



# City of Harrisonburg, Virginia

## Department of Planning & Community Development

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Building Inspections  
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Planning & Zoning

July 1, 2019

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

**SUBJECT:** Public hearing to consider a request from Michael White and Susan Crosby for a special use permit per Section 10-3-48.4(2) of the Zoning Ordinance to allow for a short-term rental within the R-3, Medium Density Residential District. The +/- 19,500 sq. ft. property is addressed as 1220 Ivy Lane and is identified as tax map parcel 50-B-17.

### **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 12, 2019**

Vice Chair Colman read the request and asked staff to review.

Ms. Dang said that she would first present some of the common conditions that will be repeated in all the presentations. When we discuss each STR request, Ms. Banks and I will highlight the conditions that are unique to the requests and the staff recommendations.

The common condition last month was that all STR accommodations shall be within the principal structure. This condition is suggested to be applied to the STR to prevent someone from constructing an external structure for the purpose of lodging people in that space as that has not been vetted as part of this process. The assumption, at this point in time, is that the requests have been for accommodation spaces within the principal buildings. That is what is being reviewed. This condition would keep those accommodation spaces within the principal structure.

We had suggested that prior to beginning operations building codes and fire inspectors would have the opportunity to enter the buildings and inspect the accommodation spaces and the means of egress to ensure compliance with the building and fire codes. We are suggesting amending that language on all requests. This amendment was presented to City Council yesterday evening when three of the STR applications which you received and reviewed last month were forwarded to City Council. Striking out that text that is currently in your staff report, we are suggesting this alternative prior to beginning operations: "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 the short-term rental guests are present." A copy of a draft STR pre-operation form was placed before you tonight, to show that applicants will be self-certifying. As we continued working with building codes and fire officials and the City Attorney's office it became very complicated to have the staff entering the buildings limit themselves to only inspecting the accommodation spaces and means of egress. In an effort to protect the property owner's interests when having their spaces inspected, we have come up with this alternative. This form would have to be completed and submitted to city staff prior to beginning operations. There are ten items listed that would be checked, such as addresses posted outside, smoke detectors installed in the accommodation spaces, fire extinguishers, egress windows, etc. We expect to have this posted on the City website, on the STR webpage, by tomorrow so that applicants may begin using it to ensure that they are in compliance. The form would be kept on file with the STR SUP documents.

Commissioner Romero asked if the form will be filled out once or on an annual basis.

Ms. Dang responded that it would be filled out once. It is an opportunity for an awareness that all their accommodation spaces should meet these expectations and they have to certify that they do. If they change their accommodation spaces, the new spaces will still have to meet this, but we will not be requesting that a new form be completed.

Mr. Fletcher said that the Fire Department continues to have concerns about safety. This is a positive, but it is not perfect.

Commissioner Whitten asked what the concerns of the Fire Chief are?

Mr. Fletcher said that it is a combination of multiple issues, knowing that the professionals on staff know what they are looking for and know how to interpret these codes. We read these building codes and have interpretations trying to discern the intent, but they are quite complicated. What does it mean to have an egress window and an exit door? A person might look at this might believe that they have a suitable window, but it might not meet the dimensional requirements. Even if they meet the dimensional requirement, it can still be confusing.

Vice Chair Colman said that this form makes it easier for the applicants. If the building officials or fire officials were to visit the property, they might identify other things that need to be taken care of that are beyond the SUP. This makes it more accessible than having a building official come in and want you to redo your whole house.

Ms. Dang continued, other common conditions are regarding minimum off-street parking spaces. The off-street parking regulations requires one off-street parking space for every accommodation space or as conditioned otherwise. You will see two options. One is that no minimum parking be required. We have recommended this in situation where there may not be an ability to add parking spaces, their driveway is small and cannot accommodate it, or it is not advisable to require additional spaces to be built on the property in order to retain the residential character of the property. The option is that minimum off-street parking spaces do not need to be delineated and can be accommodated using the driveway and other areas of the property. Generally, these are properties that have a large driveway and have enough space, but we do not want them to have to line the spaces or mark them with blocks.

