

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**July 10, 2019**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, July 10, 2019 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Mark Finks; Brent Finnegan; Zanetta Ford-Byrd; Kathy Whitten; Gil Colman; and Henry Way, Chair.

Members absent: Sal Romero.

Also present: Adam Fletcher, Director of Planning and Community Development; Wesley Russ, Assistant City Attorney; Thanh Dang, Assistant Director of Planning and Community Development; Alison Banks, Senior Planner; and Nyрма Soffel, Administrative Assistant.

Chair Way said there was a quorum with six of seven members in attendance. He asked if there were any corrections, comments, or a motion regarding the June 12, 2019 Planning Commission minutes.

Commissioner Whitten said that she wants to make a substitution on page 35. I will read the correction, starting at the word “also”: “concerns beyond the ownership of this applicant to the next property owner that is going to put 12 lodgers in there. This could create a trend that would be dangerous for the neighborhood.”

Commissioner Whitten moved to approve the minutes with the correction, as stated.

Commissioner Finnegan seconded the motion.

All members voted in favor of approving the June 12, 2019 Planning Commission minutes, as amended (5-0) with Chair Way abstaining.

**New Business – Public Hearings**

***Consider a request from the Northeast Neighborhood Association for a special use permit to allow for a community building at 481, 491, and 505 Broad Street.***

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site as Mixed Use. The Mixed Use designation includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

The following land uses are located on and adjacent to the property:

- Site: House of worship, zoned R-2
- North: Single-Family Detached Dwelling, zoned R-2
- East: Duplex Dwelling and Multi-Family Dwellings, zoned R-2
- South: Single-Family Detached Dwelling, zoned R-2
- West: Commercial Uses, zoned B-1

Ms. Dang said that the subject property is located at the intersection of Broad Street and Effinger Street. The applicant is requesting a special use permit per Section 10-3-40(5) to allow for a community building use. The building was previously owned and used by Broad Street Mennonite Church, who in October 2018 donated the property to the Northeast Neighborhood Association (NENA).

NENA is a non-profit organization that serves the Northeast Neighborhood in Harrisonburg. NENA's website says its mission is "to work to make our neighborhood a secure, attractive, and strong community." NENA describes in their letter that in addition to continuing to use the building for worship services, they "would like to create a Community Center where residents of the community and city come for special gatherings, recreational, educational, and cultural activities." They describe that they have plans for a music room, art room, meeting spaces, and to host special occasions such as weddings, church concerts, and special programs.

NENA representatives are aware that before using the building as a community center, a new certificate of occupancy for a change of use per the Building Code is required. Additionally, off-street parking requirements will be reviewed by Zoning staff prior to the issuance of a new certificate of occupancy. Parking spaces must be provided at a rate of one parking space per 250 square feet of gross floor area and must meet parking lot landscaping regulations described in Zoning Ordinance Section 10-3-30.1. The building has +/- 3,120 square feet of gross floor area and will require a minimum of 13 off-street parking spaces, one of which must be handicap accessible. Additionally, either a shared parking agreement or a subdivision to vacate the property line between parcels identified as 34-G-10 and 11, which respectively contain the parking lot and building, will be required to meet off-street parking requirements.

Additionally, signage for the site will remain limited to 24 square feet and six feet in height.

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. Staff recommends approval of the special use permit request with the suggested conditions:

- Any community building shall operate substantially the same as the use proposed within this application.
- If in the opinion of Planning Commission or City Council, parking, noise, or other issues associated with the community building becomes a nuisance, Planning Commission or City Council may request to re-evaluate the permit, and if necessary, add conditions, restrictions, or revoke the permit.

Chair Way asked if there were any questions for staff.

Commissioner Ford-Byrd said that there was a mixed-use application last month that did not have the nuisance condition. Why does this application have this condition?

Ms. Dang said that although there was concern regarding noise from the tasting room, however restaurants are already permitted by-right in the B-1 zoning district.

Commissioner Finnegan said that churches often have many community events. The current use is already similar to the SUP.

Ms. Dang agreed. Churches can also have classes and other community activities. The owner and use of the property is not a church, it is a community group, therefore they have to get a SUP.

Mr. Fletcher said that SUPs go with the land, not with the operator, so if they wish to sell the property, a new community organization can come in and operate in a way that is different from how they operate.

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

Steven Thomas, representative of the Northeast Neighborhood Association (NENA), came forward to speak to the request. I would like to acknowledge board member Mrs. Meldorise Jordan. The Broad Street Mennonite Church is a very historic building. Its history in our community spans almost 100 years. Next year is the 75<sup>th</sup> anniversary of the opening of the Broad Street Mennonite Church and we look forward to honoring the legacy of that structure. The trustees that have bestowed upon us such an amazing responsibility to take what they have built and expand on what they have done in our community for so many decades. I thank the Assistant Director for her remarks and we appreciate your recommendation. You can be assured that what we said that we are going to do with the structure is exactly what we are going to do. We look forward to using this space to transform our community and the lives of those who would utilize the community center that we envision.

Commissioner Whitten asked if there was a manager for the building.

Mr. Thomas answered that NENA, as most non-profit organizations, has a board and they manage the property.

Chair Way 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 Whitten moved to recommend approval with the conditions, as stated.

Commissioner Colman seconded the motion.

All members voted in favor of the recommendation, as presented (6-0). The recommendation for approval will move forward to City Council on August 13, 2019.

***Consider a request from Hans Kline for a special use permit to allow for a short-term rental at 168 Pleasant Hill Road.***

Chair Way read the request and asked staff to review.

Ms. Dang said that there are some common conditions that will be seen throughout all the STR applications that we will be talking about this evening. These are:

*All STR accommodations shall be within the principal structure.*

The purpose is to ensure that someone does not construct an accessory structure to be used as accommodation spaces. Such accessory structures may be allowed; however, it should be part of the SUP review process. If someone would like to add an accessory structure as an accommodation space, they will need to go through the SUP review process again.

*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.*

This is a checklist of items that the applicant self-certifies that the number of people sleeping there meets the requirements of the Building Code, that there is a smoke detector and fire extinguisher and other elements. They sign the form and submit it to our office. They would have to remain compliant with all of those elements as long as there are guests present and they are operating the STR.

*Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property; or, The STR has no minimum parking requirements.*

You will see two versions of verbiage regarding minimum off-street parking requirements. Where the applicant's property has enough space to accommodate off-street parking requirement, staff recommends not requiring that the parking spots be delineated, marked or signed in order to preserve the character of the neighborhood. In cases where they do not have enough space or no space to delineate off-street parking, we may recommend that the STR not be required to provide any off-street parking.

*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.*

If the STR is found to be a nuisance in the future, Planning Commission or City Council can recall for review or revoke the permit.

*The site shall be the operator's primary residence.*

There have been some changes since the last time we met. In situations where the property is zoned R-2 or R-3, we have added the additional phrase:

*and the STR shall occur within the operator's dwelling unit.*

In the R-2 or R-3 zoning districts where the lot size may be big enough to create a duplex unit, the STR would have to occur within the operator's dwelling unit. It could not be in the second dwelling

unit on that property where the operator does not reside. If someone would like to create a new dwelling unit and use it as a STR, they will have to request another SUP.

*If the operator is not the property owner, then the operator shall be present on the site during the lodging period within any dwelling unit.*

This is the phrasing that Planning Commission had recommended, and City Council agreed to at last night's meeting.

All the items that were reviewed at the Planning Commission's last meeting were approved by City Council except 60 Shenandoah Avenue, which was withdrawn by the applicant, and 1159 Nelson Drive, which was tabled by City Council.

Commissioner Finnegan said that Councilmember Romero is not present tonight. What does City Council need from us in order to move the 1159 Nelson Drive request forward?

Mr. Fletcher said that there is no action required of the Planning Commission regarding that application.

Commissioner Whitten said that there needs to be some publicity about the process for a neighbor to make a complaint. Sometimes people are reluctant to ask how to address any concerns. We do a good job about educating people about STRs, but if you are the neighbor and there is a problem, how do they go about that process of speaking up? We need to be as diligent in protecting neighborhoods.

Ms. Dang said that it is no different from any other zoning concern. They can call the Department of Planning and Community Development's office and log a complaint, and it may be anonymous, if needed. We can add something to the website, so that if someone is searching for this information online, they can see what they can do.

Chair Way said that he agrees. I spoke with Ms. Dang, before the meeting, regarding the potential for expiration dates for SUP. There is some anxiety about the notion that SUPs go with the property. Many times, people are comfortable with the existing owners operating an Airbnb, but the worry is about who comes next. To have some ability to put some expiration dates, as City Council discussed, seems to be a potential opportunity, especially in the R-1 and R-2 neighborhoods.

Commissioner Colman said that we also discussed, at yesterday's site tour, a definition for "operator." That comes into play as we see some of the other requests coming up.

Mr. Fletcher said that localities interpret the code differently across the Commonwealth about whether or not jurisdictions have the authority to place restrictions and SUP conditions regarding the time period in which they exist, in other words, a sunset clause. Staff had discussed this again just a few days prior to last night's City Council's meeting. It is still gray as to whether or not the City has the authority to place that as a condition. What we can do is accept the applicant's submission. We accepted one last night, at the City Council meeting, where the applicants for the STR on Franklin Street submitted a sunset clause condition and City Council accepted it. The applicant on Nelson Drive is also proposing to do the same thing. When City Attorney Chris Brown and I spoke during the meeting last night, it seemed that if it was an owner submitted condition, it becomes part of their application, and we are accepting that as part of the SUP as their own condition.

Mr. Russ cautioned that sunset clauses should not be used to avoid analyzing whether or not the STR is an appropriate use of a property. That is the biggest concern, that you are “kicking the can” down the road.

Ms. Dang said that our first STR for this evening is at 168 Pleasant Hill Road. The Comprehensive Plan designates this site as Medium Density Residential. These areas have been developed or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.

The following land uses are located on and adjacent to the property:

- Site: Nonconforming duplex, zoned R-3
- North: Multi-family dwellings, zoned R-3
- East: Multi-family dwellings, zoned R-3
- South: Across Pleasant Hill Road, auction house, zoned B-2
- West: House of worship, zoned R-3

The applicant is requesting approval of a short-term (STR) operation at 168 Pleasant Hill Road, between Pear Street and Colonial Drive. The applicant desires to rent one of the dwelling units for “whole home” rental.” The dwelling unit includes two 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 accommodation space could accommodate up to four STR guests. The applicant describes that the property is not their primary residence, however, they have a long-term tenant in the second dwelling unit who is a co-operator and will be assisting with the STR operation.

Staff remains concerned that renting any dwelling unit as a “whole home” STR rental will decrease the availability of housing options for individuals seeking long-term rentals. However, to date, Planning Commission has recommended in favor of and City Council approved the STR SUP for 1451 Hillcrest Drive to allow a one-bedroom dwelling unit within a duplex structure to be operated as a STR, and Planning Commission has recommended in favor of 957 Summit Avenue and 845 College Avenue to allow for a “whole home” STR rental of dwelling units on properties that contained two dwelling units. City Council acted on both 957 Summit Avenue’s and 845 College Avenue’s STR SUP requests on July 9, 2019, the day before the subject request is being considered by Planning Commission.

With City Council’s approval of 957 Summit Avenue and 845 College Avenue’s request on July 9, staff believes that a precedent has been established that the allowance for “whole home” STR rental of dwelling units on properties containing duplexes is acceptable and that this use would not have undue impact on the surrounding properties. Therefore, staff recommends approving this request at 168 Pleasant Hill Road with the following conditions:

1. The site shall be the operator’s primary residence.
2. If the operator is not the property owner, then the operator shall be present on the site during the lodging period within any dwelling unit.
3. All STR accommodations shall be within the principal structure.

4. There shall be no more than two STR guest room or accommodation spaces on the property.
5. The number of STR guests at one time shall be limited to four 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. In this case, the applicant, who is also the property owner, has described that their long-term tenant is a co-operator and that this is not the property owner's primary residence. Therefore, the long-term tenant must be present on the site during the lodging period within any dwelling unit. If in the future, this became the primary residence of the property owner who operates the STR, they would not be required to be present during the lodging period. The condition is consistent with Planning Commission's recommended conditions on other applications. 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 two. Condition #5 limits the total number of STR guests to not more than 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 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 spaces, the property should provide one off-street parking space. It should be acknowledged that in addition to the off-street parking space required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling unit. There are two driveway areas serving this property, one on each side of the principal structure. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. 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 as approved. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

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

Hans Kline, owner of 168 Pleasant Hill Road, said that the reason he looked into using his property into a STR is because he had been unable to rent it.

Commissioner Finks said that the applicant's letter states that Mr. Kline and a tenant would be co-operators. It is difficult for me to understand how condition #1, "[t]he site shall be the operator's primary residence," can be upheld. If it has to be the operator's primary residence, it would not be your primary residence. I have difficulty with the term co-operator. It seems that, by nature of having co-operators, it would automatically be in violation of condition #1, if both operators are not making it their primary residence.

Mr. Kline said that it has already been approved for other properties, according to what I heard.

