



# City of Harrisonburg

City Hall  
409 South Main Street  
Harrisonburg, VA 22801

## Meeting Minutes Planning Commission

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Wednesday, August 14, 2019

7:00 PM

Council Chambers

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### 1. Call To Order

The Harrisonburg Planning Commission held its regular meeting on Wednesday, August 14, 2019 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

### 2. Roll Call/Determination of Quorum

Members present: Gil Colman; Brent Finnegan; Zanetta Ford-Byrd; Sal Romero; Kathy Whitten; and Henry Way, Chair.

Members absent: Mark Finks.

Also present: Adam Fletcher, Director of Planning and Community Development; Wesley Russ, Assistant City Attorney; Thanh Dang, Assistant Director of Planning and Community Development; Alison Banks, Senior Planner; and Nyrma Soffel, Administrative Assistant.

Chair Way said there was a quorum with six of seven members in attendance.

### 3. Approval of Minutes

Chair Way asked if there were any corrections, comments or a motion regarding the July 10, 2019 Planning Commission Minutes.

Commissioner Finnegan moved to approve the minutes, as presented.

Commissioner Colman seconded the motion.

All members voted in favor of approving the July 10, 2019 Planning Commission minutes as presented (6-0).

**A motion was made by Finnegan, seconded by Colman, that this be approved. The motion carried by a voice vote.**

Minutes from the July 10, 2019 Planning Commission Meeting

Attachments: [Minutes](#)

#### 4. New Business - Public Hearings

Ms. Dang presented an overview of the common conditions that will be seen throughout all the STR applications that we will be discussing this evening. These are:

1. The site shall be *an* operator's primary residence.  
In previous staff reports, we stated that "[t]he site shall be *the* operator's primary residence." After some conversations with the Planning Commission at the last meeting, it appeared that a better descriptor is "*an* operator's primary residence." We have heard from many homeowners that it is a couple or two people who operate the STR, not just one individual.
2. If *an* operator is not the property owner, then *an* operator shall be present during the lodging period.
3. All STR accommodations shall be within the principal structure.  
This prevents people from creating a separate building from the main house to lodge people. While they could do that, this condition makes it so that if someone wanted to build an accommodation space separate from the main house, they would have to come back to the Planning Commission to make a new request with a new SUP application. We want that to be vetted by this body as well as by City Council.
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 Pre-Operation Form when short-term rental guests are present. This Pre-Operation Form is a checklist of things about the accommodation spaces including the ability to exit in the event of an emergency, smoke detectors. There is a checklist that is available on our website for anyone who wishes to review it.
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.  
The way the Zoning Ordinance is written, the parking requirements for STRs require that parking spaces be marked. Since the homes in the next four applications are residential in nature, we do not think that it would be appropriate to require marked spaces. We have recommended that they do not need to be delineated or signed. We also recognize that there is space provided on the property to provide off-street parking.
6. The STR has no minimum off-street parking requirements.  
This would be in a case where a property does not have off-street parking spaces available for a car to park on the property, but there is enough parking available on the public street where it would not cause issues with the neighbors.
7. 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.

If an approved STR becomes a nuisance, City Council or Planning Commission could recall the application to review, add conditions, or to revoke the SUP entirely.

These are the conditions that we will see throughout the four applications.

- 4.a.** Consider a request from Rodney R. and Angela D. Williams for a special use permit to allow short-term rental at 511 Paul Street.

**Attachments:** Memorandum SUP (511 Paul Street)  
 Extract SUP (511 Paul Street)  
 Site maps  
 Application, applicant letter and other supporting documents  
 Public comments received as of September 11, 2019

Chair Way read the request and asked staff to review.

Ms. Dang said that the Comprehensive Plan designates this site 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: Detached single-family dwelling, zoned R-1
- North: Detached single-family dwelling, zoned R-1
- East: Detached single-family dwelling, zoned R-1
- South: Detached single-family dwelling, zoned R-1
- West: Detached single-family dwelling, zoned R-1

The applicants are requesting approval of a short-term (STR) operation at 511 Paul Street, which is located about 500-feet from Martin Luther King, Jr. Way in the Preston Heights neighborhood. The applicants desire to rent for STR one accommodation space located in the basement of their home. (“Accommodation space” means 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 two guests. The applicants describe that the property is their primary residence and that they would 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 for STR one accommodation space, the property should provide one off-street parking space. 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. The property has a large driveway and a two-car

garage. The applicants have explained that lodgers will park their vehicles in the driveway. It appears that all the required off-street parking could be provided on the site in the existing driveway area. 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 be placed on the SUP:

1. The site shall be an operator's primary residence.
2. If an operator is not the property owner, then an 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 one STR guest room or accommodation space.
5. The number of STR guests at one time shall be limited to two 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. 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 one. Condition #5 limits the total number of STR guests to not more than two. 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. 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 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.

The City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations. Considering those approvals and the suggested conditions, 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 asked what is the nearest approved STR to this one?

Ms. Dang said that the two closest are on Franklin and Campbell Streets. The next closest is East Fairview Avenue and East Weaver Avenue and are not far. I have also placed in front of you a petition that was dropped off by a neighbor earlier today.

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

Rodney Williams, 511 Paul Street, came forward to speak to the request and provided some materials to the members of the Planning Commission. I am the owner and occupant of the property. A letter came in from our neighbor to our left, if you are facing the house, William Hall. When I spoke with Mr. Hall's wife she mentioned the sound of a truck. That truck belonged to a long-term tenant, a year and a half ago. Neighbors did not know that we were doing Airbnb until the ordinance to meet the August 1, deadline. I spoke with them because I knew a letter was coming. Then Ms. Dang started receiving letters. What the first part of the letter says is that the master bedroom window directly faces the parking area. I gave you a picture that shows the garage, the rather large building next to our property, followed by a sun porch, then the main house. The letter says that the master bedroom directly faces the parking area, loading and unloading, entrance and exit of STR. My parking for one car with two guests is further away than his car that parks near the line.

The next letter was written by the first neighbor for the second neighbor to sign because he is 92 years old. I just sat with him the other day because he might have had to go into the hospital for pneumonia. We had a good talk and I shared the same thing with all of this. The letter stated that he had made complaints to local law enforcement about often times loud and disruptive events. I have never been contacted by the police. I did not know that.

The next letter, from Sergeant Monahan with Harrisonburg Police Department, states that a search of the calls for service (CFS) related to the address of 511 Paul Street in the City, from January 2017 and forward, resulted in zero CFS related to any noise violation and zero CFS

related to disorderly conduct. I had to address a letter with false claims.

There is an additional article regarding whether Airbnb are a hindrance to property values. They are not a stigma. They increase property values because something that has value to rent that room or comply with this new ordinance gives that person confidence to pay the mortgage, the taxes, the utilities, and so forth. That ruling is a benefit and has been proven. There are many articles on the internet about the improvement of a property through that.

These letters addressed public safety. Paul Street is a four-vehicle width road. There are 25,000 students who come into the City every year. We are advertised as a tourist town. We love people coming here. I am half a block away from where people could go tailgate, enjoy a game, or something of that sort. In response to that, I attached a quick statement. When you are on Airbnb, we have that credit card of that person. We do not have that information on a person driving up and down our street at any time of the night. There are also background checks done on Airbnb guests and hosts, including regulatory terrorist and sanctioned watch list for hosts and guests in the United States. That creates a comfort for people coming to my place and it creates a comfort with me.

We got an additional letter, a document with names of different people in the neighborhood. You will see on the front note where it is highlighted exhibit one and exhibit two. You can see, again, the distance between Mr. Hall's house and my house. Behind that bush that you see in exhibit two, there is vinyl fencing. I put that fence in as a courtesy because both went in mutually to remove a tree. There is an eight-foot vinyl fence. I also moved it right beside my driveway to allow Mr. and Mrs. Hall to have an additional three-foot more that I could have claimed because their corner sits at an angle and I was giving them more room to move around. He appreciated that. That shows that the master bedroom is not right beside my house. I make that statement of a false claim and ask for that letter to be removed and disallowed.

The next one is Cecil Gilkerson, 507 Paul Street, exhibit three and four. If you look at exhibit three, that is his house. Exhibit four shows the greenery and hedges between his driveway and my car. That driveway is not the one guests would be using. The driveway for guests is shown in exhibit two. He has never known about any renters, nor has seen anyone coming and going.

Next, there is an adjoining neighbor. Exhibit five shows standing in the center of the driveway where an Airbnb guest would pull in. You can hardly see their house. They were probably unaware until they were approached by Mr. Hall to sign a document.

Finally, he got a signature from 560 Myers Avenue. Exhibit six is their house. To the right you see the very back corner of my property. I would dare say they did not know that I had guests. They cannot even see the back of my house, and at that point, you can see that I have an additional lot on the back. There is a lot of footage between those properties.

I was made to respond to letters and signatures. Were they even considered adjacent property

owners? I do not know who the letters were sent to.

Ms. Dang said that the letters get sent to anyone who has property touching the applicant's property or across the street from the property.

Mr. Williams said that he spoke with Mr. Anderson's wife before the meeting. She told me that she did not realize that her husband had signed this. He signed it not knowing exactly what it was. He was told that it was going to make my house a duplex and create a duplex effect, which is of course not true.

Chair Way asked if there were any questions for Mr. Williams.

Commissioner Finnegan said there were some claims about noise. I am not addressing the validity of the claims. If I am an Airbnb guest and there is a lot of noise coming from upstairs, I am probably going to write a bad review.

Mr. Williams said that he is a "super host." I got that rather quickly because of the reviews. The super host status means that I am five star. We have had the best compliments, the best accommodations. I go above and beyond. I have green tea, a super foam mattress with high quality linen, a Keurig with all the K-cups. I offer quality. I did take some offense to the comment "degrading the neighborhood" because I pride myself on my home. My guests are enjoying the space. They are not creating any issues. I have not made any complaints against any of them. They are complying with the house rules. One neighbor made the claim that cops were called, several times. That is not true. I am standing here, speaking more than I should to false claims from people that I do not think truly understood that I was already doing it up until this point.

