



# City of Harrisonburg

City Hall  
409 South Main Street  
Harrisonburg, VA 22801

## Master

File Number: ID 19-213

File ID: ID 19-213      Type: PH-Special Use Permit      Status: Agenda Ready

Version: 1      Agenda Section:      In Control: City Council

File Created: 06/28/2019

Subject:      Final Action:

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

### Internal Notes:

**Sponsors:**

**Enactment Date:**

**Attachments:** Staff Report SUP 168 Pleasant Hill Road (Short-Term Rental) (4 pages), Site Maps (2 pages), Application, applicant letter, and supporting documents (5 pages), Public Hearing notice, Surrounding property owners notice

**Enactment Number:**

**Contact:**

**Hearing Date:**

**Drafter:** thanh.dang@harrisonburgva.gov

**Effective Date:**

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Planning Commission	07/10/2019	recommended to full council	City Council	08/13/2019		Pass

**Action Text:** Commissioner Finnegan made a motion to recommend denial of this request. Commissioner Whitten seconded the motion. 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.

**Notes:** 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 he 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.

Yes: 6 Colman, Finnegan, Finks, Whitten, Way and Ford-Byrd

No: 0

Absent: 1 Romero

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