



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Master

File Number: ID 19-242

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Type: PH-Special Use Permit

Status: Draft

Version: 1

Agenda Section:

In Control: City Council

File Created: 08/05/2019

Subject:

Final Action:

Title: Consider a request from Janice M. Kirby for a special use permit to allow short-term rental at 789 Blue Ridge Drive.

Internal Notes:

Sponsors:

Enactment Date:

Attachments: Memorandum, Site maps, Application, applicant letter and supporting documents, Public comment received as of Aug 30 2019, Surrounding property owners, Public Hearing 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:
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1	Planning Commission	08/14/2019	recommended to full council	City Council	09/10/2019		Pass
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Action Text: A motion was made by Colman, seconded by Finnegan, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 9/10/2019. The motion carried with a recorded roll call vote taken as follows:

Notes: 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: Single-family detached dwelling, zoned R-1

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

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

The applicant is requesting approval of a short-term rental (STR) operation at 789 Blue Ridge Drive, which is located on the southeast corner at the intersection of Blue Ridge Drive and Star Crest Drive in the Reherd Acres neighborhood. The applicant desires to rent their entire home, which includes three STR accommodation spaces-two bedrooms and one pull out sofa in a living area-to up to five STR guests. (“Accommodation space” 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 not be present during the lodging period. They plan to stay with family nearby while guests are renting.

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 three accommodation spaces for STR, the property would need to 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 applicant has explained that lodgers will park their vehicles in the driveway, which can accommodate three to four vehicles. 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:

1. The site shall be an operator’s primary residence.
2. If an operator is not the property owner, then an 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 five 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. 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 five people. 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.

The City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations. Considering those approvals and the suggested conditions, staff recommends approval of the special use permit request.

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

Janice Kirby, 789 Blue Ridge Drive, came forward to speak to the request. I have lived in this residence since 2015 and I care deeply about my neighborhood. I have spent hundreds of hours landscaping and gardening, not just for my benefit, but because I feel it makes this neighborhood a place where people want to be. I began using Airbnb two years ago. I listed it immediately as a non-party site. I have only rented on a Friday or Saturday evening. It accommodates people who are visiting because of student family members at the university, for conferences and for weddings. I have never had a problem with guests. I am

a “super host,” which means that it is very clean. I stay in touch with those that rent. They know that I am next-door. I am living on Social Security and a very part-time job. This has allowed me to make property improvements. I need to repaint this house and probably re-stucco it in a year. I cannot do this without this additional income. This is allowing me to live in my own home and to maintain that home and to upgrade a neighborhood that I care very much about. There are a few places in my neighborhood where there are empty houses. One of them is across the street. I would like to see more families in this neighborhood and am encouraging that.

Chair Way asked if the applicant has spoken with neighbors about the request.

Ms. Kirby said that she has. Two neighbors stopped by separately to ask about the sign. I explained that it would allow me to rent on the weekends. Neither had any objections.

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

Faye Morrison, Blue Ridge Drive, came forward to speak in opposition to the request. About a month ago, the Planning Commission denied a STR for the house next to me. I have lived on Blue Ridge Drive for sixteen years. In the past five years, there have been two vehicles overturned in front of my home. We have had trees knocked down. We have had poles knocked out. There have been multiple wrecks. The traffic on that road has become extremely bad. I am asking that the STR request be denied. The other one (921 Blue Ridge Drive) goes to City Council next. On each of these papers, I have ten names for a total of sixty of my neighbors. We would like to keep our neighborhood zoned as R-1. We do not want an Airbnb because we like our quiet neighborhood. The City neighborhoods in zones R-2 and R-3 can have all the Airbnbs. We have a small area. Our neighborhood is very quaint.

Chair Way asked what the document was that the applicant was showing. Is this neighborhood in opposition to this request?

Ms. Morrison said that it was for the former request. I am sorry to sound misleading. It is for the previous STR request that was going to City Council but was tabled. In the process of getting these sixty-some signatures, I have been around the neighborhood. I have met quite a few people. That is how we knew about this one. They also wanted me to do one for this one that is up for tonight. City Council is coming up and I needed to get this taken care of for the previous one before I could get around getting anything. Quite a few of them have asked me to do that; so I came tonight to speak against it to let you know that our neighborhood is not in support.

Commissioner Whitten said that we also received a letter regarding this one, too.

Ms. Banks said that it was emailed on Monday to each of you with concerns about traffic.

