



City of Harrisonburg, Virginia

Department of Planning & Community Development

409 South Main Street
Harrisonburg, Virginia 22801
(540) 432-7700 / FAX (540) 432-7777
www.harrisonburgva.gov/community-development

Building Inspections

Engineering

Planning & Zoning

June 3, 2019

TO THE MEMBERS OF CITY COUNCIL

CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Richard Scott Asbell, III and Jacqueline Mae Asbell for a special use permit per Section 10-3-34(7) of the Zoning Ordinance to allow short-term rental within the R-1, Single Family Residential District. The +/- 11,700 sq. ft. property is addressed as 341 South Willow Street and is identified as tax map parcel 24-D-30.

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 the Comprehensive Plan designates this area 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: Across South Willow Street, Virginia National Guard Readiness Center, zoned R-2

South: Single-family detached dwelling, zoned R-1

West: Single-family detached dwelling, zoned R-1

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 341 South Willow Street, which is located in the western section of the City. The property is across the street from the Virginia National Guard Readiness Center and James Madison University. This section of South Willow Street has green zone permit parking on the west side of the street. A parking pass is required for vehicles parking on the west side Monday through Friday, 8am-8pm. The east side of South Willow Street has no restricted parking.

The applicants desire to rent for STR two accommodation spaces in their home that could accommodate a total of five individuals. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) They describe that the property is their primary residence and that they plan to be present during the lodging period.

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 two accommodation spaces for STR, the property should provide two off-street parking spaces. 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 single-family detached dwelling per Section 10-3-25(7) of the ZO for a total of three required parking spaces for the dwelling and STR.

The property has a one car garage that can be counted for the single-family detached dwelling. The driveway to access the garage is not located on the subject property, but is on the neighbor's property with permission granted by a private access easement. The applicant has explained to staff that they can only use the private access easement to access their garage; no parking of vehicles is allowed in the easement.

The applicants state in their letter that constructing new parking spaces on their property would be difficult due to the grade change between the street and their home. They plan to have STR guests park their vehicles either on the west side of Willow Street using their two green zone guest parking passes or on the east side of Willow Street where there is no restricted parking.

Given the large lots that exist in the neighborhood and that this property has approximately 80-feet of road frontage that could accommodate about four vehicles in front of it (it would be unlikely that STR guests would park in front of the homes of neighbors), staff is comfortable conditioning that minimum off-street parking for the STR would not be required.

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

1. The site shall be the operator's primary residence.
2. An operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal dwelling.
4. There shall be no more than two STR guest rooms or accommodation spaces.
5. The number of guests at one time shall be limited to five.
6. 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.
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 protects the neighbors by

ensuring that there is on-site accountability with operators being present during the lodging period. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for a STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to two. Condition #5 limits the total number of guests at one time to five. However, with Condition #6, 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 five 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 dwelling (meaning that the STR operator could decide later to change which accommodation spaces are rented for a STR), Building Code and Fire Code requirements would be specific to the spaces. Condition #7 provides flexibility for the property owner to maintain the residential appearance of the property by not requiring them to create parking spaces. 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 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 across the street from the Virginia National Guard Readiness Center and James Madison University (JMU) and connects directly to West Market Street (a major arterial). Especially during times of the year when JMU is in session, the on-street public parking on the east side of Willow Street is heavily used. It is clear that this section of this residential neighborhood experiences a great deal of pedestrian and vehicular traffic that is not generated from the residents of the street or their relatives and friends. Staff believes that from a traffic perspective, allowing a STR at this location would have very limited impact. 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 Finnegan said, for clarification, that the red line on the PowerPoint slide is no parking and the other side has no restriction, but we do not know what will happen with those, in the future.

Ms. Dang said that is correct.

Commissioner Whitten said that the no parking zone is probably because the property is an armory. There is probably some Federal reason why they leave that.

Commissioner Finks said that they would have three parking passes.

Commissioner Romero asked what the community engagement process for these requests looks like.

Ms. Dang said that the process applies to all the rezoning and SUP applications received by the Planning Commission. We post the sign on the property, at all locations that touch a public street. In this case, they had one frontage or one property line that touches a public street, so we posted a sign there. Letters are

sent to all property owners that are touching the property or directly across the street from them. A notice advertising the request is placed in the newspaper twice, and it is posted on the City webpage.

