



# City of Harrisonburg, Virginia

## Department of Planning & Community Development

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Building Inspections  
Engineering  
Planning & Zoning

July 1, 2019

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

**SUBJECT:** Public hearing to consider a request from David Lee for a special use permit per Section 10-3-34(7) of the Zoning Ordinance to allow for a short-term rental within the R-1, Single Family Residential District. The +/- 19,000 sq. ft. property is addressed as 1159 Nelson Drive and is identified as tax map parcel 84-E-16.

### 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 the Comprehensive Plan designates this area 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 dwelling, zoned R-1
- East: Single-family detached dwelling, zoned R-1
- South: Single-family detached dwelling, zoned R-1
- West: Single-family detached dwelling, zoned R-1

The applicant is requesting approval of a short-term rental (STR) operation at 1159 Nelson Drive. The applicant desires to rent for STR a four-bedroom single-family detached dwelling with a maximum of eight STR guests at a time. The property is not the applicant's primary residence and there will be no STR operator present during the lodging period.

The property is located in the southeast quadrant of the City, deep within the Ashby Heights and Ashby Estates neighborhood about 0.5-miles from the nearest arterial or collector street (Port Republic Road) and 422-feet from the end of Nelson Drive, which ends in a cul-de-sac. Nelson Drive is unlikely to have pedestrian and vehicular traffic that is not from residents of the street, their relatives, friends, or other visitors.

Generally, when someone purchases a home in a residentially zoned neighborhood, there is a degree of confidence that, although properties within the neighborhood could be rented to different people every

month, such a residential environment is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Staff believes if a whole home STR is approved within this neighborhood at this location, there is a greater chance that there would not be long-term permanent neighbors (either homeowners or long-term tenants) residing on the property, which could result in community instability because STRs introduce high turnover of different people who are unknown to the neighbors or could leave a house vacant for periods of time while the home is not being rented as a STR.

Additionally, at this location, allowing whole home rentals, where it is not the operator's primary residence decreases the housing stock available for long-term rentals and decreases the number of homes available for owner-occupied homeownership. While, some applicants may not consider themselves investors who are purchasing multiple homes to operate STRs, this home could be sold to an investor and the SUP and associated conditions would convey.

Staff believes that without a condition that the operator be present during the lodging period, and thus no on-site accountability, that there is a greater chance of nuisance activities occurring on the property and negatively impacting neighbors.

Staff also believes that STRs should not negatively impact a community, an individual's quality of life, or an individual's often biggest investment: their home and property. Given the location of the property within this residential area of the City and the nature of the request, staff believes a business operation of this nature should not be promoted at this location and further believes that a STR at this location would have adverse effects on other residents in the neighborhood and on the overall housing options in the City and recommends denial of the special use permit request.

If Planning Commission, however, desires to recommend approval of the applicant's request to City Council, staff recommends the following conditions be placed on the SUP:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than four STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to a family of not more than eight or not more than two unrelated persons.
4. 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.
5. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
6. 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 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 #2 limits the total number of guest rooms and accommodation spaces on the entire property to four. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #3 limits the total number of STR guests to not more than eight. Condition #4 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. The form requires STR operators to certify that STR accommodation spaces have the proper square footage for the number of STR guests planned, have a permanent heat source, have smoke detectors, have egress windows or exit doors, etc.

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 #5 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. Section 10-3-25(28) of the 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 four accommodation spaces within the dwelling for STR, the property would be required to provide four off-street parking spaces unless conditioned otherwise. 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 units. It appears that all the required off-street parking could be provided on the site in the existing driveway areas. Regardless, 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.

Condition #6 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 his 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.

Vice Chair Colman asked if there any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request.

David Lee, 304 Turner Ashby Drive, Bridgewater, came forward to speak to the request. This is my house. I built my house in 1992. It contains inside all my historical collection of Virginia history and documents and all kinds of items that my wife would prefer not to be in the house that she resides in. It also has my very extensive library. We use the house frequently, regularly. We have five small children at home. I already have two daughters that graduated from college. I will have seven, total. What we use this house for is to have a place where I can get away with my family. We cannot just be at home because my wife always works. There is always laundry and if I do not remove her from that situation, she will not relax. We spend our time there. We usually go to a movie and come back to the house. I usually have excursions with a couple of my kids at a time up there. I occupy that house a lot.

