



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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January 31, 2022

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

SUBJECT: *Consider a request from Heather and Bronson Griscom for a special use permit to allow a short term rental at 217 Franklin Street*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: January 12, 2022**

Chair Finnegan read the request and asked staff to review.

Ms. Banks said that the Comprehensive Plan designates this site 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 UR
- North: Across Franklin Street, single-family dwellings, zoned UR
- East: Single-family dwelling, zoned UR
- South: Across Ash Tree Lane, single-family dwellings, zoned UR
- West: Single-family dwelling, zoned UR

In June 1980, the subject property, then zoned R-2, Residential District, received a setback and lot density variance from the Board of Zoning Appeals (BZA) to allow the conversion of the second floor of an existing detached accessory building/garage into an accessory dwelling use. The BZA conditioned that the accessory dwelling use was restricted to that of a single-family dwelling

classification. It is staff's understanding that the accessory dwelling use has been rented out as a long-term rental on and off throughout the years. (Of note, the accessory dwelling use is not a non-conforming use, it is a use approved by the BZA; therefore, the accessory dwelling use can be re-established at any time.)

The applicants are requesting approval of a short-term rental (STR) operation at 217 Franklin Street and describe the property as their primary residence. The property is located in the Old Town area of the City, along the southern side of Franklin Street, about 75-feet east of the intersection of Franklin Street and South Mason Street.

As stated in the applicant's letter, they desire to use the second floor space above a detached garage on the property as a short-term rental (STR) and describe the space as a one-room studio apartment with a bathroom. The applicant's state that the space would accommodate a total of four individuals. While the proposed operation is similar in scale to a homestay, the requested operation is not classified as a homestay because the space in which the property owners want to operate the transient use is not within the principal building.

The applicants have been informed that if the SUP is approved, they will need to work with the Building Code Division to ensure that all building code requirements are met for the space above the garage. This may require a building permit or other trade permits be issued for the space, inspected and approved prior to its use as a STR.

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 one accommodation space, the property should provide one off-street parking space. In addition to the off-street parking space required for the STR, the ZO requires one off-street parking space for the non-transient dwelling unit. Therefore, if approved, a total of two off-street parking spaces would be required. Currently, there is a paved parking space on the property, adjacent to the detached garage, which is accessed from Ash Tree Lane at the back of the property. The applicants explain that guests would park there. Also, there is a drive and parking space at the front of the property, off Franklin Street, along the eastern side of the property.

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

1. All STR accommodations shall be within the existing accessory dwelling above the detached garage described in the application.
2. There shall be no more than one STR guest room or accommodation space.
3. The number of STR guests at one time shall be limited to four.
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 items identified in 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 driveways 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 any other accessory building on the property into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create additional 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 one. Condition #3 limits the total number of STR guests to not more than four. 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 items identified in 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 delineate the required off-street 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 applicants have explained their plans for using this property, the SUP is not restricted to the applicants or operator, and transfers to future property owners. If the applicants were to sell the property, then 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.

Because the City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations, staff recommends approval of the request with the 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.

Chair Finnegan asked if there were any questions for staff.

Commissioner Whitten said that attached to the packet was the excerpt of minutes from a BZA meeting that was held June 2, 1980 in which the decision contains a statement that reads: "Mr. Byrd [former director of Community Development] recommended that the motion be supplemented to restrict uses to that of a single family dwelling classification and otherwise comply with all other City regulations." That may complicate things a bit because the BZA is an entity. I am not sure that we can give permission for four people to live in a place that was supposed to be maintained as a single-family. I could probably accept two people, but I am not sure. I am not sure that we can change anything that was approved by the BZA. What would be the decision on that from our legal mind?

Ms. Banks said that staff had already made the determination that this was not an individual single-family home on this property. That decision was made, therefore we allowed this SUP request to move forward.

Commissioner Whitten asked if Mr. Russ reviewed the determination.

Mr. Russ said we discussed the issue that you raise. Ultimately, if the Planning Commission and City Council approve it, the applicant can rely on that decision even if there were technical errors in allowing the application to move forward. Once it has been voted on and approved, they can rely on that. I am not concerned about it. It is interesting to think, “What exactly did they mean by single-family dwelling classification?”

Commissioner Whitten said that knowing those years, it was an effort to not make it a student rental. That was an issue in those years and still continues to be.

Commissioner Byrd said that excerpt was added, for the sake of clarification, that is a different Mr. Byrd.

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.

Bronson Griscom came forward to speak to the request. Thank you for considering our request. We are happy to comply with all the conditions staff laid out. I did review the two public comments that came through and am happy to reflect on those and address those. I think they were both essentially addressed by the conditions. One was dealing with parking. That is resolved because we have off-street parking. The prior owners of our residence, the Nichols, had received permission to do long term rental of this unit. I do not know if that preceded the 1980 issue, which I was not aware of. We currently have permission for long-term rental. This is a shift from that long-term to short-term. It was a grandfathered condition, so most units on our street do not have that. This is not a shift from not using it as a rental to using it as a rental. It is a shift from long-term to short-term. I am happy to answer any questions. Thank you for considering this request.

