



# City of Harrisonburg

City Hall  
409 South Main Street  
Harrisonburg, VA 22801

## Master

File Number: ID 19-219

File ID: ID 19-219      Type: PH-Special Use Permit      Status: Agenda Ready  
Version: 1      Agenda Section:      In Control: City Council  
File Created: 06/28/2019  
Subject:      Final Action:

Title: Consider a request from Elizabeth and Michael Goertzen for a special use permit to allow short-term rental at 990 Summit Avenue.

### Internal Notes:

#### Sponsors:

#### Enactment Date:

Attachments: Staff Report SUP 990 Summit Avenue (Short-Term Rental) (4 pages), Site Maps (2 pages), Application, applicant letter, and supporting documents (5 pages), Public Hearing notice, Surrounding property owners notice

#### Enactment Number:

#### Contact:

#### Hearing Date:

Drafter: thanh.dang@harrisonburgva.gov

#### Effective Date:

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1		07/10/2019					
1	Planning Commission	07/10/2019	recommended to full council	City Council	08/13/2019		Pass
<b>Action Text:</b> Commissioner Colman made a motion to recommend approval of the SUP, with the conditions as stated. Commissioner Finks seconded the motion. Chair Way called for a roll call vote on the motion. Commissioner Whitten: No Commissioner Ford-Byrd: Aye Commissioner Finnegan: Aye Commissioner Finks: Aye Commissioner Colman: Aye Chair Way: No The motion to recommend approval, with conditions, passed (4-2). The recommendation will move forward to City Council on August 13, 2019.							
<b>Notes:</b> Chair Way read the request and asked staff to review. Ms. 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 and undeveloped parcel, zoned R-2

South: Undeveloped parcel, zoned R-2

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

The applicant is requesting approval of a short-term rental (STR) operation at 990 Summit Avenue. The applicant desires to rent for STR two accommodation spaces. ("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.) The accommodation space can accommodate up to six STR guests. The applicants describe that the property is their primary residence and that they would be present on the property during the lodging period.

The property is located in the northwestern section of the City about 0.7-miles from the nearest arterial or collector street (Chicago Avenue and Mt. Clinton Pike) and 0.1-miles from the end of Summit Avenue, which ends in a cul-de-sac. Staff understands that Summit Avenue receives pedestrian, bicycle, and vehicular traffic from visitors who are not relatives or friends of neighbors on the street who visit this street for the views and because there is relatively low volumes of traffic the street is comfortable to walk and bicycle on.

Generally, when someone purchases a home in a residentially zoned neighborhood, there is a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential environment is not likely to occur. Thus, there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. Approving one or more STRs within neighborhoods could result in community instability because STRs introduce high turnover of people who are unknown to the neighbors.

STRs should not negatively impact a community, an individual's quality of life, or an individual's often biggest investment: their home and property. As has been stated in two previous staff reports for STRs on this street, given the location of the property within this residential area of the City and the nature of the request, staff believes a business operation of this nature should not be promoted at this location and further believes that a STR at this location could have adverse effects on other residents in the neighborhood.

However, to date, Planning Commission has recommended in favor of and City Council approved the STR SUP for 981 Summit Avenue, and Planning Commission has recommended in favor of a STR at 957 Summit Avenue. City Council took action on the 957 Summit Avenue STR SUP request on July 9, 2019, the day before the subject request is being considered by Planning Commission. With City Council's approval of the request for 957 Summit Avenue on July 9, staff believes that a precedence is established that the



allowance for STRs along this street is desirable and acceptable and that such a use in this location would not have an undue impact on or be incompatible with other uses of land since nearby property owners were already given such permission. Therefore, staff would recommend approving the request at 990 Summit Avenue with the following conditions:

1. The site shall be the operator's primary residence and the STR shall occur within the operator's dwelling unit.
2. If the operator is not the property owner, then the operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal structure.
4. There shall be no more than two STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to six people.
6. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
7. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
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. Additionally, the subject property is large enough to allow a duplex structure and this condition prevents any future second dwelling unit on the site from being rented as a "whole home" STR that was not previously vetted. Condition #2 helps to protect neighbors from nuisances arising from absentee operators. Along with condition #1, for property owners operating the STR for whom this property is their primary residence (and to be consistent with Planning Commission's recommended conditions on other applications), they are not required to be present during the lodging period. However, long-term tenants operating a STR would be required to be present during the lodging period. Condition #3 prevents the ability for the STR operator to convert or construct an accessory building into space for STR that was not previously vetted for impacts to the surrounding properties. If the applicant later wishes to create living spaces within an accessory building for STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #4 limits the total number of guest rooms and accommodation spaces on the entire property to two. Condition #5 limits the total number of STR guests to not more than six. Condition #6 requires that prior to beginning operations that the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form and shall maintain compliance with the form when STR guests are present. The form includes a checklist to guide STR operators through a self-inspection of guest rooms and accommodation spaces and means of egress.

Condition #7 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to create and delineate additional

off-street parking spaces. 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.” With a request to rent two accommodation spaces within the structure for STR, the property would be required to provide two off-street parking spaces unless conditioned otherwise. 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. 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.

Condition #8 allows PC and CC to recall the SUP for further review if the STR becomes a nuisance.

It should be acknowledged that while the applicant has explained their plans for using this property, the SUP is not restricted to the applicant or operator and transfers to future property owners. If the applicant sold the property, future property owners could operate a STR so long as they meet the conditions for the SUP as approved. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

I would like to point out that condition #1 is slightly different from the other requests. This property is zoned R-2 and large enough to be converted to a duplex. Condition #1 prevents the operator from converting to a duplex and operating a whole home rental that has not been vetted through the SUP process.

Chair Way pointed out that the recommendations for approval for the other Summit Avenue requests were not unanimous. We had some discussion on those.

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

Elizabeth Goertzen and Michael Goertzen, 990 Summit Avenue, came forward to speak in support of their request. We are requesting a SUP for STR opportunities and would appreciate your considerations.

Commissioner Finnegan said that this is the third application for Summit Avenue. In your opinion, do you think that Summit Avenue can accommodate every house being a STR?

Mr. Goertzen said that there are 50 lots on Summit Avenue. There are well over 100 more on Smith Avenue and College Avenue that are already mixed-use. There are a number of people operating on Summit Avenue, far more than have applied. There has been virtually no impact to the street or to the neighborhood. We feel very good about it. We love our home. We love our neighborhood. We love our city very much. We would never put those things in jeopardy.

Commissioner Colman said that he likes the limit to six guests. That seems reasonable.

Mr. Goertzen said that it is rarely more than one car. It is often a family with two small children. It has a walkout basement with two private entrances and a central connecting stairway to our main residence. We permanently occupy the whole residence.

Mr. Fletcher said that 981 Summit Avenue was recommended for approval by Planning Commission on a 5-2 vote, with Commissioner Whitten and Chair Way voting in



opposition. 957 Summit Avenue was recommended for approval by a 5-1 vote, with Commissioner Whitten voting in opposition.

Chair Way said that he remembered that there was a lot of discussion about it. We have talked about precedence setting, so I wanted to know what precedence we are setting.

Commissioner Colman said that even though City Council has moved forward and approved those, there is also some disagreement.

Chair Way asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that is what he is struggling with. It has come up before. How many do we allow in a neighborhood?

Commissioner Colman said I do not know that we can rule on that basis.

Commissioner Ford-Byrd said that she is relying on condition #8 as we move forward, knowing that more applicants are coming forward in one area.

Commissioner Colman said that staff mentioned that some of the localities have a number limit.

Ms. Dang said that she is not aware of any in Virginia.

Commissioner Ford-Byrd said that it was a discussion last month while they were touring the neighborhoods.

Commissioner Finks asked if that is something the Planning Commission wants to consider, where if a street has too many STR, at some point we say only a certain amount of days for any STRs that come forward. If we cannot fairly say that a street cannot accommodate more STRs, once we determine that there are a certain number of STRs on a street, can we limit the number of days that they operate.

Ms. Banks said that she is not comfortable with that. Everyone should have the opportunity.