I have been operating this as a STR for quite some time. We have abided by the zoning ordinance of no more than two unrelated people. We have turned down more than half of the people who request to rent. One of the concerns that I have always had with the R-1 zoning district with the SUP is that it undoes that no more than two unrelated people in that neighborhood.

I think that affordable housing is important in our community. Having been in real estate for 35 years and having a property management company, there are times in this community when you need a STR for the people in this community who are transitioning between homes. They have just bought a house, but the other people have not moved out yet. They need a couple weeks of a furnished rental for a place to stay. Some of the guests that we have had have been primarily mothers and their sisters coming to take care of their daughters who has just had a baby. That has been one of our more common guests. Our other guests have been people who have come to visit their local family. This house is much more affordable for them to stay as a whole family than a hotel. There is a need for that type of housing in this market. We have to

be careful when we are talking about affordable housing to put an awful lot of pressure on people who already own housing as to what they can do with it, when the City is in control of how many new units are allowed. The conditions that they place on developing those new units also has corresponding costs.

We also use the house with the real estate company to accommodate our clients who are coming into town for a few days to look at property. We have an agent in Manhattan right now and he has been bringing people down. They are interested in investing in Harrisonburg and our company puts them up in the house. Zoning will not change that as long as I do not charge for it.

I have some experience in how this has been operating. I have sent letters to my neighbors to let them know what was going on. In my conversation with the neighbor representative, he said that he is glad we are not doing a long-term rental because, the last time we did it many years ago, it was disastrous. The tenant would not mow the grass and did not take care of the house. The house was pristine for three years. I have not had any complaints. They did ask me one thing- to put the outside lights on a timer so that when the guests could not find the switch to turn them off, they would go off. I told them that I would. I am eleven minutes from the house. I do not like idea of staying at the house with someone I do not know. I have brought my representative Lisa Hawkins to speak on my behalf.

Lisa Hawkins, attorney with Flora Pettit, came forward to speak in favor of the request. There has been some discussion on whether or not there can be time limits on a SUP. There is a difference of opinion in the legal community about that. There are some communities that say you can and some communities that believe that you cannot. The Virginia Code allows Boards of Zoning Appeals that have the authority to issue SUPs to impose time limits on those. There is not express authorization allowing a City Council or other governmental body to do that. Many jurisdictions will interpret that to mean that we cannot. Others say that it is a valid concern and it falls under the general authorization that they regulate, so they can. There are jurisdictions that interpret Virginia law to allow time limits.

In terms of this particular property, we do not agree that it is deep within the neighborhood. You exit I-81, take Port Republic Road, drive through all the retail and restaurants, turn left and look for the mail box. It is very easy to find. By my count, looking at the maps, you drive past around 25 houses. You drive past about 30 to get to this house. "Deep in the neighborhood" is a relative term. You have to consider how easy it is to find for people who are not familiar to the area. That is a relevant consideration. You have to consider not only the distance, but how many houses do you pass and how many people are on that street. I do not agree that if there is more traffic on the street, it will be less disruptive. It is probably more disruptive if someone who does not know where they are going is driving slowly trying to find an address on a busy street where there are many people walking and bicyclists, etc. such as some of the properties you were looking at earlier.

The root of the concern that you have with this application, having heard everything you are talked about today, is that it is not a primary residence. What is a primary residence? I do not think that it is defined in the City of Harrisonburg ordinance. If it is not, then the standard definition of a primary residence is that it is the place where you live most of the time. If you live there for half of the year, which is what the IRS would say, it is your primary residence. You could have people who are in their primary residence half the year; they are in Florida the other half of the year and they rent it out as a STR for the period of time that they are gone. I see no difference between that and what we are talking about here, except that instead of being an absentee landowner for a substantial part of the year, the owner is a local person who is available if there are problems and who uses it on a sporadic basis as a second home for their family, with their belongings in the property. When you add the condition about renting to a family with no more than two unrelated individuals, I do not see any distinction between what we are asking you to approve and things that you have already approved tonight, particularly because you removed the condition that the owner has to present at many of those properties, so they could be in Florida. What we would like to do is recommend that you consider an additional condition to this application that would address the concern