Abdelrahman Rabie, Sparrow Court, came forward to speak in opposition to the request. I helped Ms. Morrison gather the list for the other STR on Meadowlark and Blue Ridge Drive, which is near Sparrow Court. When I saw the sign for the STR, we decided to come here tonight because it is the consensus in the area of Blue Ridge Drive on both sides. This is the only area left that is R-1 with single-family homes. I am now retired, and our neighborhood is changing for better. We have younger families coming into the neighborhood. We would like to keep it this way.

The main concern we have is the safety and the people coming into the area. There are a lot of complaints about safety. Particularly in our area, we are starting to see reports of the unsafe people coming into the area. I believe that adding this Airbnb into the area will make it even more unsafe and will not attract the new, younger people to the area. In addition, we have very heavy traffic. We have students living in the townhouses in the back. The police records show this.

The sign referred to the application for the people who would like to change the zoning or for STR. The burden should be on them to make sure they consult with their neighbors, the five or six around them, rather than having passing conversations with people walking their dogs. I recommend that these conversations be included in their application. I also recommend that the City require that the operators of an Airbnb report, on a weekly or monthly basis, what guests they have and what occupancy they have so you can have an idea if it has been used properly or not, rather than depend on the neighborhood complaints. I am ten houses away. It should be the people who are running the business to report this to you or to the City, not wait until the complaints happen.

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 it was an interesting point to require conversations with the adjacent neighbors. He also made a point about reporting. How are we monitoring this? Does the applicant have the burden of reporting the occupancy on a monthly basis?

Mr. Fletcher said that they pay a lodging tax to the City.

Commissioner Colman said that it does not tell us how many individuals are staying there.

Ms. Dang said that we only limit the number of lodgers based on the conditions, so they should be staying below the number that is conditioned.

Commissioner Whitten said that if they are not we do not know.

Chair Way said there is the proactive enforcement and responding to neighborhood concerns.

Commissioner Whitten said that she feels the same with this application as she did with the first one. It is an R-1 neighborhood and we are saying five with two additional unrelated people; that is over the number we would allow in our own Zoning Ordinance. The property is beautiful, but she will not always live there. This SUP will be allowed, no matter who lives there because it goes with the property. I respect the neighborhood.

Chair Way said that the interesting parallel is the potentially busier road, as well. What I was saying about Paul Street is that we have to be careful about that because it interrupts its spine and it is already under some threat and, in principle here, Blue Ridge Drive which we have heard from other people, is as well. I would echo those concerns. The nuance of the SUP is that it goes with the property rather than the owner. We know that the owner has done a fantastic job of maintaining it, but the next owner might not.

Commissioner Whitten added that “no party” rule is good, but it does not have to go along to the next owner of the property. They do not have to have that rule because it is not part of the conditions.

Commissioner Colman said that it is also five unrelated people.

Commissioner Whitten said that it may or may not be. It could be a family.

Commissioner Colman said that he is speaking to the zoning requirements and how it relates to this number.

Commissioner Whitten asked how far away it was from the previous Blue Ridge Drive request.

Ms. Banks said that it was two blocks.

Commissioner Whitten said that this is more embedded into the R-1 neighborhood.

Ms. Banks said no, this is closer to Country Club Road.

Mr. Fletcher said that the circumstances were different with the other request. It was not the property owner’s primary residence. This one is.

Commissioner Colman said that one of the arguments that we had when it came down to the Airbnbs was that if it was owner occupied or if we have someone who lives there, it gives us some comfort, and hopefully the neighborhood, that the place would be taken care of, compared to a place that is under a rental company, where there is not a person who lives there that takes pride in the home. That is the difference between this and the other one mentioned.

Chair Way said that the first condition is important.

Commissioner Colman said that his main concern is the number of occupants or the number of guests because that is what is a stress on the road and on the neighborhood, not necessarily the use. I am not opposed to the use. The number of guests is what concerns me.

Commissioner Finnegan clarified that he was referring to condition #5, “[t]he number of STR guests at one time shall be limited to five people.” If we amended that to three people, would that help?

Commissioner Colman said that when he considers these, he likes to mimic in some way, what the Zoning Ordinance says. It could be a family, which could be five people. If it is unrelated, then it should be whatever the ordinance calls for. Perhaps we can stretch that, I do not know. I am not married to that. I propose that as a consideration.

Commissioner Finnegan said that we did not put those conditions on the one that we just approved.

Commissioner Colman said the one that we discussed adding the condition for the unrelated.

Ms. Dang asked Commissioner Finnegan for some clarification. Are you referring to the fact that the occupancy regulations are the same for both R-1 and R-2?