Commissioner Finks said that in the other STRs that we approved, the renter was the operator in their primary residence. They were not co-operator with the property owner. This is the first time that I have seen a situation where the property owner and the renter are going to be co-operators of the STR. In the other situation, it was the renter that was going to be the operator of the STR, not the owner of the property.

Mr. Fletcher said that is accurate. I do not recall this specific example where there are two operators and for one it is not their principle residence. These are staff's suggested conditions, if you do not like suggested condition #1, you do not have to recommend that to City Council.

Commissioner Finks said that he likes condition #1. I am saying that if we present it with condition #1, it would make it difficult for a co-operator situation to exist.

Mr. Fletcher said that if the co-operator no longer resides on site, then the STR could not operate until a co-operator resides on site.

Ms. Banks said that means that if this tenant were to leave and the next tenant does not want to co-operate it, then you could not operate the STR. The next tenant would have to be willing to operate it with you.

Commissioner Finks said that the way we worded it is "operator." A co-operator would still be an "operator," so I would read this as it would have to be a primary residence for both operators.

Mr. Russ said that the condition could be changed to read "this site shall be *an* operator's primary residence." Someone who is operating it, whether it is one person or a group of people, would have to use the property as their primary residence.

Commissioner Colman said that it is whether we deem this person to be an operator. A tenant is not necessarily an operator. What defines an operator? We need to define what an operator is.

Commissioner Finks said that we are saying that it would have to be their primary residence. If they are not the tenant, what are they if it is their primary residence?



Chair Way said that what Commissioner Colman is asking is what does an operator do? We understand that there is a long-term tenant. Would a future tenant also be willing to take on those responsibilities?

Commissioner Colman said what are the responsibilities of the current tenant? What will those responsibilities be? That is what we need to define, what that means. Anybody can come here and say that they have a tenant there. They could have four apartments, one rented to one person and say that is the operator. If there are no responsibilities attached to that operator, anybody can do that. We have discussed the availability of homes for months, perhaps a couple of years. That is part of our concern.

Mr. Kline said that his operator does whatever is needed. He is an on-site person in case that they need to reach out to me. That is usually the first thing that happens, they reach out to me. It is someone who immediately can take care of the situation, that is not just a piece of paper posted on the wall. It is a person.

Commissioner Whitten said that the house has been rented. It has been rented to at least one person. You are saying that it has been empty, but it has not been empty. You said that the reason to make it a STR is because it was empty.

Mr. Kline said that when the last tenants moved out of the downstairs unit, I was not able to find new tenants to come in.

Commissioner Whitten asked when that happened.

Mr. Kline said that he did not bring his leases with him.

Commissioner Whitten asked if it was months or years.

Mr. Kline said that it was in the spring.

Commissioner Whitten asked if it had been advertised.

Mr. Kline said yes, of course.

Commissioner Whitten said that it seems like a family would have liked to have lived there. That is one of our big concerns with STRs. We are removing housing stock that would be very welcome.

Mr. Kline said that that has not been his experience with this property. I do not disagree with that statement.

Commissioner Whitten asked how long he has owned the property.

Mr. Kline said he owned it for about two years. My family owned it for about 40 years prior to me buying from my mother. It has been in the family for a while.

Chair Way 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. At the moment, there has been a suggestion to say that "the site shall be *an* operator's primary residence."

Commissioner Finnegan said that it is not the job of the Planning Commission to review lease agreements. The current tenant moves out, a new one moves in, and part of the job is to be a co-operator. I am not comfortable with it.

Commissioner Whitten said that she feels it waters down the intent of what a STR was supposed to be. The more we get into this complex issue, the more we find that, just as we predicted, there

are going to be people who were going to want to do what they wanted to do with their property. It is not about your house or your having control over how that unit is used. I know what City Council did, but I do not agree with them on this.

Commissioner Colman said that they followed our lead on that. Our recommendations have been evolving as we run into different issues. We are trying to avoid creating loopholes to what we are doing here. We cannot be victim of the loopholes that we have created. In this case, we have a chance to fix them and say no, this is not what we are going to do and that is not our intent. I go back to my initial suggestion; how do we define “operator?” If we define the responsibilities of the operator then we can set that and see how it works in situations like this.

Chair Way asked if there was a working definition of “operator,” at least in precedence somewhere where we have talked about it?

Ms. Dang said that there is only what staff has been presenting. The operator could be the property owner, a long-term tenant or an employee. There is no definition of function.

Mr. Fletcher offered a correction to one of his previous statements. I had previously stated that all of the previous applications that have been approved were not the same situation. That is not entirely true. The Smith Avenue request by Mr. Kraybill and Ms. Hershberger, which was approved last night, is the same situation except that it is a home and not a duplex. It is not a separate unit. That is the difference.

Mr. Russ said that the legal position of our Zoning Ordinance is that we do not like that this is a duplex and we would prefer that it no longer be non-conforming and become a single-family home.

Mr. Fletcher said that in the Smith Avenue case, the owners built the home and then moved away.

Commissioner Finks said that he agrees that there is a potential loop-hole that we could be setting up by allowing this STR. Maybe we have already done so, but with this property tonight it feels different.

Commissioner Colman said that, per staff’s comments, the operator could be a tenant or an employee, then that expands it even more.

Commissioner Finks said that it would still have to be their primary residence, even if they have an employee.

Commissioner Colman asked how do you enforce that? We have to define what an operator is and from that we can establish what rules might apply.

Mr. Fletcher said that if we receive concerns or complaints, we will investigate. We can look on the Airbnb website, find out who the operator is and ask them questions.

Commissioner Finks said that one of the things that made sense for a definition of “operator” is that the “operator” is the person whose name is on the business license.

Commissioner Finnegan said that our intent, at least my intent, is that operator is the person who is the host on Airbnb. That is the assumption I have been operating on.

Commissioner Finks said that we are not just dealing with Airbnb. Someone could do it on their own without using one of these services.

Commissioner Colman said that it is still the same thing. Who is the host?

Commissioner Finks said that it would be the person on the business license.

Ms. Dang said that STRs also include bed and breakfasts, hostels and things like that. It does not fit nicely in that definition that we envision as the traditional Airbnb home rental. In that case it might be an employee, where it is not their primary residence. That is why I value the other conditions that we list such as, “the site is the operator’s primary residence” or the other conditions. It is the formulation of the conditions that sets up the restrictions, all together.

Commissioner Colman said that either there are conditions or definitions. We need to adjust the definitions of bed and breakfasts and hostels because that is a different situation. It does not fit with what we are looking at right now. We are envisioning a home that is being opened for STR, not necessarily a service operation.

Commissioner Whitten said that we used to have boarding houses. If I am remembering this right, did we not require a manager on site and was that not a nightmare?

Ms. Banks said that when boarding houses started, the property owner was supposed to reside on site and it morphed or transformed to where they would have a designated tenant every year that was listed. Boarding houses were inspected every year, so we were able to touch base with the owner.

Commissioner Finnegan said that we do not think about boarding houses now, just like people twenty years from now will not know what Airbnb was.

Commissioner Whitten said that it is germane to the conversation.

Commissioner Finnegan said that these SUPs that we are approving with Airbnb in mind, twenty years from now, they convey but people do not know what we meant.

Chair Way said that he is still concerned about condition #1 and the “primary residence” factor.

Commissioner Whitten agreed. That was first and foremost what we thought needed to be the condition. That was the primary condition, not just the primary resident.

Chair Way said that he can see the logic, but there is some muddiness. As the Planning Commission, we can point this out. We can be prepared have a different outcome on this than City Council. It would be nice if we had a recommendation that would help clarify things. Our job is to stand up for good zoning practice and consistency.

Commissioner Whitten said that the one that we are talking about, that was approved at City Council, was a situation that tended to pull at the heart strings. It was a family who had built a house and planned to stay. Their grandchild was born prematurely and had some special needs, so they had to move away to help the child. In order to keep the house, which they intend to come back to, is to do a STR. It is hard to vote against that. I voted against that because of this very concern.

Commissioner Finks said that it seemed logical that the primary concern is that the operator is going to be in that house most of the year. That it is their primary residence. It was hard to divide the fact of whether they owned the house, or they rented the house. If it is their primary residence, they live there, that solves the concern.

Commissioner Whitten said the operator was a couple who are the property owner’s tenants, which is the same thing that Mr. Kline is saying.

Chair Way and Commissioner Finks said that there is no co-operator.

Commissioner Whitten said I am not sure Mr. Kline came up with the term co-operator. You are playing with words in a way that I am not comfortable with.

Commissioner Colman said that we need to express what our intent is. Our intent is that the owner or renter lives in the unit and is responsible for the functioning of the STR. It is the person responsible, not someone that is going to call the owner to come solve it. We can redefine that, but it is what I understood as our intent.

Commissioner Finks said that there is someone accountable, in case there is a problem with the neighbor. These SUPs go with the property. The current owner of the property says what they plan to do, but the next owner lives in Washington, DC and not come to Harrisonburg once a year. If we allow them to be a co-operator...

Commissioner Whitten said that we heard a great story from Mr. Lee, last month. Last night, at the City Council meeting, one of his neighbors showed up and said that is not true. We have not seen him in the neighborhood for two years.

Commissioner Finnegan said that it is difficult. There were a couple requests that I was close to voting no on because they were pushing the line. I feel that this is pushing the line enough to make a motion to recommend denial of this request.

Commissioner Whitten seconded the motion.

Commissioner Finks said that he has difficulty voting on this because it has the appearance of us contradicting ourselves from last month.

Chair Way called for a roll call vote.

Commissioner Colman: Aye

Commissioner Finks: Aye

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: Aye

Commissioner Whitten: Aye

Chair Way: Aye

The motion to recommend denial of the SUP passed (6-0). The recommendation will move forward to City Council on August 13, 2019.

***Consider a request from Victor Landis and Patricia Kennedy for a special use permit to allow for a short-term rental at 72 East Weaver Avenue.***

Chair Way 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: 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 rental (STR) operation at 72 East Weaver Avenue, which is located approximately 650-feet from Port Republic Road, approximately 0.2-miles from South Main Street and James Madison University (JMU) and 0.3-miles from Interstate 81. The applicant desires to rent for STR one accommodation space within their home that could accommodate a total of two individuals. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and that they would be present during the lodging period.

This neighborhood has brown zone permit parking and a parking pass is required for vehicles parking on-street at all times. 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 one off-street parking space for the non-transient dwelling unit.

The property has no off-street parking accommodations. The applicant explained that STR guests can park their vehicle within areas in the undeveloped “paper street” adjoining the property, or on East Weaver Avenue in front of the property with a displayed brown permit parking guest pass. This property has approximately 60-feet of road frontage along East Weaver Avenue that could accommodate about three vehicles along the subject property’s street frontage. Staff does not believe there should be issues created with allowing lodgers to utilize on-street parking and is comfortable conditioning that off-street parking for the STR operation is not required.

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

1. The site shall be the operator’s primary residence.
2. If the operator is not the property owner, then the 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.
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. The STR has no minimum off-street parking requirements.
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, 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. Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring minimum off-street parking requirements. 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 applicant has explained his 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.

Given the size and nature of the request, location of the property, and staff's 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.

Staff recommends approval of the special use permit request with the suggested conditions.

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

Patricia Kennedy and Victor Landis, 72 East Weaver Avenue, came forward to speak to the request.

Ms. Kennedy said that they have lived at the property for 31 years. Our intention is to live there another 31 years. We are active members of the neighborhood and stewards of the neighborhood. We brought this request forward with a lot of thought and consideration for our neighbors.

Chair Way said that in your application you stated that at least one of you would be present during a stay.

Ms. Kennedy said yes. If we were not there, we would not rent it out.

Chair Way 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 that this request is what we had in mind when we did this. It is home sharing and not a whole home rental.

Commissioner Colman said that the second condition the “operator shall be present during the lodging period” does not say that it has to be the operator’s primary residence.

Ms. Banks said the first condition addresses that.

Commissioner Colman read “If the operator is not the property owner...”

Chair Way said that they could still have the STR as residents, even if they are not the owner.

Commissioner Colman said that the application does not say that. It says that they will be present during the stay.

Ms. Banks said that the applicant’s letter said that they would be present, but we are using the condition that has been worked out previously.

Commissioner Finnegan said that the applicant did not indicate that they had any problem with condition #2.

Commissioner Finks said that we had a long discussion, at the last meeting, about what a primary residence was.

Commissioner Whitten said that just because City Council went a different way at their meeting last night, does not mean that we have to change our opinion or how we do things. We are the Planning Commission. We need to do what we feel is the right thing for this community, not what City Council said last night. We take into consideration what City Council said last night. They will ultimately vote on these. I am going to vote the way I think I should vote as a Planning Commissioner for this City, not dictated by City Council.

Commissioner Finks said that City Council voted according to the recommendations that we sent to them. They were not disagreeing with the Planning Commission’s recommendations. They might be disagreeing with individual recommendations.

Commissioner Colman said that they have gone with the minority vote, in the past.

