



# City of Harrisonburg

City Hall  
409 South Main Street  
Harrisonburg, VA 22801

## Master

File Number: ID 19-220

File ID: ID 19-220      Type: PH-Special Use Permit      Status: Agenda Ready

Version: 1      Agenda Section:      In Control: City Council

File Created: 06/28/2019

Subject:      Final Action:

**Title:** Consider a request from Jonathan and Kaitlin Ernest for a special use permit to allow short-term rental at 1934 Park Road.

### Internal Notes:

**Sponsors:**

**Enactment Date:**

**Attachments:** Staff Report SUP (1934 Park Road) (4 pages), Site Maps (2 pages), Application, applicants letter and supporting documents (3 pages), 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:
1	Planning Commission	07/10/2019	recommended to full council	City Council	08/13/2019		Pass

**Action Text:** Commissioner Finks made a motion to recommend approval of the SUP, with conditions, as stated.  
Commissioner Finnegan seconded the motion.  
Chair Way called for a roll call vote.  
Commissioner Finnegan: Aye  
Commissioner Ford-Byrd: No  
Commissioner Whitten: No  
Commissioner Colman: No  
Commissioner Finks: Aye  
Chair Way: No  
The motion to recommend approval failed.  
Commissioner Whitten made a motion to recommend denial.  
Commissioner Colman seconded the motion.  
Chair Way called for a roll call vote on the motion.  
Commissioner Colman: Aye  
Commissioner Finks: No  
Commissioner Finnegan: No  
Commissioner Ford-Byrd: Aye  
Commissioner Whitten: Aye  
Chair Way: Aye  
The motion to recommend denial passed (4-2). The recommendation will move forward to City Council on August 13, 2019.

**Notes:** Chair Way read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site 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: Detached single-family dwelling, zoned R-3

North: Townhomes, zoned R-3 and property within Rockingham County, zoned A-2

East: Townhomes and detached single-family dwelling, zoned R-3

South: Detached single-family dwellings, zoned R-3

West: Detached single-family dwelling, zoned R-3 and property within Rockingham County, zoned A-2

The applicants are requesting approval of a short-term (STR) operation at 1934 Park Road, which is a cul-de-sac street located in the northern portion of the City. The property is approximately 0.5-miles from: Harmony Square, a shopping center that fronts on Virginia Avenue; Park View Mennonite Church; and Virginia Mennonite Retirement Community. Additionally, Eastern Mennonite University is within 0.7-miles of the site.

The applicants describe that the property is their primary residence and they desire to rent for STR three accommodation spaces in the basement of their home. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant explained to staff that the basement area contains a separate bedroom and a common area that is partitioned into two separate spaces. The accommodation spaces could accommodate two guests in each space for a total of up to six STR guests.

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 a large driveway and a two-car garage. The applicants have explained that lodgers will park their vehicles in the driveway. 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 be placed on the SUP:

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 six.
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. Additionally, the subject property is large enough to allow a duplex structure or multi-family 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 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 STR guests to not more than 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 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 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, 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.

Chair Way asked if there any questions for staff. Hearing none, he opened the public hearing and invited the applicant to speak to the request. The applicant not being present, he 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.

Chair Way asked if there were any other submissions, letters, or comments regarding the request. Staff responded that there were not.

Commissioner Whitten asked if staff was notified that they would not be present.

Ms. Banks replied that she did hear from the applicants, today, and they informed her that they would not be present.

Chair Way said that while we do not require that applicants be present, if we did want to discuss the conditions or ask questions, we cannot do so. There is that technical reason, as well as a courtesy reason to be there.

Commissioner Finks said that there is always the option to table the request so that the applicant can come before this body to answer questions.

Mr. Fletcher said that we do not know why they are not here.

Ms. Dang said that if the applicant has any concerns regarding Planning Commission's vote, they would have the ability to address it before City Council.

Commissioner Finnegan said that in the absence of any letters in support or against, it is hard to know anything about the request other than the staff report, which was thorough.

