



# City of Harrisonburg

City Hall  
409 South Main Street  
Harrisonburg, VA 22801

## Master

File Number: ID 19-218

File ID: ID 19-218      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 J&K Trust for a special use permit to allow short-term rental at 921 Blue Ridge Drive.

### Internal Notes:

Sponsors:

Enactment Date:

Attachments: Staff Report, Site Maps, Application, applicants letter and supporting documents, 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
<p><b>Action Text:</b> Commissioner Finnegan made a motion to recommend denial of the request. Commissioner Ford-Byrd seconded the motion. All members voted in favor of recommending denial of the SUP. The recommendation will move forward to City Council on August 13, 2019.</p> <p><b>Notes:</b> Chair Way read the request and asked staff to review. Ms. Banks said that she placed a letter before each Commissioner. There was also some correspondence that was emailed to you earlier this week. 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:</p> <p><u>Site:</u> Detached single-family dwelling, zoned R-1</p> <p><u>North:</u> Vacant parcel and detached single-family dwellings, zoned R-1</p>							

East: Detached single-family dwellings, zoned R-1

South: Detached single-family dwellings, zoned R-1

West: Detached single-family dwelling, zoned R-1 and townhomes, zoned R-4

The applicants are requesting approval of a short-term rental (STR) operation at 921 Blue Ridge Drive, which is located in the eastern portion of the City in Reherd Acres Subdivision. The applicants desire to rent for STR a four-bedroom, single-family detached dwelling with a maximum of 13 STR guests during the lodging period. The property is not the applicant's primary residence and there will be no STR operator present during the lodging period. The applicants state in their letter that they would be present at their primary residence on Mockingbird Drive, which is approximately 0.4 miles from the subject property.

The applicants explained to staff that they intend to offer accommodation spaces within each of the four bedrooms, as well as spaces in the living room and recreation room. Additionally, the applicants stated that they would only accept guests who come as a single family or a single group; they will not be renting out individual rooms. There is a large driveway that can accommodate six vehicles, plus a two-car garage, for a total of eight off-street parking spaces on the subject property.

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 situation 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 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 also 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.

Given the size and nature of the request, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

If there is desire to approve of the applicant's request, 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 six STR guest rooms or accommodation spaces.



3. The number of STR guests at one time shall be limited to a single-family or single group of no more than 13 individuals.
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 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 a 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 six. ("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 13. 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.

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 six accommodation spaces within the dwelling for STR, the property would be required to provide six 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 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.

Chair Way asked if there were any questions for staff.

Commissioner Whitten asked if there were eight letters in opposition and Ms. Banks confirmed that there were.

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

J.C. DePoy, Trustee for the J&K Trust, came forward to speak to his request. He explained that he is one of the owners of the J&K Trust, along with his children, his sisters, and their children. He provided the trust documents and a copy of the most recent mortgage statement for the house to the Commissioners as evidence of his personal stake in the property. Mr. DePoy explained the history of the neighborhood from the prior use of the property as a dairy farm through its subsequent developments, many of which involved his father as one of the developers. He has lived there since he was a child and still lives in the neighborhood, and he is committed to the neighborhood. He stated that his property is close to a collector street and does not believe that the STR will increase traffic in the neighborhood.

Mr. DePoy asked for staff to define "nuisance."

Ms. Banks responded saying that a nuisance can be noise, numbers of individuals, loud music or parties, trash, not keeping up the property, etc.

Mr. DePoy said that he would like to offer two conditions. One is that his son can move into the home and use it as his primary residence. The other one is a condition that if they sell the house the SUP is terminated.

Mr. Fletcher said that is a condition that the City cannot legally accept. A sunset clause is a bit different. SUPs cannot be nullified by the property owner. A sunset clause is a time limit for the SUP.

Mr. DePoy said that he would offer a condition of a sunset clause of ten years.

Mr. Fletcher said that it cannot be based on the desires of staff. If you want to offer a sunset clause, that is something that you have to make part of your application.

Mr. DePoy said that he wants to make a ten-year sunset clause condition.

Commissioner Ford-Byrd asked when his son would be moving in.

Mr. DePoy said that he has started to move in. By right, we intend to furnish the home, rent it through the hospital and universities, to doctors who stay three or four months. We have started to move stuff in there.

Commissioner Finks asked why it was not on the application that the operator would be on-site?

Mr. DePoy said that he did not understand that it was a concern.

