

MINUTES OF HARRISONBURG PLANNING COMMISSION
Work Session on Short-Term Rentals

December 12, 2019

The Harrisonburg Planning Commission held a special work session on Tuesday, December 12, 2019 at 3:00 p.m. in Room 237 of City Hall, 409 South Main Street.

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

Also present: Adam Fletcher, Director of Community Development; Thanh Dang, Assistant Director of Community Development; and Alison Banks, Senior Planner.

Chair Way said there was a quorum with all members in attendance.

Chair Way asked if there was anyone interested in speaking for public comment.

Wes Smallwood, 165 New York Avenue, referred to comments made previously by Councilman Baugh about paying attention to both petitioners requesting special use permits for short-term rentals and neighbors coming to speak against petitioners and referred to what occurred in the recent request in the Forest Hills Neighborhood. Mr. Smallwood said that three people had spoken about how his request will cause negative changes to their neighborhood. Mr. Smallwood said that he has made a positive change to the neighborhood. He believes that the comment Councilman Baugh made has been lost.

Chair Way asked staff to review the next agenda item and begin the discussion of short-term rental regulations.

Ms. Dang provided a brief summary of the decisions made at the October 29, 2019 work session and brought up a PowerPoint slide that summarized those decisions.

By Right Homestay	STR by SUP
	Minimum regulations for STR by SUP. Remember that during review/approval, conditions can be placed upon a STR SUP that are more restrictive.
Must be operator's primary residence.	Must be operator's primary residence.
If the operator is not the property owner, then the operator must be present during the lodging period.	If the operator is not the property owner, then the operator must be present during the lodging period.

Lodging periods limited to less than 30 consecutive nights.	Lodging periods limited to less than 30 consecutive nights.
May operate up to 90 nights/calendar per year.	No limit on number of nights that the STR can operate per year.
Maximum of 4 guests.	?
Allowed in all zoning districts in which residential uses are allowed, except apartments/multi-family.	?
No off-street parking requirements	One off-street parking for each accommodation spaces, unless conditioned otherwise
Annual registration - \$25/year	Annual registration - \$25/year

The question *Where can STRs be allowed to operate, and how many guests and accommodation spaces should be allowed?* will be the focus of today’s meeting.

Ms. Dang referred to the memorandum addressed to Planning Commissioners dated December 6, 2019, which referred to an email written by Ms. Dang to the Planning Commission dated November 1, 2019, which stated:

“I believe there was agreement to allow STRs with an approved SUP in all zoning districts in which residential uses are allowed, but that can continue to be explored. Unresolved is what the maximum number of guests in a STR (requires SUP approval) should be. Ideas discussed at the work session included:

1. To allow STRs with an approved SUP in all zoning districts in which residential uses are allowed, and to consider the maximum number of guests allowed at a time on a case-by-case basis.
2. ... to regulate the maximum number of guests allowed at a time based on the square footage of livable space within a dwelling. Livable space of single-family detached, townhomes, and duplex units on their own parcels can be found here in the Real Estate system: <https://www.harrisonburgva.gov/real-estate-info-system>. It should be acknowledged that if the livable space information is incorrect, owners can request the information be updated or appeal with the Real Estate Office. I am not sure yet how we would determine livable space for a duplex unit that shares a property with another duplex unit, or for apartments.
3. ... to regulate the maximum number of guests allowed at a time based on the number of bedrooms or accommodation spaces with a dwelling. A number of localities

- established a maximum of two adult guests per bedroom, and do not restrict the number of children allowed.
4. ... to regulate the maximum number of guests at a time based on the (long-term) occupancy regulations. In other words, if a family or up to four people are allowed for long-term occupancy, then a STR could be operated to allow the addition of a family or up to four people for STR. Please refer to Table 2 within the October 23 memorandum.
 5. ... to regulate the maximum number of guests based on zoning districts. In other words, a maximum number of guests could be established for each zoning district. Zoning information including an interactive web map of the zoning districts can be found here: <https://www.harrisonburgva.gov/zoning>.
 6. ... to regulate the maximum number of guests based on future land use (Land Use Guide of the Comprehensive Plan). In other words, a maximum number of guests could be established for each future land use designation. The Future Land Use Guide map and the Comprehensive Plan is available here: <https://www.harrisonburgva.gov/comprehensive-plan>.”

Ms. Dang said that staff continues to recommend that STRs by SUP should be allowed to operate in any zoning district in which residential uses are allowed, and that the maximum number of guests allowed at one time should be considered on a case by case basis. While staff believes that there should be the opportunity to determine on a case by case basis whether an operator should be required to maintain a STR property as their primary residence, staff is comfortable supporting Planning Commission’s recommendation to require that a STR property shall be an operator’s primary residence.

Ms. Dang said that the December 6th memorandum included comments received from Commissioner Whitten and Commissioner Finks and she asked the Commissioners if they could share their comments.