Chair Way said that his concern, especially with R-1, R-2 and UR neighborhoods, is to protect and serve those single-family neighborhoods. I want to make sure we look at these as closely as all the others. We want to be thoughtful about those neighborhoods, especially those adjacent to colleges and universities in our City, where there is a greater risk of neighborhood change with more transient population. I feel reassured by this one. There are no red flags here.

Mr. Fletcher clarified the reasoning behind condition #2, which the Planning Commission had reasoned out last month and staff agreed. There was a clear indication that when it is the property owner’s primary residence and they are the operator, they have a sense of responsibility and they have an acceptance of the risk because it is their property. When it is not their primary residence, other accountability comes in.

Commissioner Colman said that if it is their property, then they do not have to be present. The condition requires that if it is not their property, they should be present.

Chair Way said that he did not hear or see any neighborhood opposition to this request.

Commissioner Finks made a motion to recommend approval of the SUP with the conditions, as stated.

Commissioner Finnegan seconded the motion.

All voted in favor of recommending approval of the SUP, with conditions, as stated. The recommendation will move forward to City Council on August 13, 2019.

***Consider a request from Glenn Loucks with representative David Sloop for a special use permit to allow for a short-term rental at 111 Campbell Street.***

Chair Way read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site 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, zoned U-R

North: Across Campbell Street, multi-family dwelling, zoned U-R and professional office, zoned B-2

East: Single-family detached dwelling, zoned U-R

South: Multi-family dwelling, zoned R-3

West: Single-family detached dwelling, zoned R-3

In early 2018, staff discovered occupancy violations upon the subject parcel, where there were eight unrelated individuals residing within the single-family detached dwelling and one person residing in two separate dwelling spaces within the accessory structure that had been illegally converted from a non-conforming one-unit dwelling to a duplex. Zoning staff issued a Certified Notice of Violation to the property owner requiring that the property's uses and occupancy be brought into conformance with the existing U-R zoning regulations. This meant the property could contain only a single-family detached dwelling occupied by a family or two unrelated individuals and the accessory structure could no longer be used as dwelling units because the non-conforming dwelling had been illegally enlarged to two dwelling units.

The property owner appealed the decision of zoning staff to the Board of Zoning Appeals (BZA). On June 4, 2018, the BZA upheld Zoning staff's determination that there was an occupancy and use violation existing on the site and therefore, the property would need to be brought into compliance with the U-R zoning district. The property owner discontinued the uses within the main house and the carriage house and placed the property for sale. In December 2018, the City's Zoning/Planning Specialist issued a formal letter to the property owner listing the allowable uses for 111 Campbell Street (the letter is attached with this staff report.) Please note within the letter under Uses Permitted by Special Use Permit, that subsection (6) Bed and Breakfast Facilities is, as of March 26, 2019, now listed as Short-term rentals.

The applicant is requesting approval of a short-term rental (STR) operation at 111 Campbell Street. The property is located mid-block, along the southern side of Campbell Street, across from the intersection of South Federal Street with Campbell Street. The property is also located about 300-feet from South Main Street and about 350-feet from City Hall. Situated on the property is a



single-family detached dwelling and an accessory structure (often referred to as “the carriage house”) which is non-conforming to required setbacks.

As stated in the applicant’s letter, they desire to purchase the property for their personal residence and begin renovations on both the single-family dwelling and the accessory structure. Staff has discussed with the applicant the issue involving the illegal uses that previously existed on the property and informed them that building and trade permits will be required prior to beginning any renovations.

The applicants propose to renovate the existing accessory structure to be used as two accommodation spaces for short-term rental. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Each space would accommodate three persons for a total of six guests within the accessory structure. The applicants must understand that any building improvements made to the accessory structure could in no way renovate the spaces to a point where the spaces would be considered dwelling units.

Renovations are also proposed for the detached single-family dwelling, converting it from seven bedrooms to five bedrooms, along with other necessary updates to make it their primary residence. Once the single-family dwelling is renovated, the applicants desire the ability to rent the single-family detached dwelling as a “whole home” STR with five accommodation spaces and up to 15 guests during football weekends or graduation. The operator would not be present during the whole home lodging period. They describe that the whole home rental would be to a family or a single group; they would not be renting individual rooms within the single-family detached dwelling.

The applicants further explain that in the future, if they were to move from the property, they would still want the ability to operate the property as a whole home STR, even though it would not be their primary residence.

If approved as requested, there could be a total of 21 guests on the subject property lodging within the single-family detached dwelling and accessory structure, and the operator/property owner would not be present during the lodging period.

This section of Campbell Street has residential Red Zone parking; therefore, a parking permit is required when parking on the street between the hours of 4:00 am to 6:00 pm, Monday through Friday. If approved as submitted, a total of eight off-street parking spaces would be required (one for the single family detached dwelling and seven for the STR operations). This property has the ability to provide the required off-street parking within the driveway and parking areas on-site.

The subject site is in a transitional space between a major collector street (Mason Street) and a minor arterial street (South Main Street) and is within 200-feet of the Joshua Wilton House and other businesses fronting South Main Street. Additionally, it is walkable to James Madison University (JMU) and to the downtown central business district. Staff believes that a whole home STR could be appropriate at this location, but does not believe it is in the best interest of this neighborhood to allow such a high number of allowable lodgers (up to 21 persons as presented by the applicant) without the site being the property owner’s primary residence. Such a situation could become a nuisance to neighboring properties with large groups temporarily renting the space. Therefore, as indicated below, staff is recommending the condition that if the site is the operator’s primary residence, the STR can have up to 20 individuals. If, however, the site is not the operator’s primary residence, the site shall only allow up to 10 lodgers.

Staff recommends approval of the STR only with the following conditions:

1. All STR accommodations shall be within either the principal dwelling or the accessory structure (“the carriage house”).
2. There shall be no more than seven STR guest rooms or accommodation spaces.
3. If the STR is the primary residence of the operator, 20 individuals may be accommodated on the site. If the STR is not the primary residence of the operator, 10 individuals may be accommodated on site. Where lodgers reside within the seven accommodation spaces can be determined by the STR operator so long as all Building Code requirements are met.
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 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 driveway or other areas on the property.
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 any additional accessory buildings 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 #2 limits the total number of guest rooms and accommodation spaces on the entire property to seven. Condition #3 limits the total number of STR guests to not more than 20 or not more than 10 depending upon whether the property is the operator’s primary residence. 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 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 #5 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 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 seven accommodation spaces, the property should provide seven off-street parking spaces. It should be acknowledged that in addition to the off-street parking space required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling unit. This property has the ability to provide the required off-street parking within the driveway and parking areas on-site. 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 #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 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.

Chair Way asked if there any questions for staff.

Chair Way said he noted that the word “only” was emphasized when saying “only with the following conditions.” If any of those conditions #1-3 were modified, you would have some discomfort with recommending approval. Correct?

Ms. Banks said that she would need to know what the modifications were. Our discomfort is the large number that could be accommodated there.

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

David Sloop, currently living on Paul Street, came forward to speak to the request. We are excited about this home and how close it is to downtown. It has been a student rental for over two decades and would not be suitable for my family to live there. We would like to restore that home, and we think it would be beautiful. The only way that we could afford to do that is with the extra income from the back unit. Because of its proximity to downtown, if we did decide to move again, I would like to have the broad usage. We do not have any plans to move out.

Commissioner Whitten said that to be clear, your intent is to move into this house with your family, and having a STR with you being present. That would be your intent.

Mr. Sloop said yes. We are already under contract for our home on Paul Street, and we have contingencies in both contracts pending this approval. We intend to be present, with the exception of the mentioned game weekends and graduations. That would be the only time that we would rent the whole house.

Chair Way said that he wanted to address the three scenarios mentioned. The first one is the carriage house. You propose up to three persons in each of the areas in the carriage house. In addition to that, the potential whole house STR, up to fifteen people, on sports weekends and graduations. There is also an additional element here which warrants our attention. In condition #3, if you, as primary residents leave the property, you want to have the ability to operate it as a STR despite it not being your primary residence.

Mr. Sloop said yes.

Commissioner Ford-Byrd asked what the plan would be for management if the applicant is not living on the property.

Mr. Sloop said that if we were to do that third option, we have no plans to leave Harrisonburg, ever. I grew up here. I moved here in 1986 and moved back to town five years ago. We have no plan to leave. Our hope is to stay in Old Town. If we found something else, we would still operate it and live close by. If we were moving out of town, we would have no interest in that.

Chair Way said that you might do that, but the potential conveyance leads back to our previous case. It opens up a gray, tenuous area. I am more comfortable with the carriage house. Some of the issues will be on that last scenario, where you leave the property, or someone else buys it and they have the right to do all these things.

Mr. Sloop said that the proximity to downtown, the proximity to the Joshua Wilton House, the street is primarily student rentals and businesses. I have spoken at length with Roberta McCorkle

who lives next door. She knows our intention with what we would like to do with the property. I feel like the location fits, but I understand the concern.

Commissioner Colman said that the main concern is having an operator on site. The number of people is a concern, but we have approved some SUP with large numbers. The operator is where our concern is. In the first scenario, where it is your home, I do not have a problem with you being there or not during the lodging period. If you move away, and this is no longer your primary residence, then that is where the issue comes about. That is the reason that we are turning away other applications.

Chair Way said that we just had a good discussion about the nature of the primary residence question.

Commissioner Whitten said that she is not at all comfortable with condition #3. Furthermore, your short block of Campbell that goes to Mason Street continues on up the hill and is very residential. Noise carries, as we have found with that very house. We have here in front of us the U-R zoning regulations which state that a property can be occupied by a family or two unrelated individuals. The accessory structure could no longer be used as dwelling units because of the non-conformity of that structure. We are going from that, a family or two unrelated persons, to twenty unrelated people. That is a big stretch. I am not comfortable with that.

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

Roberta McCorkle, 95 Campbell Street, came forward in opposition of the request. I feel absolutely betrayed. This may be a transitional area, and I may live in an R-3 residence, but I am a person living on lower Campbell Street. It is my neighborhood. I would hope that this City, no matter where anybody lives, would maintain the same standard of what Airbnb is supposed to be.

This is not what Mr. Sloop and I discussed. I can tell you many examples of what happens in that lovely home and the broad porch when twenty people, on a beautiful night, decide to sit outside and talk. I have central air. I have double-glass windows. I use fans. I can hear every word. I cannot sleep. I am forced to go over, in my bathrobe, and try to maintain my composure to be a decent individual to ask the individuals on the porch to please lower their voices, and that is not a responsibility that I am willing to take on. I share that driveway. I have had my driveway blocked before. I have to go over and ask the renters to move their cars so that I can get my car out of the driveway. With no one there, I become the property manager, and I am not willing to take that on. It is my home. It will be the home of my daughter, my son-in-law, my grandson.

Joshua Wilton House is my neighbor. They never have more than twelve people. They have five rooms for two people and they have two cots. They have an innkeeper on site at all times. We have an apartment in the back, managed by Matchbox Realty, that is a no-party zone. It is a lovely neighborhood. We have a counseling center where people come and find solace. We have a house where members of the Sigma Nu fraternity have lived for four years. We call that our legacy house. They have found a community there and we accept them. We guide them, and we help them, and we hope that they will remember their experience on Campbell Street.

Chair Way asked what is your level of comfort with the carriage house proposal? If we were to take out the whole house rental?

Ms. McCorkle said that someone, either the owner or the operator, needs to be present, at all times. Secondly, it would take housing stock. This house has been rented since April 7, 2019, on a six-

month lease, to a lovely Congolese refugee family of nine. They told me that they want to stay, but they cannot stay. It is a Section 8 house. They cannot afford that house. They cannot afford that neighborhood. We will welcome the Sloops. They can make it their home, but they have to be reasonable and understand that this is the way Airbnb works. Airbnb, as Mr. Lee pointed out to City Council last night, that occupancy is based on the satisfaction of the guest. If the guests are not satisfied because they were not given proper information, or the old bat next door keeps coming over in her bathrobe, then the occupancy will be diminished. I am happy for the Sloops to live there. I wrote a letter. I have no problem and I clearly stated that. I am not a NIMBY person. This is not a NIMBY neighborhood. This is a welcoming neighborhood. I have no problem with up to ten people on the property. That is what it used to be when it had an illegal use. And that member of the family or an operator be present. That individual could stay in one of the carriage house rooms. I do not want to have an acrimonious relationship with my closest neighbor and do not want to have to worry about this constantly. On the last ESPN day, two vehicles in my driveway were hit by a driver. That skinny driveway goes back to a parking lot, so it is in very close proximity, so it requires extra special recognition of that.

Mr. Sloop said that he wants to apologize publicly to Roberta. I did not intend to deceive or betray. The part that I added to the end of that application is not part of our plan. I see why that came across the way that it did. Our goal is to live in this home.

Commissioner Whitten asked if he would like to remove that option.

Mr. Sloop said yes, if you are comfortable with ten. My primary goal is not to launch a business plan. I added it in because I wanted to have a broad use for the SUP. I knew that this was a one-time thing. This is my first time ever doing something like this. I apologize.

