



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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October 31, 2022

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

SUBJECT: *Consider a request from Robert E. Alford II and Havilah Alford for a special use permit to allow short-term rental at 375 Broad Street*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: October 12, 2022**

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher said 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: Duplex dwelling, zoned R-2
North: Single family detached dwelling, zoned R-2
East: Across Broad Street, single family detached dwellings, zoned R-2
South: Single family detached dwelling, zoned R-2
West: Across Community Street, 7-Eleven convenience store and Fire Station #4, zoned B-1

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (8) to allow for a short-term rental (STR) within one unit of a duplex on a property zoned R-2, Residential District. The parcel is +/- 6,123 square feet and is addressed at 375 Broad Street on the western side of the block between East Rock Street and East Gay Street. The property contains an unsubdivided duplex with one dwelling unit on the first floor and a second dwelling unit on the second floor. The rear of the property includes existing off-street parking spaces across the width of the property off of Community Street.

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the Zoning Ordinance. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time. The applicant is the property owner, who noted that their son will reside in the upstairs unit with it being his principal residence, where he will be the operator of the STR located on the first floor. Since the operator will not be the property owner, the operator must be present at the property during the lodging period. As explained in the applicant’s submitted letter they will have three accommodation spaces with plans to allow up to six guests at one time.

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

With regard to off-street parking matters, the ZO requires one off-street parking space for each dwelling unit and, unless conditioned otherwise, one parking space for each accommodation space of a STR. This means that five parking spaces would be needed to meet the requirements of the ZO—one for each unit of the duplex and one each for the three accommodation spaces of the STR. The ZO does not allow for a reduction in parking spaces for a duplex on this parcel, but it does allow City Council to approve the reduction of off-street spaces needed for a STR. The property owner noted that they believe the existing parking area at the rear of the parcel is large enough for about four vehicles. The width of the parcel, however, appears to be about 45 to 46 feet in width, thus there could technically be enough width for five vehicles as the standard width for a parking space is nine feet. Nonetheless, in this particular situation, if the STR is approved as requested, the one unit of the duplex would not be used long-term and would only be used as a STR, therefore,

staff can support a reduction in required parking for the STR from three to two off-street parking spaces.

Given the circumstances of this request, where the operator does not reside within the dwelling in which the STR will operate, staff believes the request should be denied. At the August 10, 2022, regular Planning Commission meeting, staff proposed amendments to the ZO that, if the amendments were already in effect, would have prevented the property owner from being able to apply for a STR as requested. In brief, among other amendments, staff had proposed to amend Section 10-3-205 (2) as shown below:

Sec. 10-3-205. General Regulations

(2) Operators shall maintain the ~~property~~ dwelling as their primary residence, as indicated on a state-issued license or identification card or other documentation deemed acceptable by the Zoning Administrator.

Planning Commission unanimously (7-0) recommended for City Council to approve all of the ZO amendments that were proposed at the August 10, 2022, regular meeting. However, at City Council's public hearing regarding the amendments at the September 13, 2022, meeting, while there appeared to be differing opinions on the matter, Council tabled the request and advised staff to draft an option that would allow one unit of a duplex property to be used as a STR by SUP. At this time, staff has not had an opportunity to draft those amendments.

While we respect City Council's direction noted above, under the current regulations and in this particular situation, staff believes it is in the best interest of the City to maintain Planning Commission's intent to require transient accommodations to only be permitted within the dwelling in which the operator resides. Staff believes the most recent proposed amendments for the STR and homestay regulations is a good middle ground for the many and diverse opinions as to how such uses should be permitted in the City.

At this time and at this location, staff believes it is in the best interest of the City to maintain the opportunity for both units of the duplex to be available for someone or a family to use for long term housing needs rather than one of the units only being used for a transient accommodation space.

