



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

February 6, 2023

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

SUBJECT: *Consider a request from Thomas W. Rogers and Allison G. Kauffman for a special use permit to allow short-term rental at 71 Broad Street*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: January 11, 2023**

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said that the Comprehensive Plan designates this area as Mixed Use. The Mixed Use category includes both existing and proposed areas for mixed use. Mixed Use areas shown on the Land Use Guide map are intended to combine residential and non-residential uses in neighborhoods, where the different uses are finely mixed instead of separated. Mixed Use can take the form of a single building, a single parcel, a city block, or entire neighborhoods. Quality architectural design features and strategic placement of green spaces for large scale developments will ensure development compatibility of a mixed use neighborhood with the surrounding area. These areas are prime candidates for “live-work” and traditional neighborhood developments (TND). Live-work developments combine residential and commercial uses allowing people to both live and work in the same area. The scale and massing of buildings is an important consideration when developing in Mixed Use areas. Commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

Downtown is an existing area that exhibits and is planned to continue to contain a mix of land uses. The downtown Mixed Use area often has no maximum residential density, however, development should take into consideration the services and resources that are available (such as off-street parking) and plan accordingly. Residential density in Mixed Use areas outside of downtown should be around 24 dwelling units per acre, and all types of residential units are permitted: single-family detached, single-family attached (duplexes and townhomes), and multi-family buildings. Large scale developments, which include multi-family buildings are encouraged to include single-family detached and/or attached dwellings.

The following land uses are located on and adjacent to the property:

Site: Duplex Dwelling, zoned R-2
North: Single family dwelling, zoned R-2
East: Across Broad Street, single family dwelling, zoned R-2
South: Parking lot, zoned B-2
West: Parking lot, zoned B-2

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (8) to allow for a short-term rental (STR) within one unit of a duplex on a property zoned R-2, Residential District. The parcel is +/- 4,279 square feet, is addressed as 71 Broad Street, and identified as tax map parcel 34-U-11. The property contains an unsubdivided duplex with one dwelling unit on the lower-level and a second dwelling unit on the upper-level.

As defined in the Zoning Ordinance (ZO), a STR is “[t]he provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” STRs are further regulated by Article DD of the ZO. Among other things, a STR differs from the by right homestay use by allowing operators to exceed 90 lodging nights per year and in allowing more than four guests at one time.

The applicant is the property owner, who noted that they would reside in the upper-level unit being their principal residence. As explained in the applicant’s submitted letter they will have three accommodation spaces within the unit with plans to allow up to six guests at one time.

While the applicant has explained their operation plans for the STR, the SUP is not restricted to only the current applicant/operator. All SUPs transfer to future property owners; thus, if the applicant sells the property, any future property owner could operate a STR so long as they meet the requirements of the ZO and any conditions placed on the SUP. How the STR could be operated by any future property owner should be considered and evaluated as part of this request.

With regard to off-street parking matters, the ZO requires one off-street parking space for each dwelling unit and, unless conditioned otherwise, one parking space for each accommodation space of a STR. This means that five parking spaces would be needed to meet the requirements of the ZO—one for each unit of the duplex and one each for the three accommodation spaces of the STR. Nonetheless, in this particular situation, if the STR is approved as requested, the one unit of the duplex would not be used long-term and would only be used as a STR. The applicant’s letter describes that the property contains a driveway that offers parking capacity for two vehicles and a third parking space is available upon removal of a large planting box. Given this, if the request is approved, staff recommends conditions that the property owner limit the number of cars associated with each stay to no more than two vehicles and to require only one off-street parking for the STR. Given the circumstances of this request, where the operator does not reside within the dwelling in which the STR would operate, staff believes the request should be denied. At the August 10, 2022, regular Planning Commission meeting, staff proposed amendments to the ZO that, if the amendments were already in effect, would have prevented the property owner from being able to apply for a STR as requested. In brief, among other amendments, staff had proposed to amend Section 10-3-205 (2) as shown below:

Sec. 10-3-205. General Regulations

(2) Operators shall maintain the **property dwelling** as their primary residence, as indicated on a state-issued license or identification card or other documentation deemed acceptable by the Zoning Administrator.