about it lasting forever, assuming that you do not later conclude that you could impose a time limit. The condition would be something along the lines of: “The site shall be a secondary residence of the operator whose primary residence is within 30 miles of the site.” The only person who could operate this SUP would be someone who lives within 30 miles and uses it as a secondary residence. They are using it on a regular basis, for personal occupancy and other personal use. Secondary residence is defined in the IRS code, just as primary residence is. It is the same as primary residence, only less than half of the year. This condition puts this one in a box that is similar, if not identical, to SUPs you have already approved this evening. It also fills a market need for larger STRs because most of the STRs you have recommended for approval accommodate two or four people, with one or two bedrooms in a house. There is a lot of need for rentals that can accommodate families. The City would be shortsighted not to make sure that you are including some larger rentals in the mix. You are not going to find many of those for families that want to occupy a whole house.

Let us not lose sight of one of the major goals of the Comprehensive Plan which is to grow hospitality and tourism in the City by “encourage more visits and longer visits among target markets”. The types of rentals that Mr. Lee has had over the past several years with no complaints from the neighbors are exactly what that goal is seeking to promote, which is families who visit, eat at restaurants, spend money here, and enjoy the wonderful City that we all share.

Commissioner Finks asked that Ms. Hawkins restate the suggested condition.

Ms. Hawkins said “the site shall be the secondary residence of the operator whose primary residence is within 30 miles of the site”.

Commissioner Finks asked if they are formally requesting that the condition be considered.

Ms. Hawkins said 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 Whitten said this request is the same as the request on Shenandoah Avenue.

Vice Chair Colman said that it was similar. If we were to approve this request, we would have to ask City Council to take another look at Shenandoah. I am not advocating for that. It is an interesting argument.

Vice Chair Colman asked counsel for clarification regarding primary and secondary residences.

Mr. Russ reviewed the IRS definition of secondary residence. A secondary residence is a residence in which you live a portion of the year, not more than half, and you do not rent the home out for more than 300 days per year. At that point it becomes a rental unit.

Commissioner Finks asked if that would preclude a STR.

Mr. Russ said he could not imagine that many people would be renting a STR for 300 days a year.

Commissioner Finks asked if it would have to have a time limit for that condition to be considered. If we were to add second residence into a condition, would it automatically put that 300-day time limit on it? If it were rented more than 300 days, it would not longer be a second residence. Am I understanding that correctly?

Mr. Russ said the limit it would place is that they could rent the Airbnb for 299 days a year to continue to qualify as a secondary residence.

Ms. Dang asked if a person can have more than one secondary residence.

Mr. Russ said yes, they could.

Vice Chair Colman said he could buy and own many houses, occupy them for five days a year and call all of them my secondary residence. My intent is to give due attention to each one of these items and each one of these arguments. We need to consider each argument and see how it stacks up to our reasoning and our concerns with why we are regulating it.

Commissioner Finnegan said that the Planning Commission voted on a split decision (4-3) for option number two which was by right, except for in cases where it was not operator occupied. City Council went in a different direction. If we are going to be here to 11:00 p.m., instead of having this be by right, we can take each one. We are finding boundaries. Each house is different. Each neighborhood is different. Each situation is different. With the split decisions tonight, we have fallen on different sides of where those boundaries are. I tend to agree with Commissioner Whitten that this falls in with the same category as Shenandoah Avenue. I am inclined not to support.

Vice Chair Colman said it is the same situation, but the argument was presented differently. I give credit to the argument. I am concerned that it can be a second residence even if it is rented for 300 days.

Commissioner Finks said he wanted to explore the suggested condition and see if it would change our thinking, but it is very similar to Shenandoah Avenue.

Vice Chair Colman said it is tied to the definition of secondary residence, which can be stretched.

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

Commissioner Whitten seconded the motion.

All members voted in favor of the motion to recommend denial. The recommendation will move forward to City Council on July 9, 2019.

Respectfully submitted,

*Alison Banks*

Alison Banks  
Senior Planner