However, if there is a desire to approve the request, staff recommends the following conditions:

- a. All STR accommodations shall only be permitted within the first-floor dwelling unit of the existing principal structure.
- b. There shall be no more than three STR guest rooms or accommodation spaces.
- c. The number of STR guests at one time shall be limited to six.
- d. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the items identified in the Pre-Operation Form when short-term rental guests are present.
- e. Minimum off-street parking spaces may be reduced to two and do not need to be delineated and can be accommodated utilizing the existing parking areas to the rear of the property or other areas on the property.

- f. 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.

Chair Finnegan asked if there were any questions for staff.

Mr. Fletcher said there had been a question about the Pre-Operation Form, the self-checklist, and the Fire Department. A few years ago, there was a lot to do with our inability to require inspections and to get into those spaces. That is why we have to do it through the SUP and that it is not required in the by-right homestay. We do not have the ability to require people to go into those homes for these types of inspections. We did the best we could with the Pre-Operation Form to give it a self-checklist.

Commissioner Whitten asked why is that true? It is a matter of public safety.

Mr. Russ said it is not a change of use under the Building Code, so there is not authority to inspect the interior.

Mr. Fletcher said, according to the Building Code, if there were an R-1 or R-2 use classification type of construction, we do have that ability. Those are multifamily unit use classifications. Because they are not applying to change the use of the space in the Building Code, we do not have the legal ability to go into their home to do that.

Commissioner Whitten said then we are depending on the person completing the form to check the items on the list. If there is a fire, they are going to be on the line, if they did not do something right.

Mr. Fletcher said it is the private property owner's responsibility to ensure those safety mechanisms for their lodgers.

Commissioner Whitten said and hotels and motels?

Mr. Fletcher said we inspect those.

Commissioner Whitten said you are taking your chances if you go to a place like that. What year did the duplex use begin at this address?

Mr. Fletcher said I think it was built as a duplex. I would have to look up the date.

Commissioner Whitten asked it is it a legal duplex? Did you check that?

Mr. Fletcher said it is a non-conforming duplex. It is zoned R-2 and it has less than 11,000 square feet of lot area. Like many of the duplexes in that area of the City, the lots are smaller. I am almost positive it was built as a duplex, but we can double check that.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Robert Alford, owner of 375 Broad Street, came forward in support of his request. I went to the City Council meeting. They got into quite the discussion about it. I know there are a lot of different opinions on this. One of the things that City Council said that stuck with me is that, as a governing body, they really do not have the right to tell me what to do with asset. That was one of the things a councilmember said. You can look it up in the notes. I purchased this with this current law in place so that I could do this for part of it and provide housing for my son. I am a blue collar worker. I am performing a lot of the work on the property myself. I have cleaned it up. I have cleaned multiple trash off this property. I am trying to bring it up. I am a painting contractor. I am going to make it look better. All the neighbors are excited that it is cleaned up. The current residents are no longer there. I would have already put this through before you even did this. It took me months and months to legally get these people out. They were on a month to month lease. It was 1980-something it was purchased. We checked that. It was renovated at that time and the City approved it as a duplex. That is part of it. The off street parking is there.

I understand the intent that everyone is scared of, the neighborhood and things, but this is so close to downtown. It is an area where a little tourism would help the City. You have multiple festivals. You have many things that go on in downtown. I understand that you might want to do that a couple miles down the road. I live in the County. I own it. I pay the mortgage on it. You are not helping a corporation. You are helping an individual. I understand that in other parts of the country, they are buying up properties. They are doing this thing with the Airbnbs. This is not the situation with this. City Council kicked it back because they were not comfortable saying that I could not do this with this property. I purchased this property with the intent to do this. Because it has taken so long to get tenants out who had more people living in there than they should have. I still have to, you cannot throw people out on the streets, so you patiently wait. They do not pay. Then you start your process. I have done that the whole step of the way. I am not a lawyer. I am not a great big businessman. I simply bought an asset, and I am trying to make some money off of it and provide free housing for my son to live there, as well. I understand there is a lot and people have some strong opinions about this, but I could very easily just decide not to put a tenant in there. This is not a primary residence. This was bought as an asset. My wife and I do not live in either. We are going to rent it to somebody. If they want to walk downtown and do things like that and experience the City, how will they ever experience that living in a hotel and travelling? I am not in favor of those very large corporations versus the American dream. You buy a house. You buy real estate. You rent it. You hopefully build some wealth for your family.