Glenn Loucks, owner of the property and co-signer of the application with Mr. Sloop, came forward. This is the first time that I have heard about fifteen people in the house. My understanding, from when our contract was written, was for two units in the carriage house. That is where I thought we were going with that. I think that is a reasonable use for that property. My understanding is that the Sloop family would be living in the primary house and would be able to use some of the income from the carriage house to help renovate the property. Was this added later, the fifteen people, or was it part of the original application?

Ms. Banks said that it was in the application.

Mr. Loucks said that it is news to him that it was added to the application.

Chair Way 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 referred to Commissioner Whitten's thoughts on condition #3 and asked how she would amend condition #3.

Commissioner Whitten said that she was asking Mr. Sloop if he would be interested in removing #3. That would be up to him. The conditions would have to be reworked.

Commissioner Colman said that he likes the idea of the carriage house being the only one for STR. That is six people.

Commissioner Finnegan asked if that can be changed between now and City Council or if it would have to be tabled.

Mr. Fletcher said that the Planning Commission has the ability to recommend any conditions you like.

Chair Way said that, to be clear, what we are suggesting here is a rewrite of conditions #1-3 to make it more consistent with other STRs where we talk about primary residency, etc. and saying that the rentals would take place in the carriage house.

Commissioner Finks said that we would be adding conditions #1 and #2 that we have had in the other STR.

Ms. Dang asked why would they limit the STR to just the carriage house? Why not consider limiting the number of total people on the entire site.

Chair Way said that it was because, as we heard from the neighbor, there was a desire for the owner to be present as much as possible.

Commissioner Whitten said that the point is that a bedroom in the main house could also be used.

Ms. Dang said that staff could offer suggestions based on what we are hearing from you.

Ms. Banks suggested the following conditions:

1. The site shall be the operator's primary residence.
2. If the operator is not the property owner, then the operator shall be present during the lodging period.
3. The number of STR guests at one time shall be limited to ten.

Chair Way said that six is the number we were considering.

Ms. Banks said that it would be whatever number you choose. We were hearing ten. Our thoughts are utilizing both the carriage and the main building.

Commissioner Finks asked if they might consider tabling the request because it sounds like we are trying to make some major edits of these conditions.

Mr. Sloop said that he added the number, which came about during discussions with staff, where they were considering three people per bedroom. I am not saying that this is not my fault, it clearly is. It is a rookie mistake and I apologize. I am happy to remove #3. My intention here was to rent out the carriage house and I shot for more. I did not realize that this was going to be such a mistake.

Chair Way said that we are trying to give you some flexibility here.

Mr. Fletcher said that the application letter says that each unit of the carriage house can have three people. The letter goes on to state that the house can accommodate up to fifteen people. That is where the 21 guests comes from, six from the carriage house and fifteen from the house.

Chair Way said that is why we were suggesting keeping it at six because that accommodates the carriage house.

Commissioner Colman said that you have the ability to use bedrooms in the main house, one or the other. You could do both, half in one and half in the other.

Commissioner Ford-Byrd asked if this is a case that would benefit from the operator being on-site, due to the response from the neighbor.

Chair Way said that he would prefer that. I know that there are differences on the Planning Commission regarding operators being present or not during the accommodation period.

Commissioner Finks said that the difference would be if it is the property owner or the renter. If it is the renter that is the operator, then they have to be on-site. If they are the property owner, they do not necessarily have to be on-site, but it has to be their primary residence.

Commissioner Colman said that this is a SUP. If we have standard conditions, then they might as well be part of the ordinance. We can vary the conditions. We can have the condition that the operator is on-site, whether it is the owner or not seems reasonable in this case.

Commissioner Finks said that he does not feel comfortable changing any of these conditions, at this point, and voting on it because there seems to be confusion among what was discussed with the current neighbor of the property and with City staff. I am a little concerned that this has not been completely fleshed out.

Commissioner Whitten said that Mr. Sloop seems to be clear about what he is asking.

Commissioner Finks said that he is referring to Ms. McCorkle's thoughts, that things were not laid out to her.

Commissioner Whitten said that her understanding was that it was only supposed to be the carriage house.

Mr. Sloop asked if it would solve the problem if they drop the whole house rental portion of the request. I had hoped for that, but it was a secondary point. I do not want to lose this issue over something that was not a primary issue for me in the first place. I am happy to adjust to the carriage house.

Planning Commission and staffed worked through the language to be applied to the recommended conditions and read the following into the record:

1. The site shall be the operator's primary residence.
2. If the operator is not the property owner, then the operator must be present during the lodging period.
3. All STR accommodations shall be within the accessory building ("the carriage house").
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 six.
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.

Commissioner Colman made a motion to recommend approval of the SUP with the modified conditions, as stated.

Commissioner Ford-Byrd seconded the motion.

All members voted in favor of recommending approval of the SUP, with modified conditions. The recommendation will move forward to City Council on August 13, 2019.

***Consider a request from Jeryl David and Mary Ann Kreider for a special use permit to allow for a short-term rental at 443 Lee Avenue.***

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site 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, zoned R-2
- North: Single-family detached dwelling, zoned R-2
- East: Across Lee Avenue, single-family detached dwelling, zoned R-2
- South: Single-family detached dwelling, zoned R-2
- West: Across Chicago Avenue, Waterman Elementary School, zoned R-2

The applicant is requesting approval of a short-term rental (STR) operation at 443 Lee Avenue in the northwest section of the City near Waterman Elementary School. The applicant desires to rent for STR three accommodation spaces for a total of up to nine STR guests. (“Accommodation space” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) This is a change from the staff report. There was an email, which was forwarded to you, and a letter from the applicant has been placed before you that explains the applicant’s reason for wanting to request up to nine STR guests. The applicants describe that the property is their primary residence and that they would be present on the property 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 three accommodation spaces the property should provide three off-street parking spaces. 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. There is a small driveway behind the home that can be accessed from Chicago Avenue that can be counted for the non-transient dwelling unit. There are no other off-street parking accommodations available on the property.

The applicant explains in their letter that there is enough space in front of their home for four on-street parking spaces and that STR guests would park their vehicles on the street in front of the house. Since Lee Avenue is not restricted by permit parking, nor are there regulatory controls on where individuals can park vehicles along Lee Avenue (i.e. anyone can park in front of any property), the applicants could not entirely control where lodgers could park their vehicles. Given



that the subject parcel is +/- 75 feet wide and that a standard parallel parking space is 20 feet long, it is possible that three to four vehicles—depending upon individual vehicle lengths—could park in front of the subject property. Since the adjoining parcels along this section of Lee Avenue have similar lot widths, and thus ample on-street parking for residents and visitors, at this time, staff does not believe there should be issues created with allowing lodgers to utilize on-street parking and is comfortable conditioning that off-street parking for the STR operation is not required.

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

1. The site shall be the operator's primary residence and the STR shall occur within the operator's dwelling unit.
2. If the operator is not the property owner, then the 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 three STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to nine.
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. The STR has no minimum off-street parking requirements.
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. Additionally, the subject property is large enough to allow a duplex structure and this condition prevents any future second dwelling unit on the site from being rented as a "whole home" STR that was not previously vetted. 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 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 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 three. Condition #5 limits the total number of guests at one time to two six. 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 the property by not requiring them to create 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 applicant has 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 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.

Given the nature of the request, the site's proximity to North High Street/Virginia Avenue (Route 42) and downtown, and with staff's suggested conditions, staff believes that 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.

Staff recommends approval of the special use permit request with the suggested conditions.

Chair Way asked if there any questions for staff.

Chair Way asked if there was any further discussion regarding the change from six to nine guests or the potential increase in parking required or if any additional neighbor submissions had been received.

Ms. Dang said that staff was not concerned with the change. We did not receive any submissions or calls from neighbors.

Commissioner Ford-Byrd asked if the applicant's request to increase the number of guests in order to accommodate infants or children would convey to allow a future operator to have nine adults.

Ms. Dang said that staff does not distinguish between children and adults. Other applications we have reviewed have requested to rent to three persons within an accommodations space. Applicants have explained that their intent was to accommodate children, however we did not point those out because we do not make a distinction between the two.

Commissioner Whitten said that she is impressed with the house rules. It would be nice to see more applications consider stipulating no parties, quiet time after 10:00 p.m., to preserve the peace and character of the neighborhood they enjoy. That shows real consideration.

Commissioner Colman said that if they sell that property, there is no guarantee that they are going to carry those rules.

Chair Way said that this is a good example of the difficulty of the SUP being associated with the property and not the owner. I fully endorsed the current owners' application.

Commissioner Finks noted that the property is within a school zone and asked if there are any concerns with Airbnb or any of these services as far as renting to sex offenders who may be staying within a school zone.

Commissioner Whitten said that the new high school would be within a hotel zone.

Ms. Banks said that there is a bed and breakfast operating on Garbers Church Road near two schools.

Commissioner Finks asked if there are any legal requirements in that situation.

Mr. Russ said that he believes that the onus is on the registered sex offender to make sure that they are not within a school zone. I would have to look into it. I cannot imagine that there would a restriction on operating any sort of rental because it is within a school zone.

Commissioner Whitten said that, in a long-term rental, it is a renter's responsibility to know that they are not supposed to be within a school zone.

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

Mary Ann Kreider and David Kreider, 443 Lee Avenue, came forward to speak to their request.

Ms. Kreider said that we want to thank the Planning Commission for your thoughtful work in developing guidelines for Airbnbs and we are very pleased that you have made provisions for them to remain options for visitors in our community. Airbnb's mission is broadly stated as making people around the world feel like they can belong anywhere. We wholeheartedly embrace this positive social entrepreneurial model that, not only offers opportunities for affordable lodging for persons visiting our community, but also offers a more personable human touch in hospitality, an often-gratifying experience of connection with total strangers that we have come to know better and appreciate. Airbnb, as a company, and we, as hosts, try to cultivate an environment where the richness of diverse experiences and cultures are appreciated and enjoyed. We have been privileged, through Airbnb, to host individuals who needed a free place to stay while riding out or recovering from a hurricane that hit the Carolinas last year. We appreciate Airbnbs general philosophy around that kind of thing, being a benefit to communities. We have been sensitive to the potential concerns around Airbnbs by choosing how we operate as hosts and members of this community, which we care about very much and have invested over 44 years of our lives. Even before opening our Airbnb, we made it a point to check in with most of our immediate neighbors to make sure that they had no questions or concerns and since then have spoken with all of them. We have consistently met with approval and even offers of using off street parking, should the City have required them, or if there is a need to do so, as well as enthusiasm that there might actually be options to house visiting families or friends nearby them. In our house rules, that you referenced, we have asked guests to only park immediately in front of our house. We even have signs to that effect on the door. We have also shared with our neighbors that we have made it a point to disallow parties by our guests and included within our house rules a quiet time after 10:00 p.m. on our premises to preserve the quality and the peace that we have enjoyed in our neighborhood and in our home.

Mr. Kreider said that we are appreciative of the conditions that staff has come up with and the last-minute adjustment to condition #5.

Chair Way said that it sounds like your intent is to be downstairs while there are guests there.

Mr. Kreider said yes, for the most part. I would like to address the last amendment to condition #5. We have generally envisioned renting to six adults, and are fine with that condition. We thought that it was being made a requirement for all Airbnbs initially and were conforming to that. It has come to our attention that some families who may want to rent the three rooms together may have children that they have asked that we accommodate if they are willing to sleep on the floor or infants who they may put in a pack-n-play in their room. We wanted to accommodate that kind of request.

Chair Way asked if the applicant would be amenable to any additional conditions that stipulates what you say in your letter about being present during the time of the rental, given the large number of people.

Mr. Kreider said that he thinks so. I am not sure how you are conceiving that. Are you talking about just for larger groups?

Chair Way said that there has been some precedent that the owner has said that they will be present during the lodging period, so the condition then was that the owner would be present during the lodging period. I am considering this because it is a larger number of people that you might find in some of the other places and the second point is that if another owner comes into that house in the future and is not as diligent as you, it adds another level of protection for the neighbors in the neighborhood. We are broaching this topic as a discussion point.

Mr. Kreider said that we generally are very much in support of the whole idea of that accountability so that it does not become a problem with our neighbors.

Ms. Kreider said that the only thing that I am concerned about is how strictly you say “must be present during the lodging period.” We work. I wonder if you are restricting us if we wanted to go to Charlottesville one night while they were there.

Ms. Dang said that the intent is that the operator would be sleeping at the house and would be around. If you think that you may want to be in Charlottesville to visit someone overnight, then you might want the condition to remain the way that it is. Otherwise, what I am hearing, Chairman Way, is that you are suggesting amending condition #2 to say that the operator shall be present during the lodging period.

Chair Way said it would be like we have had on other ones.

Ms. Dang said that we have not. It was changed at the last meeting.

Chair Way asked if it was changed retroactively to previous conditions.

Ms. Dang said that it was not retroactively. I think you are trying to draw a distinction between this application and other applications because of the number of people. Is that what I am hearing?

Chair Way said that he has full confidence in the applicant’s operation of the STR, but I am anxious about whoever comes in the future.

Ms. Dang said that by amending the condition, it would restrict their ability to stay overnight elsewhere.