Commissioner Finks made a motion to recommend approval of the SUP, with conditions, as stated.

Commissioner Finnegan seconded the motion.

Chair Way asked if it was possible for commissioners to abstain, or do they have to vote.

Mr. Fletcher said that if you abstain, you have to give a reason to City Council.

Chair Way said that he is interested in asking the applicant how they will operate. They write some things in their letter, but I have a few more questions.

Ms. Banks said that she met with the applicants and would answer some questions on their behalf.

Ms. Dang asked why it matters what the applicant says in their letter regarding their intent, if the conditions are going to be what dictate what they are allowed or not allowed to do.

Chair Way said that what they are doing is the thing that we are giving them permission to do.

Mr. Fletcher asked are you saying that, regardless of the applicant's wishes, the Planning Commission can make conditions on them, and they either like them or they do not. They have to comply with them. They might not like your conditions, but if they wish to operate it and City Council adopts it, they have to live with it.

Ms. Dang said that if you asked your question, I might better understand what your concern is. Why more specificity about their operation, than what they offered? What is your question?

Chair Way said that one question is to know if they will be present during the accommodation period.

Ms. Banks said I do not think that generally they will be present the whole time, based on conversations with them.

Commissioner Whitten said that is a question for them to answer.

Commissioner Colman said that they are not present here to answer it.

Chair Way said that he has spoken with every applicant regarding the SUP to get a sense of the operation. I understand that it is not a condition, necessarily, but it could prompt a condition change based if the discussion raises concerns about issues that we are less comfortable about or that we feel is a problem.

Commissioner Finks said that we have discussed all of these issues last month. I feel comfortable in these instances in which they are the owner and it is their primary residence. What sort of extra conditions would you consider if an applicant said that they do not plan to be present?

Chair Way said that we may ask if six is the right number of guests if they are not going to be around. Perhaps four may be a more comfortable number. If there is a group or a single family rather than individuals. What is the nature, the make up of the actual property? I am not saying that there are a whole bunch of problems that I have with this, but I do feel that they should come here and speak to this. I do have these questions and I have asked everyone else. It may be unfair, if I am asking other people these questions, which may not necessarily lead to different conditions, but have certainly led to all sorts of conversations.

Commissioner Finnegan said that it is interesting that deciding the case in the absence of the applicant is what is going to happen when these properties convey. Someone new is going to take it over and we are not going to have the opportunity to question them regarding how they are going to use it and what their understanding is.

Commissioner Whitten said that it is even scarier.

Commissioner Colman said that is more reason to vet this because we want to make sure



that it is set right.

Commissioner Finks said that that is my point. If we are going to change conditions based on what the applicant says...

Commissioner Whitten and Chair Way said that we do.

Commissioner Finks continued saying that there has been a basic structure with which we have been working.

Chair Way said that he would like to make a point that he would like for more information and is not comfortable making a vote without some of the other information that we have received from everyone else. It is not black and white.

Chair Way said that we do have a motion and a second and called for a roll call vote.

Commissioner Finnegan: Aye

Commissioner Ford-Byrd: No

Commissioner Whitten: No

Commissioner Colman: No

Commissioner Finks: Aye

Chair Way: No

The motion to recommend approval failed.

Commissioner Whitten made a motion to recommend denial.

Commissioner Colman seconded the motion.

Chair Way called for a roll call vote on the motion.

Commissioner Colman: Aye

Commissioner Finks: No

Commissioner Finnegan: No

Commissioner Ford-Byrd: Aye

Commissioner Whitten: Aye

Chair Way: Aye

The motion to recommend denial passed (4-2). The recommendation will move forward to City Council on August 13, 2019.

Ms. Dang asked if all those voting to deny the request had the same reasoning as Chair Way had expressed or are there other reasons that City Council should consider.

Commissioner Whitten said that she would like to always hear from the applicant or more representation than a letter in a packet or some reason why they could not be present. If we can show up and stay, then they should be able to be here or send a representative.