Finally, the general conditions that if the STR becomes a nuisance, the Planning Commission or City Council would have the ability to recall, review and consider revocation of the SUP.

The first STR to consider today is 1220 Ivy Lane. The Comprehensive Plan designates this area 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: Single-family detached dwelling, zoned R-3

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

East: Across College Avenue, multi-family dwellings, zoned R-3

South: Across Ivy Lane, single-family detached dwelling, zoned R-3

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

The applicants are requesting approval of a short-term (STR) operation at 1220 Ivy Lane, located on the northwest corner of Ivy Lane and College Avenue. The property is located in the northwest section of the

City about 0.3-miles from Buttonwood Court, where Harmony Square is located, which is a shopping center that fronts on Virginia Avenue. The property is also located about 0.25-miles from Eastern Mennonite University's campus and Park View Mennonite Church's property is about 200-ft from site with the church entrance about 600-ft. away.

The applicant desires to rent for STR three accommodation spaces; two bedrooms in the basement of their home and a third bedroom on the second floor. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The accommodation spaces could accommodate up to five STR guests. The applicants describe that the property is their primary residence and that they plan to be present 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. The property has two driveways and parking areas; one that is accessed from Ivy Lane and another that is accessed from College Avenue. The applicants have explained that lodgers using the basement will park their vehicles in the driveway accessed from College Avenue, and lodgers using the single room will park their vehicles in the driveway in front of the house on Ivy Lane. 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.

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

1. The site shall be the operator's primary residence.
2. 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.
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 protects neighbors by ensuring that there is on-site accountability by the STR operators. 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. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #5 limits the total number of STR guests to not more than five. 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.

Additionally, it appears that the basement was finished without obtaining building permits. The applicant is aware that a building permit and final inspection will be required by Building Code Officials prior to their 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. 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.

Commissioner Finnegan asked if there was any discussion of condition number two requiring that an "operator shall be present during the lodging period" during the site tour. I share the staff's concern that the site should be the operator's primary residence, however I am not convinced that the operator being present during the lodging period ensures accountability.

Commissioner Finks said they did discuss that during the site tour and agrees that having the operator on site will not necessarily provide accountability. If you have an operator that is unable to confront the renters, for physical or other reasons, their accountability will not matter. The police may still have to be called. A cell phone is going to be as accountable as the operator being on the property if there are complaints or issues with neighbors.

Commissioner Finnegan said that the accountability comes from the site being the operator's primary residence. If someone is going out of town for the weekend, they cannot rent their home over the weekend because they are not going to be on site. If the applicant has no objection to the condition, then we can do it. If someone has an objection, I would be inclined to removing that requirement.

Vice Chair Colman said we did discuss this issue. There is a difference between a property owner and an operator. The operator could be someone who lives there but is not the owner. Something we discussed was to adjust that condition so that if the property owner is the operator, then the operator does not need to be present. If the operator is not the owner, then having the operator in place is important to protect the property. If allowing for the operator to not be present, then anyone could buy up properties and use them as STRs and that affects the availability of homes.

Commissioner Finks presented the following hypothetical situation: If a family bought a house that they intend to use as an STR, and they establish it as their child's primary residence by receiving their mail, registering their car and registering to vote at that location, however, the child still lives at home with the parents. It is still the operator's primary residence on paper, but they would never be there. So, if we completely took out "operator shall be present during the lodging period", the operator may not be using the property as their primary residence. On the other hand, there is a lot of accountability built into Airbnb

sites. There is a rating system that is used. If there are scenarios where a renter is creating serious issues, it will affect their ability to continue using these sites.

Commissioner Whitten said a simple Google search will show that there are many problems with STRs. If we are trying to protect neighborhoods, we need to be as careful as we can about how these homes are being used. That is our due diligence.

Commissioner Finks said our other due diligence is to make sure that people are able to use their property in a way that benefits the area.

Commissioner Whitten said that should be as long as it does not adversely impact the neighborhood.

Commissioner Finks said that is why we have added these conditions.