Ms. Kreider asked if it would make any difference if we lower that capacity to eight? We originally had requested six. I do not know. It is hard to respond without talking together about this.

Mr. Kreider said that we had appreciated the move from that preliminary condition as it was phrased to require the operator to be present to the shift that accommodated more flexibility. If we would make arrangements to have a representative there, nearby or available to respond to any concerns that would arise from neighbors or to offer contact information, we have consistently had that as our way of operating.

Chair Way said that I am not concerned about your operation. It is very different to have a family come in and be guests of an Airbnb. It is different to have nine random people. I know that there are only three bedrooms, but you can see how it can get out of hand. That is my concern.

Mr. Krieder said that under Airbnb has a very good system of communication that they encourage and that we make use of to clarify expectations and house rules.

Chair Way said I have no doubt about what you are doing or what Airbnb does, but in thirty years' time, there might be a different owner there and Airbnb is not going to exist. That is what my concern is. I am not speaking for the Planning Commission. To summarize, I am hearing caution from your point about changing condition #2.

Ms. Krieder said yes.

Mr. Krieder said that he likes condition #2 as it is now.

Chair Way 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 that this was a lot of what we talked about at last month's meeting and how we landed on that wording- "if the operator is not the property owner." Until I hear otherwise, I am assuming that the operator is the person who has the listing, who is managing, who is the host, not just some person. That is the assumption that I am operating off of for these. Condition #2 makes sense in that understanding.

Commissioner Finks said that last month there was a lot to take in. I cannot remember exactly, but I think there was a property that we allowed them to have close to nine or eleven on which we did not put that stipulation.

Ms. Dang said that Summit Avenue had a limit of twelve and Smith Avenue had a limit of thirteen.

Commissioner Colman said that the numbers are considered in two ways. In this case, the number of guests. There is also the number of applications that we consider. Our thinking continues to evolve as we face different situations.

Chair Way said that he appreciates the explanation of how condition #2 developed. That does make more sense.

Commissioner Colman said that you can consider a house that has five bedrooms, but is only 1,000 square feet. How can you have fifteen people? The reason we do the SUP is that we visit the property, look at it, see if it seems to have the capacity for nine people, the neighboring houses, whether it may be a nuisance to the adjacent neighbors. Those are things that we take into consideration. In this case, these houses seem buffered enough through landscaping and it is a large property.

Commissioner Finks said that he struggles with the idea of limiting the number of guests. It would be different for each property. What would be the metric for how many bedrooms versus how much square footage versus how many people before we change condition #2 to say that they have to be on site? It seems like it could be applied unfairly.

Commissioner Finnegan said that it is similar to the distance from a collector street.

Commissioner Whitten said that when you put the practical point to it, it is that if there is a problem, if there is noise, if a water pipe breaks, and the operator is needed, are they within a phone call or within an hour's drive? I think it is unrealistic to think that someone is going to be sitting there every single minute. They are not. That is not real life. People have jobs, sick relatives in the hospital, and so on.

Chair Way said that you are considering the vested interest if it is their property.

Commissioner Finks said that the difference between why the renter should be on the property and not the owner is because there is the assumption that the owner has built or will be building long-term relationships with the neighbors. The neighbors will have their phone number or another way to contact them. If the operator is a renter, they may only be there for a year, so it is more important for them to be there during the lodging period because those relationships will not be built with the neighbors.

Chair Way said that he has a lot of concerns with these STRs going on in single-family neighborhoods.

Commissioner Whitten said that she does, too.

Commissioner Finnegan said that this is my neighborhood. I have been approving these in other people's neighborhoods. I am not going to oppose it in mine. I would like to clarify #5 as amended to nine guests.

Commissioner Finnegan made a motion to recommend approval of this SUP, with conditions, as amended.

Commissioner Finks seconded the motion.

Chair Way said that he will be voting no on this because he has concerns regarding the number of guests in the future.

The motion to recommend approval of the SUP, with conditions, as amended, passed (5-1). The recommendation will move forward to City Council on August 13, 2019.

Commissioner Whitten said it is important to note that the STR has been occurring at this residence for quite some time and there are no neighbors complaining. That is important to me.

Chair Way agreed that it was good to hear.

***Consider a request from Rachel Whitmer for a special use permit to allow for a short-term rental at 519 Green Street.***

Chair Way read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site 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: 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 applicant is requesting approval of a short-term rental (STR) operation at 519 Green Street, which is located approximately 0.2-miles from Chicago Avenue (a major collector street), approximately 0.25-miles from West Market Street and 0.28-miles from North High Street (both are principal arterial streets). The applicant desires to rent for STR two accommodation spaces within their home that could accommodate a total of three individuals. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and that they generally plan to be present during the lodging period.

The subject property has no off-street parking accommodations. The applicant explained to staff that during lodging periods guests could park on the street in front of the property. This property has approximately 52-feet of road frontage that could accommodate at least two vehicles in front of it. Staff does not believe there should be issues created with allowing lodgers to utilize on-street parking and is comfortable conditioning that off-street parking for the STR operation is not required.

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

1. The site shall be the operator’s primary residence.
2. If the operator is not the property owner, then the 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 two STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to three.
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. The STR has no minimum off-street parking requirements.
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 two. Condition #5 limits the total number of STR guests to not more than three. 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. Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring minimum off-street parking requirements. 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 applicant has explained her 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.

Given the size and nature of the request, location of the property, and staff's 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.

Staff recommends approval of the special use permit request with the suggested conditions.

Chair Way asked if there were any communications from neighbors.

Ms. Banks said that when putting the sign up, she had a great conversation with neighbors who were on-board and pleased with the request.

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

Rachel Whitmer, 519 Green Street, came forward to answer questions. There were no questions.

Chair Way 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 Ford-Byrd said that this request hits directly upon our intent for STRs.

Commissioner Ford-Byrd made a motion to recommend approval of the SUP, with conditions, as stated.

Commissioner Whitten seconded the motion.

Chair Way said that he is comfortable with the number of guests proposed in this requests. The arrangements seem to be solid and well spelled out.

All members voted in favor of recommending approval of the SUP, with conditions, as stated. The recommendation will move forward to City Council on August 13, 2019.

***Consider a request from J&K Trust for a special use permit to allow for a short-term rental at 921 Blue Ridge Drive.***

Chair Way read the request and asked staff to review.

Ms. Banks said that she placed a letter before each Commissioner. There was also some correspondence that was emailed to you earlier this week.

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: Vacant parcel and detached single-family dwellings, zoned R-1
- East: Detached single-family dwellings, zoned R-1
- South: Detached single-family dwellings, zoned R-1
- West: Detached single-family dwelling, zoned R-1 and townhomes, zoned R-4

The applicants are requesting approval of a short-term rental (STR) operation at 921 Blue Ridge Drive, which is located in the eastern portion of the City in Reherd Acres Subdivision. The applicants desire to rent for STR a four-bedroom, single-family detached dwelling with a maximum of 13 STR guests during the lodging period. The property is not the applicant's primary residence and there will be no STR operator present during the lodging period. The applicants state in their letter that they would be present at their primary residence on Mockingbird Drive, which is approximately 0.4 miles from the subject property.

The applicants explained to staff that they intend to offer accommodation spaces within each of the four bedrooms, as well as spaces in the living room and recreation room. Additionally, the applicants stated that they would only accept guests who come as a single family or a single group; they will not be renting out individual rooms. There is a large driveway that can accommodate six vehicles, plus a two-car garage, for a total of eight off-street parking spaces on the subject property.

Generally, when someone purchases a home in a residentially zoned neighborhood, there is a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential situation is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Staff believes if a whole home STR is approved within this neighborhood at this location, there is a greater chance that there would not be long-term permanent neighbors (either homeowners or long-term tenants) residing on the property, which could result in community instability because STRs introduce high turnover of people who are unknown to the neighbors or could leave a house vacant for periods of time while the home is not being rented as a STR.

Additionally, at this location, allowing whole home rentals, where it is not the operator's primary residence decreases the housing stock available for long-term rentals and decreases the number of homes available for owner-occupied homeownership. While, some applicants may not consider themselves investors who are purchasing multiple homes to operate STRs, this home could be sold to an investor and the SUP and associated conditions would convey.

Staff also believes that without a condition that the operator be present during the lodging period, and thus no on-site accountability, that there is a greater chance of nuisance activities occurring on the property and negatively impacting neighbors.

Given the size and nature of the request, 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 there is desire to approve of the applicant's request, staff recommends the following conditions be placed on the SUP:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than six STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to a single-family or single group of no more than 13 individuals.
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 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 driveway or other areas on the property.
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 six. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #3 limits the total number of STR guests to not more than 13. 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 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 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 six accommodation spaces within the dwelling for STR, the property would be required to provide six 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 #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 applicant has 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.

Chair Way asked if there were any questions for staff.

Commissioner Whitten asked if there were eight letters in opposition and Ms. Banks confirmed that there were.

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

J.C. DePoy, Trustee for the J&K Trust, came forward to speak to his request. He explained that he is one of the owners of the J&K Trust, along with his children, his sisters, and their children. He provided the trust documents and a copy of the most recent mortgage statement for the house to the Commissioners as evidence of his personal stake in the property. Mr. DePoy explained the history of the neighborhood from the prior use of the property as a dairy farm through its subsequent developments, many of which involved his father as one of the developers. He has lived there since he was a child and still lives in the neighborhood, and he is committed to the neighborhood. He stated that his property is close to a collector street and does not believe that the STR will increase traffic in the neighborhood.

Mr. DePoy asked for staff to define “nuisance.”

Ms. Banks responded saying that a nuisance can be noise, numbers of individuals, loud music or parties, trash, not keeping up the property, etc.

Mr. DePoy said that he would like to offer two conditions. One is that his son can move into the home and use it as his primary residence. The other one is a condition that if they sell the house the SUP is terminated.

Mr. Fletcher said that is a condition that the City cannot legally accept. A sunset clause is a bit different. SUPs cannot be nullified by the property owner. A sunset clause is a time limit for the SUP.

Mr. DePoy said that he would offer a condition of a sunset clause of ten years.

Mr. Fletcher said that it cannot be based on the desires of staff. If you want to offer a sunset clause, that is something that you have to make part of your application.

Mr. DePoy said that he wants to make a ten-year sunset clause condition.

Commissioner Ford-Byrd asked when his son would be moving in.

Mr. DePoy said that he has started to move in. By right, we intend to furnish the home, rent it through the hospital and universities, to doctors who stay three or four months. We have started to move stuff in there.

Commissioner Finks asked why it was not on the application that the operator would be on-site?

Mr. DePoy said that he did not understand that it was a concern.

Commissioner Finks asked if Mr. DePoy would have any objections to amending the conditions to add that it has to be the operator's primary residence. In other words, conditions #1 and #2 that we have been talking about tonight.

Mr. DePoy asked for clarification regarding conditions #1 and #2.

Commissioner Finnegan read the standard conditions.

Mr. DePoy agreed to adding conditions #1 and #2. My son is an owner of the house and would use it as his primary residence.

Chair Way asked if anyone else would like to speak to the request.

Faye Morris, 891 Blue Ridge Drive, came forward to speak in opposition to the request. Her home is a four-bedroom home, zoned R-1 in a diverse, close-knit neighborhood. She opposes the request due to concerns regarding increased traffic, trash, the character of the neighborhood, and density.

Commissioner Finnegan asked, hypothetically, if a family were to purchase the house and apply for a SUP to operate an Airbnb in one or two bedrooms would you have an objection to that, as well?

Ms. Morris said that it depends on how many people. If you are looking at thirteen versus the one that is actually physically living in there. If the son owns it and physically lives there, it is different from owning and being a part of it and only being a quarter of a mile away.

Chair Way 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 Whitten said that Mr. DePoy made a good point about how neighborhoods can change because of things that happen that you think will be good things and then turn out not so well. I think he made his own argument against this SUP.

Commissioner Finks said that he grew up in that neighborhood. The street changed from a cul-de-sac to when Madison Manor was put in. The traffic exponentially changed to the point where we were awoken to car wrecks in our front yard. Making changes to neighborhoods changes the character of the street. We went from having a street that we could play in to being afraid to walk. Blue Ridge Drive is a very busy road, but I do not think that is an argument to approve or add to it.

Commissioner Finnegan said that his primary concern is with the thirteen individuals.

Chair Way said that, qualitatively as well, this is a single-family neighborhood.

Commissioner Whitten said that we have multiple neighbors with great concern.

Commissioner Finnegan said that the applicant said two things that he would like to make note of. One was that doctors might want to rent this for three months at a time. If this is a primary residence and they are not there during that time, then that is a concern.

Commissioner Finks asked, with the possible addition of more conditions, such as conditions #1 and #2, which we have discussed, and the sunset clause, would that change the recommendation of staff.

Mr. Fletcher said it would be difficult to give an on the spot response.

Ms. Dang said that, except for the sunset clause, the conditions would be exactly the same as Smith Avenue where we recommended denial.

