



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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October 31, 2022

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

SUBJECT: *Consider a request from Margaret P. Morris for a special use permit to allow for short-term rental at 140 Ott Street*

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

Chair Finnegan asked staff to review.

Ms. Dang said 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:

- Site: Single-family detached dwelling, zoned R-1
- North: Single-family detached dwelling, zoned R-1
- East: Cemetery zoned, R-3
- South: Single-family detached dwelling, zoned R-1
- West: Across Ott Street, single-family detached dwelling, zoned UR

The applicant is requesting approval of a short-term rental (STR) operation at 140 Ott Street. The applicant desires to rent the entire residence for STR, which includes four accommodation spaces to up to eight guests at a time. (“Accommodation spaces” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.)

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 Zoning Ordinance. 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.

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.

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 four accommodation spaces, the property should provide four off-street parking spaces. 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. Off-street parking is available within the driveway and the parking area behind the home. Rather than creating new off-street parking areas, staff recommends a condition to limit the number of guest vehicles during a rental period to no more than three. It should be known that Ott Street and surrounding neighborhood streets are subject to Red Zone permit parking restrictions where permits are required Monday through Friday from 4 a.m. to 6 p.m.

The City has approved many STR SUP applications throughout the City with a few of them being within the nearby neighborhood—one of which is directly across the street at 293 Newman Avenue. Staff believes this request is similar to other applications that have already received approval, thus staff recommends approval of the request, but only with the following conditions:

1. All STR accommodations shall be within the principal building.
2. There shall be no more than four STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to eight.
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 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.

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.

Councilmember Dent said, just to be clear, this is the usual STR requirement that the owner lives there and rents it out?

Ms. Dang said because it is already built into the regulations, we would not be able to present an application where the owner did not live on the property.

Councilmember Dent said we are still saying “property” at this point, correct?

Ms. Dang said correct.

Commissioner Whitten said it has to be the primary residence, but with no requirement to be there.

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.

Meg Morris, owner of 140 Ott Street, came forward in support of her request. This house has been my primary residence since 2009. I operate a STR with my mother on the eastern shore. I have been operating a STR [as a homestay] in this house as of this year under the by-right rules, which is 90 nights or under per year and up to four guests. I want to be able to expand that. I have a shared custody situation with my kids, and I travel to my property on the eastern shore. My house sits vacant already. It is a good use of the space. The house is almost 2,700 square feet which is a lot of space for just four people. There is room for more people. I want to emphasize that this is my primary residence and I care what is happening in the neighborhood. I am in contact with all of the adjacent neighbors. They all know that I am using it as a STR when I am out of town. They all have my cellphone number and can get in touch with me if there are any issues. I have had seven stays this year and we have not had any issues. The feedback has been very good. A lot of feedback is about the location. They love that location. I know that there is a push for more density. We do not have more space in the City. These people are definitely buying from downtown restaurants. It is bringing money into downtown. I have also opened it up on a couple of weekends where I had my kids, and we were going to go out of town just because the demand was so high. Parents’ Weekend was the first in which I did that. I do not love being in town during Parents’ Weekend because it gets very busy. The hotels were all booked. There were no more Airbnb’s in Harrisonburg, so we listed it and it was gone within 24 hours. There is a demand for this property and, so far this year, it has gone very well. Up to eight guests at a time is the maximum number that I would allow. I prefer groups under six. If I have groups over six, I am going to charge an extra \$25 fee per guest per day. I do not like groups that big, but the house can accommodate groups that big. Do you have any questions for me?

Chair Finnegan said I appreciate everything that you are saying. You have lived there for a while, and you care about the property. The SUP does convey. That is the nature of it. We will take into consideration everything that you have said and the fact that this SUP will convey.

Ms. Morris and the Commissioners discussed other STRs in the neighborhood near the subject property.

Councilmember Dent said I heard you talking about groups of six, with a maximum of eight. With four accommodation spaces, you could have four sets of parents on Parents’ Weekend.

Ms. Morris said they rent as one group. On Airbnb, you have one person who is the point of contact. It is one group to me. If they have eight people, they could coordinate amongst themselves. I do not rent separately to four individual groups. It is one group.

Ms. Morris answered questions regarding the amount Ms. Morris charged lodgers during parent's weekend. Ms. Morris charges \$300 per night for four lodgers. If she is allowed to rent to eight lodgers, she would charge \$350 per night for eight lodgers. She charges \$300 for up to six lodgers. She charges \$25 per person over six people. Eight people would be \$50 additional per night. Airbnb allows hosts to charge for extra guests over a certain number. She usually does not charge extra for additional guests until it is over six.

Chair Finnegan asked if there were any more questions for the applicant's representative. 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.