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

Commissioner Whitten asked if the applicant has done long-term rentals in that unit.

Mr. Griscom said we inherited a renter that was in the unit when we bought the residence. She had a lease, so we could not immediately evict her. The answer is yes.

Commissioner Whitten asked what is your rationale for changing from long-term to short-term?

Mr. Griscom said that there are a number of different considerations. We wanted the option to use the space for family. With our last renter, we were concerned about trash. We had experience with Airbnb from a property in West Virginia. We like the ability to review and approve our guests. Bottom line is that we thought that we would have less impact on the neighborhood by doing this shift.

Commissioner Whitten asked how much are you going to charge for the rental of that unit?

Mr. Griscom said I do not know. We have not resolved that. We are aware of two other STR permissions that are within a block of us with a similar situation as our own who have already been granted approval. We were going to talk with them and get a sense of where the market is. I do not know.

Commissioner Whitten asked what the monthly rent was.

Mr. Griscom said that the monthly rent was about \$920 per month.

Ms. Banks said that she wanted to get back to the public input comments received. One email was regarding traffic on Ash Tree Lane and had suggested that staff put a condition on the SUP regarding this. Monitoring the traffic would be a difficult condition for staff to enforce. Perhaps the applicant would be willing to put something on their advertising platform that informs potential renters that they could enter and exit the property off of Mason Street without having to travel Ash Tree Lane. As you can see, it is very narrow and has a sharp curve to get back out to Campbell Street. It is something for the applicant to consider.

Mr. Griscom said that it is a good point and what had occurred to me when I read that public input. If they use a mapping system, it would send them off of South Mason Street. I think that is a good idea that we could just add it into the logistical information that is provided when it is booked. For their benefit and the benefit of the neighbors, that makes sense.

Chair Finnegan said my comments are along the lines of what Commissioner Whitten already hinted at, which is, we have a housing crisis in Harrisonburg. There is a difference between a home that is lived in by the owner and is rented out to guests, as in Airbnb and doing what you are doing which is taking housing units off the market and turning them into STR. Certainly more money can be made from an Airbnb rental per month than the average market rent for an apartment in Harrisonburg. Could you speak to that concern?

Mr. Griscom said that he did not quite understand.

Chair Finnegan said that taking what is now an apartment off the market and turning it into an Airbnb. That is different from living in a housing and renting out a bedroom or two on Airbnb. This is an apartment unit that is being taken off the market and turned into an Airbnb.

Mr. Griscom said sorry if I am being obtuse. The concern is that it is less availability of housing at a lower cost?

Chair Finnegan said that it is less housing for people to live here. The difference between a whole home rental where the owner-occupier lives in the house and rents out a couple of bedrooms versus an apartment that used to have a tenant in it and is taken off the market and turned into an Airbnb. If we vote for this, are we incentivizing more people to do what you are requesting now, to make more money off of an Airbnb as opposed to renting it out. That is the concern.

Mr. Griscom said I think the situation is unique to us because most people do not have this. For some reason that I do not understand, we were grandfathered. It is as far as I know, our permission

to do rental that exists now is not normal. Most people in our area do not have that permission. Most people in our neighborhood would not be moving from a long-term rental to a short-term rental. They would go from non-rental to rental. That is my understanding. It is unique to us. The question is should we be granted permission to do that. Another consideration is that a friend of ours is going to have more work. They have the opportunity to do the cleaning and turnover of the space. That is a part-time job that would not otherwise exist. That is somebody who is going to benefit from that and is interested in that. The person we are renting to previously was a student. I do not know if there is a shortfall of student housing. I am not giving you a very good answer because it sounds like a broader question for the town that I am not in a position to answer. There is the question of additional employment that we are delivering by doing this, if it is approved. I agree with you. I do not mean to dodge the point. If you rent it for a certain number of nights per month, we might be making more than a long-term rental. Whether we actually do make more money is an open question. I do not know how much we will rent it and it depends on the use by our own family. What triggered the decision for us was the concern that we had a year lease and were concerned about the impact that they were having. Our neighbor was complaining about it, but they had a lease. For six months, there was not a lot that we could do until that lease was up. This way, we have more ability to keep the condition of the place at a level that is respectful to our neighbors. That is a major part of it. I do not have a simple answer to your question. I think that it is complicated.

Chair Finnegan said that it is complicated. Thank you for responding. One of the things that I am concerned about is incentivizing more people to do this. That is my concern as we are having a full-blown housing crisis as shown by our Housing Study report. That is something I hope we will take into consideration in considering this request.

Commissioner Whitten said Chair Finnegan's questions are valid and exactly where I was headed. The applicant is probably going to charge \$150 per night. It is very clear to me that if you rent it during the weekend nights, it would come in at way over \$900 per month. The other question is are you planning to be there when this is rented?

Mr. Griscom, yes.

Commissioner Whitten asked, yes, categorically, yes?

Mr. Griscom said yes, we are planning to be there when it is rented.