Airbnbs clean up an area. That is not a part of town that has always been the cleanest or the best. It is coming up. If you have rentals there, people want it neat. They want the grass cut. They do not rent from you, and you get bad reviews. They go elsewhere. If you are trying to bring up a part of town, tourism, things being nicer, that helps versus who was running it before. Do you have questions for me? I hope you understand the intent. I am not going to become a big businessman or get rich off of this.

Chair Finnegan said the SUP would convey. Whenever people talk about their intent, I want to contextualize that.

Commissioner Whitten said you will get a lot richer doing it this way than you would if you were renting out that apartment for the year.

Mr. Alford said and when I get a tenant in there that does not pay the rent? Are any of you going to offer for me to pay the mortgage, the mortgage insurance, or the taxes?

Commissioner Armstrong asked was that through the pandemic and the forbearance?

Mr. Alford said no, it has been since the pandemic was over. I bought it during the pandemic. It has been months and months trying to fight people to get rent out of them. They will not do it. They are supposed to only have three people living there. They have seven living there. I have had stuff stolen off the porch. People who never live there come check the mail every day. I do not know what shady thing is going on there. I have ring cameras up. They do not even know that I have seen them stealing stuff from us. It is not the best part of town. If you had a couple of rentals in the area, it seems to me like it would help things. My only other comment is that City Council threw this back because they did not feel it was fair to do that with an asset that I purchased. It is a rental anyway. It is nobody's primary residence. It is a rental.

Chair Finnegan asked if there were any more questions for the applicant. He asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Mr. Fletcher said, to clarify, their son will reside in the upstairs unit to be the operator of the STR. Since he does not own the property and he is the operator, he must be present during the lodging period.

Chair Finnegan said we have all made our positions clear about how we feel about STRs, in general. One of the biggest differences between this and the last request is that staff recommended approval of the last one and is recommending denial of this one for the reasons that were stated. There is a third option that we could consider which would be tabling. Is that an option?

Mr. Fletcher said it is an option. If you table it, there is a time period in which you would need to act on it. Staff will soon work on the provisions that City Council directed us to give back to them for their own consideration. I think it is about 90 days if you table it.

Mr. Russ said it is 90 days, but I cannot remember if the 90 days starts today or the date of the application.

Councilmember Dent asked will that timeline coincide with what you are preparing at City Council's request?

Mr. Fletcher said I cannot answer that yet.

Commissioner Armstrong said they tabled, so they have a timeframe too?

Mr. Fletcher said they do not. In that scenario, the City brought the ordinance amendment and they could table it indefinitely. It is different.

Chair Finnegan said it does matter to me what City Council decides. Whether I agree with City Council's decision or not is beside the point. What the City Council decides would impact this request. I would hope that it would go back to City Council within 90 days, but we do not know the timeline for that.

Commissioner Byrd said I was in favor of that amendment about dwellings because dwellings are rentable for permanent residency, whereas property is too broad. In this case, we have two potential permanent dwellings, and the owner wants to use one as this extra business. I am not in favor of that idea and am inclined to go along with staff's recommendation for denial. I am renter. I choose renting places based on location and rent. If there are no locations, then I am only making my decisions based on rent. Which means that I might be on the edge of the City or in a neighborhood that I am not inclined to be in. From the perspective of a renter in the City, who is a permanent resident, the reduction of potential places to rent is not conducive to those like myself. In that light, I would not be in favor of approval.

Chair Finnegan said I agree with making that distinction.