Mr. Fletcher said that as City Council begins to make their decisions, as they begin to set precedent and policy, we have to take a step back and recognize what their decisions mean for the neighborhoods in the City and what we are doing in our community. You might begin to see differences of opinion from staff as the STRs are approved. Was Smith Avenue the same situation?

Ms. Dang said that at the time we discussed Smith Avenue, staff was focused more on location. We did not assess the number of guests.

Commissioner Colman said that City Council is agreeing with our analysis and going along with it. We are adjusting our opinions and we should convey that to City Council.

Commissioner Ford-Byrd said that this is currently my neighborhood and I travel Blue Ridge Drive several times a day. I know that cars have trouble getting out of their driveways, as they are backing out into the street. There is already a problem with traffic on that road. I do not see a household with thirteen people operating, especially because the road is so busy and getting to the point that it is dangerous.

Commissioner Finnegan said that he would like to add to his earlier comment about the conditions and the operator living on-site. We denied a couple of STRs last month such as Shenandoah Avenue. If it becomes a condition where people are saying, "OK, I'll change my primary residence to that address," that is different from someone who has lived in the house for 30 years and we want to rent a room. Those things are fundamentally different. I will not be voting in favor.

Commissioner Whitten said that another difference between Smith Avenue and this request is that this one is zoned R-1. It is a single-family home. This is what we say, as a City, is our low-density neighborhood.

Mr. Fletcher said that the Smith Avenue site is zoned R-2, but their private covenants do not allow further subdivisions. It is similar to R-1.

Ms. Banks said that their covenants restrict duplexes, so it is just single-family homes.

Commissioner Finnegan said that his primary motivating factor is the email he received from Scott Rogers this morning. He says that this is some of the lowest home sales that we have seen, the lowest houses available. Staff pointed out about the availability of housing.

Commissioner Finnegan made a motion to recommend denial of the request.

Commissioner Ford-Byrd seconded the motion.

All members voted in favor of recommending denial of the SUP. The recommendation will move forward to City Council on August 13, 2019.

***Consider a request from Elizabeth and Michael Goertzen for a special use permit to allow for a short-term rental at 990 Summit Avenue.***

Chair Way read the request and asked staff to review.

Ms. Dang 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, zoned R-2
- North: Single-family detached dwelling, zoned R-2
- East: Single-family detached dwelling and undeveloped parcel, zoned R-2
- South: Undeveloped parcel, zoned R-2
- West: Single-family detached dwelling, zoned R-2

The applicant is requesting approval of a short-term rental (STR) operation at 990 Summit Avenue. The applicant desires to rent for STR two accommodation spaces. (“Accommodation space” is used here to mean 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 six STR guests. The applicants describe that the property is their primary residence and that they would be present on the property during the lodging period.

The property is located in the northwestern section of the City about 0.7-miles from the nearest arterial or collector street (Chicago Avenue and Mt. Clinton Pike) and 0.1-miles from the end of Summit Avenue, which ends in a cul-de-sac. Staff understands that Summit Avenue receives pedestrian, bicycle, and vehicular traffic from visitors who are not relatives or friends of neighbors on the street who visit this street for the views and because there is relatively low volumes of traffic the street is comfortable to walk and bicycle on.

Generally, when someone purchases a home in a residentially zoned neighborhood, there is a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential environment is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Approving one or more STRs within neighborhoods could result in community instability because STRs introduce high turnover of people who are unknown to the neighbors.

STRs should not negatively impact a community, an individual’s quality of life, or an individual’s often biggest investment: their home and property. As has been stated in two previous staff reports for STRs on this street, given the location of the property within this residential area of the City and the nature of the request, staff believes a business operation of this nature should not be promoted at this location and further believes that a STR at this location could have adverse effects on other residents in the neighborhood.

However, to date, Planning Commission has recommended in favor of and City Council approved the STR SUP for 981 Summit Avenue, and Planning Commission has recommended in favor of a STR at 957 Summit Avenue. City Council took action on the 957 Summit Avenue STR SUP request on July 9, 2019, the day before the subject request is being considered by Planning Commission. With City Council’s approval of the request for 957 Summit Avenue on July 9, staff believes that a precedence is established that the allowance for STRs along this street is desirable and acceptable and that such a use in this location would not have an undue impact on or be

incompatible with other uses of land since nearby property owners were already given such permission. Therefore, staff would recommend approving the request at 990 Summit Avenue with the following conditions:

1. The site shall be the operator's primary residence and the STR shall occur within the operator's dwelling unit.
2. If the operator is not the property owner, then the 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 two STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to six 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. Additionally, the subject property is large enough to allow a duplex structure and this condition prevents any future second dwelling unit on the site from being rented as a "whole home" STR that was not previously vetted. 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 two. Condition #5 limits the total number of STR guests to not more than six. 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 structure 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 applicant has 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.

I would like to point out that condition #1 is slightly different from the other requests. This property is zoned R-2 and large enough to be converted to a duplex. Condition #1 prevents the operator from converting to a duplex and operating a whole home rental that has not been vetted through the SUP process.

Chair Way pointed out that the recommendations for approval for the other Summit Avenue requests were not unanimous. We had some discussion on those.

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

Elizabeth Goertzen and Michael Goertzen, 990 Summit Avenue, came forward to speak in support of their request. We are requesting a SUP for STR opportunities and would appreciate your considerations.

Commissioner Finnegan said that this is the third application for Summit Avenue. In your opinion, do you think that Summit Avenue can accommodate every house being a STR?

Mr. Goertzen said that there are 50 lots on Summit Avenue. There are well over 100 more on Smith Avenue and College Avenue that are already mixed-use. There are a number of people operating on Summit Avenue, far more than have applied. There has been virtually no impact to the street or to the neighborhood. We feel very good about it. We love our home. We love our neighborhood. We love our city very much. We would never put those things in jeopardy.

Commissioner Colman said that he likes the limit to six guests. That seems reasonable.

Mr. Goertzen said that it is rarely more than one car. It is often a family with two small children. It has a walkout basement with two private entrances and a central connecting stairway to our main residence. We permanently occupy the whole residence.

Mr. Fletcher said that 981 Summit Avenue was recommended for approval by Planning Commission on a 5-2 vote, with Commissioner Whitten and Chair Way voting in opposition. 957 Summit Avenue was recommended for approval by a 5-1 vote, with Commissioner Whitten voting in opposition.

Chair Way said that he remembered that there was a lot of discussion about it. We have talked about precedence setting, so I wanted to know what precedence we are setting.



Commissioner Colman said that even though City Council has moved forward and approved those, there is also some disagreement.

Chair Way 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 that is what he is struggling with. It has come up before. How many do we allow in a neighborhood?

Commissioner Colman said I do not know that we can rule on that basis.

Commissioner Ford-Byrd said that she is relying on condition #8 as we move forward, knowing that more applicants are coming forward in one area.

Commissioner Colman said that staff mentioned that some of the localities have a number limit.

Ms. Dang said that she is not aware of any in Virginia.

Commissioner Ford-Byrd said that it was a discussion last month while they were touring the neighborhoods.

Commissioner Finks asked if that is something the Planning Commission wants to consider, where if a street has too many STR, at some point we say only a certain amount of days for any STRs that come forward. If we cannot fairly say that a street cannot accommodate more STRs, once we determine that there are a certain number of STRs on a street, can we limit the number of days that they operate.

Ms. Banks said that she is not comfortable with that. Everyone should have the opportunity.

Commissioner Finnegan said that in Tulsa, Oklahoma they have put density restrictions on dollar stores. Is there a way to put a density restriction on STRs?

Commissioner Whitten said not in Virginia. That would have to come from the legislature.

Chair Way said that the solution is the Planning Commission getting responses from the neighbors. If twenty neighbors from Summit Avenue said that this is too much for the neighborhood, that they have too many, then that is evidence that we can use.

Commissioner Whitten said that the bigger question is, not what the neighbors think now, but what are the neighbors going to think twenty years from now. The ones that are making headlines are in cities where this has reached a critical mass. It is a big problem in a lot of places.

Mr. Russ said that we do have a handful of restrictions, for example, if you want to operate an adult store it has to be a certain distance away from a church or if a business is next to a residential area it has slightly different requirements for signage, among others. The first person to develop out of these lots will have more options than their neighbors will. It is something we can look into. For example, STRs have to be at least 100 yards apart, first come, first served.

Commissioner Finnegan said that options regarding density restrictions would be good information to have moving forward.

Commissioner Whitten said that it seems strange to her that we can develop zoning districts and determine what they should be, what they look like, with limitations and numbers, and yet when we thread the issue of STRs into the middle of any neighborhood, we throw that out the window. It is R-1, oh well, it is ok because it is a STR.

Chair Way said that we have not. If we look back at Summit Avenue, you and I voted against on this very basis. There is some judgment going on. This is a subjective thing, it is a judgment call. It is up to the Planning Commission to deliberate and think about what is going on and there are going to be differences of opinion. At some point, there is going to be a majority that feel that that neighborhood has reached a tipping point in our judgment. That judgment may not be scientifically correct, but it is a judgment.

Commissioner Whitten said that she hopes that judgment call is not when people start leaving our single-family or R-2 neighborhoods to go to the County as everybody likes to say. Everyone knows you can do whatever you want in the County.

Commissioner Colman said that for each zoning district we have a number of how many unrelated people can be in a place. We are not applying that here, in these cases. We are saying a certain number of people can stay, but we are not saying that they have to be related. The applicant letter may say that the guests are going to be families, but we are not placing that restriction. It could be anyone. It could be thirteen different people.

Chair Way said that is the problem with the single-family zones. In retrospect, it might have been interesting to consider restricting STRs to certain zoning categories and not others.

Commissioner Ford-Byrd said that if it is twenty years later and the neighborhood has changed, condition #8 still is in effect. If neighbors do start complaining, it could be revoked.

Commissioner Finks said that at the last meeting there were concerns with condition #8 and its ability to be applied.

Commissioner Whitten said that our attorney has concerns about the ability to revoke STRs. It is not as simple as one might think. It would involve litigation. It would be expensive.

Commissioner Ford-Byrd asked, if the revocation of a SUP is not as easy as we are saying, can more restrictions be placed?

Chair Way said that the condition reads “which could lead to the need for additional conditions, restrictions.” Yes, there is that potential. Rather than revoke it completely, you can add more conditions.

Mr. Fletcher said that this condition has been placed on those where there are some lingering concerns. This shows up in other SUP conditions. I cannot tell you that it is easy or not easy because we have not had a situation where a SUP has become a nuisance to a point that the Planning Commission or City Council has asked for staff to bring the application back to a review process.

Commissioner Colman made a motion to recommend approval of the SUP, with the conditions as stated.

Commissioner Finks seconded the motion.

Chair Way called for a roll call vote on the motion.

Commissioner Whitten: No

Commissioner Ford-Byrd: Aye

Commissioner Finnegan: Aye

Commissioner Finks: Aye  
Commissioner Colman: Aye  
Chair Way: No

The motion to recommend approval, with conditions, passed (4-2). The recommendation will move forward to City Council on August 13, 2019. It is my hope that the discussion and its complexity is precedent setting, and that our caution is precedent setting, as well.

Commissioner Whitten asked Chair Way if you are comfortable that we have had enough discussion for the reason of our no vote, because I am.

Chair Way answered, yes.

***Consider a request from Jonathan and Kaitlin Ernest for a special use permit to allow for a short-term rental at 1934 Park Road.***

Chair Way read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site as Medium Density Residential. These areas have been developed or are planned for development of a variety of housing types such as single-family detached, single-family attached (duplexes and townhomes), and in special circumstances, multi-family dwellings (apartments). Depending on the specific site characteristics, densities in these areas should be around 15 dwelling units per acre. Non-residential uses may also be appropriate.

The following land uses are located on and adjacent to the property:

- Site: Detached single-family dwelling, zoned R-3
- North: Townhomes, zoned R-3 and property within Rockingham County, zoned A-2
- East: Townhomes and detached single-family dwelling, zoned R-3
- South: Detached single-family dwellings, zoned R-3
- West: Detached single-family dwelling, zoned R-3 and property within Rockingham County, zoned A-2

The applicants are requesting approval of a short-term (STR) operation at 1934 Park Road, which is a cul-de-sac street located in the northern portion of the City. The property is approximately 0.5-miles from: Harmony Square, a shopping center that fronts on Virginia Avenue; Park View Mennonite Church; and Virginia Mennonite Retirement Community. Additionally, Eastern Mennonite University is within 0.7-miles of the site.

The applicants describe that the property is their primary residence and they desire to rent for STR three accommodation spaces in the basement of their home. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant explained to staff that the basement area contains a separate bedroom and a common area that is partitioned into two separate spaces. The accommodation spaces could accommodate two guests in each space for a total of up to six STR guests.

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. 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 the operator's primary residence and the STR shall occur within the operator's dwelling unit.
2. If the operator is not the property owner, then the 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 three STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to six.
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. Additionally, the subject property is large enough to allow a duplex structure or multi-family structure and this condition prevents any future second dwelling unit on the site from being rented as a "whole home" STR that was not previously vetted. 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 three. Condition #5 limits the total number of STR guests to not more than six. 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.

Given the nature of the request, location of the property, and staff's 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.

