



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Master

File Number: ID 19-216

File ID: ID 19-216 Type: PH-Special Use Permit Status: Agenda Ready

Version: 2 Agenda Section: In Control: City Council

File Created: 06/28/2019

Subject: Final Action:

Title: Consider a request from Jeryl David and Mary Ann Krieder for a special use permit to allow short-term rental at 443 Lee Avenue.

Internal Notes:

Sponsors:

Enactment Date:

Attachments: Staff Report SUP 443 Lee Avenue (Short-Term Rental) (4 pages), Site Maps (2 pages), Application, applicant letter, and supporting documents (3 pages), CC Ad 08-13-19.pdf, surrounding property owners 081319.pdf, 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:
2	Planning Commission	07/10/2019	recommended to full council	City Council	08/13/2019		Pass
<p>Action Text: Commissioner Finnegan made a motion to recommend approval of this SUP, with conditions, as amended. Commissioner Finks seconded the motion. The motion to recommend approval of the SUP, with conditions, as amended, passed (5-1). The recommendation will move forward to City Council on August 13, 2019.</p> <p>Notes: Chair Way read the request and asked staff to review. Ms. Dang said that the Comprehensive Plan designates this site as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood. The following land uses are located on and adjacent to the property:</p>							

- Site: Single-family detached dwelling, zoned R-2
North: Single-family detached dwelling, zoned R-2
East: Across Lee Avenue, single-family detached dwelling, zoned R-2
South: Single-family detached dwelling, zoned R-2
West: Across Chicago Avenue, Waterman Elementary School, zoned R-2

The applicant is requesting approval of a short-term rental (STR) operation at 443 Lee Avenue in the northwest section of the City near Waterman Elementary School. The applicant desires to rent for STR three accommodation spaces for a total of up to nine STR guests. ("Accommodation space" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) This is a change from the staff report. There was an email, which was forwarded to you, and a letter from the applicant has been placed before you that explains the applicant's reason for wanting to request up to nine STR guests. The applicants describe that the property is their primary residence and that they would be present on the property 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. There is a small driveway behind the home that can be accessed from Chicago Avenue that can be counted for the non-transient dwelling unit. There are no other off-street parking accommodations available on the property.

The applicant explains in their letter that there is enough space in front of their home for four on-street parking spaces and that STR guests would park their vehicles on the street in front of the house. Since Lee Avenue is not restricted by permit parking, nor are there regulatory controls on where individuals can park vehicles along Lee Avenue (i.e. anyone can park in front of any property), the applicants could not entirely control where lodgers could park their vehicles. Given that the subject parcel is +/- 75 feet wide and that a standard parallel parking space is 20 feet long, it is possible that three to four vehicles depending upon individual vehicle lengths could park in front of the subject property. Since the adjoining parcels along this section of Lee Avenue have similar lot widths, and thus ample on-street parking for residents and visitors, at this time, staff does not believe there should be issues created with allowing lodgers to utilize on-street parking and is comfortable conditioning that off-street parking for the STR operation is not required.

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

1. The site shall be the operator's primary residence and the STR shall occur within the operator's dwelling unit.
2. If the operator is not the property owner, then the 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 nine.
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. The STR has no minimum off-street parking requirements.
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. Additionally, the subject property is large enough to allow a duplex structure and this condition prevents any future second dwelling unit on the site from being rented as a "whole home" STR that was not previously vetted. 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 two six. 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.

Given the nature of the request, the site's proximity to North High Street/Virginia Avenue (Route 42) and downtown, and with staff's suggested conditions, staff believes that 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.

Chair Way asked if there any questions for staff.

Chair Way asked if there was any further discussion regarding the change from six to nine guests or the potential increase in parking required or if any additional neighbor submissions had been received.

Ms. Dang said that staff was not concerned with the change. We did not receive any submissions or calls from neighbors.

Commissioner Ford-Byrd asked if the applicant's request to increase the number of guests in order to accommodate infants or children would convey to allow a future operator to have nine adults.

Ms. Dang said that staff does not distinguish between children and adults. Other applications we have reviewed have requested to rent to three persons within an accommodations space. Applicants have explained that their intent was to accommodate children, however we did not point those out because we do not make a distinction between the two.

Commissioner Whitten said that she is impressed with the house rules. It would be nice to see more applications consider stipulating no parties, quiet time after 10:00 p.m., to preserve the peace and character of the neighborhood they enjoy. That shows real consideration.

Commissioner Colman said that if they sell that property, there is no guarantee that they are going to carry those rules.

