



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

January 4, 2021

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

SUBJECT:

Public hearing to consider a request from David E. Berry, Jr. and Sharon Berry for a special use permit per Section 10-3-34(7) of the Zoning Ordinance to allow for a short-term rental within the R-1, Single-Family Residential District. A short-term rental is defined in the Zoning Ordinance as “[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.” Short-term rentals are further regulated by Article DD of the Zoning Ordinance. The +/- 10,220 sq. ft. property is addressed as 817 Honeysuckle Lane and is identified as tax map parcel 28-O-4.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: December 9, 2020**

Chair Colman read the request and asked staff to review.

Ms. Banks 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: Single-family detached dwellings, zoned R-1

North: Across Honeysuckle Lane, single-family detached dwellings, zoned R-1

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

South: Single-family detached dwellings fronting Country Club Road, zoned R-1

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

The applicant is requesting approval of a short-term rental (STR) operation at 817 Honeysuckle Lane, which is located approximately 275-feet east of the intersection of Vine Street and Honeysuckle Lane. The single-family detached dwelling is a three-bedroom home and the applicant desires to offer each bedroom as STR accommodation spaces. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant desires to rent for STR to a maximum of six STR guests during the lodging period.

The applicant has stated that this is their primary residence and because they are often out of town visiting their son, they would like the ability to rent out the home for short-term rental when they are away. Staff discussed with the applicants the option to operate a by right homestay. However, homestay uses are limited to four guests during a lodging period and are limited to operating for only 90 nights during a calendar year. The applicant desires to rent to six guests during a lodging period and for more than 90 nights during a calendar year.

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 three accommodation spaces, the property should provide three off-street parking spaces. In addition to the off-street parking spaces required for the STR, the ZO requires one off-street parking space for the non-transient dwelling unit. There is a two car garage, that the applicants state is available for parking, and a driveway that can accommodate two vehicles, for a total of four off-street parking spaces. Staff believes the applicants should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway, or within the garage, without delineating parking spaces.

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

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than three STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to six.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the items identified in the Pre-Operation Form when short-term rental guests are present.
5. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the garage or driveway.
6. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 prevents the ability for the STR operator to convert or construct an accessory building into space for a 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 a STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 limits the total number of guest rooms and accommodation spaces on the entire property to three. Condition #3 limits the total number of STR guests to not more than six. Condition #4 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 items identified in the form when STR guests are present. Condition #5 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to delineate off-street parking spaces. Condition #6 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 applicants or operator, and transfers to future property owners. If the applicants were to sell the property, then 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.

Because the City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations, staff recommends approval of the request with the suggested conditions. Staff believes that the proposed use is consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted within the district.

Chair Colman asked if there any questions for staff.

Chair Colman asked if staff received any concerns from the public regarding this request.

Ms. Banks said that staff received phone calls. Today, I spoke with a Cindy Buker, 932 Morning Glory Court, which is part of that neighborhood. She had concerns regarding noise and strangers coming and going from the home compared to knowing who your neighbors are. I have had two other anonymous phone calls from people residing in that area. Their concerns were that it is a quiet neighborhood with elderly residents. They have concerns regarding additional traffic and not knowing who is coming and going.

Commissioner Whitten asked if the applicants were clear about the 90 day opportunity, as well as the STR opportunity, and they chose to take the one with unlimited overnight stays.

Ms. Banks said correct. I discussed the by-right homestay operation with the applicants. They were very clear that they want to apply for the short-term rental special use permit to rent to six individuals for more than the 90 days during the calendar year.

Chair Colman 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.

David Berry, 817 Honeysuckle Lane, called in support of his request. The reason that we are applying for this SUP is due to unforeseen, uncontrolled circumstances that arose in August of this year. My son, Dr. David Berry, who is music director at EMU lost his wife. She was 38 years old and they have two year old and twelve year old sons. It really affected him, and he asked us to help him. When we purchased this home, God allowed us to purchase this home through the help of the VA. This is what we consider as our dream home. We planned to live there all of our days, enjoying every moment of this beautiful home and this beautiful neighborhood. We have observed the neighborhood. It is a quiet neighborhood. We are senior citizens and we do not believe in any nonsense occurring on the property. The people we rent to would be thoroughly screened and checked out to make sure that they adhere to the principles that we lay down regarding quietness and traffic. We expect our home to be treated as we would treat it.

We help our son raise his two year old and twelve year old as grandparents. We spend a lot of time with them, but this is our primary residence. We do not want to rent it out long term because we want to enjoy it for the rest of our days. That is why we submitted for a SUP. When we are absent from the house, we do not want to leave it vacant. We are concerned about vandalism or anything else that might occur on the property. We decided that it would be better to have someone there occasionally as opposed to having the house empty.

My daughter-in-law was a kindergarten teacher at Stone Spring Elementary School where she was getting started in her career. They were just getting settled down. This happened and we had to step in. Thank you and we appreciate your assistance tonight.