Commissioner Finnegan said that he is interested in knowing the root cause of the noise concern, traffic, etc. What is included in your house rules?

Mr. Williams said that the house rules include where to park and noise. I have never had a problem. Most people, when they pull in with one car, are going to a wedding, an event, or downtown to eat. A lot of time I do not even know they are there. It is not a party pad. They are either coming or going. They usually have a destination within the City.

Chair Way asked if there was anyone else wishing to speak to the request. He also asked that anyone speaking limit their comments to three minutes.

William Hall, 515 Paul Street, came forward to speak in opposition to the request. I am the person who submitted the "false claims" that Mr. Williams referred to. I should have three other people beside me. The people who live directly across the street, who is the director of the Marching Royal Dukes, has obligations and is with his band tonight, so he is not here. The people in the house right beside him, across the street, are on vacation in Delaware and are unable to be here. The other person who has been referred to, on the left side of Mr. Williams house, is Cecil

Gilkerson. I live on the east side of Mr. Williams' house. I would like to give you a little more face to my letter. I am not going to repeat my letter and I do not feel that I need to defend the comments that I made in my letter, but if you would like me to defend them, I would be glad to.

Chair Way asked what the primary concerns are.

Mr. Hall said that they are safety, nuisance, traffic. There is a history here. Mr. Williams has been renting this space for many years. I thought at first that you were only allowed to have one unrelated person but then found out that there were two. He did have two. At one time, before his mother moved in to her quarters in the house, Mr. Williams had very loud parties. If you look back through the police record before 2017 you would probably find what he was referring to. My wife and I bought our lot about 48 years ago in Preston Heights with all the covenants and requirements and stipulations that went with that. I even walked behind the lot that we eventually bought to find exactly where Martin Luther King Jr. Way was actually going to be placed. Paul Street ended at my lot. There was one house on another corner. One of those people is here tonight. It is an established, stable, single-family dwelling neighborhood. I appreciated the comment regarding the closest Airbnbs to this location. It seems as though we are changing the character of this neighborhood, if you agree with this. Our garage is on the side of Mr. Williams house. We have a New England salt box and the garage is attached to the house by a breezeway, but that still does not stop the sound from his house.

Commissioner Finnegan said you mentioned covenants. Is there a neighborhood covenant that the property owners signed?

Mr. Hall said that at the time, 48 years ago, there was. I want to stress the fact that it is a stable, established single-family dwelling neighborhood.

Paula Caldwell, 417 Paul Street, came forward to speak in opposition to the request. We have lived there since 1977. I looked at some codes today, in an effort to educate myself. We live two doors up from Mr. Gilkerson, that is three doors up from Mr. Williams' home. Over the years, we have heard the noise, at 11:00 p.m., midnight, on into the wee hours. We have let it go. I do not know if Mr. Gilkerson called the police, but I do know that he called us many times. I do know that he called us the day before yesterday. He was concerned about the prospect of an Airbnb next door to him and in our neighborhood. It is a good neighborhood. It is an R-1, family, residential neighborhood. As all neighborhoods, we are cycling through. We have older residents and we have new families. We have a lot of new families, new kids, strollers everywhere. It is wonderful. I can see how it will benefit the Williams. How is it going to benefit Preston Heights? What is it going to do for my neighborhood? I live next door to 407 Paul Street, which if you do not know the history of that, we do not have the time tonight. For too long, I did the same thing. I looked the other way. A couple of times I did call the zoning office and got nowhere. I am not going to look away tonight. I hope you will consider this being an R-1 neighborhood that wants to stay there. I know you say that the SUP can be revoked, but how efficient is that process? I am asking based on my recent experience with 407 Paul Street. There have always been many cars

at Mr. Williams' home coming and going all hours of the night. Some of them are not particularly people who I want to be around; and I was out at 4:00 a.m.

Commissioner Ford-Byrd said you mentioned noise and traffic, are you agreeing with safety and nuisance, as well?

Ms. Caldwell said yes. I just heard Mr. Williams talk about background checks and having driver's licenses, but then said that he does not know their names coming and going. Which is it?

Cosette Johnson, 486 Andergren Drive, came forward to speak in opposition to the request. I have two children, 13 and 11 years old. There are younger children in the neighborhood. We did not want to rent in Old Town because there are a lot of students, so we settled in Preston Heights. It is an R-1, single-family home neighborhood. We want to have a family neighborhood. I know all the cars in and out of our street. Paul Street is a busy street, a high traffic area and that is a concern. I am also concerned with safety. With an Airbnb, we will not know the people coming in and out of the home. I did not realize that it was an Airbnb. I thought he was having renters. I thought that this permit was to add the Airbnb. It comes as a surprise to me with this meeting that he has the potential to have renters in that house, two for the Airbnb, and then two unrelated individuals in the house. It would not just add the two. You could potentially add four. That means more people in and out. There was an incident where a third grader was walking home. A car had pulled over to talk to the little girl. Luckily the crossing guard was there and aware of who the children and their parents were. She was able to scare the driver off. Safety is a concern knowing what cars belong to who. With the Airbnb, we will not know which cars are supposed to be there.

Ms. Caldwell said that she looked at the STR requirements in the Code of the City of Harrisonburg and it complies with the Code of Virginia 15.2. Number two on there says that "no ordinance shall require a person to register pursuant to this section if such a person is licensed by the Real Estate Board." Does that mean that Mr. Williams does not have to register because he is a licensed real estate agent? And, if so, is that some sort of concern or loophole that we should be aware of?

Mr. Russ said that one of the options that the State gave jurisdictions was just creating a registry. Anyone who had a STR would pay an annual registration fee. This would allow us to monitor, largely for hotel and lodging tax purposes. What the City opted for was a land use option which is separate. In other words, no, he still would need to get a SUP.

Ms. Caldwell asked how are the STRs monitored and where is the accountability? If you are running an Airbnb, how are you accountable other than registering your place?

Chair Way said that you would have to get a SUP to do so legally.

Ms. Caldwell asked how would we know that they are abiding by the rules? How is it enforced?

Ms. Dang said that there are a couple of ways. One is complaint based. If someone has a suspicion that there is a violation of the conditions, they can make a complaint and our staff would investigate. We also investigate by logging into Airbnb or any other STR website that the home might be listed on to see if they are listed, and how they are listed. If they are listed as providing lodging for four people, for example, that would be evidence that they are in violation of the conditions.

Chair Way asked if there was anyone else wishing to speak to the request.

Mr. Williams said that he hears that safety is a big concern. My comment was that what Airbnb does with the background check means that I know who they are, we have done checks and we are being safe. My comment about how I do not know who they are was referring to the people who go up and down our street and in and out of our neighborhood. I understand the concern with safety, but that is a different topic. Anyone can walk up and down our street from the college to downtown all the time. Safety is a side topic. I can assure the safety the people I know.

Chair Way closed the public hearing and opened the matter for discussion.

Commissioner Whitten said that Ms. Caldwell made a good point when she said that she knows what this is going to do for the applicant, by way of a financial benefit, but asks what it is going to do for her neighborhood. I think we need to be careful about how we treat neighborhoods in our city. We do not have many R-1 neighborhoods or cohesive neighborhoods. We have many that have been interrupted with a lot of uses that are not complementary to each other. I would also say that this police call for service is a fairly narrow period of time. I do not know how long the Williams have lived in that house. I do not know if there might have been calls for service before 2017. It does speak to the nature of the residents of the home if they did have a lot of disturbance. We have had testimony to that effect.

Commissioner Colman asked if we are saying that the Airbnb will make that situation worse?

Commissioner Whitten said that if you are giving someone a SUP, it is an acknowledgment that they will abide by the rules. If you already know that someone is not abiding by the rules of their own neighborhood, it might not be wise to do so. There are people who are hesitant to say anything about a problem which is ongoing. I recommend that people call the police if they have a problem.

Commissioner Ford-Byrd asked if staff is able to confirm that there is a potential for the applicant to rent to four people.

Ms. Dang said that in the R-1 and R-2 zoning districts, an owner-occupied property can have two unrelated long-term tenants. The point that is being made is that they can have two unrelated long-term tenants plus the two short-term renters and that would be up to four renters.

Commissioner Colman asked if there was the space to rent to a long-term tenant and also for the Airbnb.

Mr. Williams said that his mother lives with them upstairs.

Commissioner Finnegan said that the common issues for those in opposition were safety, nuisance, traffic, noise, parties and property values. We have been approving these in other neighborhoods and we have approved them over the objections of neighbors. We have approved them in R-1 neighborhoods. If we are going to deny this, I would like to know on what grounds. If it is because of the objections of neighbors, why did we not say no to the STR request on Franklin Street?

Commissioner Colman said that, in some instances, when we have a large number of people against a SUP and we have recommended that those people and the applicants get together and figure out their differences and come back to us with something that they all agree on. Part of a SUP is to allow the neighbors to come and speak for or against the request. We cannot turn a deaf ear to the people protesting this. We need to listen. This request is similar to the ones that we have approved in the past and, from that standpoint, there are no issues. The neighbors are bringing up issues that may or may not be directly related to this. We need to see if the issues are related to this or if they are issues that have happened in general with the property and the applicant, which would not impact our decision directly. We have conditions and more conditions can be imposed on this application, if they are reasonable, and can give the neighbors an avenue beyond what we have here to question or bring it back to the City if the conditions are not being made. I do not know what that would be. It is an opportunity to add conditions that would give you additional tools to regulate it. You, the neighbors, are part of the regulatory process of these Airbnbs.

Commissioner Ford-Byrd said that, if we are taking these on a case by case basis, I wonder how much weight prior applications should carry. If we are stating that we are trying to be consistent, then why do we not have some conditions created so that we do not have these across our desk?

