



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections

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Planning & Zoning

June 3, 2019

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from John and Janet Hostetter for a special use permit per Section 10-3-40(8) of the Zoning Ordinance to allow short-term rental within the R-2, Residential District. The +/- 14,800 sq. ft. property is addressed as 1451 Hillcrest Drive and is identified as tax map parcel 51-K-17 and 18.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: May 8, 2019

Chair Way read the request and asked staff to review.

Ms. Dang said that as the next four items on the agenda are short-term rentals (STR), I would like to present several talking points regarding STRs that these applications have in common. There were five applications for STRs, but one on 1110 Royal Court has been withdrawn by the applicant.

In March 2019, City Council adopted the new STR regulations which are in Article DD of the Zoning Ordinance. A STR is defined as “[t]he provision of a dwelling unit, a bedroom 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.” A STR is a 30-days or less rental of a space within a home in exchange for money.

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019 and which would provide individuals wishing to operate STRs time to apply of and potentially receive approval of a special use permit (SUP). Staff has begun looking at Airbnb.com and similar websites looking for STRs currently in operation in order to send notice letters informing operators of the requirement to apply for a STR SUP and have the permit approved by August 1, 2019 in order to begin operating on that date. After August 1, we will begin enforcement, issuing penalties associated with this particular use. SUP applications are received on a rolling basis for upcoming Planning Commission reviews and subsequent city Council meeting agendas for final determinations.

Once a SUP is approved, it is valid for an indefinite period of time. After approval by City Council, the operator has twelve months to start their operation or that SUP becomes void. In addition, if the operation were to cease for a continuous period of two years, then the SUP is automatically terminated. Someone could operate a STR for three months, then not operate for 24 months, after which the SUP would terminate. As we discussed at the site visits yesterday, the SUPs are not restricted to applicant. They are specific to the property. If the property were to change hands and be sold to someone else, the SUP, and any conditions that City Council included in the approval of the SUP, would continue to apply.

Section 10-3-126 of the ZO gives City Council the ability to place special conditions on SUPs. Staff has recommended a set of conditions that are specific to each STR SUP request. In cases where we have

recommended denial, we still recommended conditions that would apply in the event the Planning Commission recommended approval and City Council approved the applications.

I will refer to “accommodation spaces” throughout the presentations. “Accommodation spaces” are any rooms that are offered for sleeping. This would include bedrooms with beds, living rooms with pull-out sofas, etc. If a room is being offered for sleep, it is considered an accommodation space. Accommodation spaces will be relevant to discussions regarding parking and limiting the number of accommodation spaces in the recommended conditions. Accommodation spaces would not include kitchen areas or living rooms in which people are not sleeping.

Section 10-3-25(28) of the 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.” City Council has the ability to make conditions to require additional parking spaces or to require less or no parking spaces. In certain residential neighborhoods, it may not be in line with the character of the neighborhood to require properties to mark their driveway with parking spaces, as it takes away from the residential appearance we want to preserve. In addition to potential parking spaces required for STRs, each dwelling has parking requirements depending on the type of dwelling that it is, such as single-family detached, duplex, and so forth.

Ms. Dang said that the first request is the request for approval of a STR operation at 1451 Hillcrest Drive located in the Northwestern section of the City near Easter Mennonite University campus. 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 R-2

North: Undeveloped lots, zoned R-2

East: Nonconforming multi-family dwellings, zoned R-2

South: Single-family detached dwelling, zoned R-2

West: Undeveloped lots in Rockingham County property, zoned R-2

On March 26, 2019, City Council adopted new Zoning Ordinance regulations associated with short-term transient lodging commonly referred to as “Airbnbs,” which is associated with the webservice www.airbnb.com. Although known as Airbnbs, operators may use other services including but not limited to VRBO, HomeAway, and FlipKey to advertise their properties. These operations, unless previously approved by the City as a bed and breakfast, have been illegal in the City of Harrisonburg. A short-term rental (STR) is defined as “[t]he provision of a dwelling unit, a bedroom 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.”