Commissioner Finks asked if Mr. DePoy would have any objections to amending the conditions to add that it has to be the operator's primary residence. In other words, conditions #1 and #2 that we have been talking about tonight.

Mr. DePoy asked for clarification regarding conditions #1 and #2.

Commissioner Finnegan read the standard conditions.

Mr. DePoy agreed to adding conditions #1 and #2. My son is an owner of the house and would use it as his primary residence.

Chair Way asked if anyone else would like to speak to the request.

Faye Morris, 891 Blue Ridge Drive, came forward to speak in opposition to the request. Her home is a four-bedroom home, zoned R-1 in a diverse, close-knit neighborhood. She opposes the request due to concerns regarding increased traffic, trash, the character of the



neighborhood, and density.

Commissioner Finnegan asked, hypothetically, if a family were to purchase the house and apply for a SUP to operate an Airbnb in one or two bedrooms would you have an objection to that, as well?

Ms. Morris said that it depends on how many people. If you are looking at thirteen versus the one that is actually physically living in there. If the son owns it and physically lives there, it is different from owning and being a part of it and only being a quarter of a mile away.

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 Whitten said that Mr. DePoy made a good point about how neighborhoods can change because of things that happen that you think will be good things and then turn out not so well. I think he made his own argument against this SUP.

Commissioner Finks said that he grew up in that neighborhood. The street changed from a cul-de-sac to when Madison Manor was put in. The traffic exponentially changed to the point where we were awoken to car wrecks in our front yard. Making changes to neighborhoods changes the character of the street. We went from having a street that we could play in to being afraid to walk. Blue Ridge Drive is a very busy road, but I do not think that is an argument to approve or add to it.

Commissioner Finnegan said that his primary concern is with the thirteen individuals.

Chair Way said that, qualitatively as well, this is a single-family neighborhood.

Commissioner Whitten said that we have multiple neighbors with great concern.

Commissioner Finnegan said that the applicant said two things that he would like to make note of. One was that doctors might want to rent this for three months at a time. If this is a primary residence and they are not there during that time, then that is a concern.

Commissioner Finks asked, with the possible addition of more conditions, such as conditions #1 and #2, which we have discussed, and the sunset clause, would that change the recommendation of staff.

Mr. Fletcher said it would be difficult to give an on the spot response.

Ms. Dang said that, except for the sunset clause, the conditions would be exactly the same as Smith Avenue where we recommended denial.

Mr. Fletcher said that as City Council begins to make their decisions, as they begin to set precedent and policy, we have to take a step back and recognize what their decisions mean for the neighborhoods in the City and what we are doing in our community. You might begin to see differences of opinion from staff as the STRs are approved. Was Smith Avenue the same situation?

Ms. Dang said that at the time we discussed Smith Avenue, staff was focused more on location. We did not assess the number of guests.

Commissioner Colman said that City Council is agreeing with our analysis and going along with it. We are adjusting our opinions and we should convey that to City Council.

Commissioner Ford-Byrd said that this is currently my neighborhood and I travel Blue Ridge Drive several times a day. I know that cars have trouble getting out of their driveways, as they are backing out into the street. There is already a problem with traffic on that road. I do not see a household with thirteen people operating, especially because the road is so busy and getting to the point that it is dangerous.

Commissioner Finnegan said that he would like to add to his earlier comment about the conditions and the operator living on-site. We denied a couple of STRs last month such as Shenandoah Avenue. If it becomes a condition where people are saying, "OK, I'll change my primary residence to that address," that is different from someone who has lived in the house for 30 years and we want to rent a room. Those things are fundamentally different. I will not be voting in favor.

Commissioner Whitten said that another difference between Smith Avenue and this request is that this one is zoned R-1. It is a single-family home. This is what we say, as a City, is our low-density neighborhood.

Mr. Fletcher said that the Smith Avenue site is zoned R-2, but their private covenants do not allow further subdivisions. It is similar to R-1.

Ms. Banks said that their covenants restrict duplexes, so it is just single-family homes.

Commissioner Finnegan said that his primary motivating factor is the email he received from Scott Rogers this morning. He says that this is some of the lowest home sales that we have seen, the lowest houses available. Staff pointed out about the availability of housing.

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

Commissioner Ford-Byrd seconded the motion.

All members voted in favor of recommending denial of the SUP. The recommendation will move forward to City Council on August 13, 2019.

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