Chair Colman asked if there were any questions for the applicant. Hearing none, he asked for the next caller. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Whitten said that her heart goes out to this family. I am in the same situation minus the death of a loved one. We also are raising a grandchild. I do understand that situation. Strangely enough, I volunteered in the classroom next door to this lovely lady that we lost. She was a wonderful teacher and it was such a shock to the school and to the community. That being said, my sympathies are certainly with this family. From a neighborhood perspective, this is the wrong thing to do. It is another situation where you are turning a house into a small hotel without any limits as to how many nights, days, cars. We have off-street parking spaces, but there is also on-street parking. I can see a lot of ways that this could become a nuisance. Maybe not with this family who will do their due diligence to try to prevent any nuisances. We are considering a SUP that entitles the next owner to the same opportunity. The economic side of that is that for six people to stay in a home for a weekend is not inexpensive. When you think about the economic opportunity, the next person could have every intent of making this into a business that churns out dollars. I do not think that is what we have in mind for our neighborhoods in the City of Harrisonburg. At least, I hope that is not what we have in mind. It will drive up the cost of the real estate. I have no choice but to vote no on this. I probably would have been able to vote yes for a 90 day limit on rental. I can understand trying to realize some economic benefit from the property when you are not going to be there all the time. I cannot say yes to short-term rental.

Ms. Banks said that the Planning Commission can make more or different conditions if you feel strongly that the number of occupants is fine, but you want to limit the number of days or nights. You have the ability.

Chair Colman said that the applicant could have a homestay where they could rent to four persons for a maximum of 90 nights. We could stipulate a limited number of days, as the Planning Commission deems appropriate.

Commissioner Whitten said that is why she asked if the applicant understood the difference between homestay and the SUP and whether they had been offered that opportunity.

Commissioner Finnegan said that he agrees with staff. We have approved some Airbnb type situations in neighborhoods in Harrisonburg. I intend to support this, but I am also open to a 90 day limit as a condition.

Chair Colman asked if it would be 90 days or 90 nights.

Ms. Banks said that it should be nights. If you recall, we had the conversation that it is easier to state “nights”. The number you provide is up to you.

Chair Colman said that he is inclined to pursue a number of nights that we are all comfortable with and make that recommendation.

Commissioner Fitzgerald said that she agrees. The concern is not with this family and their particular circumstances, but the fact that it conveys to the next owner. Some kind of limitation would seem to be in order.

Commissioner Byrd asked how the Planning Commission arrived at the 90 nights for the homestay option.

Commissioner Finnegan said that it was a matter of setting a limit. Can someone turn their house into a full-time, 365 days a year, hotel in the middle of a neighborhood. Ninety may seem like an arbitrary number and maybe it is. That is what we settled on for people who want to rent out their home but want to make some additional income doing Airbnb. That is where 90 came from. We say 90 nights because when you stay for one day, it is really two days, one night.

Chair Colman said that we wanted to make sure that the operator to lives there. Someone can say they live there, but only stay there a limited number of days of the year. We wanted to make sure that the ratio of the person living there was longer than the time of the short term rental. The rental should not be longer than the time the person actually resides at the location. We have had some requests, where the applicant lives there perhaps two months out of the year. It was a little bit sketchy.

Commissioner Whitten said that they are calling it their primary residence. Residence has a specific meaning to me.

Chair Colman asked what number of nights would the Commission want to propose as a condition: 90, 120? The SUP helps the applicant because they would be able to rent to six people. Ninety nights potentially means 180 days, which is six months that they could rent it.

Commissioner Finnegan said that he would be amenable to limiting the number of persons to six, but for no more than 90 nights during the calendar year.

Ms. Dang clarified that not every night comes with two days. Two consecutive nights is three days.

Commissioner Whitten asked staff regarding who keeps up with the number of nights.

Ms. Banks said no one. We do not have a method to keep track of it.

Chair Colman asked if there was reporting at the end of the year. It is a business, so there has to be something recording how many nights. Those records could be audited.

Ms. Banks said that staff could look into how that is handled by the office of the Commissioner of the Revenue. We could look into how they audit that.

Commissioner Finnegan said that the Commissioner of Revenue is only interested in how much money the operation made in the calendar year.

Chair Colman said that we did have some conversations along those lines. That information can be requested, and they would have to present it. That is something to consider as we move forward.

Commissioner Finnegan moved to recommend approval of the SUP request with the conditions presented by staff and including a condition to not exceed a lodging period of more than 90 nights during a calendar year.

Commissioner Fitzgerald seconded the motion.

Chair Colman asked for a roll call vote.

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| Commissioner Byrd | Aye |
| Commissioner Finnegan | Aye |
| Commissioner Whitten | Aye |
| Commissioner Fitzgerald | Aye |
| Commissioner Orndoff | Aye |
| Chair Colman | Aye |

The motion to recommend approval of the SUP request with the conditions presented by staff and including a condition to not exceed a lodging period of more than 90 nights during a calendar year passed (6-0). The recommendation will move forward to City Council on January 12, 2021.