City Council granted a grace period where enforcement of the ordinance would not occur until August 1, 2019 and which would provide individuals wishing to operate STRs time to apply for and potentially receive approval of a special use permit (SUP). SUP applications are received on a rolling basis for upcoming Planning Commission reviews and subsequent City Council meeting agendas for final determination.

The applicants are requesting approval of a STR operation at 1451 Hillcrest Drive, which is located in the northwestern section of the City and less than one block from the Eastern Mennonite University campus. The applicants desire to rent for STR up to three accommodation spaces that could accommodate a total of six individuals. They describe that the property is their primary residence and that they plan to be present during the lodging period.

The building is currently described by staff as a single-family detached dwelling. However, during meetings with the applicant, staff became aware that the property has been used as a duplex (two dwelling units). The property is zoned R-2, Residential District and has approximately 14,800 square feet of lot area. A duplex is permitted by the Zoning Ordinance (ZO) to be located on this site so long as Building Code requirements are met. City records indicate that a building permit was applied for in 1984. The building permit was approved for the construction of a single-family dwelling with a basement apartment to be leased, which today the ZO defines as a duplex. The building permit further described that the single-family dwelling (hereafter referred to as the “first larger dwelling unit”) was to also contain a kitchenette in the basement for use by the owner. However, there are no City records that a Certificate of Occupancy (CO) had been issued for the building. Once the applicants became aware of this issue, they began working with the Building Official to take the necessary steps to obtain a CO for the building. If approved, staff recommends a condition that prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the property.

Assuming that the necessary building inspections occur, and a CO is issued for how the owner desires to use the property, the building would be a duplex. The first larger dwelling unit is accessible from the front, as well as from the basement level in the rear of the building. A second kitchen is located in the basement of the first dwelling, along with two rooms. The second smaller dwelling unit is accessible from the rear of the building.

The applicant desires to rent from the first dwelling unit the basement space, which includes two accommodation spaces for a STR. (“Accommodation spaces” is used here to mean any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Additionally, the applicant has explained to staff that they plan to continue renting the second dwelling unit to long-term tenants, however, as their future plans may change they have included in their application a request for approval to rent the accommodation space contained within the second dwelling for STR as well. In total, they are requesting permission to rent three accommodation spaces for STR; each accommodation space could accommodate two people for a total of six people.

Section 10-3-25(28) of the 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.” The applicant has submitted a map illustrating that three off-street parking spaces for STRs can be provided on their property.

It should be acknowledged that in addition to the off-street parking spaces required for the STR, the ZO requires off-street parking spaces for the non-transient dwelling units. It appears that all the required off-street parking could be provided on the site. In addition to the large driveway in the front of the property, on the side, and in the rear of the building, the building also has a two-car garage. Regardless, staff believes that if the request is approved, the applicant should be provided the flexibility to meet the off-street parking requirements by allowing customers to park on the existing driveway or other area of the property without delineating parking spaces and offers this as a condition on the permit.

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

1. Prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the building.
2. The site shall be the operator’s primary residence.
3. An operator shall be present during the lodging period.