Staff recommends approval of the special use permit request with the suggested conditions.

Chair Way asked if there any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request. The applicant not being present, he 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.

Chair Way asked if there were any other submissions, letters, or comments regarding the request. Staff responded that there were not.

Commissioner Whitten asked if staff was notified that they would not be present.

Ms. Banks replied that she did hear from the applicants, today, and they informed her that they would not be present.

Chair Way said that while we do not require that applicants be present, if we did want to discuss the conditions or ask questions, we cannot do so. There is that technical reason, as well as a courtesy reason to be there.

Commissioner Finks said that there is always the option to table the request so that the applicant can come before this body to answer questions.

Mr. Fletcher said that we do not know why they are not here.

Ms. Dang said that if the applicant has any concerns regarding Planning Commission's vote, they would have the ability to address it before City Council.

Commissioner Finnegan said that in the absence of any letters in support or against, it is hard to know anything about the request other than the staff report, which was thorough.

Commissioner Finks made a motion to recommend approval of the SUP, with conditions, as stated.

Commissioner Finnegan seconded the motion.

Chair Way asked if it was possible for commissioners to abstain, or do they have to vote.

Mr. Fletcher said that if you abstain, you have to give a reason to City Council.

Chair Way said that he is interested in asking the applicant how they will operate. They write some things in their letter, but I have a few more questions.

Ms. Banks said that she met with the applicants and would answer some questions on their behalf.

Ms. Dang asked why it matters what the applicant says in their letter regarding their intent, if the conditions are going to be what dictate what they are allowed or not allowed to do.

Chair Way said that what they are doing is the thing that we are giving them permission to do.

Mr. Fletcher asked are you saying that, regardless of the applicant's wishes, the Planning Commission can make conditions on them, and they either like them or they do not. They have to comply with them. They might not like your conditions, but if they wish to operate it and City Council adopts it, they have to live with it.

Ms. Dang said that if you asked your question, I might better understand what your concern is. Why more specificity about their operation, than what they offered? What is your question?

Chair Way said that one question is to know if they will be present during the accommodation period.

Ms. Banks said I do not think that generally they will be present the whole time, based on conversations with them.

Commissioner Whitten said that is a question for them to answer.

Commissioner Colman said that they are not present here to answer it.

Chair Way said that he has spoken with every applicant regarding the SUP to get a sense of the operation. I understand that it is not a condition, necessarily, but it could prompt a condition change based if the discussion raises concerns about issues that we are less comfortable about or that we feel is a problem.

Commissioner Finks said that we have discussed all of these issues last month. I feel comfortable in these instances in which they are the owner and it is their primary residence. What sort of extra conditions would you consider if an applicant said that they do not plan to be present?

Chair Way said that we may ask if six is the right number of guests if they are not going to be around. Perhaps four may be a more comfortable number. If there is a group or a single family rather than individuals. What is the nature, the make up of the actual property? I am not saying that there are a whole bunch of problems that I have with this, but I do feel that they should come here and speak to this. I do have these questions and I have asked everyone else. It may be unfair, if I am asking other people these questions, which may not necessarily lead to different conditions, but have certainly led to all sorts of conversations.

Commissioner Finnegan said that it is interesting that deciding the case in the absence of the applicant is what is going to happen when these properties convey. Someone new is going to take it over and we are not going to have the opportunity to question them regarding how they are going to use it and what their understanding is.

Commissioner Whitten said that it is even scarier.

Commissioner Colman said that is more reason to vet this because we want to make sure that it is set right.

Commissioner Finks said that that is my point. If we are going to change conditions based on what the applicant says...

Commissioner Whitten and Chair Way said that we do.

Commissioner Finks continued saying that there has been a basic structure with which we have been working.

Chair Way said that he would like to make a point that he would like for more information and is not comfortable making a vote without some of the other information that we have received from everyone else. It is not black and white.

Chair Way said that we do have a motion and a second and called for a roll call vote.

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: No

Commissioner Whitten: No

Commissioner Colman: No

Commissioner Finks: Aye

Chair Way: No

The motion to recommend approval failed.

Commissioner Whitten made a motion to recommend denial.

Commissioner Colman seconded the motion.

Chair Way called for a roll call vote on the motion.

Commissioner Colman: Aye

Commissioner Finks: No

Commissioner Finnegan: No

Commissioner Ford-Byrd: Aye

Commissioner Whitten: Aye

Chair Way: Aye

The motion to recommend denial passed (4-2). The recommendation will move forward to City Council on August 13, 2019.

Ms. Dang asked if all those voting to deny the request had the same reasoning as Chair Way had expressed or are there other reasons that City Council should consider.

Commissioner Whitten said that she would like to always hear from the applicant or more representation than a letter in a packet or some reason why they could not be present. If we can show up and stay, then they should be able to be here or send a representative.

Commissioner Colman said that as we are looking at these SUPs and discuss them, we need them to be here.

Commissioner Ford-Byrd said that she does not want to set the standard that these are submitted, and people not show up in the future.

Chair Way said that it is part of the precedent building that we have discussed.

Commissioner Finks said that if that is the consensus, should we ask staff that if the applicant is not able to be present or send more than an application, then their application is automatically denied? I am not sure about the legality of that being done, but is that the consensus?

Commissioner Whitten said, yes, they could have asked to be tabled.

Mr. Fletcher said that he would like to talk with the City Attorney's office about that.

Mr. Russ said that he would almost prefer that we never hear from the applicant and make the decision solely based on land use.

Chair Way said that he has questions about how they are using the land. That is why I want them to be here. I think there is a good standard that we are talking about regarding people being here to answer those questions.

Commissioner Whitten said that there is a reason for that.

Mr. Fletcher said that there is nothing in the State Code or any precedence in case law, that I am aware of, where the applicant must be present during those hearings.

Ms. Dang agreed. The point of hearing or not hearing from the applicant is that we should be establishing the conditions based on the use that we expect to see there regardless of what the applicant tells us.

Commissioner Colman said that we changed some of the conditions as we discussed things with the applicants. Is that not why we are here?

Ms. Dang said that it makes her uncomfortable.

Chair Way asked what the point of having a public hearing is, if they are not going to speak with the applicant.

Mr. Russ said that the point of the public hearing is to get factual information from neighbors that we may not be able to get otherwise. Land use decisions should not be based on unspecified anger or angst from neighbors.

Chair Way said that he had factual requests that he wanted from the applicant regarding the nature of their parking arrangements, for instance.

Mr. Fletcher said if you believe the conditions are important for land use matters, then the Planning Commission makes those statements and the applicant may not agree with them, but if they want to operate the SUP, then they have to follow those conditions.

Commissioner Whitten said that is not how this has been working.

Mr. Fletcher said that the STR regulations are very new. In years prior, I have not experienced the conversation of having the applicant express how they feel about the conditions.

Commissioner Whitten said that if you ask someone if they want to comply with a rule, they are going to say no.

Mr. Russ said that they might say yes because they think that they have to say yes. Sometimes it seems like we are imposing conditions because they say yes and not because we think that there is some actual tangible benefit from the condition.



Commissioner Colman said that we changed the first two conditions that we used, the owner-occupied and the presence of the renter, based on our discussions. Those conditions were different. We changed them based on our discussions with the applicants. We did change those things based on our interaction with the applicants.

Mr. Fletcher said that if there are questions about procedural matters or your responsibilities, please reach out to staff. They can set up one-on-one discussions or set up presentations for the group.

Commissioner Colman asked if the Planning Commission is not being procedurally correct.

Mr. Fletcher said that it is about the issue being so new.

Chair Way said that he is very uncomfortable about this SUP. I believe it is an inappropriate neighborhood for it to happen and I do not like this site. That is why I wanted to talk through it, to ask the applicant to convince me about why this might make sense there. I completely understand that this is not necessarily going to change too many technical things, but it is going to get us, as subjective human beings, to a better understanding of the neighborhood. I need for something to get me to vote for it.

Commissioner Whitten said that she thinks that if someone thinks that it is important enough to pay their money and ask for a SUP, it is not too much to expect that they show up and be asked a question. That is not unreasonable.

Commissioner Finks said that if we are not requiring their presence and we are not telling them that it is a requirement, up front, how can they know that?

Chair Way said that when I was making my pitch at the start, it was very much on the basis of having questions for the applicants. I am not trying to set a requirement that people come here. We have had other things in the past where the applicant has not been here, and we have not liked it, but we have done it. There are particulars to the case here.

***Consider a request from Daryl and Carrie Bert for a special use permit to allow for a short-term rental at 1230 Alpine Drive.***

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site 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, zoned R-2
- North: Single-family detached dwelling, zoned R-3
- East: Single-family detached dwelling, zoned R-2
- South: Single-family detached dwelling, zoned R-2

West: Single-family detached dwelling, zoned R-2

The applicants are requesting approval of a short-term (STR) operation at 1230 Alpine Drive. The property is located in the northwest section of the City about 0.5-miles from Buttonwood Court, where Harmony Square is located, which is a shopping center that fronts on Virginia Avenue. The property is also located less than 0.25-miles from Eastern Mennonite University's campus and about 250-feet from Park View Mennonite Church.

The applicant desires to rent one accommodation space. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The accommodation space would accommodate up to three STR guests. The applicants describe that the property is their primary residence and that they would be present on the property during the lodging period.

If the request is approved, staff recommends the following conditions be placed on the SUP:

1. The site shall be the operator's primary residence and the STR shall occur within the operator's dwelling unit.
2. If the operator is not the property owner, then the 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 on the property.
5. The number of STR guests at one time shall be limited to three 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. Additionally, the subject property is large enough to allow a duplex structure and this condition prevents any future second dwelling unit on the site from being rented as a "whole home" STR that was not previously vetted. Condition #3 helps to protect neighbors from nuisance arising from absentee operators. Along with condition #1, for property owners operating the STR for whom this property is their primary residence, 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 #4 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 #5 limits the total number of guest rooms and accommodation spaces on the entire property to one. Condition #6 limits the total number of STR guests to not more than three. Condition #7 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 #8 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 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 space required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling unit. There are two driveways serving this property. It appears that all the required off-street parking could be provided on the site in the existing driveways. Staff believes the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveways or on other areas of the property without delineating parking spaces.

Condition #9 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.

Given the nature of the request, location of the property, and staff’s 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.

Staff recommends approval of the special use permit request with the suggested conditions.

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

Daryl Bert, 1230 Alpine Drive, came forward to speak to the request. I am the owner, primary resident and operator of the STR. There is one amendment that I will make to the letter that I submitted. It stipulated that we intend to be present at all times. We will be there most of the time, but there may be the occasional day that we are not there. We agree to the remaining conditions.

Chair Way asked that the applicant speak to the parking situation.

Mr. Bert said that there are two driveways. We use one for our primary residence. The other driveway is available for the STR.

Chair Way 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 Colman said that this is down the street from another STR that we recommended for approval, last month. It is a block and a half away from it.

Commissioner Finnegan said there would be the possibility of the applicant not being present at all times. That is why condition #2 is written the way it is. It is understood that there might be times that the applicant is not there.

Commissioner Whitten said that the operator should be accessible.

Commissioner Finks made a motion to recommend approval of the SUP with the suggested conditions.

Commissioner Finnegan seconded the motion.

All members voted to recommend approval of the SUP (6-0), with conditions, as stated. The recommendation will move forward to City Council on August 13, 2019.

***Consider a request from Greendale LLC to preliminarily subdivide a +/- 5.8 acre parcel into nine single-family home parcels and one common area parcel at a site addressed as 1205 Greendale Road.***

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site as Low Density Mixed Residential. These areas have been developed or are planned for residential development containing a mix of large and small-lot single-family detached dwellings, where commercial and service uses might be finely mixed within residential uses or located nearby along collector and arterial streets. Duplexes may be appropriate in certain circumstances. Mixed use buildings containing residential and non-residential uses might be appropriate with residential dwelling units limited to one or two dwelling units per building. Attractive green and open spaces are important for these areas and should be incorporated. Open space development (also known as cluster development) is encouraged, which provides for grouping of residential properties on a development site to use the extra land for open space or recreation. The intent is to have innovative residential building types and allow creative subdivision designs that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and the protection of environmental resources or sensitive areas (i.e. trees and floodplains). Residential building types such as zero lot-line development should be considered as well as other new single-family residential forms. The gross density of development in these areas should be around 7 dwelling units per acre and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

The following land uses are located on and adjacent to the property:

- Site: Undeveloped property, zoned R-2C
- North: Single-family detached dwellings, zoned R-2C
- East: Single-family detached dwellings, zoned R-1
- South: Undeveloped property in Rockingham County, zoned PSF
- West: Undeveloped property in Rockingham County, zoned PSF

The Crossings Subdivision is located at the southeastern edge of the City, and straddles Greendale Road near its intersections with Dorval Road and Ramblewood Road. The portion of the subdivision within the City was rezoned to R-2C, Residential District Conditional in June 2007, with a proffer that there will be no more than 52 single-family detached dwelling lots within the City. Currently, within the Crossings, Phase 1, which is located entirely within the City, there are 35 lots. The Crossings, Phase 2 proposes 9 additional single-family lots in the City. As part of the 2007 rezoning, staff provided Planning Commission and City Council a site layout of the overall design of the subdivision, which proposed a total of 91 single-family lots within the City and County (Exhibit A).