Chair Way said that this is a good example of the difficulty of the SUP being associated with the property and not the owner. I fully endorsed the current owners' application.

Commissioner Finks noted that the property is within a school zone and asked if there are any concerns with Airbnb or any of these services as far as renting to sex offenders who may be staying within a school zone.

Commissioner Whitten said that the new high school would be within a hotel zone.

Ms. Banks said that there is a bed and breakfast operating on Garbers Church Road near two schools.

Commissioner Finks asked if there are any legal requirements in that situation.

Mr. Russ said that he believes that the onus is on the registered sex offender to make sure that they are not within a school zone. I would have to look into it. I cannot imagine that there would a restriction on operating any sort of rental because it is within a school zone.

Commissioner Whitten said that, in a long-term rental, it is a renter's responsibility to know that they are not supposed to be within a school zone.

Chair Way opened the public hearing and invited the applicant to speak to the request.

Mary Ann Kreider and David Kreider, 443 Lee Avenue, came forward to speak to their request.

Ms. Kreider said that we want to thank the Planning Commission for your thoughtful work in developing guidelines for Airbnbs and we are very pleased that you have made provisions for them to remain options for visitors in our community. Airbnb's mission is broadly stated as making people around the world feel like they can belong anywhere. We

wholeheartedly embrace this positive social entrepreneurial model that, not only offers opportunities for affordable lodging for persons visiting our community, but also offers a more personable human touch in hospitality, an often-gratifying experience of connection with total strangers that we have come to know better and appreciate. Airbnb, as a company, and we, as hosts, try to cultivate an environment where the richness of diverse experiences and cultures are appreciated and enjoyed. We have been privileged, through Airbnb, to host individuals who needed a free place to stay while riding out or recovering from a hurricane that hit the Carolinas last year. We appreciate Airbnbs general philosophy around that kind of thing, being a benefit to communities. We have been sensitive to the potential concerns around Airbnbs by choosing how we operate as hosts and members of this community, which we care about very much and have invested over 44 years of our lives. Even before opening our Airbnb, we made it a point to check in with most of our immediate neighbors to make sure that they had no questions or concerns and since then have spoken with all of them. We have consistently met with approval and even offers of using off street parking, should the City have required them, or if there is a need to do so, as well as enthusiasm that there might actually be options to house visiting families or friends nearby them. In our house rules, that you referenced, we have asked guests to only park immediately in front of our house. We even have signs to that effect on the door. We have also shared with our neighbors that we have made it a point to disallow parties by our guests and included within our house rules a quiet time after 10:00 p.m. on our premises to preserve the quality and the peace that we have enjoyed in our neighborhood and in our home.

Mr. Kreider said that we are appreciative of the conditions that staff has come up with and the last-minute adjustment to condition #5.

Chair Way said that it sounds like your intent is to be downstairs while there are guests there.

Mr. Kreider said yes, for the most part. I would like to address the last amendment to condition #5. We have generally envisioned renting to six adults, and are fine with that condition. We thought that it was being made a requirement for all Airbnbs initially and were conforming to that. It has come to our attention that some families who may want to rent the three rooms together may have children that they have asked that we accommodate if they are willing to sleep on the floor or infants who they may put in a pack-n-play in their room. We wanted to accommodate that kind of request.

Chair Way asked if the applicant would be amenable to any additional conditions that stipulates what you say in your letter about being present during the time of the rental, given the large number of people.

Mr. Kreider said that he thinks so. I am not sure how you are conceiving that. Are you talking about just for larger groups?

Chair Way said that there has been some precedent that the owner has said that they will be present during the lodging period, so the condition then was that the owner would be present during the lodging period. I am considering this because it is a larger number of people that you might find in some of the other places and the second point is that if another owner comes into that house in the future and is not as diligent as you, it adds another level of protection for the neighbors in the neighborhood. We are broaching this topic as a

discussion point.

Mr. Kreider said that we generally are very much in support of the whole idea of that accountability so that it does not become a problem with our neighbors.

Ms. Kreider said that the only thing that I am concerned about is how strictly you say “must be present during the lodging period.” We work. I wonder if you are restricting us if we wanted to go to Charlottesville one night while they were there.

Ms. Dang said that the intent is that the operator would be sleeping at the house and would be around. If you think that you may want to be in Charlottesville to visit someone overnight, then you might want the condition to remain the way that it is. Otherwise, what I am hearing, Chairman Way, is that you are suggesting amending condition #2 to say that the operator shall be present during the lodging period.

Chair Way said it would be like we have had on other ones.

Ms. Dang said that we have not. It was changed at the last meeting.