4. All STR accommodations shall be within the principal dwelling.
5. There shall be no more than three STR guest rooms or accommodation spaces.
6. The number of guests at one time shall be limited to six.
7. Prior to beginning operations, the operator shall have the guest rooms and accommodation spaces and means of egress inspected by city staff to confirm compliance with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code or as determined necessary by Building Code and Fire Officials.
8. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
9. 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 #2 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. This also means that if a CO is issued for the building for two dwelling units, and if the applicants live on the property in the arrangement that exists today, then the applicants could not rent the second smaller dwelling unit as a STR since that dwelling is not their primary residence. However, any long-term tenant they have in the second dwelling unit could rent the space as a STR so long as they meet the other conditions for the SUP. Alternatively, the applicants could rent a third bedroom in the first larger dwelling unit. Condition #3 protects the neighbors by ensuring that there is on-site accountability by the STR operators. Condition #4 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 PC and City Council (CC) with a new SUP request. Condition #5 limits the total number of guest rooms and accommodation spaces on the entire property to three. Condition #6 limits the total number of guests at one time to six. However, with Condition #7, which requires that prior to beginning operations that the guest rooms and accommodation spaces and means of egress are inspected by city staff to confirm compliance with the Building Code and Fire Code, the number of guests could be further limited if inspectors determine that six people could not be accommodated in the proposed spaces. While the SUP does not restrict the operator to using specific guest rooms or accommodation spaces within the dwellings (meaning that the STR operator could decide later to change which accommodation spaces are rented for the STR), Building Code and Fire Code requirements would be specific to the spaces. Condition #8 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create delineated parking spaces. Condition #9 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 applicant 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. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

The property is located close to Eastern Mennonite University and in an area of the neighborhood where there is likely more pedestrian and vehicular traffic than other sections of Hillcrest Drive further to the north. Guests of the STR would likely travel Parkway Drive or West Dogwood Drive to get to the STR. Both streets likely already receive non-resident traffic because of the activities associated with the university.

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.

Chair Way asked if there were any questions for staff.

Commissioner Finks asked if the second dwelling, where the applicant intends to have one accommodation space, is the applicant's main residence.

Ms. Dang said that the first dwelling unit is the main unit, the larger portion of the building. That is where the applicant and property owner lives. They are planning to have two short-term accommodation spaces in the first dwelling unit. They have a separate a separate dwelling unit, which they referred to as a basement apartment. That has one bedroom which they are requesting to use as a STR accommodation. If they do not live in the second dwelling unit, provided that the conditions presented here are recommended by the Planning Commission and approved by City Council, the operator and property owner could not operate the second dwelling unit as a STR. Their tenant could operate that space as a STR with the approval of the property owner. Alternatively, the property owner could operate three accommodation spaces within the first dwelling unit.

Commissioner Finks said that clarifies his understanding. It originally seemed that the three accommodation units and six guests contradicted each other. I did not understand how they could have six guests at one time if they remained within the dwelling. I understand now.

Commissioner Romero asked for clarification. Can they have up to three accommodations in the main house?

Ms. Dang said they could have three accommodations in the whole property. When these special use permits are granted they are for the property.

Chair Way asked if operator was defined in the ordinance.

Ms. Dang said that it is intended to mean the person who is operating the STR.

Chair Way asked could a tenant run the STR.

Ms. Dang said that a STR could be operated by an owner or a tenant.

Chair Way said that operator does not necessarily mean the owner.

Chair Way opened the public hearing and invited the applicant or their representative to speak to the request.

Eric Hostetter, the owner and applicant residing at 1451 Hillcrest Drive, came forward to speak to his request. I would like to address the issue that the apartment cannot be operated as a STR by the owner because the owner resides in the larger dwelling of the building. The apartment is directly below the principal dwelling. We can smell what is going on. We can hear what is going on. We are quite aware of any activity in the unit. If there were anything happening in that unit that would jeopardize or affect the community, we would be literally on top of it. I know that the intent is to ensure the operator could monitor the activities that may disturb the community. In this situation, we live in the same building and would be there during the rental. We do not live in the apartment. It is a semantics issue. I would suggest an exception so that we would be able to use the second dwelling for a one room STR.

Commissioner Whitten asked if there was more than one bedroom in the second dwelling.

Mr. Hostetter said that in the apartment there was only one bedroom. It would accommodate a maximum of two people. In the main dwelling, there would be two bedrooms for a maximum of four people. There could be a total of six in the building.

Commissioner Whitten said that the basement apartment is the additional dwelling that makes the property a duplex, correct?

Mr. Hostetter said yes.

Commissioner Ford-Byrd asked how the applicant feels about the conditions that are being suggested.