Chair Finnegan asked what was tabled at City Council, it would not affect this request because this request is not a duplex, right?

Ms. Dang said that is correct.

Commissioner Whitten asked how many unrelated people could live in the R-1 zoning district?

Ms. Dang said in the R-1 district, an owner-occupied property could have a family plus two boarders. For an owner-occupied property, one might say that it is one individual, plus two roommates for a total of three unrelated people living together. For a non-owner-occupied property, it would be a family plus one other boarder or two unrelated individuals.

Commissioner Whitten said that is substantially under eight people.

Commissioner Washington asked when would the STR pre-operation form need to be submitted?

Ms. Dang said the pre-operation form is a condition that we have recommended for all STR applications. I can email you a copy. It has a checklist that includes egress windows and doors, smoke detectors, carbon monoxide detectors, and other checks to help ensure the safety of the guests. It has nothing to do with the number of guests. The number of lodgers is not related to the recommended condition. The SUP [if approved with the recommended conditions would] allow the property owner to rent out to eight guests for the STR.

Commissioner Washington asked so this pre-operation form has already been done.

Ms. Dang said no. Ms. Morris is currently operating the by-right homestay. By-right homestays allow up to four guests. The pre-operation form is not something that we can require. We can require it through the SUP conditions, so we have chosen to recommend that every time.

Commissioner Whitten asked who does the inspection?

Ms. Dang said it is a self-inspection. They have to sign and submit the form to us.

Commissioner Whitten said I thought the Fire Department was involved.

Ms. Dang said they were involved in creating the form.

Commissioner Armstrong said I wanted to give an example of neighborhood cohesion. I am not friends with any of my neighbors. I do have phone numbers, but I do not socialize with them. We are neighbors and there is an intent to be neighborly. Sometimes, the lady across the street will let me know when she is going out of town. She will ask me to keep an eye out. There was package that arrived, delivered on her property. It had a big notice on the front that you could easily see from across the street. I was concerned about theft, so I put it up on her porch and turned the label around. That is something that I do because I am familiar with my neighbors. If I had a STR, that is not something that you would call somebody and let them know. It is about neighborhood cohesion. One of the questions that has been used to measure neighborhood cohesion is “do you believe your neighbors would help you if you needed it?” Another example, a limb blew down on roof. My neighbor across the street, who’s name I do not know, asked if needed help. I accepted his help, and we sawed it up and got it off my roof. There is an intent to be good neighbors. That happens because we are familiar with the routine of our neighborhood. We do not have a formal neighborhood watch, but they are our neighbors. The research article that I distributed to this body was speaking to that exact point. It is not that someone renting in a STR is going to go steal that package. It is that the people who occupy the neighborhood become more fragmented, less cohesive. It erodes the social fabric. Those are the terms they used in that article. We are at a time in the United States where we need to be supporting social cohesion and trust. We need to build that, and this is undermining that. My second point is that we have a lot of business districts on the east side of town, with a lot of new motels. There are lower income jobs over there. Those are not high income jobs. I care about that. We are eroding that economy over there. There are many empty commercial buildings over there. They also need City support. Instead, we are supporting individual profitability over the well-being of our community, including our economy on the east side. That really bugs me. There are a lot of jobs over there and they need our support. This is eroding that. Those are my two biggest points. I am going to continue to vote against these.

Commissioner Whitten said I wholeheartedly agree with you, and I have a few other points. I see this as a business use. It is a business use. This is a neighborhood. We are saying that we are okay with a business use in this neighborhood. There is more trash. There certainly is more trash. It is a business use. As I asked about the zoning, eight unrelated people would never be allowed in our Zoning Ordinance. Yet, we are saying that for someone to make extra money, we are willing to ignore our Zoning Ordinance and allow it. It is not conducive to building community. The other thing that I keep saying is, affordable housing seems like the topic that we always end up on in this body. There is no way that you can charge \$300-\$350 per night, for however many nights you would like to of the year, and not cause the price of that real estate to go up. When that house sells, it will sell for more than the ones that do not have this SUP. That is special, but it is not special for the City of Harrisonburg. I will also vote no.

Commissioner Byrd said there are a lot of things that people have opinions about, like this is destructive of community cohesion. I was not moved by those points. As a business, having these

ordinances and knowing about it gives us knowledge of these things. Many years ago people were doing these things, such as couch-surfing, and no one knew unless people in the communities knew their neighbors and knew what was going on. I see this as an opportunity for us to know what is going on and as we acquire data over time, we will know for sure what the pros and cons of these situations are. I will likely vote in favor of this request.

Commissioner Washington said the applicant is already operating as a homestay. Going from four to eight people does not mean that it will be used more, it will just accommodate more people.