Chair Way asked if it was changed retroactively to previous conditions.

Ms. Dang said that it was not retroactively. I think you are trying to draw a distinction between this application and other applications because of the number of people. Is that what I am hearing?

Chair Way said that he has full confidence in the applicant’s operation of the STR, but I am anxious about whoever comes in the future.

Ms. Dang said that by amending the condition, it would restrict their ability to stay overnight elsewhere.

Ms. Kreider asked if it would make any difference if we lower that capacity to eight? We originally had requested six. I do not know. It is hard to respond without talking together about this.

Mr. Kreider said that we had appreciated the move from that preliminary condition as it was phrased to require the operator to be present to the shift that accommodated more flexibility. If we would make arrangements to have a representative there, nearby or available to respond to any concerns that would arise from neighbors or to offer contact information, we have consistently had that as our way of operating.

Chair Way said that I am not concerned about your operation. It is very different to have a family come in and be guests of an Airbnb. It is different to have nine random people. I know that there are only three bedrooms, but you can see how it can get out of hand. That is my concern.

Mr. Krieder said that under Airbnb has a very good system of communication that they encourage and that we make use of to clarify expectations and house rules.

Chair Way said I have no doubt about what you are doing or what Airbnb does, but in thirty years’ time, there might be a different owner there and Airbnb is not going to exist. That is what my concern is. I am not speaking for the Planning Commission. To summarize, I am hearing caution from your point about changing condition #2.

Ms. Krieder said yes.

Mr. Krieder said that he likes condition #2 as it is now.

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 Finnegan said that this was a lot of what we talked about at last month’s

meeting and how we landed on that wording- "if the operator is not the property owner." Until I hear otherwise, I am assuming that the operator is the person who has the listing, who is managing, who is the host, not just some person. That is the assumption that I am operating off of for these. Condition #2 makes sense in that understanding.

Commissioner Finks said that last month there was a lot to take in. I cannot remember exactly, but I think there was a property that we allowed them to have close to nine or eleven on which we did not put that stipulation.

Ms. Dang said that Summit Avenue had a limit of twelve and Smith Avenue had a limit of thirteen.

Commissioner Colman said that the numbers are considered in two ways. In this case, the number of guests. There is also the number of applications that we consider. Our thinking continues to evolve as we face different situations.

Chair Way said that he appreciates the explanation of how condition #2 developed. That does make more sense.

Commissioner Colman said that you can consider a house that has five bedrooms, but is only 1,000 square feet. How can you have fifteen people? The reason we do the SUP is that we visit the property, look at it, see if it seems to have the capacity for nine people, the neighboring houses, whether it may be a nuisance to the adjacent neighbors. Those are things that we take into consideration. In this case, these houses seem buffered enough through landscaping and it is a large property.

Commissioner Finks said that he struggles with the idea of limiting the number of guests. It would be different for each property. What would be the metric for how many bedrooms versus how much square footage versus how many people before we change condition #2 to say that they have to be on site? It seems like it could be applied unfairly.

Commissioner Finnegan said that it is similar to the distance from a collector street.

Commissioner Whitten said that when you put the practical point to it, it is that if there is a problem, if there is noise, if a water pipe breaks, and the operator is needed, are they within a phone call or within an hour's drive? I think it is unrealistic to think that someone is going to be sitting there every single minute. They are not. That is not real life. People have jobs, sick relatives in the hospital, and so on.

Chair Way said that you are considering the vested interest if it is their property.

Commissioner Finks said that the difference between why the renter should be on the property and not the owner is because there is the assumption that the owner has built or will be building long-term relationships with the neighbors. The neighbors will have their phone number or another way to contact them. If the operator is a renter, they may only be there for a year, so it is more important for them to be there during the lodging period because those relationships will not be built with the neighbors.

Chair Way said that he has a lot of concerns with these STRs going on in single-family neighborhoods.

Commissioner Whitten said that she does, too.

Commissioner Finnegan said that this is my neighborhood. I have been approving these in other people's neighborhoods. I am not going to oppose it in mine. I would like to clarify #5 as amended to nine guests.

Commissioner Finnegan made a motion to recommend approval of this SUP, with

conditions, as amended.

Commissioner Finks seconded the motion.

Chair Way said that he will be voting no on this because he has concerns regarding the number of guests in the future.

The motion to recommend approval of the SUP, with conditions, as amended, passed (5-1). The recommendation will move forward to City Council on August 13, 2019.

Commissioner Whitten said it is important to note that the STR has been occurring at this residence for quite some time and there are no neighbors complaining. That is important to me.

Chair Way agreed that it was good to hear.