Councilmember Dent said I think that I agree. This is a tough one because I like STRs as a general business model for the property owner. I really object to taking a dwelling unit off the market when housing is so short. The other concern that I raised last time is that if we are looking to push for more density and more availability of duplexes, ADUs, extra apartments, then this would set a dangerous precedent to allow STRs in all those duplexes. We did change the ruling. Once that ordinance rewrite goes through, Mr. Fletcher acknowledged that as a concern. We could address the law as it is now and change it later if we want to. That is just a forward looking concern. If we want more density precisely to address the housing shortage, then this is going in the wrong direction. I will somewhat reluctantly vote to deny it. I have fellow councilmembers who feel differently. I was surprised by the tabling of the amendment. I will have to explain to them how I felt.

Commissioner Armstrong said I would move to recommend denial, or table it until City Council acts on it, if this request based on staff's recommendation regarding duplex designations.

Councilmember Dent asked if we voted to deny now, and City Council makes a clear determination that we want to allow duplex STRs by the owner or operator, what would happen with this request?

Mr. Fletcher said if you vote on it and do not table it, they will likely hear this application before we are able to give them the amendments that they requested.

Councilmember Dent asked what are you planning to bring back to City Council?

Mr. Fletcher said I have some questions of my own about exactly what they wanted. I went back to listen and watch the video about what they requested for us to do. I believe that essentially it was to make this kind of scenario an ability via SUP. That was the directive. There are some things

that we need to figure out with the language. A STR is already a SUP. I have some ideas about how we can make that work from the legal standpoint being codified.

Mr. Russ said the language itself is really quite simple. The real concern is that right now, by-right, you can do it with a duplex under certain circumstances and making sure that is not the case any longer.

Councilmember Dent said, I see, because under the current law with the term “property” it is allowed by-right in a duplex.

Mr. Russ said the text of the actual ordinance, I could write it in 15 minutes. That is not complex.

Mr. Fletcher said at the meeting there was a lot of conversation about what they wanted, what I thought City Council wanted. I question, is it only for duplexes or was it for a property that might be a triplex or a quadplex. Is it simply just a duplex? Mr. Russ is correct. I could just write out some text to say that it is a SUP, but there is more to it than just writing it down in 15 minutes. It is thinking through lots of different things and making sure that staff is not wasting City Council’s time in just throwing that together. We want to think through the scenarios and make sure that we are doing what they requested for us to do.

Commissioner Armstrong asked what was their answer about tri-plex and multi-plex?

Mr. Fletcher said I did not get an opportunity to ask them. I was in the crowd when the motion was made, and the vote was taken. I figured there would be an opportunity for us to work together as staff with the City Attorney’s office to figure out what exactly they want. Do we bring them back options? Is it just a simple text amendment? I have questions.

Chair Finnegan said we are talking about the amendment that may or may not happen in the next 90 days. This body, we all have a different place where we draw the line. Some of us do not want any STR SUPs. Some of us might say yes to most or all of them. And some of us draw a line somewhere. It sounds like this is where, at least this particular body at this point is drawing the line. That is where I draw the line. If we are taking livable spaces with kitchens off the rental market, that matters to me. Regardless of what City Council does, we can continue to draw the line where we feel that we want to draw the line. In this case, speaking for myself, I am drawing the line at taking rental units off the market.

Commissioner Whitten asked I wonder what will happen when the son moves on, if this was approved? Who would be the person who would have to stay there all the time when it is a STR?

Mr. Fletcher said we have another scenario just like that with the operator of a homestay on Long Avenue. They are essentially an employee. They would have to rent to someone in the upstairs unit, and that renter would have to agree to be the operator.

Commissioner Whitten said, for clarity, when you buy a piece of property, be it a duplex or a single-family home or a whole apartment building, you have to abide by the zoning that is in place. You have the opportunity to take advantage of a SUP, but that is not something that will necessarily

be granted because you would like it to be. People who buy property in Harrisonburg need to understand that. I know that realtors tell people all kinds of things, but they are not always right. In my experience, they are frequently wrong. If you buy something, you bought it. It is your mortgage. It your insurance. It is your rental. It is your renters. Sorry about your luck.

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

Commissioner Armstrong seconded the motion, based on staff's recommendation.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend denial of the SUP request passed (7-0). The recommendation will move forward to City Council on November 8, 2022.