive of this but your issue is with the number of cars that might be in the driveway, it sounds like you might be talking about another condition "h" limited to no more than X cars.

Commissioner Byrd said I am not making a motion right now, but I would be more comfortable with that.

Councilmember Dent said the one thing that I am noticing looking at the floor plans, I see three bedrooms. I do not know if they are planning on any renovations. That would indicate to me that there is the resident plus two rental spaces, unless you are planning to do something different with it.

Commissioner Whitten said they do not have to be there. All three bedrooms would be available for rent.

Councilmember Dent asked do they not have to be there for a STR?

Chair Finnegan said it has to be their primary residence, but they do not have to be there.

Mr. Fletcher said going back a few years, we had the work sessions to create those regulations. If you were the property owner and it is your principal residence, you do not have to be on site during the lodging period. If you rent the property, you have to be present during the lodging period. To clarify, if I own a single-family home and it is my principal residence, I do not need to present during the lodging period. If I rent a single-family home and I am the operator, I have to be present because I am not the owner of the property.

Chair Finnegan said we did several work sessions and that is what we came up with. I am grateful this is the only public hearing tonight. We have been wrestling with this for four or five years, trying to regulate. This is an ongoing thing. It is hard to find the right regulations and there is not necessarily agreement. Some people believe that no STR should exist anywhere. Others are more permissive.

Commissioner Armstrong asked to clarify. If you are an owner, you do not have to be there. If you are a renter, you do not have to be there.

Commissioner Whitten said if I am owner and you are renting out my house, you better not be renting out my house. I feel like the rental people may take care of that one for us.

Chair Finnegan said similar to HOAs, it is not the purview of this body to regulate HOAs or lease agreements.

Commissioner Whitten said I do not know how we would ever be able to say that is a renter who is renting this house, unless something went wrong.

Chair Finnegan said it sounds like we are split. To Commissioner Armstrong's earlier point about being conflicted, I think that as long as you are clear as to why you are voting yes, or why you are voting no, it does not have to be a precedent.

Commissioner Armstrong made a motion to add a condition "h" to limit the number of vehicles to no more than three.

Ms. Dang said that the base regulation with the property proposing to rent out three accommodation spaces, it would be three parking spaces plus the one for the dwelling. The condition for the STR would be to restrict them to have two guest vehicles. That would allow them to have the space for the two guest vehicles, plus the third one for the resident.

Commissioner Armstrong said that if the owners are not there, that changes things.

Chair Finnegan said the way to address that would be to say that there will be no more than X number of vehicles in the driveway.

Mr. Fletcher said that would be reflective of the fact that if the owner left their own personal vehicle on the site, if staff gets a complaint and we are able to go out to take a photograph and document it and we see four vehicles, they would be considered in violation of that condition. I want to make sure that what you want is that you do not want to see any more than three vehicles at any time during a lodging period. Do you only want to see three vehicles at one time during a lodging period?

Chair Finnegan said yes.

Mr. Fletcher said we can write a condition that says, "During any lodging period, there shall be no more than three vehicles on site."

The commissioners agreed to the new condition.

Commissioner Armstrong moved to recommend approval of the request with the new condition “h” to allow no more than three vehicles on site during the lodging period.

Commissioner Byrd seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye, because I do not consider it similar to some previous ones that I voted against.
Commissioner Baugh	Abstained.
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the SUP request passed (6-0). The recommendation will move forward to City Council on July 12, 2022.

Commissioner Baugh returned at the conclusion of this item.