Commissioner Finnegan said yes. We approved the last one with the condition of a group with no more than eight people.

Commissioner Colman said that is why I raised the question. These (the guests for the South Brook Avenue) are unrelated, but there are no issues to consider. In this application, we have issues to consider, one of them being the traffic on that road.

Commissioner Finnegan said that he is trying to get to the core concerns, like what we were talking about before. They are speeding on Blue Ridge Drive. There is a lot of traffic. We are talking about a few extra cars, which would happen if you were having a party and inviting your friends over or a yard sale. You could legally have a yard sale every weekend, I believe. What I am getting at is the core concern of the residents in the neighborhood. Safety keeps coming up, speeding and safety. I do not see how this changes speeding, or traffic more than a yard sale would. I voted to deny the last one that was in this neighborhood because it was not owner-occupied. This one is owner-occupied.

Commissioner Romero said that we need to keep in mind that this has been going on for two years. For two years we have had this situation and it does not appear to have created issues. Otherwise there would be some reporting of it. Have you had any neighbors come to you to complain the past couple of years?

Ms. Kirby answered no.

Commissioner Romero said that people were probably not even aware of it until the application came through.

Chair Way said that nobody here is assuming the worst of this particular owner. The concern is about the future if this owner does not live in the house.

Commissioner Romero said that a number of people have asked him, are we able to put limits on STRs so that it does not convey with the property?

Chair Way said that we have put a time limit.

Mr. Fletcher said that we have not put any sunset clauses on anything. The applicant (294 Franklin Street) submitted the condition.

Mr. Russ said that it is questionable. What happens in ten years? My concern is that you are setting a landmine for ten years from now. No one has ever tested the issue and jurisdictions are split on it.

Mr. Fletcher said that we have accepted it, but we do not place conditions on who the applicant is.

Ms. Dang said to answer Commissioner Romero's question about the property changing hands, the permit would go to the next property owner. There is not a way for us to condition that it would only apply to the current owner. We cannot do that.

Chair Way said that, in retrospect, SUPs were the wrong way to go.

Commissioner Finnegan agreed. That is why I voted against going this route. I think we should revisit this. We can talk about that after we vote on this. I think that we are doing the wrong thing.

Chair Way added especially because in hindsight, Airbnb is all about relationships with the operator. It is all about that relationship and that is what we keep coming into.

Commissioner Finnegan said that it has been a learning process, but I do not think that we should continue doing this. That is a bigger issue than this particular permit. I live in an R-2 neighborhood, and I voted to approve the one in my neighborhood. There are cars that blow the stop sign next to my house all the time. I have serious concerns about traffic, but I do not associate those concerns with the Airbnb. I am not inclined to vote against this.

Commissioner Ford-Byrd said that she is unclear about how they are verifying that the trees

are being knocked down and the cars overturned or the actual unsafe people. How do we know that these are the guests?

Chair Way said that we do not.

Commissioner Ford-Byrd said then this is a generalization.

Commissioner Finnegan said that there is just a lot of traffic and bad drivers.

Commissioner Colman said that just because a group of people do not like someone, they can come here and complain and perhaps present evidence, but we cannot base our decision on that. On the other hand, we can consider zoning and the zoning requirements of R-1 and R-2. What are the limitations of that. We are giving, through the SUP, a lot more occupancy allowance than is given by the zoning regulations.

Commissioner Whitten said that, if you have other neighbors on the same street that want to do the same thing, how do you deny it? Although it is case by case, when it is very similar, how do you say no?

Commissioner Finnegan asked if there was any follow up on a formula for how many STRs are too many. It is my understanding that most cities in Virginia are regulating it through the permit process, not the SUP process. The permit can be revoked if there are problems.

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

Commissioner Finnegan seconded the motion. I hear the concerns of the neighbors. I have concerns with how we are regulating these. I am not ignoring those, and I hope that the applicant will work with the neighbors to assuage those concerns.

Chair Way called for a roll call vote.

Commissioner Whitten: No
Commissioner Romero: Aye
Commissioner Ford-Byrd: Aye
Commissioner Finnegan: Aye
Commissioner Colman: Aye
Chair Way: No

The motion to recommend approval of the SUP, with conditions, as presented, passed (4-2). The recommendation will move forward to City Council on September 10, 2019.

Yes: 4 Colman, Finnegan, Ford-Byrd and Romero

No: 2 Whitten and Way
Absent: 1 Finks