Commissioner Finks asked about bed and breakfasts and the group discussed whether bed and breakfasts should have their own regulations, separate from short-term rentals. There was discussion that the old special use permit for bed and breakfasts did not limit the number of people, unless conditioned by the special use permit, but did limit the number of guestrooms to 10. There was discussion that bed and breakfasts and short-term rentals/homestays are not mutually exclusive. Bed and breakfasts can also operate with varying numbers of bedrooms, and that both by right homestays (as proposed) and short-term rentals by special use permit can be marketed as bed and breakfasts.

Commissioner Finks said that he initially thought that evaluating the number of people based on the square footage of the home could be done, but then found that it is not workable.

Commissioner Whitten said short-term rentals still seem like a business, and not a home in a neighborhood. It is not about the number of rooms, the size of the yard, or the number of parking spaces. Public hearings are for the public to comment and the public should be listened to and not discounted. If neighbors do not want a short-term rental, then we should listen to them.

Commissioner Finnegan said we should not be judging applications on whether neighbors have issues with the applicant. Neighbors came to speak out against the short-term rental application on Paul Street, but did not come out to speak against the application on Myers Avenue. The properties are in very close proximity to each other. Additionally, the property and rights granted would also convey to future owners.

Commissioner Finks said he does not want to set a limit on the number of people as there could be a situation that exceeds a number of guests limited by the regulations. He supports leaving the number of guests open.

The group discussed whether they should consider staff's original approach of distances from a collector or arterial street. Mr. Fletcher said in the evaluation of earlier short-term rental special use permit applications, staff was attempting to give context of distances from transitional spaces that are typically found around major street corridors. Staff did not intend to establish a hard and fast rule for any specific distance such as $\frac{1}{4}$ or $\frac{1}{2}$ mile from a type of street and cautioned against doing so because neighborhoods and context vary throughout the City.

The group discussed whether they should consider a restriction that short-term rentals do not occur within a specified distance of an existing short-term rental. Ms. Dang said she discussed the idea with Wesley Russ, Assistant City Attorney, and was advised that the examples of distance restrictions, such as not wanting adult materials near schools, have a fairly obvious rationale. The idea proposed for short-term rentals seems more like an incrementalism concern that is not as obvious. If the Commissioners want to go in this direction, Mr. Russ advised that the Commission should clearly lay out the zoning purposes that it would advance to establish why it is not an irrational or arbitrary restriction.

Mr. Fletcher said that the Commissioners should ask themselves if they are comfortable with a first-come, first-served approach.

The group discussed whether there could be a trial period for operators to operate a by right homestay first, and then later apply for a short-term rental special use permit to have more guests. It was suggested as a way to establish "proof of concept" and to see if the operation was a nuisance. It was noted that the Forest Hills short-term rental special use permit, where the subject property had been illegally operating as a short-term rental, that was denied, had no indication of a prior nuisance.

The group discussed whether there should be guidelines established for how to evaluate the number of guests allowed in a short-term rental. The discussion continued that if guidelines or criteria was considered, then it should be considered as a regulation.

The group decided to not limit the number of guests within the short-term rental regulations, and to evaluate requests for short-term rental special use permits on a case by case basis.

Ms. Dang asked the group if short-term rentals should be restricted to certain locations in the City.

Mr. Finks said this should be evaluated on a case by case basis. There are R-1 properties where short-term rentals could make sense.

Mr. Finnegan said that not all R-1, R-2, and R-3 neighborhoods are the same.

Mr. Way asked if other special use permits have written guidelines. Ms. Dang responded that no special use permits have written guidelines¹; however, over time there may be general things that are commonly evaluated. For example, when considering a request for a major family day home, availability and safety of parking for drop off and pick up is often considered.

The group discussed whether there should be a public facing document that applicants could review to understand what would be considered. Staff noted that the city webpage for short-term rentals provides a list of things that applicants are encouraged to address in their letter, including but not limited to, whether or not the location of the short-term rental is the primary residence of the operator, how many accommodation spaces will be rented, the maximum number of lodgers, and where lodgers would park their vehicles.

The group decided to not prescribe specific locations where short-term rental special use permits can be applied for. Short-term rentals would be allowed in any zoning district where residential uses are allowed, and the special use permit request would be evaluated on a case by case basis.

Ms. Dang said staff has enough information to begin drafting amendments to the regulations. February or March 2020 would be the earliest that amendments would be presented to Planning Commission for a public hearing.

The meeting adjourned at 4:05 p.m.

¹ Editor's Note: While there are no written guidelines, there are built-in regulations for some special use permits, such as: in the B-1 and B-2 districts, approved manufacturing uses cannot employ more than 15 persons in a single shift; in several zoning districts, the required number of off-street parking spaces can be reduced provided an amount of open space equal to the amount of space that would have been used for the required number of vehicle parking spaces is left available for parking; and in the B-2 district, required side yard setbacks can be reduced along lot lines of adjoining lots or parcels zoned B-2 or M-1. Additionally, in the R-3 and R-5 districts the regulations describe a number of criteria that must be determined to be met by City Council to approve special use permits to allow multi-family dwellings.