Vice Chair Colman said these conditions are conditions that staff brought to the Planning Commission to recommend to City Council. We can recommend our own conditions. The conditions reflect our past discussions. I agree that the requirement to have the operator on site should not be necessary if the property is the primary residence of the owner.

Ms. Dang said perhaps condition two may be revised to say, “if the operator is not the property owner, then the operator shall be present during the lodging period.” Do you want to keep it as is, amend the condition or remove the condition?

Commissioner Ford-Byrd asked for clarification. Commissioner Finnegan, are you saying that either owner or operator should not be bound to the property if the person were utilizing the property as their primary residence? I do not see where we are addressing your concern with the proposed revision.

Ms. Dang said the suggestion addresses Vice Chair Colman’s suggestion. Commissioner Finnegan, are you suggesting removal of condition two entirely?

Commissioner Finnegan said for this particular SUP, the applicant does not have an objection to condition number two, so I would leave it as is. I am leaving the door open to removing or amending it for future requests.

Vice Chair Colman said the applicant should speak to that. They might prefer to remove it or have the alternative that I proposed. My intention with the revision I proposed would be to have it as a blanket condition for all applications.

Commissioner Romero asked if staff has received calls from residents that are looking to apply who state that the process is confusing. I think the language is still confusing. What does “operator or owner present during the lodging period” mean? Do people have questions about that? Does present mean during the entire time that the property is rented or only at the time that the keys are handed in?

Ms. Dang said the question has come up. The expectation of “being present” is that the operator is sleeping there and spending time there. It means they have not left town. When we say “operator” it may apply to the property owner or long-term tenant who has permission from the property owner to operate a STR.

Vice Chair Colman said if anyone goes to an Airbnb, would they want the operator to be in the house, or would they rather have the house to themselves?

Commissioner Whitten said she has stayed in both those situations and both were fine. It varies based on the property.

Commissioner Finks said that the preference often is related to the layout of the property. Sleeping down the hallway from the operator and sharing a bathroom may not be as comfortable as staying in a separate living space.

Vice Chair Colman opened the public hearing and invited the applicant or applicant's representative to speak to the request.

Hillary Dorzweiler, daughter of Michael White and Susan Crosby, 1220 Ivy Lane, came forward to speak to the request. My father is school bus driver. They are now in South Carolina visiting family. They have agreed with the staff's suggestions. I think that they added the condition in question about being on site after meeting with Ms. Dang. It was recommended, and they agreed in order to comply with staff's suggestions. Currently, a friend who is working in the area temporarily is staying with them. If they had an Airbnb, I could envision them becoming comfortable with a repeat customer and might want to allow them to stay when they are not there. I do not think that they are going to object if you believe it is important to keep the condition.

Vice Chair Colman asked the applicant's representative if she suggests that the condition be removed.

Ms. Dorzweiler answered yes.

Vice Chair Colman 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 Finks asked staff if an operator can only be a renter or the property owner.

Ms. Dang answered yes. It applies to someone for whom the property is a primary residence, not an agent.

Commissioner Whitten said that helps to not encourage people to buy houses and then having someone else responsible.

Mr. Fletcher said condition number one requires that the property be the operator's primary residence.

Vice Chair Colman said that Planning Commission can remove condition two if they feel comfortable with it.

Commissioner Whitten asked if the neighbors that have seen this advertised would feel the same way if they knew. They have the option to come tonight and disagree with the SUP, but they also thought that it was going to include someone being present. Have we not substantively changed the SUP by removing that condition?

Ms. Dang said that the advertisement as written does not provide the specific conditions. The staff report was posted on Friday with the suggested conditions. People know that you are making a recommendation. There is another opportunity to address concerns at City Council.

Commissioner Finnegan moved to recommend approval of the SUP, and to remove condition two while retaining the remaining conditions.

Commissioner Finks seconded the motion.

All members voted in favor of the SUP with conditions, as amended. The recommendation will move forward to City Council on July 9, 2019.

Respectfully submitted,

*Alison Banks*

Alison Banks  
Senior Planner