



## CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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October 5, 2020

### **TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA**

**SUBJECT:** 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.

### **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: September 9, 2020**

Chair Colman read the request and asked staff to review.

Ms. Dang said that 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.

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.

Chair Colman asked if there were any questions for staff.

Commissioner Whitten asked if the City had heard any comments from the neighborhood.

Ms. Dang said that there was a call received today. I failed to ask my colleague if it was the same person who called her last week. They are one or two people who called. The first one was inquiring about the application. The person who called today did not want to identify themselves. Our colleague did encourage them to call in this evening, but they had some hesitation about doing so. They did express concern regarding the lack of limitation on the number of days on the property could operate as a STR in a calendar year, and they suggested 90 days. They expressed that this feels like a commercial establishment in a residential district. That is the only phone call. We did not receive any letters.

Chair Colman asked if there were any other questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Nicholas Hantzes, Hantzes & Associates, Chantilly, VA, called representing the applicant. I would like to thank the Planning Commission and staff for working with us to make sure that the previous concerns of the community have been addressed. My client is committed to address those concerns. We hope that this time around he will be approved for STR. He is currently renting the property as a long-term rental to people in pharmaceuticals, at Merck, and some nurses. He has a history of renting to good tenants. That is an important consideration for a community, that the owner of the property respects the community and make sure that there are high quality tenants. I am happy to answer any questions.

Chair Colman asked if there were any questions for the applicant's representative. Hearing none, he asked for the next caller. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan said that he does not love this. We have to be consistent with what we have allowed in other neighborhoods. The letter from the attorney states that the new application provides that the property will be Mr. Smallwood's primary residence. When people apply for these, we take them at their word. The Planning Commission is not in the business of enforcement. There are no comments here from neighbors about objections. I question how the parking map will work with eight vehicles. It works on paper, but it is hard to imagine that working physically, with eight cars in that driveway. I am probably going to vote in favor of this, but I am not crazy about it.

Commissioner Whitten said that it comes at no surprise that I am having the same concerns as Commissioner Finnegan. I do think that this format of calling in is very difficult for neighbors to be able to voice those concerns. There is some sentiment that people are concerned about speaking their mind or giving their name. I do not know what that is about. I agree with the comment made by the person who called. This feels more like a commercial, like a niche hotel, where you have one owner living on one side of the City and one owner calling it his primary residence. I cannot question whether it is primary residence or not. The other concern is that we are not just granting

the SUP to this owner. We are granting it to the property. While this owner can say that they will rent only to high quality tenant, you just do not now. Eight people is a lot for no limit on number of nights. I do not think that I am going to vote for it.

Commissioner Fitzgerald said that she agrees with the comments that Commissioners Finnegan and Whitten made. I am comforted by the sixth condition that states that the SUP can be recalled for review, which can lead to the additional conditions, restrictions or even revocation of the SUP. If what is quite possible does happen, and it becomes a problem in the neighborhood, there is an avenue that we could use to correct that problem.

Commissioner Whitten said that the problem with that is that I feel that it is a paper tiger. We need to be careful using that as a good reason to vote in favor of something.

Commissioner Fitzgerald said that it does say that it is in the opinion of the Planning Commissioner, which means that a Planning Commission with a different group of people could have a very different opinion about what is a problem and what is not. I get the point. You are not wrong.

Commissioner Whitten said that the other piece of that is that we would be in a situation of having to go into the court system which is a big expense to the City to incur. Mr. Russ is much more capable of speaking to this than I am.

Chair Colman said that City Council's record has been that they have approved most of the STR requests. This has been the most controversial and this is the one that they voted down. The main reasons that we had before were that neither the owner nor the tenant were going to be present and the number of people. That appears to have been mitigated. It is not something that we can go out and prove. Presented this way, we have to be consistent with City Council. I agree that because it has been in front of us once or twice, and we have seen it through the process, we feel somewhat uncomfortable, but it is a SUP and the conditions are set there. It might be more difficult than not to revoke something like this. Perhaps because of COVID-19, there are not that many people speaking out as there were before. Therefore, it appears that there no significant opposition or significant nuisance to the neighborhood. For the same reasons as Commissioner Finnegan expressed, I will likely be voting in favor of it.

Commissioner Fitzgerald made a motion to approve the SUP with conditions, as presented.

Commissioner Finnegan seconded the motion. I will be voting in favor because of what the application says in that this is a primary residence.

Chair Colman called for a roll vote.

Commissioner Whitten        No. I will vote no because of my concerns for the neighborhood. I would reference the land uses surrounding the property. They are all single-family detached dwellings. If we follow the logic that everybody should be able to do this, we could have a whole block of these. The proximity to campus and other things that people might want to do would

certainly lend themselves to this particular little neighborhood turning into a bed and breakfast city. I am going to vote no.

Vice Mayor Romero	Aye
Commissioner Byrd	No, via chat message
Commissioner Finnegan	Aye
Commissioner Orndoff	Did not vote due to technical difficulties
Commissioner Fitzgerald	Aye
Chair Colman	Aye

The recommendation to recommend approval of the special use permit, with conditions, passed (4-2), with Commissioner Orndoff not voting due to technical difficulties. The recommendation will move forward to City Council on October 13, 2020.