Commissioner Armstrong said it goes for longer too. It goes from 90 nights to...

Chair Finnegan said it is the same use, but a more intensive use, more people for more nights.

Chair Finnegan said I appreciate the reasons for the neighborhood cohesion and what you are talking about. The separation of uses and this idea that this area is only designated for housing and this area is only designated for business is not good. I do not agree with it. I do not like it. I also have a couple of Airbnb homestays and STRs in my neighborhood. There have only been a handful of occasions where I have interacted with guests from there. Those interactions have been the lodgers asking where the best place to eat is or where the dog parks are, those kinds of questions. My experience is that those Airbnbs have not harmed the neighborhood. I do not know if they have helped, but they make daily life more interesting. Boardinghouses and group homes were far more common in the pre-war era and Harrisonburg had quite a few of those. Airbnb is new in the grand scheme of things, but it is not new in the sense that you have transient visitors staying. From my perspective, we have the homestay. I do not think that this substantially changes how the house is being used. It increases the number of nights and the number of people, but there are already Airbnb guests staying there.

Commissioner Whitten asked what about the economic benefit? You always talk about that. You always talk about affordable housing. Does it not concern you that the cost of this house will be greatly increased because of this business related use, this income-related use that makes that house more desirable? We have already inquiries from venture capitalists who want to buy a house here, who want to buy a lot of houses here. How do you think that is going to change the way the neighborhood looks? Right now, we can keep the venture capitalists out but only until the lawyers figure out how to get around our "primary residence" clause. And they will. They certainly will. When you compare boardinghouses to this, that is laughable. Boardinghouses were for an economic reason. I had a little old lady that lived in my house in the time period that you talked about because she could not afford anything else. There was a dentist that lived there because he could not afford anything else. Every renter that lived in those rooms lived there because they could not afford their own house or their own apartment. Boardinghouses in no way compare to this concept.

Chair Finnegan said they are different. They are fundamentally different. We have zoned out existence the single-room occupancy (SRO). That is what a lot of those boardinghouses were. When you talk about affordable housing, I will meet you halfway on that, but it will not be on this request. It is going to be looking at R-1 and how we can put in basement apartments, how we can

put in ADUs, and how we can make housing for affordable for the people who live here? That is not what this request is about.

Commissioner Whitten said I have been here for 35 years. The reason that boardinghouses went away is because of the abuse of boardinghouses, because of student accommodations in boardinghouses. They were dangerous, too. They were removed from the ordinance for that reason, not to try to keep people from living in a single room, like the old concept. The old concept is an old concept. Maybe there is room for it in the future. I had boardinghouses in my neighborhood, and they were not a good thing.

Commissioner Washington said there is aSTR across the street, already in use?

Chair Finnegan said yes, there is one at the corner of Newman Avenue and Ott Street.

Commissioner Washington asked what is the difference?

Chair Finnegan said that is an accessory building.

Commissioner Washington asked what would make this application different from the other approved ones in the area?

Commissioner Whitten said why would we not just go ahead and approve them all? Is that your question?

Commissioner Washington said no. I am not saying approve them all. I am saying, in terms of how the Planning Commission and everyone else approved the other ones around this, what is the difference in the application compared to the other ones? If we say no to this one, for whatever reason, are we going to have to say, well there are other ones in the neighborhood that are similar? Are we being fair?

Commissioner Whitten said this one is for eight. That is a lot more people.

Chair Finnegan said one way of looking at it is do we object to the number of people? Do we object to accessory dwellings? All seven of us up here might have different reasons as to why we are voting yes or no. I think that everyone has to figure out where they stand and why.

Commissioner Washington said I do not see eight as a difficult number, coming from a large family. Eight for me is accommodating the six of my siblings and one parent. That does not even accommodate my whole close family. Eight is not a large number for me.

Commissioner Armstrong said the boardinghouse comparison, when the owner operates the STR, they do not have to be there. Those boardinghouses were run. You had to have references. They were run as boardinghouses. This is not comparable to that. I think that speaks to the point that there are eight of you. Well, there is a parent there who laid down the law. You said your family.

Commissioner Washington said a parent and grown children. What do you mean, lay down the law?

Commissioner Armstrong said you had a family that had rules. Comparing that to this... She can rent this to eight independent people. It does not have to be like that. This is just a number. It is not like a family that has parents there, with rules and guidelines and noise limits. It is not like that.

Commissioner Washington said so the assumption is that the eight people who are unrelated do not have rules and regulations to...

Commissioner Armstrong said you are comparing it to your family unit. I find that incomparable.

Commissioner Washington said who says that these people that are going to use this space are going to be eight unrelated people? They have to book all together. She is not booking them separately. It is a group.