In October 2018, City Council approved a public utility application to provide water and sanitary sewer services to the portion of the subdivision within Rockingham County. Later, in January 2019, the portion of the subdivision within Rockingham County was rezoned from R-3C, General Residential District Conditional to PSF (Planned Single Family). The approval authorized an increase of lots within the county from 32 to 40 and approved an accompanying Master Plan depicting 30.9% of gross area reserved as open space.

The project's engineered comprehensive site plans, stormwater management plan, and erosion and sediment control plans are all currently under review by City and County staff.

The applicant is requesting to preliminarily subdivide a +/- 5.28 acre parcel into nine single-family home parcels and one common area parcel and to preliminarily dedicate public street right-of-way for streets that will serve this residential development. Additionally, the applicant is requesting a variance from the Subdivision Ordinance Sections 10-2-61 and 10-2-67 to not construct about 130 linear feet of sidewalk along the frontage of two existing parcels.

When the existing portion of Dorval Road was constructed, the City's Design and Construction Standards Manual (DCSM) required sidewalks only on one side of the street. Dorval Road was constructed with sidewalks on the south side and with a temporary cul-de-sac ending at parcels 97-L-7 and 8. When Dorval Road is extended, the temporary cul-de-sac would be removed, and a public street constructed to meet current City standards would be required unless variances are granted.

Since August 2009, the City has required sidewalks to be constructed on both sides of newly constructed streets. The extension of Dorval Road would require sidewalks along the north side of Dorval Road in front of City parcels 9-L-7 and 8. However, neither the existing City portion or the County portion will have sidewalks on the north side of Dorval Road. The Planned Single Family (PSF) zoning district in Rockingham County is classified as a "suburban area type" within the County zoning ordinance and would only require the construction of sidewalks on one side. The applicant plans to construct sidewalks in Rockingham County on the south side of Dorval Road to match the City portion.

Given the relatively short length of sidewalk (+/- 130 linear feet) along a local residential street and that new sidewalks along other portions of the northern side of Dorval Road are unlikely to be constructed, staff supports not requiring the subdivider to build sidewalks along the frontage of parcels 9-L-7 and 8.

Aside from the variance request to not construct +/- 130 linear feet of sidewalk, the development meets all other requirements of the Subdivision and Zoning Ordinances.

Prior to final platting, the applicant is responsible for constructing all public infrastructure improvements, including construction of new streets and extending the public water and sewer lines to serve all City parcels, or to submit a form of surety to the City to cover the costs of such work. The applicant plans to construct all of Section 2, including City and County areas, at one time; no phasing is proposed.

Chair Way asked if there were any questions for staff.

Commissioner Finks said that it appeared that the covenants, Use Restrictions, Article 6, Section 6.1, would not allow STRs. Did I read that correctly?

Section 6.1 reads: "No Lot shall be used except for residential purposes, or for builder's construction sheds and sales and administrative offices during the construction and sales period, and not more than (1) principal building shall be permitted on any residential Lot shown on said Plat, and no such Lot shall be subdivided. The Declarant shall not be subject to the restriction on resubdivision set forth herein."

Mr. Russ said that, relatively close to here, another resort type community had this restriction in their covenants. The Supreme Court said that a STR as far as HOA terms and covenants go, just because a residential use is for profit does not mean it is no longer residential. A person sleeping in a house is a residential use, no matter how many days they are sleeping there.

Mr. Fletcher asked if there was another interpretation that said that covenants could specifically say there shall be no STR?

Mr. Russ said that covenants can dictate how long rentals have to be.

Mr. Fletcher said that this particular covenants do not specify STRs.

Commissioner Finks said that we could have a neighborhood where on one side of the line it is by-right, but the next house over requires a SUP.

Mr. Fletcher said that it is the same way with the school system. Your next-door neighbor may have to go to Harrisonburg City School and the other to the County.

Commissioner Finnegan asked if the water hookup had already been approved.

Ms. Dang said yes.

Commissioner Finnegan asked if there was any precedent for developers or property owners signing an agreement stating that they may not object to any future annexation where water hookups from the City to the County happen? The City provides water to areas in the County in exchange for an agreement that the area not object in the event the City annexes that area.

Mr. Russ said that it goes back to when annexation was allowed. There were urban areas developing right outside City limits. They eventually would need to become a part of the City. When the City allowed them to connect the utilities, they required an agreement where the residents could not object in court if they annexed the subdivision.

Commissioner Finnegan asked if that is no longer relevant since the moratorium on annexation has been in place since 1984.

Mr. Russ said that he assumes that the City has not been including those requirements.

Commissioner Finnegan said that it might not be relevant to the current matter, but it might become relevant for this subdivision or one like it if the moratorium is lifted.

Mr. Russ said that a private property owner in the County has the right to take the City to court if the City tries to annex the property, and argue that it is inappropriate for the City to annex that portion of the County. The individual has the right to make the argument that that land belongs in the County, however if you need water from the City, the City may require that the property owners waive their right to challenge the attempt to annex.

Commissioner Finnegan said that he understands that there is currently a moratorium on annexation. If that moratorium were ever lifted, is that something that we would want to include?

No response was offered to Commissioner Finnegan's question.

Chair Way said that he would prefer to encourage sidewalks wherever they may exist.

Commissioner Whitten said that it is unusual that the City not require a sidewalk.

Commissioner Whitten made a motion to recommend approval of the subdivision, with the variance, as requested.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the subdivision (6-0), with the variance. The recommendation will move forward to City Council on August 13, 2019.

### **Unfinished Business**

None.

### **Public Comment**

None.

### **Report of Secretary and Committees**

#### ***Proactive Code Enforcement***

For the month of June 2019, the proactive code enforcement program inspected the Pleasant Hill section of the City. Violations related to junk and inoperable vehicles were found. The proactive zoning program for July 2019 will be directed toward the North Liberty section of the City.

#### ***Rockingham County Planning Commission Liaison Report***

Liaisons for the remainder of the year:

August 6	Commissioner Ford-Byrd
September 3	Chair Way
October 1	Commissioner Colman
November 6	Commissioner Ford-Byrd
December 3	Commissioner Finnegan

Commissioner Colman was unable to attend the July Rockingham County Planning Commission meeting.

#### ***Board of Zoning Appeals Report***

None.

### ***City Council Report***

Mr. Fletcher said that City Council approved all items that came before them except for the STR on Nelson Drive, which was tabled. The STR request for Shenandoah Avenue was withdrawn.

Chair Way said there were interesting discussions regarding SUP sunset clauses.

Ms. Dang said that Wyndham Woods withdrew their application, as well.

### **Other Matters**

Ms. Dang said that there are four STR applications for next month's meeting.

Commissioner Finks asked if the Planning Commission wanted to discuss defining "operator."

Commissioner Finnegan said that there might be a way to use generic language that would cover an Airbnb operator, a hostel operator, etc.

Chair Way asked if other localities have this definition.

Ms. Dang said that she has not had the opportunity to research whether other localities have defined "operator."

Commissioner Finnegan asked how many other cities are regulating STR by SUP.

Ms. Dang said that Charlottesville distinguishes between homestays and bed and breakfasts. It is not by SUP. Both have by-rights but at different levels. New Market, Broadway, and Woodstock are using SUPs.

Mr. Russ said that more urban areas are allowing STRs by-right.

Ms. Dang said that if we made them by-right, we would have to be very specific as to what those by-right abilities are. That is what the group was struggling to come to a consensus on. Would there be limits on the number of people, the number of nights, or by zoning district. I heard some discussion about how difficult it might be because there are different uses in different zoning districts that are non-conforming. It sounds to me like location does matter to some people. If we are going to reevaluate it, there will be a lot of work to put into it.

Commissioner Finks asked if there was a consensus that there is not a desire to define "operator."

Commissioner Colman said that his concern is not with the types of STR we have been dealing with, but with bed and breakfasts, hostels or other STR of that nature. It would be different for those.

Chair Way asked if it is self-defined. If it is a bed and breakfast, there is language regarding the operation of the bed and breakfast. It defines itself.

Ms. Dang said that the old bed and breakfast definition included ten guest rooms. The operator had to be on-site and you could serve meals. Again, that is a SUP that is considered on a case by case basis and would have to be approved. Staff and Planning Commission would recommend conditions to City Council on the particular proposal. I do not see it different if someone were to propose a bed and breakfast under the STR regulations. We would go through the same thought process regarding the conditions that would be appropriate for that application. Whatever the operator is would be limited by the conditions that we establish.



Mr. Fletcher said that these are the same types of operations, transient lodging.

Commissioner Colman said that if a property investor said that they are starting a bed and breakfast, how will that be different from what we have right now.

Mr. Fletcher said that it is not. We had the recommendation tonight that we were comfortable with the request and believed that it was a potential location for a whole home rental.

Commissioner Colman asked are we still saying that we require that the operator live there.

Mr. Fletcher said that we could have. Since SUPs are very specific, the applicant and their desires of how they want to operate become very crucial to the reviews.

Commissioner Whitten said that is the reason that they should appear here. That is the perfect example of why that case unraveled before our eyes. The owner of the property did not know what the purchaser of the property was going to do. The neighbor was told one thing but not the other. That is why you need all the players here.

Commissioner Colman asked, in this case which we recommended for denial, what would make it not a bed and breakfast? It could be a bed and breakfast.

Mr. Fletcher said that someone could offer breakfast if they wanted to do so. The applicant being present is not a requirement. We just reviewed a preliminary plat and the applicant was not present.

Chair Way said that it was not a public hearing.

Mr. Fletcher said that the applicant was still not present.

Commissioner Finks said that there have been situations where we have a public hearing, such as a property in the County requesting a utility connection. There may be a public comment for that. Are we expecting scenarios where we are going to be asking the applicant questions that will change the nature of the application?

Commissioner Whitten said that we had some on Hawkins on that very topic, with regard to traffic. That was a hookup and there were questions.

Commissioner Colman said there are reasons for a public hearing.

Commissioner Finks said that what I am hearing from staff is that if we define "operator" too narrowly it may cause problems with bed and breakfasts and other scenarios. I would lean to defining an operator in a way that would be helpful for STR, but we would not be able to use that same definition for a bed and breakfast.

Commissioner Whitten asked what would you envision as that definition.

Commissioner Finks said that, according to our discussion at the site visit, the operator would be the name on the business license.

Commissioner Whitten said that the owner would be the person on the business license.

Commissioner Finks said that a renter could be that person, too.

Chair Way said that is what is covered by condition #2.

Commissioner Whitten said that in that case there was a co-operator. We were unsure about what that arrangement entailed.

Commissioner Finks said that is why I have a problem with it. If the owner of the property is on the business license, and the renter is the operator, you have a scenario where you have a renter who does not have a lot of stakes in the operation.

Commissioner Whitten said that those are relationships that you cannot really know.

Commissioner Finks said that if we make the operator the person on the business license, that would be the clearest way. Then you know that the person who is operating the Airbnb is the same person that got the business license. That would not be a problem for the majority of the ones that we have approved. It would become an issue for bed and breakfasts.

Chair Way said that perhaps the task is to think through whether there is a problem with identifying the operator as the person with the business license.

Commissioner Finks said that the issue would be, for example, a scenario that looks more like a bed and breakfast where there is not going to be someone living on site. We might approve something like that because it is more formally a business than a residential home. If we have clearly defined “operator” as the person on the business license, it would be difficult for them to operate if it has to be the person on the business license.

Ms. Dang said that there could be a scenario of a hostel, which could have one person there as an employee for three shifts during the day. That person does not own the business, so they would not be on the business license, but they are there as the accountable person.

Commissioner Finks said that defining operator could affect other elements outside of the Airbnb.

Ms. Dang said that she believes so. Staff will think about it and welcome emails from the Commissioners, but I do not feel the need to define it because it will hinder us further. I would focus more on the conditions that we recommend.

Chair Way suggested that everyone think about it, do some research, both staff and Commission and discuss it next time under Unfinished Business or Other Matters.

Commissioner Ford-Byrd asked for more clarification regarding the number of STRs on Summit Avenue to use as a reference when addressing requests in other areas in the future.

Chair Way asked if we should come up with a minimum number or figure out how many are in existence in the Summit Avenue neighborhood.

Commissioner Ford-Byrd said that our discussion during the tour last month drifted off when we discussed legal aspects. It affected how I was making decisions.

Mr. Fletcher asked if the request is for the number of STRs operating.

Commissioner Ford-Byrd said she is asking about how many can operate. Are we able to say there are enough in a particular neighborhood?

Commissioner Finnegan said that we discussed density restrictions.

Mr. Fletcher asked if the request is to know how many is too many or are you wanting to know how many may possibly come forward?

Commissioner Ford-Byrd said that she wants to know how many is too many. If we decide that a particular request is too many, are we legally able to say that to them?

## **Adjournment**

The meeting was adjourned at 11:12 p.m.