



City of Harrisonburg, Virginia

Department of Planning & Community Development

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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 Glen Stoltzfus 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 +/- 21,000 sq. ft. property is addressed as 981 Summit Avenue and is identified as tax map parcel 48-C-12.

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 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: Single-family detached dwelling, zoned R-2

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

South: Single-family detached dwelling and city-owned water tower, zoned R-2

West: Agricultural uses located in Rockingham County, zoned A-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 applicant is requesting approval of a STR operation at 981 Summit Avenue, which is located in the northwestern section of the City. The applicant describes in his letter that he and his wife desire to rent for STR one space that could accommodate a total of four 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, which has two dwelling units. The property is zoned R-2, Residential District and has approximately 21,000 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 1996. The building permit was approved for the construction of a two-story dwelling with a basement apartment. Today, this type of building would be defined by the ZO as a duplex. 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 for two dwelling units. 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 makes up the majority of the structure and includes the space that the applicant plans to use as a STR. While the applicant's letter describes the STR space as an "efficiency apartment," staff considers this space as part of the first larger dwelling unit. The second smaller dwelling unit is described in the 1996 building permit as the "basement apartment."

The applicant lives in the first dwelling unit with his family; his parents, who own the property, live in the second dwelling unit. The applicant desires to rent from the first dwelling unit a space on the second floor, which includes one accommodation space for a STR. ("Accommodation space" is used here to mean any room offered for sleeping. This would not include living spaces or rooms where guests would not be 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." The applicant has described in their letter that they are able to provide two parking spaces on their property for the STR. However, since they only have one accommodation space, the ZO would only require that they provide one off-street parking space for the STR.

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 the existing driveway areas and within the two-car garage. Regardless, staff believes 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 approved.

Staff believes that STRs should not negatively impact a community or an individual's quality of life or to a neighborhood individual's often biggest investment: their home and property. Zoning regulations offer some certainty for home buyers and property owners. The zoning regulations adopted by City Council in March 2019 created the opportunity to allow STRs in the City while also providing city staff, Planning Commission, and residents of the neighborhood to share their thoughts. The regulations also allow City Council to establish conditions on the SUP.

The property is located deep within a neighborhood, at the end of dead end street that is approximately 0.3-miles long (from Greystone Street) and approximately 0.8-miles from the nearest collector streets (Chicago Avenue and Mt. Clinton Pike), and is unlikely to have pedestrian and vehicular traffic that is not from relatives or friends or neighbors who live on Summit Avenue or their visitors. Staff believes that introducing a STR at this location could create neighborhood instability because STRs introduce high turnover of different people who are unknown to the neighbors and could change the character of the neighborhood with increased vehicle trips.

Given the location of the property within this residential area of the City, staff believes that a STR at this location would have adverse effects on other residents in the neighborhood and recommends denial of the special use permit request.

However, 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 structure.
5. There shall be no more than one STR guest room or accommodation space.
6. The number of guests at one time shall be limited to four.
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, then between the two dwelling units only one accommodation space may be rented as a STR at a time so long as they meet the other conditions of the SUP. 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 a STR that was not previously vetted for impacts to surrounding properties. If the applicant later wishes to create living spaces within an accessory building for a 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 one. Condition #6 limits the total number of guests at one time to four. 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 four 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.

Mr. Fletcher noted a mistake on the aerial graphic. The star identifying the subject property is misplaced and should be further to the left.

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

Mr. Michael Stoltzfus, 981 Summit Avenue, came forward to speak to the request. The property is owned by my father Glen Stoltzfus. I would like to start by reading a letter that I prepared to give to our neighbors, although I never had to give the letter to them. I went to their doors and had a personal conversation with each of our neighbors to the north, to the east and several houses to the south on both sides of the street. They were all supportive. They did not have any problems with my request. I specifically mentioned traffic and parking. They did not have problems with either of those specific issues. I thought it might be helpful to read a portion of the letter I wrote for our neighbors in case they want to read it.

My wife Jen, my two sons Adam and Luke, and I moved in to 981 Summit Avenue in May 2018. This house was built by my father Glen in 1997. He and my mother Malinda have lived here since, until our family moved in last May. (They are now living in the apartment in the basement.)

Jen and I have lived in the Park View neighborhood all but 3 of the past 27 years (including EMU campus, Shank Dr, College Ave, Greystone St, and Summit Ave). We love this neighborhood - the quiet family atmosphere, friendly neighbors, and gorgeous views. It has been our family's hope and plan for some time to make the move back to Summit Ave (Jen and I lived in the basement apartment at 981 Summit Ave during our first year of marriage).

It has also been our dream to provide guest accommodations in our beautiful neighborhood, with its restful atmosphere and scenic views of both the city and county. I have closely watched and participated in the city's efforts to establish short term rental guidelines to protect neighborhoods. I advocated for the requirement to acquire a special use permit, and urged the city to also require short term rentals to be owner-occupied and provide off-street parking. I felt this was important to protect the integrity of neighborhoods and to limit the impact of investment properties being turned into short term rentals at the expense of affordable housing options. I share some city residents' concerns about traffic, noise, and parking. I decided to wait until the city had an ordinance allowing short term rentals in place before opening our home to guests, since it has been illegal to do so in the city until now. I want to share our beautiful city with guests who desire something different than a hotel experience, and to help them experience my favorite events, natural areas, historic treasures, restaurants, and other amenities in our city.