Commissioner Whitten said that is a good point. They are supposed to be on a case by case basis. I would also like to remind the commissioners that on Franklin Street there were no complaints of previous noise or issues regarding noise. The concerns were about property values and the historical character of the neighborhood.

Commissioner Finnegan said that we are separating issues that are not related to the actual concerns. It sounds like safety is a recurring issue that people brought up. I assume that relates to not knowing who the guests are. I approved an STR a block away from where I live in an R-2 neighborhood. There were no objections from neighbors. I think that a lot of the noise complaints may actually be mitigated by having an Airbnb. Having stayed at Airbnbs, I would write a very bad review if there was noise all night. The noise seems to be a separate or tangential issue.

Chair Way said that one of the things that we do within this process is to get a read of the neighborhood, to be sensitive to the local interest and get a sense of what is important to people who live in the neighborhood. I have no doubts that Mr. Williams' family is conscientious in trying to create a nice home for themselves and pursue this opportunity, but, clearly, we are hearing from the neighborhood here that there are some perceived challenges with what has happened before and some uncertainty with what will happen in the future. We want to be thoughtful about what is happening in R-1 neighborhoods and single-family home neighborhoods generally. We are particularly sensitive to these places because the essence of what a single-family neighborhood includes; family, stability, and continuity. One of the things that an Airbnb potentially brings is a sense of change and instability that may come with a more transient population in that area. The grounds on which we are making decisions here is about balance. None of these things are cut and dry. We have to balance the individual concern and neighborhood concern. The rights of the private individual and the common good. In the R-1 neighborhoods like this, that neighborhood interest is significant, and people have a vision and understanding of what that neighborhood is. I think that the neighborhood here has clearly articulated what they believe that neighborhood to be. Specifically, Paul Street is a cut-through. One of the things that concerns me is that Paul Street has a potential to become another negative to the neighborhood. I am worried about what is going on with that street in terms of protecting the neighborhood because of some decisions that are made on that street. I am not saying that this Airbnb will add to the traffic, but I want to be thoughtful of what goes on. It is the same principle that we have addressed on the edges of neighbors. What happens on the edges of neighborhoods can have an impact on what goes on. We have to stand firm somewhere. Having said that, there is a lot to balance here. I am not inclined to support this request in the interest of the stability of the neighborhood, given its location between old town and JMU on the other side of Martin Luther King Way. It is an interesting position and it is not easy or clear cut.

Commissioner Colman said that we have considered giving more emphasis on what the zoning requirements are in regard to non-related occupancy in a home. In this case, my concern is that this house could have other non-related people living there, if part of the house were to be rented. It is not the case right now, but it could be in the future. Then you will have the four unrelated individuals that we are talking about. Perhaps there are conditions that we can impose, so they could not do that. We have not discussed these issues. We have, in fact, approved some STRs with large numbers of guests, which I now second-guess that decision. My concern is how many unrelated people could be in the residence.

Commissioner Romero said that he is considering whether the neighbors do not want the STR because of the history that they are sharing with us. Is that the main reason they are opposing this request? If another neighbor were to submit an application, would they be opposed? Is it the history? Is it the noise, traffic, safety, or the stability of the neighborhood? Is it that they would oppose any application? That is something that we need to consider. If we were to recommend denial tonight and someone else in the neighborhood submits an application, what are we going to do next?

Commissioner Whitten said that it is case by case.

Commissioner Finnegan said that he agrees with Commissioner Romero. Will there be the same opposition if another house somewhere else in this neighborhood puts in a similar application? There is one a few blocks away, on Franklin Street. There are other applications that we have approved in nearby neighborhoods.

Chair Way said he hopes that he made it clear in his remarks that he was talking generally. There are some particular issues that people perceive with this property's history; but we do not want to litigate that here. I was trying to make a general point that I hope we would be thoughtful and serious about it (other applications for STR in this neighborhood) as we have been for all the cases so far.

Commissioner Whitten said that she has done a lot of reading regarding Airbnb. There are many articles, in professional journals and in reliable news sources, that talk about the detrimental aspects of Airbnb. They can reduce property values and they can also reduce community. There are some cities, much larger than Harrisonburg, that have this problem. In Barcelona, Amsterdam, London there are neighborhoods that used to be neighborhoods with community that are now Airbnb neighborhoods. I do not think that we want that to happen in Harrisonburg. I do not think that we are in peril of that happening. We have people in the room who live on the end of Paul Street when Cantrell Avenue was being planned and not in existence. We do have to think about that. We do have to protect neighborhoods. That is well-founded in fact, in factual publications, that do say that it can reduce property values. It depends on what you want to do. If you want to turn it into an Airbnb neighborhood, maybe the property values will go up, but nobody who has children and who live and work and go to school there may want to live there.

Commissioner Finnegan said that they can also increase the value of properties, as well. I have spoken with friends who are realtors, who say that although they cannot quite afford the house but can supplement their income with Airbnb income, then maybe they can afford the house. There is an argument to be made the other way, as well.

Commissioner Romero said that Mr. Williams has been running this Airbnb for about a year. Now that there is an ordinance in place, I am curious as to how long it would have taken the neighborhood to say something or call the police. It seems that in the last two years they have not been problems. My concern is that there are no complaints on record.

Commissioner Ford-Byrd said that she was interested in including the number of renters on the property in the conditions, to ensure that there are not four people renting at one time.

Ms. Dang said that the idea would be that when they are operating a STR, they could not have long-term tenants.

Mr. Fletcher said that they would waive their right to rent to two boarders.

Commissioner Ford-Byrd asked if there is interest in amending the conditions.

Commissioner Finnegan said that he is not sure that it would address the concerns that they have heard regarding this request. It might address one fraction of the concern. The concern is not having too many people in the house, it is not knowing who those people are.

Commissioner Colman said that he agrees with the concept of limiting the number of tenants. It somewhat addresses some of the concern in terms of how the number of people affects noise. In general, we have been talking about R-1 neighborhoods and how the number of people coming and going impacts the character of the neighborhood. I think it is worth considering.

Chair Way asked if there was proposed language.

Commissioner Whitten said that in R-1 they would be able to have two unrelated people, but they would not be able to have four unrelated people. It makes sense to me to look at what the zoning restrictions would be on a property if you took it at face value in R-1, setting aside the STR. My point has been why would we give somebody the right to do more than they could do by right on the property in terms of density? I do not think we should. That is detrimental to a neighborhood.

Chair Way asked whether or not the commissioners would like to pursue the suggestion.

Commissioner Whitten said that the condition would have to be agreed to by the applicant. Maybe they would not be interested in waiving their ability to have two longer term tenants.

Mr. Fletcher said that if the Planning Commission believes that a condition is necessary for the SUP to operate according to how you want it to operate, it does not require the applicant's consent. The proposed condition was not a condition on any of the other similar applications. They all maintained those abilities.

Commissioner Whitten said that it has not come up before. It was brought up because there were long-term renters at this address.

Mr. Fletcher said that, at the time that the ordinance was being discussed, the fact that they would maintain those abilities was discussed. In the SUP applications that have come up, that particular matter has not been discussed, but it was considered during the creation of the ordinance.

Chair Way asked if the proposed condition would help the commissioners be supportive of the request.

Commissioner Ford-Byrd said that it would help.

Commissioner Colman said that he would like to hear some proposed language.

Commissioner Finnegan asked if they were proposing adding to condition #5.

Commissioner Colman said that we have to consider unintended consequences. We want to make sure that STRs do not infringe or limit the number of available rental spaces. By doing this, we are limiting that in this case. If we continue this into other STR requests, we will be limiting the number of available long-term rentals. We need to be careful how this impacts the availability of housing.

Ms. Dang read a draft condition with the understanding that staff would have the ability to edit it as necessary to capture the intent of the Planning Commission.

*With the approval of this SUP, the right of the property owner to rent space for occupancy by two persons, as permitted by Section 10-3-33(1) and (2), is waived.*

Mr. Williams said that was his right, one that he did not know he had, and it is going to be taken away by the proposed condition. If they approve to remove something that he could do, then he will withdraw his application and keep his rights, by law, which is two unrelated people. Why would I give up my rights?

Mr. Fletcher clarified that the R-1 and R-2 zoning districts allow occupancy in two ways. Sec. 10-3-33, Subsection 1 of the by-right abilities includes: "Owner-occupied single-family dwellings, which may include rental of space for occupancy by not more than two (2) persons, providing such rental space does not include new kitchen facilities." In layman's terms what that means is that any person who owns and lives on a property could rent to two boarders on a permanent basis, such as a month to month or year lease. If it is non-owner occupied, it is a family plus one boarder. In the City of Harrisonburg, what often times happens in the R-1 and R-2 is that it ends up being two people because we are a college town. When you rent to one person, it counts as a family. The second boarder is the second person. It is often misquoted as a family or two unrelated. That is not the accurate way to explain the ordinance.

Ms. Dang asked, for the purposes of clarification, if this condition is recommended for approval with this application, does Mr. Williams lose his right to rent to two boarders completely, or is it only when he is operating the STR that he cannot have the two boarders, meaning that he would have those options in the future to choose one or the other?

Chair Way said that intent was that it would be just when there was a STR being operated.

Mr. Fletcher said that it would be self-regulating. If you approve the request, with the condition with the intent that I am understanding, it is self-regulating. If Mr. Williams is going to offer his space for STR, then per the condition he should not be signing a lease or renting month to month

to other people. That is the way that I am understanding it. He could decide that for three months he will not operate the STR and then for those three months he can rent to someone month to month.

Chair Way clarified that this would not require him to give up the right to have the long-term rental. It is only when there is a STR.

Mr. Fletcher said that it is limiting because that condition was not placed on any other STR in the same situation when the Planning Commission allowed for nine occupants in other spaces and they also got the additional people.

Commissioner Colman said that in this case, if it moves forward and it is approved, the applicant does not lose his rights because he could choose not to operate the STR.