Mr. Fletcher added that the process repeats at City Council.

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

Mr. Scott Asbell, 341 South Willow Street, came forward to answer any questions regarding his request.

Commissioner Finks asked if the applicant had any questions or comments regarding the suggested conditions.

Mr. Asbell said that he agreed with the suggestions.

Chair Way asked if there were any further comments regarding the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finks asked if there was any feedback from neighbors regarding the application.

Ms. Banks said that staff received one phone call from a neighbor who had concerns related to tall grass and weeds, a vehicle on another property and other general concerns. She said that the property was probably already being used as a STR. The neighbor was not in favor of the request.

Commissioner Whitten said that the neighbor was not present and did not submit a letter.

Mr. Fletcher asked if the concerns were related to the applicant's property.

Ms. Banks said that the tall grass and weeds was related. I do not know if it was validated. We were out there yesterday.

Commissioner Whitten said the applicant should cut his grass.

Mr. Fletcher said that it could be that it was not a violation.

Commissioner Whitten said that if they have been using it as a STR, we have not had any law or enforcement process.

Mr. Fletcher said that he wanted to give context for the suggested conditions for the safety inspections. Was this discussed with the applicant or the Planning Commission about the concern that we observed on the Airbnb website?

Ms. Dang said that she told the applicant that the site would be inspected for egress, but we did not have a discussion about it, yet.

Mr. Fletcher said that staff has been able to observe in some STRs that there are not egress points. Those spaces cannot be used as bedrooms. It is an educational tool. There are people that did not know that they had to have an egress point for a bedroom. That someone has to be able to exit the room in the case of a fire or other emergency. There could be physical renovations that are required. They may have been renting rooms, in good faith, that they thought were safe, however our building specialists may say that they need to have a window that was big enough for someone to crawl out of if there is a fire. That is the context for the requirement. We have observed some safety issues that the applicants need to remedy. Any applicant might run into the situation where they have to make physical renovations in order to make them accommodation spaces.

Commissioner Finnegan asked if an emergency egress window is a particular type of window that can be pushed out.

Mr. Fletcher said that an emergency egress is a space that you can physically exit. You can break the window and get out.

Commissioner Colman said that in that case, the accommodation spaces that we are recommending right now and that City Council could approve will be subject to the inspection.

Ms. Dang said that if the condition is approved they will be subject to inspection.

Mr. Fletcher said that we did not talk about it during the last STR request. I wanted to help give some context.

Commissioner Colman said that if we are approving four accommodation spaces, or however many are here, they do not have to be validated as four. They could be reduced. When will that happen?

Mr. Fletcher said that it would be documented.

Commissioner Colman said that it would be documented after the approval, which means that they can make that change to comply with requirements. Since the approval of the SUP is for four spaces, but they could only have three because one of them does not have egress, for example. If the approval is for four they could have the ability to adjust it.

Ms. Dang said that whatever is the lesser number would regulate the number of people that could rent the space or if the accommodation space can be used. So, if the conditions say two accommodations spaces, but the building code and fire officials say that they can only have one accommodation space, then it would be only one until they make a change to the second area. They do not have to come back to amend the SUP if the building official determined that it had to be less.

Commissioner Whitten said that it has to meet the condition.

Commissioner Colman said that if the SUP is for four spaces but could not operate all of them based on the inspections, they still have the ability to make the changes without having to come back for an additional SUP.

Ms. Dang said that was correct.

Commissioner Finnegan said that he is strongly in favor of condition number two, requiring the operator's presence, and condition number seven, requiring no minimum off-street parking.

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

Commissioner Colman seconded the motion.

All members voted in favor of recommending approval of the SUP with the suggested conditions (7-0).

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

Mr. Fletcher addressed Commissioner Finnegan. You said that you were very much in favor of number two. Based upon your past conversations, did you mean number one?

Commissioner Finnegan said yes. It was number two in the last request.

Commissioner Whitten said that this is very instructive to people in the public who want to use the STR opportunity. Neighbors are watching closely. Applicants need to step it up. If the grass needs to be cut or there are cars parked where they should not be, people are watching.

Respectfully Submitted,

Alison Banks

Alison Banks
Senior Planner