Commissioner Colman said that as we are looking at these SUPs and discuss them, we need them to be here.

Commissioner Ford-Byrd said that she does not want to set the standard that these are submitted, and people not show up in the future.

Chair Way said that it is part of the precedent building that we have discussed.

Commissioner Finks said that if that is the consensus, should we ask staff that if the applicant is not able to be present or send more than an application, then their application is automatically denied? I am not sure about the legality of that being done, but is that the consensus?

Commissioner Whitten said, yes, they could have asked to be tabled.

Mr. Fletcher said that he would like to talk with the City Attorney's office about that.

Mr. Russ said that he would almost prefer that we never hear from the applicant and make the decision solely based on land use.

Chair Way said that he has questions about how they are using the land. That is why I want them to be here. I think there is a good standard that we are talking about regarding people being here to answer those questions.

Commissioner Whitten said that there is a reason for that.

Mr. Fletcher said that there is nothing in the State Code or any precedence in case law, that I am aware of, where the applicant must be present during those hearings.

Ms. Dang agreed. The point of hearing or not hearing from the applicant is that we should be establishing the conditions based on the use that we expect to see there regardless of what the applicant tells us.

Commissioner Colman said that we changed some of the conditions as we discussed things with the applicants. Is that not why we are here?

Ms. Dang said that it makes her uncomfortable.

Chair Way asked what the point of having a public hearing is, if they are not going to speak with the applicant.

Mr. Russ said that the point of the public hearing is to get factual information from neighbors that we may not be able to get otherwise. Land use decisions should not be based on unspecified anger or angst from neighbors.

Chair Way said that he had factual requests that he wanted from the applicant regarding the nature of their parking arrangements, for instance.

Mr. Fletcher said if you believe the conditions are important for land use matters, then the Planning Commission makes those statements and the applicant may not agree with them, but if they want to operate the SUP, then they have to follow those conditions.

Commissioner Whitten said that is not how this has been working.

Mr. Fletcher said that the STR regulations are very new. In years prior, I have not experienced the conversation of having the applicant express how they feel about the conditions.

Commissioner Whitten said that if you ask someone if they want to comply with a rule, they are going to say no.

Mr. Russ said that they might say yes because they think that they have to say yes. Sometimes it seems like we are imposing conditions because they say yes and not because we think that there is some actual tangible benefit from the condition.

Commissioner Colman said that we changed the first two conditions that we used, the owner-occupied and the presence of the renter, based on our discussions. Those conditions were different. We changed them based on our discussions with the applicants. We did change those things based on our interaction with the applicants.

Mr. Fletcher said that if there are questions about procedural matters or your responsibilities, please reach out to staff. They can set up one-on-one discussions or set up presentations for the group.

Commissioner Colman asked if the Planning Commission is not being procedurally correct.

Mr. Fletcher said that it is about the issue being so new.

Chair Way said that he is very uncomfortable about this SUP. I believe it is an inappropriate neighborhood for it to happen and I do not like this site. That is why I wanted

to talk through it, to ask the applicant to convince me about why this might make sense there. I completely understand that this is not necessarily going to change too many technical things, but it is going to get us, as subjective human beings, to a better understanding of the neighborhood. I need for something to get me to vote for it.

Commissioner Whitten said that she thinks that if someone thinks that it is important enough to pay their money and ask for a SUP, it is not too much to expect that they show up and be asked a question. That is not unreasonable.

Commissioner Finks said that if we are not requiring their presence and we are not telling them that it is a requirement, up front, how can they know that?

Chair Way said that when I was making my pitch at the start, it was very much on the basis of having questions for the applicants. I am not trying to set a requirement that people come here. We have had other things in the past where the applicant has not been here, and we have not liked it, but we have done it. There are particulars to the case here.

Yes: 4 Colman, Whitten, Way and Ford-Byrd  
No: 2 Finnegan and Finks  
Absent: 1 Romero

---