Mr. Hostetter said that he was sure that there was a certificate of occupancy for the apartment. The house was built for my mother and she has moved two times since then. The document appears to have been misplaced and the City does not have it either. I am willing to do what is required to obtain the certificate of occupancy. I agree with the fire codes, as well. It is good to have good access and safety. I want to make sure we meet all those requirements.

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 Colman said that the conditions seem restrictive. The conditions seem to be consistent with each of the requests. Why were these conditions not integrated into the ordinance, if they are so critical that they are recommended so consistently?

Ms. Dang said that it depends on the use that is proposed and the location. There may be a STR that is proposed on a collector or arterial street that may elicit different recommendations and not have such restrictive conditions. There may be a STR request that is more closely aligned with a bed and breakfast. The requests that we happened to receive at this time a proposed in residential homes within residential neighborhoods.

Commissioner Whitten said that you are trying to protect the residential neighborhood which is also important.

Commissioner Colman said that some of the ordinance discussions were whether, or not to establish regulations within the ordinance for STR. The idea was that the SUP would allow for neighbors to have an avenue to complain and for the City to be able to act based on those complaints. This seems preemptive, establishing many steps the applicant must take to operate the STR. We are probably becoming the most restrictive place in Virginia to have a STR. It appears that way to me. These conditions seem to be beyond what we had intended.

Commissioner Finks agreed with Commissioner Colman. I worry about some of these conditions, considering that we have not received much feedback from the neighbors. We may still get feedback from the neighbors. We did not see issues in the neighborhood to justify establishing restrictions to mitigate problems that may never exist. I am not a fan of condition number three. I understand the intent and the reasoning. I think that is going to be very limiting for most people. I do not know that being in town is a guarantee of accountability. You can be just as accountable by phone from somewhere else. I do not understand the thought process that you are accountable if you are in town, but do not have to be on the property. If they are not in their primary residence, where else would they be?

Commissioner Finnegan said that the Planning Commission recommended four to three, I believe, for the other by-right option.

Commissioner Finks said that it was not by-right, but it gave some flexibility. It was still a SUP.

Commissioner Finnegan said that he likes condition number two. "The site shall be the operator's primary residence." I believe that has to be there, otherwise speculators may come in and buy housing stock for

STRs. I think that condition two does what condition three is supposed to do. Maybe condition three takes a step further to protect the neighbors.

Chair Way said that in this particular case three is there because the operator volunteered that.

Ms. Dang said that the applicant happened to volunteer that, but staff also recommends that it should be conditioned because it is in a residential neighborhood and we want that onsite accountability for the operator to be there when the lodgers are there. We did not want them to leave town and rent the whole dwelling unit or spaces without their presence.

Commissioner Finks said that the fact that it is a SUP takes care of the accountability. If there are a lot of issues and they are not being accountable, then we review the SUP and revoke it.

Commissioner Romero said that number nine addresses the ability of the Planning Commission or City Council to further condition or revoke the SUP. What are the criteria for the monitoring? What are too many issues? How do we determine when it hits a trigger point that allows us to revoke a SUP? I think there is a lot subjectivity. It is not very clear to me how we would have the ability to revoke it. I do not think we would be able to revoke it in a way that is objective if we do not have criteria or guidelines.

Ms. Dang agreed that it can be subjective based on complaints received and whether the Planning Commission or City Council believes that those complaints are warranted and that the SUP should be recalled.

Chair Way said that this nuisance clause is a typical condition we apply. There is precedence for that language.

Mr. Fletcher said that there is precedence for this exact language in many instances, but I see the conditions and the request for further review as being no different from what we have experienced in the past. In the fifteen years that I have been here, when any of you or City Council receive emails and phone calls, you call us and tell us that you are receiving concerns and ask us to investigate. We investigate and report back to you. Then you determine whether or not it should be called back for further review.