Chair Way said that the applicant can still withdraw between now and City Council.

Commissioner Colman moved to recommend approval of the SUP, with conditions, as amended. I would like to recommend that City Council pay attention to the comments and complaints from the neighbors.

Commissioner Ford-Byrd seconded the motion.

Chair Way called for a roll-call vote.

Commissioner Colman:	Aye
Commissioner Finnegan:	Aye
Commissioner Ford-Byrd:	Aye
Commissioner Romero:	No
Commissioner Whitten:	No
Chair Way:	No

The roll-call vote resulted in a tie (3-3).

Mr. Fletcher suggested that the commissioners voting against the motion clarify why they voted against it.

Chair Way said that the reason for his vote was the same as what he had mentioned before, and the condition was not enough to change his mind.

Commissioner Whitten said that the condition did not temper her vote.

Commissioner Romero said that he is in favor of looking at opportunities like this, but they received a lot of feedback from the neighborhood and that is something that they need to keep in

mind. Between now and City Council, I will be discussing with people to get a better understanding.

Mr. Fletcher said that if positions are not changing, because there are only six members present, that action can move forward to City Council with the understanding there is a stalemate. Another motion is not necessary. When I take this to City Council, I will explain that the motion to approve with an additional condition resulted in a split vote.

The matter will move forward to City Council on September 10, 2019.

Mr. Fletcher addressed the audience saying that if anyone has any questions regarding the procedural matters regarding what happened tonight or beyond what happened, please give us a call.

**A motion was made by Colman, seconded by Ford-Byrd, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 9/10/2019. The motion failed with a recorded roll call vote taken as follows:**

- 4.b.** Consider a request from Anna L. Wilkins for a special use permit to allow short-term rental at 130 South Brook Avenue.

**Attachments:** [Memorandum](#)

[Extract](#)

[Site maps](#)

[Application, applicant letter, and supporting documents](#)

[Public Hearing notice](#)

[Surrounding Property owners notice](#)

[PowerPoint presentation](#)

Chair Way 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 dwelling, zoned R-2

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

South: Single-family detached dwellings, zoned R-2

West: Across South Brook Avenue, single-family detached dwellings, zoned R-2

The applicant is requesting approval of a short-term rental (STR) operation at 130 South Brook Avenue located west of the downtown central business district and east of Westover Park. The applicant desires to rent their entire home, which includes four STR accommodation spaces, to single groups of up to eight STR guests. (“Accommodation space” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and that they would not be present during the lodging period. They plan to stay with family nearby while guests are renting.

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 four accommodation spaces the property should provide four 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 are currently no off-street parking accommodations available on the property.

The applicant explains in their letter that there is “ample parking available” on South Brook Avenue and that guests would park in front of the subject property. Since South Brook Avenue is not restricted by permit parking, nor are there regulatory controls on where individuals can park vehicles along South Brook Avenue (i.e. anyone can park in front of any property), the applicants could not entirely control where lodgers could park their vehicles. Given that the subject parcel is +/- 90 feet wide and that a standard parallel parking space is 20 feet long, it is possible that at least four vehicles—depending upon individual vehicle lengths—could park in front of the subject property. Within this block of South Brook Avenue, there are four properties that are corner lots that face perpendicular streets and have relatively long rear yards ranging from about 100 to 170 linear feet. While a fifth property along this block of South Brook Avenue, located across the street, is about 50 linear feet wide and does not have off-street parking, staff believes that there is ample on-street parking for residents and visitors at this time and does not believe there should be issues created with allowing lodgers to utilize on-street parking. Staff is comfortable conditioning that off-street parking for the STR operation is not required.

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

1. The site shall be an operator’s primary residence.
2. If an operator is not the property owner, then an 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 four STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to single groups of up to eight 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. 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 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 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 four. Condition #5 limits the total number of guests at one time to a single group of up to eight people. 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 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 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 were to sell the property, then 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.

The City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations. Considering those approvals and the suggested conditions, 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 asked if there was a concern about parking if there were eight cars.

Ms. Dang said that the concern was based on prior discussions of the Planning Commission regarding how many lodgers is too many. When I was discussing that potential concern with the

applicant, the applicant explained that they were only planning to rent to single groups of people, so we recommended that as a condition. The Zoning Ordinance requires off-street parking spaces based on the number of accommodation spaces. There are four rooms, so there would be four off-street parking spaces required, however the Zoning Ordinance allows us to condition that no parking spaces be required, which is what we are recommending.

Commissioner Colman asked if the eight people would be related or unrelated.

Ms. Dang said that they would be unrelated. The condition does not say family.

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

Anna Wilkins, 130 South Brook Avenue, came forward to speak to her request. I am planning to rent out the entire house, to eight people, as one group. Usually, one person will book the house. They give me all the details of who is coming, their names, and why they are coming to town. I am not planning on renting multiple rooms at once. It is one rental. They usually come in one or two cars. It will be less cars with an Airbnb than it would be with myself there. I do not think that parking is going to be an issue.

Chair Way asked how many bedrooms the house has.

Ms. Wilkins said that it has three bedrooms and a back room with a trundle bed.

Commissioner Romero asked if the applicant has had any responses from the neighbors.

Ms. Wilkins said that she has not, except for the neighbor across the street who offered his driveway for parking. I think there are more problems with college students next door to me and in my neighborhood, and that is what I am trying to avoid. I am trying the Airbnb route so that I do not have to rent to college students. So far, I have had great experiences, both as a host and staying at Airbnbs across the country. Everyone is very respectful of the places.

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 Romero wanted to clarify that the applicant is planning to stay with someone nearby when the property is being rented.

Ms. Dang said that is their plan, but it is not a condition that we would be enforcing.

Commissioner Colman said that they would not be required to be there. I think it is interesting here that we have no neighbors complaining about it and that changes the way we look at it and what we consider. In the previous request, the fact that the neighbors complained about it made

us think more about it. My concern, on something like the previous one, would be that if a group of people do not like certain neighbors, they could come and complain about it and make us decide against because they were complaining about it. I do not think that we can always substantiate their complaints and that is a concern. In this case, we do not have that issue which makes it easier for us because we have very little to discuss given that everything seems to be in order.

Chair Way said that back when we set this up, staff had some commentary regarding distance to destinations or major thoroughfares. Is that less of a concern now? Is that consciously being retired as a rationale?

Ms. Dang said that based on City Council's approvals, it does not seem to be relevant.

Chair Way said that, in this case, its location close to downtown and close to some major roads, this will be one of those cases where there is quite a strong rationale for doing that. It could work the other way in terms of this neighborhood being under some pressure.

Commissioner Whitten said that she wonders if the Airbnb guests will like that it is a college party type neighborhood. That could be a problem.

Commissioner Colman asked how long the applicant has been operating a STR.

Ms. Wilkins said that she has been operating for a couple of months.

Commissioner Finnegan moved to recommend approval of the SUP, with conditions, as presented.

Commissioner Colman seconded the motion.

Commissioner Whitten and Chair Way expressed that they still have some concerns regarding the request.

All members voted in favor of recommending approval of the SUP, with conditions as stated. The recommendation will move forward to City Council on September 10, 2019.

**A motion was made by Finnegan, seconded by Colman, that this PH-Special Use Permit be recommended to full council to the City Council, due back by 9/10/2019. The motion carried by a voice vote.**

- 4.c.** Consider a request from Janice M. Kirby for a special use permit to allow short-term rental at 789 Blue Ridge Drive.

**Attachments:** [Memorandum](#)  
[Extract](#)  
[Site maps](#)  
[Application, applicant letter and supporting documents](#)  
[Public comment received as of Aug 30 2019](#)  
[Surrounding property owners](#)  
[Public Hearing notice](#)  
[PowerPoint presentation](#)

Chair Way read the request and asked staff to review.

Ms. Banks said that The Comprehensive Plan designates this site 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 dwellings, zoned R-1  
East: Single-family detached dwellings, zoned R-1  
South: Single-family detached dwellings, zoned R-1  
West: Single-family detached dwellings, zoned R-1

The applicant is requesting approval of a short-term rental (STR) operation at 789 Blue Ridge Drive, which is located on the southeast corner at the intersection of Blue Ridge Drive and Star Crest Drive in the Reherd Acres neighborhood. The applicant desires to rent their entire home, which includes three STR accommodation spaces-two bedrooms and one pull out sofa in a living area-to up to five STR guests. (“Accommodation space” means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) The applicant describes that the property is their primary residence and that they would not be present during the lodging period. They plan to stay with family nearby while guests are renting.

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 three accommodation spaces for STR, the property would need to provide three 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.

The applicant has explained that lodgers will park their vehicles in the driveway, which can accommodate three to four vehicles. It appears that all the required off-street parking could be

provided on the site in the existing driveway area. 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. The site shall be an operator's primary residence.
2. If an operator is not the property owner, then an 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 three STR guest rooms or accommodation spaces.
5. The number of STR guests at one time shall be limited to five 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. 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 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 three. Condition #5 limits the total number of guests at one time to five people. 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 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 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 were to sell the property, then 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.

The City has approved multiple STR SUP applications in similar locations throughout the City and with comparable operating situations. Considering those approvals and the suggested conditions, staff recommends approval of the special use permit request.

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

Janice Kirby, 789 Blue Ridge Drive, came forward to speak to the request. I have lived in this residence since 2015 and I care deeply about my neighborhood. I have spent hundreds of hours landscaping and gardening, not just for my benefit, but because I feel it makes this neighborhood a place where people want to be. I began using Airbnb two years ago. I listed it immediately as a non-party site. I have only rented on a Friday or Saturday evening. It accommodates people who are visiting because of student family members at the university, for conferences and for weddings. I have never had a problem with guests. I am a "super host," which means that it is very clean. I stay in touch with those that rent. They know that I am next-door. I am living on Social Security and a very part-time job. This has allowed me to make property improvements. I need to repaint this house and probably re-stucco it in a year. I cannot do this without this additional income. This is allowing me to live in my own home and to maintain that home and to upgrade a neighborhood that I care very much about. There are a few places in my neighborhood where there are empty houses. One of them is across the street. I would like to see more families in this neighborhood and am encouraging that.