Commissioner Finnegan said that in Tulsa, Oklahoma they have put density restrictions on dollar stores. Is there a way to put a density restriction on STRs?

Commissioner Whitten said not in Virginia. That would have to come from the legislature.

Chair Way said that the solution is the Planning Commission getting responses from the neighbors. If twenty neighbors from Summit Avenue said that this is too much for the neighborhood, that they have too many, then that is evidence that we can use.

Commissioner Whitten said that the bigger question is, not what the neighbors think now, but what are the neighbors going to think twenty years from now. The ones that are making headlines are in cities where this has reached a critical mass. It is a big problem in a lot of places.

Mr. Russ said that we do have a handful of restrictions, for example, if you want to operate an adult store it has to be a certain distance away from a church or if a business is next to a residential area it has slightly different requirements for signage, among others. The first person to develop out of these lots will have more options than their neighbors will. It is something we can look into. For example, STRs have to be at least 100 yards apart, first come, first served.

Commissioner Finnegan said that options regarding density restrictions would be good information to have moving forward.

Commissioner Whitten said that it seems strange to her that we can develop zoning districts

and determine what they should be, what they look like, with limitations and numbers, and yet when we thread the issue of STRs into the middle of any neighborhood, we throw that out the window. It is R-1, oh well, it is ok because it is a STR.

Chair Way said that we have not. If we look back at Summit Avenue, you and I voted against on this very basis. There is some judgment going on. This is a subjective thing, it is a judgment call. It is up to the Planning Commission to deliberate and think about what is going on and there are going to be differences of opinion. At some point, there is going to be a majority that feel that that neighborhood has reached a tipping point in our judgment. That judgment may not be scientifically correct, but it is a judgment.

Commissioner Whitten said that she hopes that judgment call is not when people start leaving our single-family or R-2 neighborhoods to go to the County as everybody likes to say. Everyone knows you can do whatever you want in the County.

Commissioner Colman said that for each zoning district we have a number of how many unrelated people can be in a place. We are not applying that here, in these cases. We are saying a certain number of people can stay, but we are not saying that they have to be related. The applicant letter may say that the guests are going to be families, but we are not placing that restriction. It could be anyone. It could be thirteen different people.

Chair Way said that is the problem with the single-family zones. In retrospect, it might have been interesting to consider restricting STRs to certain zoning categories and not others.

Commissioner Ford-Byrd said that if it is twenty years later and the neighborhood has changed, condition #8 still is in effect. If neighbors do start complaining, it could be revoked.

Commissioner Finks said that at the last meeting there were concerns with condition #8 and its ability to be applied.

Commissioner Whitten said that our attorney has concerns about the ability to revoke STRs. It is not as simple as one might think. It would involve litigation. It would be expensive.

Commissioner Ford-Byrd asked, if the revocation of a SUP is not as easy as we are saying, can more restrictions be placed?

Chair Way said that the condition reads "which could lead to the need for additional conditions, restrictions." Yes, there is that potential. Rather than revoke it completely, you can add more conditions.

Mr. Fletcher said that this condition has been placed on those where there are some lingering concerns. This shows up in other SUP conditions. I cannot tell you that it is easy or not easy because we have not had a situation where a SUP has become a nuisance to a point that the Planning Commission or City Council has asked for staff to bring the application back to a review process.

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

Commissioner Finks seconded the motion.

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

Commissioner Whitten: No

Commissioner Ford-Byrd: Aye

Commissioner Finnegan: Aye

Commissioner Finks: Aye

Commissioner Colman: Aye

Chair Way: No

The motion to recommend approval, with conditions, passed (4-2). The recommendation will move forward to City Council on August 13, 2019. It is my hope that the discussion and its complexity is precedent setting, and that our caution is precedent setting, as well.

Commissioner Whitten asked Chair Way if you are comfortable that we have had enough discussion for the reason of our no vote, because I am.

Chair Way answered, yes.

Yes: 4 Colman, Finnegan, Finks and Ford-Byrd

No: 2 Whitten and Way

Absent: 1 Romero

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