Commissioner Romero asked if we would have the capacity to do that. The number of requests is going to increase over time and if we begin to have concerns across the City, do we have the capacity at this time to manage the complaints?

Mr. Fletcher said that we do. This is brand new. We have four applications this month. We have a number of applications next month. Part of the precedence that is being set is based on your recommendations and the conditions you are establishing. We do not repeat everything we talked about before. We had versions where a lot of these conditions were included but because it became a SUP they were removed. A SUP is considered on a case by case basis. Remember to look at it on a case by case basis. There are many locations where an application could come in and the applicant states that they will not live on the property, that it is an investment property, and that it is essentially a bed and breakfast. It could be appropriate.

Commissioner Finks said that condition number two is the most important. I worry that some of these conditions are getting into territory that is new to us. I do not know how City staff is going to investigate if an operator was present when a complaint was lodged. I do not know how you enforce it.

Mr. Fletcher said that in their applications, the applicants have stated what their operations are. When staff reads what the application request is, they agree with the conditions the applicant proposed. The applicant said that it is their primary residence and that they “plan to operate rentals only during times when we are present and able to properly manage our overnight guests.” We recommended the stated condition.

Commissioner Finnegan said that they put that condition on themselves. I did want to point out that in the application that was withdrawn, the applicant mentioned that “short term rental sites such as HomeAway and VRBO do not allow their owner contracts for an owner-occupied residence. Airbnb does since they started as an ‘air bed in the living room’ concept.” I have not been able to verify that, but it was in their letter. That is something we should take into consideration.

Commissioner Whitten said that she has stayed in a VRBO where the owners were present.

Mr. Fletcher said that the recommendation stating that the second dwelling unit must be operator occupied reflects our concern regarding long term rentals. Staff is concerned that we may start chipping away at units that could be on the long-term market, that people can rent as their primary residence. That is why we made that recommendation. If efficiency and one-bedroom apartments become STRs, they become rentals that people cannot live in long-term. People cannot make long-term commitments in the community and have a place to live, work and pay rent.

Commissioner Finnegan said that he shares the concern with removing units from permanent living spaces for people in the City. It is a huge concern.

Commissioner Colman said that it could be conditioned differently because we can put a condition that it be limited to a certain number of days. We did not put it in the ordinance, but we could condition it in this case. We could say that the apartment within the same house on the same property could be used as a STR for 50 days of the year, or something similar. In a community like Park View where rentals often are to students who will not be there in the summer, they could use it as a STR. Giving them some flexibility on that would be good, when the second unit is within the same house.

Commissioner Finks said that since the applicant has agreed to these conditions, as far as I could tell, the applicant did not have any direct issues with them.

Chair Way asked if we should not address an exception for that second unit.

Commissioner Whitten said that the applicant did not agree with the second condition and asked for an exception.

Chair Way suggested that the Planning Commission settle the issue of whether or not, the second unit must be a primary residence.

Mr. Russ asked if the second unit is truly a unit without a certificate of occupancy. Is the property only one dwelling unit at this time?

Ms. Dang said that right now it is one dwelling unit.

Mr. Russ asked if they could have the certificate of occupancy issued for one unit and keep the house as one house and no longer call the basement an apartment.

Mr. Fletcher said that it has been constructed as a second dwelling unit. We just have the technical issue with the certificate of occupancy missing.

Ms. Dang said that there is no access from within the other unit.

Mr. Fletcher said that if they did not wish to have a duplex dwelling, it would conflict with how we interpret other spaces because it is designed as a separate dwelling unit.

Commissioner Colman asked what that means in terms of long-term rentals.

Mr. Fletcher said that he would have to ask the Building Official if it can be classified as one unit.

Commissioner Colman said that due to occupancy they could not have another unrelated person living there.

Mr. Fletcher they can have two unrelated persons.

Ms. Banks said the kitchen would need to be removed.

Mr. Fletcher said that the staff report lays out options. If you wish to remove certain ones, you can make a motion to remove the ones you do not like or add ones you want.