Chair Way asked if the applicant has spoken with neighbors about the request.

Ms. Kirby said that she has. Two neighbors stopped by separately to ask about the sign. I explained that it would allow me to rent on the weekends. Neither had any objections.

Chair Way asked if there was anyone else wishing to speak to the request.

Faye Morrison, Blue Ridge Drive, came forward to speak in opposition to the request. About a month ago, the Planning Commission denied a STR for the house next to me. I have lived on Blue Ridge Drive for sixteen years. In the past five years, there have been two vehicles overturned in front of my home. We have had trees knocked down. We have had poles knocked out. There have been multiple wrecks. The traffic on that road has become extremely bad. I am asking that the STR request be denied. The other one (921 Blue Ridge Drive) goes to City Council next. On each of these papers, I have ten names for a total of sixty of my neighbors. We would like to keep our neighborhood zoned as R-1. We do not want an Airbnb because we like our quiet neighborhood. The City neighborhoods in zones R-2 and R-3 can have all the Airbnbs. We have a small area. Our neighborhood is very quaint.

Chair Way asked what the document was that the applicant was showing. Is this neighborhood in opposition to this request?

Ms. Morrison said that it was for the former request. I am sorry to sound misleading. It is for the previous STR request that was going to City Council but was tabled. In the process of getting these sixty-some signatures, I have been around the neighborhood. I have met quite a few people. That is how we knew about this one. They also wanted me to do one for this one that is up for tonight. City Council is coming up and I needed to get this taken care of for the previous one before I could get around getting anything. Quite a few of them have asked me to do that; so I came tonight to speak against it to let you know that our neighborhood is not in support.

Commissioner Whitten said that we also received a letter regarding this one, too.

Ms. Banks said that it was emailed on Monday to each of you with concerns about traffic.

Abdelrahman Rabie, Sparrow Court, came forward to speak in opposition to the request. I helped Ms. Morrison gather the list for the other STR on Meadowlark and Blue Ridge Drive, which is near Sparrow Court. When I saw the sign for the STR, we decided to come here tonight because it is the consensus in the area of Blue Ridge Drive on both sides. This is the only area left that is R-1 with single-family homes. I am now retired, and our neighborhood is changing for better. We have younger families coming into the neighborhood. We would like to keep it this way.

The main concern we have is the safety and the people coming into the area. There are a lot of complaints about safety. Particularly in our area, we are starting to see reports of the unsafe people coming into the area. I believe that adding this Airbnb into the area will make it even more unsafe and will not attract the new, younger people to the area. In addition, we have very heavy traffic. We have students living in the townhouses in the back. The police records show this.

The sign referred to the application for the people who would like to change the zoning or for STR. The burden should be on them to make sure they consult with their neighbors, the five or six around them, rather than having passing conversations with people walking their dogs. I recommend that these conversations be included in their application. I also recommend that the City require that the operators of an Airbnb report, on a weekly or monthly basis, what guests they have and what occupancy they have so you can have an idea if it has been used properly or not, rather than depend on the neighborhood complaints. I am ten houses away. It should be the people who are running the business to report this to you or to the City, not wait until the complaints happen.

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 Colman said that it was an interesting point to require conversations with the adjacent neighbors. He also made a point about reporting. How are we monitoring this? Does the applicant have the burden of reporting the occupancy on a monthly basis?

Mr. Fletcher said that they pay a lodging tax to the City.

Commissioner Colman said that it does not tell us how many individuals are staying there.

Ms. Dang said that we only limit the number of lodgers based on the conditions, so they should be staying below the number that is conditioned.

Commissioner Whitten said that if they are not we do not know.

Chair Way said there is the proactive enforcement and responding to neighborhood concerns.

Commissioner Whitten said that she feels the same with this application as she did with the first one. It is an R-1 neighborhood and we are saying five with two additional unrelated people; that is over the number we would allow in our own Zoning Ordinance. The property is beautiful, but she will not always live there. This SUP will be allowed, no matter who lives there because it goes with the property. I respect the neighborhood.

Chair Way said that the interesting parallel is the potentially busier road, as well. What I was saying about Paul Street is that we have to be careful about that because it interrupts its spine and it is already under some threat and, in principle here, Blue Ridge Drive which we have heard from other people, is as well. I would echo those concerns. The nuance of the SUP is that it goes with the property rather than the owner. We know that the owner has done a fantastic job of maintaining it, but the next owner might not.

Commissioner Whitten added that “no party” rule is good, but it does not have to go along to the next owner of the property. They do not have to have that rule because it is not part of the conditions.

Commissioner Colman said that it is also five unrelated people.

Commissioner Whitten said that it may or may not be. It could be a family.

Commissioner Colman said that he is speaking to the zoning requirements and how it relates to this number.

Commissioner Whitten asked how far away it was from the previous Blue Ridge Drive request.

Ms. Banks said that it was two blocks.

Commissioner Whitten said that this is more embedded into the R-1 neighborhood.

Ms. Banks said no, this is closer to Country Club Road.

Mr. Fletcher said that the circumstances were different with the other request. It was not the property owner's primary residence. This one is.

Commissioner Colman said that one of the arguments that we had when it came down to the Airbnbs was that if it was owner occupied or if we have someone who lives there, it gives us some comfort, and hopefully the neighborhood, that the place would be taken care of, compared to a place that is under a rental company, where there is not a person who lives there that takes pride in the home. That is the difference between this and the other one mentioned.

Chair Way said that the first condition is important.

Commissioner Colman said that his main concern is the number of occupants or the number of guests because that is what is a stress on the road and on the neighborhood, not necessarily the use. I am not opposed to the use. The number of guests is what concerns me.

Commissioner Finnegan clarified that he was referring to condition #5, "[t]he number of STR guests at one time shall be limited to five people." If we amended that to three people, would that help?

Commissioner Colman said that when he considers these, he likes to mimic in some way, what the Zoning Ordinance says. It could be a family, which could be five people. If it is unrelated, then it should be whatever the ordinance calls for. Perhaps we can stretch that, I do not know. I am not married to that. I propose that as a consideration.

Commissioner Finnegan said that we did not put those conditions on the one that we just approved.

Commissioner Colman said the one that we discussed adding the condition for the unrelated.

Ms. Dang asked Commissioner Finnegan for some clarification. Are you referring to the fact that the occupancy regulations are the same for both R-1 and R-2?

Commissioner Finnegan said yes. We approved the last one with the condition of a group with no more than eight people.

Commissioner Colman said that is why I raised the question. These (the guests for the South Brook Avenue) are unrelated, but there are no issues to consider. In this application, we have issues to consider, one of them being the traffic on that road.

Commissioner Finnegan said that he is trying to get to the core concerns, like what we were talking about before. They are speeding on Blue Ridge Drive. There is a lot of traffic. We are talking about a few extra cars, which would happen if you were having a party and inviting your friends over or a yard sale. You could legally have a yard sale every weekend, I believe. What I am getting at is the core concern of the residents in the neighborhood. Safety keeps coming up, speeding and safety. I do not see how this changes speeding, or traffic more than a yard sale would. I voted to deny the last one that was in this neighborhood because it was not owner-occupied. This one is owner-occupied.

Commissioner Romero said that we need to keep in mind that this has been going on for two years. For two years we have had this situation and it does not appear to have created issues. Otherwise there would be some reporting of it. Have you had any neighbors come to you to complain the past couple of years?

Ms. Kirby answered no.

Commissioner Romero said that people were probably not even aware of it until the application came through.

Chair Way said that nobody here is assuming the worst of this particular owner. The concern is about the future if this owner does not live in the house.

Commissioner Romero said that a number of people have asked him, are we able to put limits on STRs so that it does not convey with the property?

Chair Way said that we have put a time limit.

Mr. Fletcher said that we have not put any sunset clauses on anything. The applicant (294 Franklin Street) submitted the condition.

Mr. Russ said that it is questionable. What happens in ten years? My concern is that you are setting a landmine for ten years from now. No one has ever tested the issue and jurisdictions are split on it.

Mr. Fletcher said that we have accepted it, but we do not place conditions on who the applicant is.

Ms. Dang said to answer Commissioner Romero's question about the property changing hands, the permit would go to the next property owner. There is not a way for us to condition that it would only apply to the current owner. We cannot do that.

Chair Way said that, in retrospect, SUPs were the wrong way to go.

Commissioner Finnegan agreed. That is why I voted against going this route. I think we should revisit this. We can talk about that after we vote on this. I think that we are doing the wrong thing.

Chair Way added especially because in hindsight, Airbnb is all about relationships with the operator. It is all about that relationship and that is what we keep coming into.

Commissioner Finnegan said that it has been a learning process, but I do not think that we should continue doing this. That is a bigger issue than this particular permit. I live in an R-2 neighborhood, and I voted to approve the one in my neighborhood. There are cars that blow the stop sign next to my house all the time. I have serious concerns about traffic, but I do not associate those concerns with the Airbnb. I am not inclined to vote against this.

Commissioner Ford-Byrd said that she is unclear about how they are verifying that the trees are being knocked down and the cars overturned or the actual unsafe people. How do we know that these are the guests?

Chair Way said that we do not.

Commissioner Ford-Byrd said then this is a generalization.

Commissioner Finnegan said that there is just a lot of traffic and bad drivers.

Commissioner Colman said that just because a group of people do not like someone, they can come here and complain and perhaps present evidence, but we cannot base our decision on that. On the other hand, we can consider zoning and the zoning requirements of R-1 and R-2. What are the limitations of that. We are giving, through the SUP, a lot more occupancy allowance than is given by the zoning regulations.

