



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Eric Campbell, City Manager
From: Adam Fletcher, Director – Department of Community Development, and Planning Commission
Date: October 13, 2020 (Regular Meeting)
Re: Special Use Permit – 165 New York Avenue (Short-Term Rental)

Summary:

Public hearing to consider a request from Orange Sky Investments LLC for a special use permit per Section 10-3-40(8) of the Zoning Ordinance to allow for a short-term rental within the R-2, Residential District. The +/- 11,250 sq. ft. property is addressed as 165 New York Avenue and is identified as tax map parcel 24-O-13.

Staff and Planning Commission (4-2) recommended approval of the special use permit with conditions.

Background:

The Comprehensive Plan designates this site 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 dwellings and duplexes, zoned R-2
East: Single-family detached dwellings, zoned R-2
South: Single-family detached dwellings, zoned R-2
West: Single-family detached dwellings, zoned R-2

On August 14, 2019, Planning Commission received a request from the applicant to operate a short-term rental (STR) at 165 New York Avenue to a maximum of 14 STR guests during the lodging period. At that time, staff recommended that the special use permit (SUP) request be denied because the property was not the applicant's primary residence and there would be no STR operator present during the lodging period. Planning Commission also recommended denial (6-0) of that SUP request.

Between the August 14 and September 10, 2019 City Council meeting, the applicant amended their application stating that the applicant/property owner would be moving to the subject property and would make it his primary residence. The applicant had also reduced the requested number of STR guests at any one time from 14 to 12. Staff presented the updated request to City Council on September 10, 2019. Given that the circumstances of the request had changed and made it similar to previously approved requests, staff's recommendation also changed and staff recommended approval of the SUP with conditions.

Given the changes to the application since Planning Commission's first review, City Council did not take action on this item on September 10, 2019 and referred it back to Planning Commission for review and recommendation. On October 9, 2019, Planning Commission recommended denial of the SUP (6-0) and on November 12, 2019, City Council denied the request (5-0).

On August 25, 2020, City Council held a public hearing and voted to approve amendments to the Zoning Ordinance to create a new use called "homestay" and to add this use as a by right use in certain zoning districts and amend regulations that apply to STRs. If the amendments are adopted, both by right homestays and STRs by SUP will require that the property be the operator's primary residence and that if the operator is not the property owner, then the operator must be present during the lodging period. The amendments are expected to be adopted on September 8, 2020 the day before the subject request is presented to Planning Commission.

Key Issues:

The applicant is requesting approval of a STR operation at 165 New York Avenue, which is located approximately 175-feet east of South High Street. The single-family detached dwelling is a six-bedroom home of which five bedrooms would be rented as STR accommodation spaces. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant desires to rent for STR to a maximum of eight STR guests 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 for STR five accommodation spaces, the property should provide five off-street parking spaces. 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 unit. There is a large parking area in the rear of the property, which can accommodate up to five vehicles and an additional three vehicles can park within the driveway, for a total of eight off-street parking spaces. 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.

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

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than five STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to eight.
4. Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. Furthermore, the operator shall maintain compliance with the items identified in the Pre-Operation Form when short-term rental guests are present.

5. Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property.
6. If in the opinion of Planning Commission or City Council, the short-term rental becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Condition #1 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 a STR, they must return to Planning Commission (PC) and City Council (CC) with a new SUP request. Condition #2 limits the total number of guest rooms and accommodation spaces on the entire property to five. Condition #3 limits the total number of STR guests to not more than eight. Condition #4 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 items identified in the form when STR guests are present. Condition #5 provides flexibility for the property owner to maintain the residential appearance of their property by not requiring them to delineate off-street parking spaces. Condition #6 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 his 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.

Because the City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations, staff recommends approval of the request with the 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.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the special use permit request as submitted;
- (b) Approve the special use permit request with suggested conditions;
- (c) Approve the special use permit with other conditions; or
- (d) Deny the request.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission's public hearing and twice advertising for the City Council's public hearing. The advertisement was published as shown below:

Special Use Permit – 165 New York Avenue (Short-Term Rental)

Public hearing to consider a request from Orange Sky Investments LLC for a special use permit per Section 10-3-40(8) of the Zoning Ordinance to allow for a short-term rental within the R-2, Residential District. A short-term rental is defined in the Zoning Ordinance 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.” Short-term rentals are further regulated by Article DD of the Zoning Ordinance. The +/- 11,250 sq. ft. property is addressed as 165 New York Avenue and is identified as tax map parcel 24-O-13.

In addition, adjoining property owners were notified of the public hearing; the property was posted with signage advertising the request; and a notice was provided on the City's website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends alternative (b) approval of the special use permit request with suggested conditions.

Attachments:

1. Planning Commission Extract
2. Site maps
3. Application, applicant letter, and supporting documents

Review:

Planning Commission recommended approval (4-2, Orndoff had technical difficulties and did not vote) of the special use permit with conditions.