Commissioner Colman said that it is important, for the record to, establish what issues we are discussing as more people are going to come later with similar concerns.

Commissioner Whitten said that they should understand what the concerns are.

Chair Way asked for suggestions or alternative language that might capture the opportunities that the applicant has requested.

Commissioner Colman said that he would like to change the conditions to reflect a period of time during which the second unit can be used as a STR. I would remove condition number two: "The site shall be the operator's primary residence."

Chair Way asked where the time-bound condition would be added.

Commissioner Whitten suggested removing "All STR accommodations shall be within the principal dwelling." Is that the one?

Commissioner Colman said that he would remove number two "The site shall be the operator's primary residence." No, number three, "An operator shall be present during the lodging period."

Chair Way suggested amending number four to say "All STR accommodation shall be within the principal *building*."

Mr. Fletcher said that the principal building is the structure. What you are trying to say is that any second dwelling unit that is constructed on the site has the provisions to allow for whatever number of days that you want to provide.

Commissioner Colman asked what would be proposed as the number of days for the second dwelling unit.

Mr. Fletcher said that the Planning Commission could give staff the intent of the condition and staff would ensure that it is written in such a way that it would meet the intent before going to City Council.

Commissioner Finks asked if they are thinking of a number of days during which the operator has to be present.

Commissioner Colman said that they want to limit the number of days that the second dwelling unit can be used as a STR.

Ms. Dang asked if it meets the intent to say, "Any second dwelling provided on the site may be operated as a STR for no more than X number of days per year." If it meets the intent, staff can work to ensure that the language reflects the intent.

Chair Way said no because it would suggest that a second building may be constructed.

Ms. Dang said that it would be a dwelling unit. That second dwelling unit that exists.

Mr. Fletcher suggested "Any second dwelling unit *within the principal structure*."

Commissioner Finks asked if that would conflict with condition number three.

Commission Whitten said that it does not.

Ms. Dang said that they could clarify number three as "An operator shall be present *on the property* during the lodging period."

Commissioner Colman said he liked adding “on the property.”

Chair Way said that in this case it would be in the *principal structure* if we are using the language suggested for number four. We should have consistent language throughout.

Mr. Fletcher suggested keeping condition three as is saying, “An operator shall be present during *any* lodging periods.” That would cover both.

Chair Way agreed.

Commission Colman said that the number of days is still undecided.

Chair Way said that, for the record, it should be noted that a lot of this discussion is due to the peculiarities of this particular building. I want to be careful to not open ourselves up to all sorts of precedents here.

Commissioner Whitten said that there would be no precedence because it is a SUP, which are all going to be different.

Commissioner Finnegan said that there are four SUPs for STR on the agenda. Two were recommended for approval by staff and two were recommended for denial.

Mr. Fletcher said that there is a correction for number four which states “All STR accommodations shall be within the principal dwelling.” It should be “principal structure”.

Commissioner Colman asked if the Planning Commission was going to recommend a number of days or leave it up to City Council to decide the number of days.

Mr. Fletcher said that the Planning Commission has to establish a number of days if that is a condition that is recommended because City Council may not want any. You have to give them a recommendation.

Commissioner Whitten said that the concern is to allow for the second dwelling to be rented during the school year.

Commissioner Colman said that the issue goes back to protecting available housing stock. I want to maintain that but also keep the flexibility for the STR.

Commissioner Finks suggested “no more than 90 days.” It is not days, it is nights. It is two days, essentially.

Commissioner Finnegan said that one stay would span two days.

Commissioner Colman said that the period of 90 is a bracket.

Ms. Banks suggested clarifying by specifying nights.

Commissioner Colman said that they would be allowed to rent for 90 days.

Ms. Banks asked if the intent is for 90 consecutive dates.

Commissioner Colman said yes, consecutive days. You do not want consecutive days? We were thinking the STR would occur during the summer.