Commissioner Whitten said that, if you have other neighbors on the same street that want to do the same thing, how do you deny it? Although it is case by case, when it is very similar, how do you say no?

Commissioner Finnegan asked if there was any follow up on a formula for how many STRs are too many. It is my understanding that most cities in Virginia are regulating it through the permit process, not the SUP process. The permit can be revoked if there are problems.

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

Commissioner Finnegan seconded the motion. I hear the concerns of the neighbors. I have concerns with how we are regulating these. I am not ignoring those, and I hope that the applicant will work with the neighbors to assuage those concerns.

Chair Way called for a roll call vote.

Commissioner Whitten: No  
 Commissioner Romero: Aye  
 Commissioner Ford-Byrd: Aye  
 Commissioner Finnegan: Aye  
 Commissioner Colman: Aye  
 Chair Way: No

The motion to recommend approval of the SUP, with conditions, as presented, passed (4-2). The recommendation will move forward to City Council on September 10, 2019.

**A motion was made by Colman, seconded by Finnegan, that this PH-Special Use Permit be recommended to full council to the City Council, due back on 9/10/2019. The motion carried with a recorded roll call vote taken as follows:**

- 4.d.** Consider a request from Orange Sky Investments LLC for a special use permit to allow short-term rental at 165 New York Avenue.

**Attachments:** [Memorandum SUP \(165 New York Avenue\)](#)

[Extract](#)

[Applicant's updated email dated August 28, 2019](#)

[Site maps](#)

[Application, applicant letter and supporting documents](#)

[Public comments received as of August 8, 2019](#)

[Surrounding property owners](#)

[Public Hearing notice](#)

[PowerPoint presentation](#)

Chair Way read the request and asked staff to review.

Ms. Banks 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

The applicants are requesting approval of a short-term rental (STR) operation at 165 New York Avenue, which is located approximately 175-feet east of South High Street. The applicant desires to rent for STR a whole home, seven-bedroom, single-family detached dwelling to a maximum of 14 STR guests during the lodging period. The applicants explained to staff that accommodation spaces will be offered within each of the seven bedrooms. There is a large parking area in the rear of the property, which can accommodate five vehicles and an additional three vehicles can park within the driveway, for a total of eight off-street parking spaces.

The property is not the applicant's primary residence and there will be no STR operator present during the lodging period. The applicant states in their letter that the property is professionally managed by Evolve Vacation Rentals and while they are not present during the lodging period, Evolve Vacation Rentals are on call 24/7 to accommodate any guest requests or concerns. The applicants also describe that they reside in the City, less than one mile from the subject property.

Allowing whole home rentals where it is not an operator's primary residence, such as this request, decreases the housing stock available for long-term rentals and decreases the number of homes available for owner-occupied homeownership. While some applicants may not consider themselves investors who are purchasing multiple homes to operate STRs, this home could be sold to an investor and the SUP and associated conditions would convey.

At this location, and based upon previous approvals in other areas in the City, staff believes a STR could operate in one of two ways. The first is to have the STR be owner-occupied, where at times the whole home could be rented, and the operator briefly resides at another location. The second option is when the operator is a tenant, who would be present during the lodging period. These scenarios are consistent with previously discussed positions, where the belief is that if the STR is owner-occupied, this person has a greater interest in maintaining the property. Since this property is known to not be the owner's primary residence, and because there will not be a tenant to provide on-site accountability, there is a greater chance of nuisance activities occurring on the property and negatively impacting neighbors.

When someone purchases a home in a residentially zoned neighborhood, there is usually a degree of confidence that, although properties within the neighborhood could be rented to different people every month, such a residential situation 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. Staff believes if a whole home STR where the property is not the operator's primary residence is approved within this neighborhood at this location, there is a greater chance that there would not be long-term permanent neighbors (either homeowners or long-term tenants) residing on the property, which could result in community instability because STRs introduce high turnover of people who are unknown to the neighbors or could leave a house vacant for periods of time while the home is not being rented as a STR.

Given the size and nature of the request, 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.

If there is a desire to allow a STR at this location where the property is not the applicant's primary residence, then staff recommends the following conditions be placed on the SUP:

1. All STR accommodations shall be within the principal structure.
2. There shall be no more than seven STR guest rooms or accommodation spaces.
3. The number of STR guests at one time shall be limited to 10 people.
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 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 seven. ("Accommodation spaces" means any room offered for sleeping. This would not include living spaces or rooms where guests would not be sleeping.) Condition #3 limits the total number of STR guests to not more than 10. 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 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 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 seven accommodation spaces within the dwelling for STR, the property would be required to provide seven 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 #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 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. How the property could be used by any future property owner should be considered when deciding on SUP conditions.

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

Wesley Smallwood, 930 Turkey Run Road, Orange Sky Investments LLC, came forward to speak to the request. The property, located at 165 New York Avenue, is across South High Street and parallel with Maryland Avenue, between South High Street and the Roosevelt Street corridor. This house was built in 1942. The gentleman who built the house, Mr. Morris, had fourteen children, therefore made seven bedrooms. It is a unique house. We have off-street parking. Dionne Jones is co-owner of the property. We have the property in an entity and run it as a business. The property had been in disarray. Since becoming owners, we have received many compliments from the neighborhood for cleaning up the property and improving the neighborhood. We have been doing this for two years. I submitted a handout from Evolve Vacation Rentals with 25 reviews, all of them A+ and five-star ratings. Before starting the Airbnb, we informed our neighbors and had an open house. A neighbor approached Ms. Jones and thanked her for improving the neighborhood. Another neighbor was concerned that it would be rented to college students, which is not our intent. Our guests have included families accompanying their children to camps and orientations to JMU, as well as alumni, providing them with the space to reunite. We have also provided lodging for multiple families staying together who were attending ball games, weddings, and other activities. While we do not live there, our residence is 0.63 miles away from 165 New York Avenue. We have partnered with Evolve Vacation Rentals who are the industry leading rental company for Airbnbs. They market our property on Airbnb, VRBO, Homeaway and other platforms. They have strict rules. They vet guests. No one under 25 years old can book. There is a noise curfew. We have a neighbor who has a key. The property is usually rented on the weekend. During the week, Dionne or I are there cleaning and performing maintenance on the property. I think we have to revisit the non-owner occupied Airbnbs. Airbnb has evolved. They are more than just taking a room in someone's house. We are running a professional business. We would like to ask the Planning Commission to reconsider the recommendation. Airbnb provides opportunity for all individuals including those marginalized groups who have been socially excluded, disadvantaged, and often at the fringe of society. This arena should be one that does not give preferential treatment to some while discriminating against others. It is an opportunity for all people to earn an income and a living.

Dionne Jones, 930 Turkey Run Road, came forward to speak to the request. We asked for a limit of fourteen guests. It is usually one booking. We do not rent seven rooms to seven different

people. It is usually a family. It was ten, but we increased it because when we would greet and check in the families they would ask to add babies and toddlers. Even though they booked for ten, they would have two or three babies that they never told us about. It is just one booking per weekend.

Gay Summers, 725 Roosevelt Street, came forward to speak in opposition to the request. My property adjoins Mr. Smallwood's property on the south side of his yard. He has done a terrific job upgrading that property. My family has been in this house since 1974. It is a quiet, quaint community adjacent to the Sunset Heights area. Most of the people on Roosevelt have been there long term. The property on the opposite side of New York Avenue from Mr. Smallwood's property has deteriorated over the last ten or fifteen years. I spoke with the gentleman who has a key to the property, who is not here tonight, and he said that he does have concerns. He said he would be here tonight, but he is not here. I was actually taken aback when I got the letter that said that there was a request for a permit. I had assumed that because there had been guests on the weekends that there was already that type of document in place. I was surprised. Has that always been the case that it is just now that it is part of rental agreements?

Chair Way said that it is a new initiative. It has been happening previously, but it had not been allowed to exist before.

Mr. Fletcher said that STRs were illegal beforehand. Unless they had been self-regulating and paying a lodging tax, then they were not paying lodging taxes to the City. It would still have been considered an illegal operation.

Ms. Summers said that she is concerned because it is a lot of people in an area where there is no continual oversight of the renters. There is no one living with them. It is a concern. It is not truly an opposition, but there are concerns. Is the permit fee stipulated by City Council or the Planning Commission? The reason I ask is because it is a one-time fee. It seems like it would be like anything else, for example you have a driving permit and you have to have that renewed. You do not just get it for a lifetime.

Chair Way said that the SUP is a onetime thing, but there is an ongoing business license.

Ms. Summers said that it is a onetime fee and that is a good deal.

Commissioner Finnegan said that the SUP would convey with the property as opposed to remain with the applicant.

Ms. Dang said that they would have to continue paying lodging taxes as long as they are renting.

Ms. Summers asked how that is monitored.

Mr. Fletcher said that they apply for a business license. Then that is monitored like any business

where it on record and they know to collect taxes from that business.

Ms. Summers said that it is a concern because that is a lot of people week in and week out that are strangers to a quiet neighborhood. I guess it would be different if it were long-term rentals, like six months or a year lease. Like I said, he has put a lot of work into that property. The reason it became that way, is because the children of the previous owner took the property over and did not maintain it. Now it does look much better. It is a concern when there are that many people in a neighborhood that already has issues with some of the houses across the street.

Ms. Jones said that Ms. Summers is worried about the three homes across the street, not our house.

Chair Way said that what she is saying is that if there are already others there, does this tip the balance of the neighborhood in some way?

Ms. Jones said that the same element was living in our house before we took it over, so now it is only on one side. That has nothing to do with us.

Mr. Smallwood said that with the improvements and the positive impact we have made in the neighborhood, other parts of the neighborhood are starting to improve. I have security cameras outside, so I am able to observe and know what is happening on the property. I am within walking distance of the house. I am there every day.

Commissioner Whitten asked if the applicants had considered renting the house as a family home.