Commissioner Armstrong said if this does not make sense to you, then that is okay.

Commissioner Washington said it does not make sense. Travelling in a large group, whether it is my family or it is my friends, the assumptions that everyone... What I am hearing from you is noise, trash, all of these things. The assumption is there, and you cannot assume things about people that you do not know who are coming to do things that you do not know why they are here.

Commissioner Armstrong said *[unintelligible]* assuming that they will misbehave. I am saying...

Commissioner Washington said that is the assumption. That they do not have rules or regulations or someone to lay down the law, the assumption is they come in...

Commissioner Armstrong said do not speak for me.

Commissioner Washington said that is what you said.

Chair Finnegan said we all have strong opinions about this. We are veering off from this particular request. Commissioner Armstrong, we do allow by-right the homestay, which is a less intensive use. Same basic thing, less intensive use.

Commissioner Armstrong said that is one of my points too. The by-right seems to be working. Let us leave it. That is a balanced position.

Commissioner Whitten said that is a good point.

Commissioner Byrd said let us remember that there are commissioners that have not spoken. When we are making our passionate arguments for things, remember that others might be thinking about what you are saying. When we are making it as we are talking to one other commissioner, we start to forget that we might hurt our own arguments. Also, when we talk about numbers, and we say

family plus this... Family is not a defined number. That is as many as those parents are able to produce and legally take care of. That number is whatever that number is, plus. The limit on this is eight people being allowed to rent that space. How that renting comes about is not part of the ordinance. It is those bodies. If those bodies misbehave, that is a nuisance. If there is such a thing as neighborhood cohesion and people are paying attention to their neighbors and notice this nuisance, they will be able to bring it City Council. These are things that we can talk to City Council about and talk to voters who go to City Council. If your position is to wait on these, fine. If your position is to let them go, fine. With this one, I am not hearing anyone talking about this building or this property. We are talking about general concepts. If this building can house eight people without being a nuisance, I see no issue with eight.

Commissioner Whitten said we have no idea about the nuisance. What I do know about the nuisance is that if you call the police and you do not get a report, it never happened. Your grand statement of “let us go to the Council” or “let us go to whoever” and get something done, you will not get anything done. You heard me talk about my experience in May with a really large, loud party. The police knew there was a big problem and yet there were no charges and there was no report. That speaks very highly of not putting a use in a neighborhood that could potentially be a nuisance. I think that the economics of it is all wrong. If we say that we are for affordable housing, we cannot vote for this because it makes housing more and more unaffordable. It increases the value of that property to the point that it is less affordable than ever. Just on that merit alone, you should not in good conscience vote for another long-term STR. It is not short-term, it is long-term. That house could be a family house rental, but it will not be.

Commissioner Armstrong said this undermines jobs here. The point that people go eat... If they are staying in motels in the business district, they can also go eat downtown. We do not have those jobs in those motels being supported. This is undermining jobs, too.

Councilmember Dent said I like it. If were coming to a new town, this is the sort of place that I would look for. An Airbnb, walking distance to downtown with neighborhood charm. That is what I have done in the past, all over the country, Europe, the world. While I understand the point of neighborhood cohesion, the primary residence requirement is our stopgap against the speculation that we are worried about. I like the economic development benefits of bringing tourist dollars into the downtown region. While I understand the point about the motels on the east, that is not where I would want to stay. It is a personal preference that I can sympathize with, so I will vote for it. I liked a couple of things that the applicant said. The neighbors know when she is going out of town and she lets them know that someone is renting, and that she is renting as a group. However, both of those are reliant on the current owner and, as you point out, the permit transfers and neither of those are guaranteed in the future. It could become more like a motel if it is rented to four different sets of people. While it is a good situation now, we cannot guarantee that. That is my one hesitation about it, but for now...

Commissioner Whitten said I would hope that would be a big hesitation.

Chair Finnegan said Condition 6 states that if “in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance,” and that does not have to be through the Police

Department, “the special use permit can be recalled for further review.” We do have that as a last ditch measure that can be used in this case.

Commissioner Whitten asked how would that be measured if not by the police calls?

Chair Finnegan said calls to Community Development.

Commissioner Whitten said calls to them? No. No, because if somebody calls, you have no way to quantify that call. They will say, well we do not know, it could just be a neighbor that does not like this neighbor. That happens. Does it not?

Commissioner Byrd moved to recommend approval of the SUP with the suggested conditions.

Commissioner Orndoff seconded the motion.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	No
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	No
Chair Finnegan	Aye

The motion to recommend approval of SUP request passed (5-2). The recommendation will move forward to City Council on November 8, 2022.