Mr. Fletcher said that if you specify consecutive days, then it is not a STR.

Commissioner Colman said that it would be STR within that period of time.

Commissioner Whitten said that the 90-day period would be broken up into STR, but no more than 90 days.

Mr. Fletcher said that it would be within a 90-day period. You are assuming that they will rent the primary area to a student.

Commissioner Finks said that it might create problems that we do not want because they will rent that space to someone for three months.

Commissioner Whitten said that the intent is that the dwelling would be available for STR during that period of three months.

Commissioner Colman said that it could be during a different time, like during Christmas break. We should restrict to a number of days rather than a period of time.

Commissioner Whitten agreed. How many days?

Commissioner Colman clarified that it would be nights.

Commissioner Whitten said that she was unsure because there might be people who try to get around the restrictions.

Commissioner Finks said that enforcement would be difficult. Who will count the nights?

Commissioner Whitten said that the count would come from the Commissioner of the Revenue's office, when they collect the taxes. That is where it gets counted.

Chair Way asked if there was any consensus on restricting the STR to a certain number of days or nights. I am seeing no's on my right.

Commissioner Ford-Byrd said that we entered into this trying to leave some decision-making to the homeowner. It seems like we are working backwards. I do not agree with setting a number of days.

Commissioner Whitten asked if it was understood why it was being discussed, which is to protect the property for people who need affordable housing. Maybe this property is not affordable. I do not know because you cannot tell people that they have to make it affordable.

Chair Way asked if they should not pursue restricting the number of days due to the lack of consensus.

Commissioner Colman asked if the recommendation is to prohibit the STR of the second dwelling.

Chair Way said, no. We want to permit the STR within the second dwelling.

Commissioner Finks asked what would be required to meet the Planning Commission's intent. Do we strike number three? What conditions do we set to make that possible?

Commissioner Whitten said that we dealt with that by saying *principal structure* to mean the house.

Chair Way asked that Ms. Dang read the revised condition to ensure they have captured their intent.

Ms. Dang said that for number three, it was last suggested that "[a]n operator shall be present during the lodging period."

Mr. Fletcher said it would be for *any lodging period for any unit*.

Ms. Dang read number three, "[a]n operator shall be present during any lodging period for any unit." Do you want it to say *dwelling* unit? The other one is number four, "[a]ll STR accommodations shall be within the principle structure." In addition, we need to correct an error in number seven. It should say "guest rooms and accommodation spaces *and means of egress*". It is reflected in the other staff reports but omitted in this one.

Chair Way asked if the changes constitute a reasonable compromise and take of the owner's interest.

Commissioner Finks said that he thinks it does.

Commissioner Whitten moved to recommend approval of the SUP with the suggested conditions as amended.

Commissioner Colman seconded the motion.

Chair Way called for a roll call vote on the motion.

Commissioner Zanetta Ford-Byrd: Aye

Commissioner Sal Romero: Aye

Commissioner Whitten: Aye

Commissioner Colman: Aye

Commissioner Finks: Aye

Commissioner Finnegan: Aye

Chair Way: Aye

The motion to recommend approval passed (7-0).

Chair Way said that the recommendation for approval of the SUP with the suggested conditions as amended will move forward to City Council on June 11, 2019. Amended conditions are as follows:

1. Prior to beginning operations, a Certificate of Occupancy (CO) must be issued for the building.
2. The site shall be the operator's primary residence.
3. An operator shall be present [on the site](#) during the lodging period [within any dwelling unit](#).
4. All STR accommodations shall be within the principal [structure](#).
5. There shall be no more than three STR guest rooms or accommodation spaces.
6. The number of guests at one time shall be limited to six.
7. Prior to beginning operations, the operator shall have the guest rooms and accommodation spaces and means of egress inspected by city staff to confirm compliance with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code or as determined necessary by Building Code and Fire Officials.
8. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
9. 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.

Respectfully Submitted,

Alison Banks

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Senior Planner