Mr. Smallwood said that it was a consideration. What is happening in that neighborhood is that of the single-family homes that are available, most have been encroached by the students moving out into the residential sections. Looking at the single-family homes that face South High Street, every house from Maryland Avenue down to Greenberries is student housing. We did not want to put students back in there, for several reasons. We did not want to fix the place up every year. I did not want to disrespect the neighbors. We have entertained big groups, ten to fourteen people, just about every weekend. With the exception of about six weekends, we have had guests there. There have been no complaints. If the issue is the size of the group, we can put less people in. That is not a problem.

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 we heard earlier in the evening concerns about property values. Here is an example of a property that has been fixed up because of this. My biggest concern is that if we approve this, that opens the door to other neighborhoods for out of town property companies to buy up properties in the City where we already have a limited housing stock. I do acknowledge that when families were bigger, a seven-bedroom house was common. Seven

bedrooms is a lot for this housing market. I would have a hard time saying yes to this simply because of the precedent that it would potentially set by opening the door to property rental companies and investors buying up houses, fixing them up and taking them off the single-family market.

Commissioner Ford-Byrd agreed. I think the staff summarized my concerns nicely on page two, paragraph one of the application. I move to recommend denial of the SUP.

Chair Way said that to echo these points, it is an interesting neighborhood, however one of the main concerns is that there is already a threat to the single-family homes there and the concern is that this would aggravate that threat. Something that was mentioned is running a business here and that is the exact thing that we do not want to happen in an R-2 neighborhood like this. That is a concern.

Mr. Smallwood said that taking available housing stock off the market is becoming a catch phrase. The City needs to look at the designated opportunity zones that has been granted by the Federal government and look at utilizing these zones. There is one at the end of North Main Street and one on South Main Street that are big tracks of land.

Commissioner Whitten seconded the motion. This is the situation that we talked about when we started into the conversation about STRs in the beginning. This is an example of what we would not want to see in the City of Harrisonburg. I think it is unfortunate that he did not go to the zoning office and have a conversation. I hope that others will learn from this experience that before you launch into a business, you need to know that you have the appropriate zoning.

All members voted in favor of recommending denial of the SUP (6-0). The recommendation will move forward to City Council on September 10, 2019.

Commissioner Finnegan said that at some point we need to look at some of these properties. If we are taking options off the table, like this for investing and fixing up properties, we need to revisit the duplexes and multiplexes in R-1 and R-2 neighborhoods so that we are not saying no to everything, but that we are opening another door to the possibility of increasing density or allowing more people to buy and own.

Chair Way said that we need to find that balance of not just fixing up homes, but fixing up neighborhoods, as well, and trying to keep that sense of community. Hopefully our conversation here tonight is reflective of those intentions.

**A motion was made by Ford-Byrd, seconded by Whitten, that this PH-Special Use Permit be recommended to full council to the City Council, due back by 9/10/2019. The motion carried by a voice vote.**

## **5. New Business - Other Items**

None.

## 6. Unfinished Business

None.

## 7. Public Comment

None.

## 8. Report of Secretary & Committees

### 8.a. Proactive Code Enforcement

For the month of July 2019, the proactive code enforcement program inspected the North Liberty section of the City. Violations related to junk, signage, and inoperable vehicles were found. The proactive zoning program for August 2019 will be directed toward the Technology Park section of the City.

#### 8.a.a. July 2019 Proactive Code Enforcement Report

**Attachments:** [July 2019 Report](#)

### 8.c. Rockingham County Planning Commission Liaison Report

Commissioner Ford-Byrd said that the August 6, 2019 meeting was an abbreviated meeting. There were four ordinance amendments. The first was recommended for tabling by staff. After review of the Virginia Time Share Act, they decided that more discussion was needed. The other three were: definition of spa clarifying that a hair salon may operate independently of a spa; Land Use and Zoning Table to add both fitness center and spa as permitted uses with supplemental standards in the R-3 zoning district; and, to add supplemental standards for fitness centers and spas in the R-3 zoning district. All of those were approved.

Three projects were discussed and approved to be considered for recommendation to the Board of Supervisors. These were Lake Shenandoah Watershed Culvert Improvements, VA 276 at VA 253 Left Turn Lanes Installation, and Garbers Church Road Bicycle and Buggy Lanes. There was a great discussion about buggies and how that all will operate. The focus was on preliminary engineering and multiple grants will be submitted to complete this project and they discussed the total project cost for the three projects.

There will be a census mailing to begin in April 2020.

### 8.b. Board of Zoning Appeals Report

Commissioner Colman said that the Board of Zoning Appeals had a special meeting to approve the minutes prior to a case being brought up to the Circuit Court of Appeals. We had to approve our minutes.

#### 8.d. City Council Report

Commissioner Romero said that he was on vacation, so he came back to a meeting with nine items. Every single one of them was approved. One was a property that was recommended for denial by Planning Commission (4-2). The reason for the Planning Commission denial was because the applicants were not present. The applicant was present last night. City Council received a letter where the reasons for the absence were fairly clear and understandable. The applicant answered our questions. City Council approved the application. Everything that this body sent through to City Council was approved.

### 9. Other Matters

#### 9.a. Planning and Zoning Projects Update

**Attachments:** [Memorandum - Planning and Zoning Projects](#)

Ms. Dang gave the following projects update:

List A. Projects completed since January 2019:

1. *Short-Term Rentals Regulations Adopted* - City Council adopted the Short-Term Rental Regulations on March 26, 2019. A grace period was granted by City Council until August 1, 2019 and enforcement by Zoning staff is underway. More information: <https://www.harrisonburgva.gov/short-term-rentals>.
2. *R-8, Small Lot Residential Zoning District Adopted* - While this project was not initiated by staff, staff worked closely with the applicant (Dick Blackwell) on drafting the new R-8 zoning district regulations. Additionally, staff proposed amendments to the off-street parking regulations that provided flexibility and reduces requirements for some residential developments. The regulations and amendments were adopted by City Council in June 2019.
3. *Mobile Vending* - In 2012, after staff had in depth conversations with individuals wanting to have particular types of food truck operations, staff researched and drafted regulations to manage food trucks and other mobile business uses. Over the past six months, staff has changed course and has created an informational webpage to guide potential mobile businesses on city requirements, including but not limited to zoning, fire, water, and business licenses.

We published a web page at the end of last week and, as of yesterday, have taken it down. The Fire Department needed some more time to work out some things on their end. When they work out what they are doing with mobile business trucks, we will put the

web page back up. It is an informational web page that offers the information that they need to know for locating their food truck, what the requirements are if they put up structures or connect to water or sewer to point people in the right direction. We are very close to wrapping that up.

List B. Projects currently underway and anticipated to be presented to Planning Commission or to be completed in the coming months:

4. *Review of Short-Term Rental (STR) Regulations* - Since the adoption of the STR regulations in March 2018, Planning Commission (PC) has reviewed 25 STR special use permit (SUP) requests, and as of August 9, City Council (CC) has approved 11 STR requests and 9 requests are expected to be heard by CC on August 13. Staff will review PC recommendations and CC approvals for patterns and may recommend amendments to the STR regulations. I speak about this further when I am done here and give you a hand out, as well.
5. *Comprehensive Update of the Sign Ordinance* - In response to the June 2015 ruling by the United States Supreme Court in *Reed v. Town of Gilbert* staff has been working on updating the City Sign Ordinance. Staff hosted a panel discussion to answer public questions regarding the proposed Sign Ordinance on January 17, 2019 followed by a public comment period that ended January 31, 2019. Since that time, staff reviewed the comments and further updates to the ordinance. A second panel discussion is planned for mid-September 2019. The final draft will be presented to Planning Commission in the coming months. More information: <https://www.harrisonburgva.gov/sign-ordinance-update>.
6. *Wireless Small Cell Facilities within Public Street and Alley Right-Of-Way (ROW)* - Staff from the City Attorney's Office and the Departments of Planning and Community Development, Public Works, and Public Utilities have been working on amending the City Code to be compliant with requirements from the Code of Virginia and from declaratory rulings from the Federal Communications Commission (FCC) regarding the rights that wireless telecommunications providers now have to locate small cell facilities-whether by collocation or by installing new poles and other structures-within the City's public street and alley ROW. This matter has been discussed at City Council and might be officially adopted at the August 13, 2019 City Council meeting.

Commissioner Finnegan asked what the court case was regarding the sign ordinance. Was it Reed vs. Town of Gilbert?

Mr. Russ said that in the Town of Gilbert they treated signs differently based on what was being advertised. A church advertising their monthly yard sale was treated differently from a business advertising something. The court said that you should not be looking at what the sign says, only how much space it is and whether or not that amount of sign space matches up with your regulations. Ours is largely based on street frontage, where based on the amount of street frontage you have you get a certain amount of sign space.

Commissioner Finnegan said that it was a content neutral, first amendment issue.

Mr. Fletcher said that it was a big, ripple across the Nation, for signs. Ours had some issues, but they were not as bad as other localities. It has been a big undertaking for the four of us, along with Rachel Drescher and Frank Hopkins. Ms. Drescher has been the project manager. We have been working on it for about two and half years.

Commissioner Colman asked how that impacts temporary signs like political signs, yard sale signs, signs on posts. Are they treated the same as regular signs?

Mr. Fletcher said that we have provisions about temporary signs.

Chair Way asked when the changes would reach the Planning Commission.

Ms. Dang said that she does not want to commit. It may be a couple of months after we do the panel, assuming that the people who attended the previous panel are pleased with it and do not require some further consideration. There were comments received at the first panel that caused us to do some reflection and further edits to what we had originally proposed. It was good that we did that.