There are several STRs that are currently operating on Summit Avenue, that have been operating for some time. I know that at least one of them is in the process of applying for a SUP. We have a lot of non-resident traffic on our street because of its location and scenic views. I do not think that one, two or even three STRs on our street would adversely affect the current nature of our neighborhood because of our location. It is an attractive place to drive, park and watch the sunset. I do not share city staff's view that the distance from a feeder street would have a negative impact on our current neighborhood atmosphere. I am open to any questions you may have.

Commissioner Finks asked if the applicant had any concerns regarding the conditions suggested by the City.

Mr. Stoltzfus said that he did not. The fact that all four of the current applicants stated specifically that we would be present during the rentals is possibly due to language on the City website. Where it talks about applying for a SUP, it says that the letter should describe who would operate the STR, if the location is the primarily residence of the operator, if the operator would be present during the lodging period, etc. That is why I included it. I thought it was a requirement. I am glad to have that be part of the conditions. I would not feel comfortable renting out that space to someone while I am not present, while we are on vacation.

Ms. Dang said that she would look at the verbiage to ensure that it is not misleading. The intent of the verbiage is to have applicants address whether they plan to be there or not, so that we would not have to ask them during the review process. We wanted to have all the information up front as staff is reviewing. I will double check to make sure that it is not misleading by implying that it is required that operators are required to be there. I do not think it is because in the next round of STR applications, there is someone who is applying who does not plan to live there. In addition, the applicant for Royal Court, who has withdrawn their application, did not plan to live there.

Chair Way asked if there were any further comments regarding the request.

Mike Goertzen, 990 Summit Avenue, came forward to speak in support of the application. I live far enough south of Mr. Stoltzfus that I was not privy to his letter. I am aware that there are a number of STR units operating on the street already. There is quite a bit of vehicular traffic due to the view, and there is a very large volume of pedestrian and bicycle traffic through that space because of the views. It does not change that much. It is a misunderstood area. It is a quiet street late at night. It is a popular place for those who do not wish good intent on the community to visit, at times. Since we have slightly increased the traffic on that street, my wife and I, who border on a number of vacant lots that would be a popular place for the less well-intended people, have seen a distinct decrease in that traffic because there is more activity on the street. I want to speak in strong support of Mr. Stoltzfus' application.

Mr. Giannakaouros came forward to speak in support of the applicant. I would like to suggest that the principle that people who are different or unknown in the neighborhood would be a disqualifying principle is not something that is held by our elected representatives. I would hope that this body and staff would stop testing them on this question.

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 Finnegan said that when we were doing research on STR, one of the things that came up and that I got from staff, last year, was an application for a bed and breakfast from 2013 on Summit Avenue. It was a letter to Dave Miller that was signed by a number of neighbors saying that they were not in favor of a bed and breakfast. A bed and breakfast and Airbnb in some ways are apples and oranges, however, it was signed by Glen Stoltzfus. Things may have changed, between now and then. It sounds like they have. It sounds like there may be a number of other applicants from this street coming up next month. There is at least one more on this street next month. It is something to keep in mind. If one or two or three is not a problem, is four or five or six or seven a problem?

Ms. Dang said that while she cannot speak to the 2013 application, specifically, keep in mind that it may have been proposed differently or the conditions were considered differently. A new STR on the street might propose something that they are operating differently. They are not all the same.

Mr. Fletcher asked if it was the same application that, at that time, staff supported before they withdrew it. Which application was he referring to?

Ms. Banks answered that it was Mr. Miller's that they were speaking of; the one staff supported was 15 to 20 years ago.

Mr. Fletcher said that was a similar application on an adjacent property. It was a long time ago, 2006 maybe? Staff supported that.

Commissioner Finnegan asked if we are taking into consideration whether a property has been a whole home rental for a long period of time. Is that a consideration? Or are we going to treat it as a clean slate, starting from scratch?

Commissioner Finks said that he would like to think that we are starting from scratch. While the law did say that this was not something that was allowed in the City, it was ambiguous. We had not directed, or City Council had not directed, staff to enforce it or make it more well-known, so that people who might have moved to the City from the County or some other area where it was allowed and who may not have considered that it might not be allowed. We were not going out of our way to inform them. In other situations where we are considering SUPs, past usage is relevant. In this area, I would like that we not take it into consideration.

Commissioner Whitten said that is what the grace period is about.

Commissioner Finks said that everyone who is coming before this body is trying to do right.

Commissioner Ford-Byrd said that in the spirit of transparency, I would not mind the applicant letting us know if they had been operating before hand and how things went.

Commissioner Finks made a motion to recommend approval of the SUP with the suggested conditions.

Commissioner Ford-Byrd seconded the motion.

The motion to recommend approval passed (5-2), with Commissioner Whitten and Chair Way voting against the motion.

Commissioner Whitten said that she still has concerns regarding the stability of the neighborhood.

Chair Way said that he voted no due to the reasons discussed.

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

Chair Way called for a five-minute recess at 9:39 p.m.

The Planning Commission reconvened at 9:46 p.m.

Respectfully Submitted,

Alison Banks

Alison Banks
Senior Planner