Planning Commission unanimously (7-0) recommended for City Council to approve all of the ZO amendments that were proposed at the August 10, 2022, regular meeting. However, at City Council's public hearing regarding the amendments at the September 13, 2022, meeting, while there appeared to be differing opinions on the matter, Council tabled the request and advised staff to draft an option that would allow one unit of a duplex property to be used as a STR by SUP. At this time, staff plans to bring this matter back to City Council's attention in February 2023. Also of note, is that at the October 12, 2022, regular meeting, Planning Commission received a similar request for a STR in one unit of an unsubdivided duplex at 375 Broad Street. Staff recommended denial of that application and Planning Commission also unanimously (7-0) recommended denial. On November 22, 2022, City Council denied the request with a vote of 3-2. On December 14, 2022, Planning Commission received a similar request for a STR in one unit of an unsubdivided duplex at 524 Long Avenue. Staff recommended denial of that application and Planning Commission also unanimously (7-0) recommended denial. City council will be voting on that request on January 10, 2023.

While the outcome of the revised ZO amendment is still unresolved, under the current regulations and in this particular situation, staff believes it is in the best interest of the community to only allow such transient accommodations within the dwelling in which the operator resides. Staff believes the most recent proposed amendments for the STR and homestay regulations is a good middle ground for the many and diverse opinions as to how such uses should be permitted in the City.

However, if there is a desire to approve the request, staff recommends the following conditions:

- a. All STR accommodations shall only be permitted within the lower-level dwelling unit of the existing principal structure.
- b. There shall be no more than three STR guest rooms or accommodation spaces.
- c. The number of STR guests at one time shall be limited to six.
- d. Minimum off-street parking spaces may be reduced to one and do not need to be delineated. The STR shall limit the amount of visitor cars to two per visit.
- e. 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 items identified in the Pre-Operation Form when short-term rental guests are present.
- f. 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.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Thomas Rogers, 71 Broad Street, came forward regarding his request. I am grateful for this process. This process has made my wife, Allison Kauffman, and I think about the City-wide impact of us potentially running a STR. I am not originally from here, but this is now my home. I am

grateful for a process that means that we are looking out for the City as a whole. We had a pre-application meeting with staff. They raised some of the opinions that staff and the Planning Commission have expressed. Obviously, we are not experts. In our opinion, if we were to run a STR in our extra unit at 71 Broad Street, that would have more of a positive impact than a negative for us and for the City. Our motivations behind our application were that our current tenants are looking to buy a house, so they may not be resigning their lease in May. Another factor was the risk management of potential vacancies of the extra unit. We know of a few landlords who have struggled to fill units in a similar price range to ours. We prefer the risk associated with STRs. The revenue potential of the unit is likely greater as a STR. Finally, we hope to have more accessibility to host family and friends and to be able to provide a space for our family and friends. From listening to a few of these meetings, it seems that the majority opinion among City staff and Planning Commission is that STR should only exist within the dwelling unit in which the operator resides. I would appreciate getting to understand more about why that is and your thoughts and opinions on that, so that I can update my opinion. I welcome any questions and thoughts that you have about our application.

Chair Finnegan asked if there were any questions for the applicant.

Chair Finnegan said the reason that I tend to vote against these, my line in the sand is, “is this taking a full-time, year-long rental off the market for someone who lives here?” If the answer is “yes,” I tend to vote to recommend denial. If the answer is “no” because there is no kitchen and it could not be an apartment, I vote yes. That is my personal line.

Commissioner Armstrong asked are you aware that you have a by-right option of 90 nights per year?

Mr. Rogers said yes, that is something that we would consider doing. Right now, we have tenants, so it is not something that we are doing at the moment. We are aware of that option, but we would prefer to be able to use it as a STR for the full year or more than 90 days.

Commissioner Byrd said if things go the way that I think they are going to go, you might want to keep the homestay option in mind. If things change in the future, keep it in mind when you present before City Council, since they will bring that up.

Chair Finnegan said even if the SUP is denied, you could rent out your house, where you live for up to 90 nights.

Chair Finnegan asked if there were any questions for the applicant’s representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Byrd said concerning this particular type of subject, duplexes, until I hear a definitive position from City Council, I am more likely to stay with the position of denying these. If, in the future, City Council decides that there is no reason to view duplexes in the way that I envision, I might consider revising my position on it. Until that happens, my current position would be to deny this request.

Chair Finnegan said I agree with Commissioner Byrd. There was one further down Broad Street, about two blocks away, that we denied for a very similar situation. It was a duplex and they wanted to live in one side and rent out the other side as a STR. We denied that one.

Commissioner Byrd moved to recommend denial of the request.

Commissioner Armstrong seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Chair Finnegan	Aye

The motion to recommend denial of the SUP request passed (5-0). The recommendation will move forward to City Council on February 14, 2023.