



# 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 Sherwyn and Deirdre Smeltzer for a special use permit per Section 10-3-180(6) of the Zoning Ordinance to allow for a short-term rental within the UR, Urban Residential District. The +/- 7,700 sq. ft. property is addressed as 294 Franklin Street and is identified as tax map parcel 26-I-12.

### 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. Banks said that the Comprehensive Plan designates this area 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:

- Site: Single-family detached dwelling; zoned U-R
- North: Non-conforming duplex dwelling; zoned U-R
- East: Single-family detached dwelling; zoned U-R
- South: Across Franklin Street, single-family detached dwellings; zoned U-R
- West: Single-family detached dwelling; zoned U-R

The applicants are requesting approval of a short-term (STR) operation in their home at 294 Franklin Street. The subject property is located along the northern side of Franklin Street, approximately 80-feet south from the intersection with Ott Street. The applicant has informed staff that the property is their primary residence and they will be present during the lodging period.

The applicants desire to rent for STR one accommodation space in their home that could accommodate two persons. ("Accommodation space" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The accommodation space is described as a third floor finished open attic space with a separate bathroom. The accommodation space has access through the home, as well as an exterior separate entrance via a staircase along the outside of the home.

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 one STR accommodation space, the property would be required to provide one off-street parking space. As well, the ZO requires one off-street parking space for the single-family detached dwelling.

This section of Franklin Street restricts parking along the northern side of the street. Additionally, there is red zone permit parking on the southern side; therefore, a parking pass is required for vehicles parking on the south side of Franklin Street Monday through Friday, 4am-6pm. The subject property has a driveway for off-street parking that is utilized for the single-family detached dwelling. The applicant states that the driveway can accommodate the additional required parking space for the STR operation.

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

1. The site shall be the operator’s primary residence.
2. An 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 one STR guest room or accommodation space.
5. The number of STR guests at one time shall be limited to two.
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. Condition #2 protects the neighbors by ensuring that there is on-site accountability with operators being 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 to one. Condition #5 limits the total number of guests at one time to two. 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 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.

Additionally, it appears that the attic 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.

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 applicants 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.

Franklin Street is a local residential street that is heavily travelled by both, vehicles and pedestrians. The subject property is walkable to the downtown area and James Madison University campus. It is situated approximately 740-feet from Mason Street, a major collector street and 1,250-feet from Main Street, an arterial street. The STR request is for one accommodation space of up to two guests, and the operator will be present during lodging periods.

Given the nature of the request, location of the property within the neighborhood, 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.

Vice Chair Colman asked if there were any questions for staff.

Commissioner Finnegan said he received an email regarding the request which he agreed to forward to staff.

Commissioner Whitten asked about egress from the third-floor attic space.

Ms. Banks said there is interior egress, but there is also a spiral staircase that goes up the side of the house. Referencing one of the slides, she pointed out the doorway and the spiral staircase.

Commissioner Whitten asked if the driveway is shared with the house next door. It is said that it is a shared driveway. My driveway is shared. I can use the driveway, but I cannot block the driveway. It is deeded that way. We had a garage that was deeded that way, half ours and half theirs. I live in the neighborhood and I have been told that the driveway is shared. If it is a shared driveway, you cannot park a car there to stay.

Ms. Banks said the house directly next door has its own driveway, here.

Mr. Fletcher said the property lines on the slides are not exact.

Ms. Banks said it would depend on what the agreement for the driveway is. The driveway can be extended to park vehicles in the rear of the property.

Vice Chair Colman asked if it is an access driveway or a driveway for parking. It depends on the agreement. Are we counting that as a parking space for the unit?

Ms. Banks said yes.

Vice Chair Colman said they would have to ask the applicant and ensure that they obtain accurate information.

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

Deirdre and Sherwyn Smeltzer, 294 Franklin Street, came forward to speak to their request.

Ms. Smeltzer said that she supports the process that the City is going through and the formalizing of STR. It is beneficial to the City and bolsters the economic input to the City.

Mr. Smeltzer said they met with their neighbors and during that meeting they expressed appreciation for the transparency of how we went about the process. In conversation with them, we shared the eight conditions that staff has recommended. None of our neighbors are here this evening and we feel that, in good faith, we want to accept all eight of those conditions, including number two. That would be the expectation in the conversation that we had with our neighbors and we want to honor that.

In our earlier letter we included a request that the SUP not convey with the sale of the house. We learned that it is not a workable condition for the City. If it is possible to have a SUP that would expire in ten years, we would advocate for that.

Ms. Smeltzer said that the property line does go about a foot into the driveway. We have lived there about eleven years. Years ago, we discussed the driveway with those neighbors. They have their own driveway and they had no problem with us using that driveway as our driveway.

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 Finnegan made a motion to recommend approval of the SUP with conditions, as presented.

Commissioner Ford-Byrd seconded the motion.

Commissioner Whitten said the letter from Mrs. Ehrenpreis is very compelling in terms of the historic nature of Franklin Street. We had a discussion and she stated some concerns about the nature of neighborhoods. I need to speak to the fact that she did not feel that it was a good thing.

Commissioner Finks said he can understand that perspective. This is the first request that is within walking distance of downtown Harrisonburg, where you are more apt to have people renting the space to have a fun weekend, whereas the others are probably going to have family, and less likely to have individuals. I can see how that concern would be raised based on its proximity. Collicello Street would also fall into that.

Vice Chair Colman said his concern was with the driveway. I understand that the neighbors do not have a problem with it, but we look at this beyond the current owners. We do not know if that relationship will still be there without a specific agreement. Perhaps most of the right of way is theirs. The SUP does not give any rights beyond the property rights to use that driveway, so you might not be able to. That is something we need to consider.

Ms. Banks said that the condition could be changed to say that the STR does not have to have off-street parking.

Vice Chair Colman said if they can use the driveway, that is fine, but if they cannot, I am ok with that.

Ms. Whitten said the parking is very limited on Franklin Street. You need to be very aware of that. Parking is only allowed on one side of the street. A lot of houses do not have off-street parking.

Vice Chair Colman said owners of the Airbnb will want to offer a parking space. I do not see an issue with them. I see an issue with us imposing that there be dedicated parking when we do not have authority to do that if that driveway is not available. That is my concern. I am not making a condition. I am making the comment. City Council or staff can look at it before the City Council meeting. That is my only concern. Beyond that, I have no concerns whether we say on-street or not require parking.

Vice Chair Colman called for a roll call vote.

Commissioner Ford-Byrd: Aye

Commissioner Romero: Aye

Commissioner Finnegan: Aye

Commissioner Finks: Aye

Commissioner Whitten: No

Vice Chair Colman: Aye

The motion to recommend approval with conditions passed (5-1). The recommendation will move forward to City Council on July 9, 2019.

Respectfully submitted,

*Alison Banks*

Alison Banks  
Senior Planner