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

Chair Finnegan said that I have made my concerns clear. I admit that I have voted for several of these accessory dwelling units to be part-time STRs. Sometimes we vote for things that later we regret. I am not against Airbnbs, but I do believe that if we are going to prioritize housing, I do not want to incentivize more of these requests to take apartments off the market and turn them into full-time STR.

Commissioner Baugh said I generally think that your points are well taken, Chair Finnegan. The applicant said that they know they have these rights but are not sure what they are or why they have them. Some of us know what they are and why he has them. Basically, it is a matter of law that if what you do is permitted under zoning rules and then the rules change, but you continue that use, that is what we crudely refer to as grandfathering in this context. What that means is that we established that that unit had this extra apartment at the time that it was permitted. It is no longer permitted, so you cannot do this to your home in old town now. But because it has been continuous that way, you get to continue doing it. It is an advantage that you have over your neighbors. Your neighbors who were not grandfathered do not get to do that. I think that I come down on the side of the point that the Chair is making. If someone moved into Harrisonburg and we do this, then it is one less apartment available for a person looking for a full-time residence. That is not what we want to be encouraging at a time when our housing supply is as tight as it is now.

Commissioner Byrd said we are referring to this accessory building as if it has to be an apartment. The property owner could simply not lease that room and use it for their own personal use and have guests over. No one would know. I am having a hard time understanding the view that we would be approving the removal of a rental unit when this building was not supposed to be that in the first place and was approved a number of years ago. I do not see the connection to how that would carry over to other people in the City doing the same thing.

Chair Finnegan said that if you have an accessory dwelling unit on your property and you rent it out for \$900 per month. You can make a lot more than that with STRs. What is not clear about that?

Commissioner Byrd said that you are still operating under the assumption that I have to rent out the unit. I do not have to do that, and it does not become an abandoned building, it is just an empty part a structure that has another use on my private property. I do not see the connection.

The applicant asked to comment.

Chair Finnegan said that the public meeting is closed, but I will allow a very brief comment from the applicant.

Mr. Griscom said that what Mr. Byrd is mentioning is very real. We may not rent it, if we are not given permission to have the STR. We may not rent it for the long-term.

Ms. Banks said I want to make a clarification between non-conforming, non-conforming grandfathering and permitted use. For this particular structure, the BZA approved for this accessory dwelling to be on this property. They referred to it as a density variant. Essential it is some type of use variance. It was approved by the BZA therefore it is a by-right use. They can have that accessory dwelling there. With a non-conforming use, as Mr. Baugh previously explained, if that non-conforming use were not to be used for two years, you could not go back and restart it. You would lose your non-conformity. With this unit, because it is an approved, permitted use by the BZA, they could rent this out for three or four years as a STR and go back to

using it as a long-term rental or flip flop back and forth because the BZA has granted that permission.

Commissioner Baugh said that is a good explanation. I think it is fairly straightforward. If you make a list right now of how many apartments there are in Harrisonburg, you come up with a number. If we grant this, that would make it that number minus one, subject to all sorts of other things that could happen. That piece that I am talking about is what some of us are focusing on. The number of apartments right now is X. We approve this. That number will be X minus one.

Commissioner Fitzgerald said that in terms of employment, I also have concerns with rentals and maintaining occupancy in those which are STR. In terms of employment, that is a concern, too. The other point is that this SUP transfers with the property. That is something that we need to consider. I intend to fall on the side that it is not a question of requiring long-term rental but incentivizing not doing long-term rentals. I do not think that it is in the spirit of this SUP in my opinion.

Councilmember Dent said that I come down more in the middle and to the side of the homeowner to decide whether they want to rent out a long-term rental or not. We are not technically losing a rental if they decide not to. It is that they decided to do so in the past. I would be inclined to grant them the right to do what they want with their property and rent it occasional as a STR.

Commissioner Whitten said I spoke to City Council last night about my great concern and I have spoken it to you. I still have great concern. The cost of housing in Harrisonburg is going up. When we grant these STR it increases the value of that house. If you are next door and you are not renting your house out, and your neighbor is, your value went up and so did your tax bill. So did the cost for anybody who wants to buy or rent a home in our City. If you do not see that, you cannot read. I need you to really pay attention to this. I know for a fact from talking with Ms. Banks today, I made the flippant remark, "well at least we do not have hedge fund managers looking to get into the action in Harrisonburg." She said, "Actually, we do. I have had calls." Do not think that this is not coming to our door. It has come to the door of Davis, West Virginia. They have had to rethink what they do with STR. They have made their stipulation what I have asked for all along. That is, a person that owns the house should be present in the house. If we do not put some restrictions on this, we are going to be having small hotels in all of our neighborhoods. Our hotels will suffer and so will our neighborhoods. My speech is over.

Commissioner Whitten made a motion to recommend denial of the STR request.

Commissioner Armstrong seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong Aye

Commissioner Baugh Aye

Commissioner Byrd No, for the stated reasons that this is an accessory building. I see all these arguments applying much stronger if it was for the main

building. This is a separate building and they have an odd approval to do a different thing with that piece of property.

Councilmember Dent	No
Commissioner Orndoff	No
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend denial of the SUP request passed (4-3). The recommendation will move forward to City Council on February 8, 2022.