



# City of Harrisonburg

City Hall  
409 South Main Street  
Harrisonburg, VA 22801

## Master

File Number: ID 19-214

<b>File ID:</b> ID 19-214	<b>Type:</b> PH-Special Use Permit	<b>Status:</b> Agenda Ready
<b>Version:</b> 1	<b>Agenda Section:</b>	<b>In Control:</b> City Council
<b>Subject:</b>		<b>File Created:</b> 06/28/2019
		<b>Final Action:</b>

**Title:** Consider a request from Victor and Patricia Landis for a special use permit to allow short-term rental at 72 East Weaver Avenue.

### Internal Notes:

**Sponsors:**

**Enactment Date:**

**Attachments:** Staff Report SUP (72 East Weaver Avenue) (4 pages), Application, applicants letter and supporting documents, Site Maps (2 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
	<b>Action Text:</b>	Commissioner Finks made a motion to recommend approval of the SUP with the conditions, as stated. Commissioner Finnegan seconded the motion. All voted in favor of recommending approval of the SUP, with conditions, as stated. The recommendation will move forward to City Council on August 13, 2019.					
	<b>Notes:</b>	Chair Way read the request and asked staff to review. Ms. Banks said that 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: <u>Site:</u> Detached single-family dwelling, zoned R-1 <u>North:</u> Detached single-family dwelling, zoned R-1					

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

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

West: Detached single-family dwelling, zoned R-1

The applicants are requesting approval of a short-term rental (STR) operation at 72 East Weaver Avenue, which is located approximately 650-feet from Port Republic Road, approximately 0.2-miles from South Main Street and James Madison University (JMU) and 0.3-miles from Interstate 81. The applicant desires to rent for STR one accommodation space within their home that could accommodate a total of two individuals. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and that they would be present during the lodging period.

This neighborhood has brown zone permit parking and a parking pass is required for vehicles parking on-street at all times. 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. It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires one off-street parking space for the non-transient dwelling unit.

The property has no off-street parking accommodations. The applicant explained that STR guests can park their vehicle within areas in the undeveloped “paper street” adjoining the property, or on East Weaver Avenue in front of the property with a displayed brown permit parking guest pass. This property has approximately 60-feet of road frontage along East Weaver Avenue that could accommodate about three vehicles along the subject property’s street frontage. Staff does not believe there should be issues created with allowing lodgers to utilize on-street parking and is comfortable conditioning that off-street parking for the STR operation is not required.

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

1. The site shall be the operator’s primary residence.
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 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. The STR has no minimum off-street parking requirements.
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 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, 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 one. Condition #5 limits the total number of STR guests to not more than 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. Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring minimum off-street parking requirements. 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 applicant has explained his 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 size and 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.

Patricia Kennedy and Victor Landis, 72 East Weaver Avenue, came forward to speak to the request.

Ms. Kennedy said that they have lived at the property for 31 years. Our intention is to live there another 31 years. We are active members of the neighborhood and stewards of the neighborhood. We brought this request forward with a lot of thought and consideration for our neighbors.

Chair Way said that in your application you stated that at least one of you would be present during a stay.

Ms. Kennedy said yes. If we were not there, we would not rent it out.

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 Finnegan said that this request is what we had in mind when we did this. It is home sharing and not a whole home rental.

Commissioner Colman said that the second condition the “operator shall be present during the lodging period” does not say that it has to be the operator’s primary residence.

Ms. Banks said the first condition addresses that.

Commissioner Colman read “If the operator is not the property owner...”

Chair Way said that they could still have the STR as residents, even if they are not the owner.

Commissioner Colman said that the application does not say that. It says that they will be present during the stay.

Ms. Banks said that the applicant’s letter said that they would be present, but we are using the condition that has been worked out previously.

Commissioner Finnegan said that the applicant did not indicate that they had any problem with condition #2.

Commissioner Finks said that we had a long discussion, at the last meeting, about what a primary residence was.

Commissioner Whitten said that just because City Council went a different way at their meeting last night, does not mean that we have to change our opinion or how we do things. We are the Planning Commission. We need to do what we feel is the right thing for this community, not what City Council said last night. We take into consideration what City Council said last night. They will ultimately vote on these. I am going to vote the way I think I should vote as a Planning Commissioner for this City, not dictated by City Council.

Commissioner Finks said that City Council voted according to the recommendations that we sent to them. They were not disagreeing with the Planning Commission’s recommendations. They might be disagreeing with individual recommendations.

Commissioner Colman said that they have gone with the minority vote, in the past.

Chair Way said that his concern, especially with R-1, R-2 and UR neighborhoods, is to protect and serve those single-family neighborhoods. I want to make sure we look at these as closely as all the others. We want to be thoughtful about those neighborhoods, especially those adjacent to colleges and universities in our City, where there is a greater risk of neighborhood change with more transient population. I feel reassured by this one. There are no red flags here.

Mr. Fletcher clarified the reasoning behind condition #2, which the Planning Commission had reasoned out last month and staff agreed. There was a clear indication that when it is the property owner’s primary residence and they are the operator, they have a sense of responsibility and they have an acceptance of the risk because it is their property. When it is not their primary residence, other accountability comes in.

Commissioner Colman said that if it is their property, then they do not have to be present. The condition requires that if it is not their property, they should be present.

Chair Way said that he did not hear or see any neighborhood opposition to this request.

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

Commissioner Finnegan seconded the motion.

All voted in favor of recommending approval of the SUP, with conditions, as stated. The recommendation will move forward to City Council on August 13, 2019.

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