Ms. Dang continued with the projects update:

List C. Other projects currently underway:

7. *Comprehensive Update of the Subdivision and Zoning Ordinances* - Planning professionals advise communities to review their zoning ordinances once every ten years to account for changes in zoning approaches, state codes, legal interpretations, and definitions. It is common for zoning ordinances to be reviewed following updates to a community's comprehensive plan because zoning ordinances are the local government's primary means of implementing their comprehensive plans. While amendments and additions to the City's Zoning Ordinance have been made over the years, a comprehensive review has not taken place since 1996. Similarly, a comprehensive review of the Subdivision Ordinance has not occurred since 1997. A diagnostic review and evaluation of the City's ordinances was completed in April 2019 and will be used to inform the request for proposals (RFP) that staff will write to procure a consultant to assist with the update. An RFP is anticipated to be released this Fall 2019. A comprehensive update of the Subdivision and Zoning Ordinances will be a multi-year project.
8. *Floodplain Management Ordinance Updates* - In May 2017, the Virginia Department of Conservation and Recreation (VA DCR) released a new Floodplain Management Model Ordinance. Staff is reviewing the City's Floodplain Management Ordinance against the model ordinance and will propose updates as necessary.

9. *Home Occupation* - In September 2016, Planning Commission identified that home occupation permits and/or home business licenses needed to be reviewed. Staff has interviewed zoning administrators from other Virginia communities and is currently coordinating with the City Attorney's Office and the Building Inspections Division on Building Code requirements for home businesses. In the coming months, staff will prepare questions for Planning Commission for discussion to guide staff towards finalizing the Zoning Ordinance amendments.
10. *Housing Policies* - Housing continues to be an issue of concern in the Harrisonburg community. In April 2019, City Council identified developing a comprehensive housing plan and increasing flexibility in development and redevelopment of residential areas to enhance the housing inventory as a 3-year priority.
  - a. The City Manager's Office is leading the effort to develop a comprehensive housing plan. Planning staff will be supporting this effort as needed.
  - b. Planning staff will continue to consider the Zoning Ordinance's impact on housing as we work on the update to the Subdivision and Zoning Ordinances and will consider recommendations to increase flexibility where appropriate.

Homelessness has been a very talked about topic in our community. I did not put the project on this list because I do not know what the project will be, but staff is researching and reaching out to other Virginia communities to understand how they deal with homeless shelters within their zoning regulations. We are learning and do not have a project, yet, but it is something that we are working on.

List D. Projects currently on hold with little to no activity:

11. *Community Gardens* - In January 2013, as part of discussions surrounding Business Gardens, Planning Commission identified that the trend of community gardens in residential districts should be investigated by staff. Staff has prepared a process to solicit public input on community gardens to inform drafting of ordinance amendments. A focus group was hosted on May 11, 2017.
12. *Parking Requirements* - In October 2016, there was consensus among Planning Commission that parking requirements needed to be reviewed by staff. This project may become a sub-project of the Comprehensive Update of the Subdivision and Zoning Ordinances.
13. *Small Area and Corridor Plans* - The 2018 Comprehensive Plan includes "Potential Small Area Plans" and "Gateway and Corridor Enhancement Area" maps that roughly identify the boundaries of neighborhoods, commercial and mixed use areas, and important local and regional travel routes through the City that could be prioritized specialized studies to address unique issues associated with each area.
14. *Public Alleys* - In March and April 2019, as part of discussions at Planning Commission and City Council meetings surrounding requests to close public alleys. Planning Commission expressed interest in evaluating public alleys (i.e. current use and future plans for how they might be used). The City Attorney's Office has researched general legal

issues on the topic regarding ownership, maintenance responsibilities, and liability. Staff discussions on this matter continues.

Ms. Dang said that these are items that are placeholders on this list, to acknowledge that we have not forgotten about them. When we can elevate them to work on, we will certainly do that.

Chair Way said that if there is any way that the Planning Commission can help, in terms of offering support or if there is something we can do. Within our bylaws, we are allowed to convene and help do things.

Ms. Dang continued:

List E. Other Projects.

15. *Environmental Action Plan (EAP)* - On October 23, 2018, following a presentation by the Council-appointed Environmental Performance Standards Advisory Committee (EPSAC), City Council directed staff to develop an action plan to address Building Standards and Energy Efficiency; Waste Reduction and Recycling; Renewable Energy; Stormwater, Water Quality, and Water Conservation; Sustainable Transportation; Regional Food Systems; and Land Use and Open Space. An open house and public comment period to review the draft EAP Phase 1 took place in June 2019 and staff is working on updates to the draft EAP Phase 1. This project is being co-led by the Departments of Planning and Community Development and Public Works.
16. *Downtown Parking Study* - Staff from the Departments of Economic Development, Public Works, Police, Planning and Community Development, Public Transportation, and from Harrisonburg Downtown Renaissance have been working with DESMAN, a national consulting firm for transportation improvements and parking facilities, to prepare a Downtown Parking Study. The study was launched in June 2019. Downtown stakeholder group meetings were recently completed and there is now a survey that the public can complete to help staff understand what brings visitors to downtown and how they park while living in or visiting downtown. The survey can be completed at the following address: <https://www.surveymonkey.com/r/F6FR36N>. There will be a public meeting in late August for residents to learn more and speak with city staff.

These are things that will not come before the Planning Commission, but things that we want you to be aware of. I encourage you to complete the survey for the Downtown Parking Study and share the link, as well.

Commissioner Finnegan said that he had a question regarding the Downtown Parking Study as it relates to project number 12 - Parking Requirements. I think that there is somewhat of a disconnect. If someone says, "Do you want free parking?" I would say, yes, of course I want free parking. There is not such a thing as free parking. All parking spots occupy space and that space could otherwise be used for housing, or anything that we need desperately in the City. Will there

be an attempt to communicate to people taking part in the Downtown Parking Study what those spaces cost, per space?

Mr. Fletcher said that the Downtown Parking Study is about how to go about doing all that you just said. Projects number 12 and 16 are different in that 12 is talking about zoning regulations, like how many spaces we need per use. Downtown already regulates parking in a best practice by not requiring parking so that we are not taking up physical space for parking. This is geared specifically to the things you are talking about, such as whether we are charging, where would we charge, the public facilities, the public private facilities, the private facilities and the private public facilities. Those four different types of facilities we have downtown that work in different ways. This is evaluating the inventory, the utilization, the perception of where they are and offering up recommendations about how the City might go about providing additional parking, but also working in partnership with private property owners in sharing parking. There is a separate project going on in Public Works about a study of eliminating lanes on Liberty and Main Streets. We would eliminate one lane and free up space for off-street parking. There has been discussion, and the consultants that we hired has spoken to the things that you mentioned about what does it truly cost to have a parking space in your downtown areas. I definitely see the two as very different things. The best practice for downtown is to not require parking. We already do not require parking. We have almost come full cycle because we used to charge for parking and we took it away when we were hurting a little bit and now we are not hurting as much.

Commissioner Finnegan said that you have put those on the back burner and I do acknowledge that those are two different issues. The one thing that I had mentioned before, if and when it does come up, the idea of some sort of overlay or something that could be within these zones near bike lanes, sidewalks, bus routes, that there be a way to reduce parking requirements given a certain radius from these arterial modes of transportation. That we find a way to reduce the off-street parking requirements in certain areas, knowing that it cannot be a blanket across the whole City, but there might be certain areas where it would be more applicable than others.

Ms. Dang said that she will revisit project number 4 - Review of Short-Term Rental Regulations. As we have been talking about STR and reviewing applications, there has been interest in reviewing the regulations. Staff has been thinking and talking about it. We have a memorandum that I would like to provide for your review. We did not include it in your agenda packet because we wanted the information from last night's City Council meeting.

What we have done is summarized the STR requests, how many have been reviewed by staff, how many have been reviewed by the Planning Commission and City Council, how many approved or denied. There is a spreadsheet in your packet that summarizes all of those requests in more detail including what conditions were included. There is also a map that is overlaid over the zoning districts. I will be sending you a summary of occupancy regulations for each of the zoning districts, as well. I would like to point out that 312 South Main Street is the only property that is non-conforming. It is located in B-1 and it had been used as a STR before our regulations came into effect.

Mr. Fletcher clarified that the 312 South Main Street operation was legal. It was operating before the STR regulations came into effect in a location where it was previously legal. That makes it non-conforming now.

Chair Way said that the map is a good way to visualize the STR locations.

Ms. Dang referred to the table provided. This is to begin discussions and to get feedback and guidance from the Planning Commission. We evaluated the patterns that we see. We are preparing a proposed by-right homestay use, keeping the existing STR SUP. The STR SUP would apply for anything that exceeds in intensity above what would be allowed by the homestay. We are offering this for review to obtain your feedback. Add, take away, change as you see fit. We will work on drafting the regulations.

Mr. Fletcher said that it is a similar proposal to what was Option 1 and Option 2 originally. With the trends that we have seen by approvals by City Council, we have an idea of what they believe is acceptable for this type of use.

Chair Way thanked staff for their work on the STR. We have to think about what is going on with City Council with the rationale for why they are overturning so many of our recommendations, or at least seeming to go in a different direction.

Commissioner Romero asked whether the Planning Commission and City Council ever have joint meetings.

Commissioner Finnegan said that it has been about two years since they have had a joint meeting.

Chair Way said that we should be in alignment. We can recommend a certain set of things or a different set of regulations, but if City Council does not heed them it affects the process. I want to make sure we are doing the right thing, but that it is acceptable to City Council, as well.

Ms. Dang said that the table does not include the number of applications that were withdrawn. The total numbers do not add up because that information was not included. The Planning Commission denials have either been tabled by the applicant, tabled by City Council, or withdrawn completely by the applicant.

Commissioner Romero said that it has only been a few times that City Council has voted against the recommendation of the Planning Commission.

Chair Way said that it is going from 31 down to 19.

Ms. Dang said that Park Road is one of them.

Mr. Fletcher said that you can see how many times the Planning Commission recommended approval, how many times it recommended denial, and City Council has approved all of them. It dwindles down because of the issues that Ms. Dang described.

Chair Way said that it makes sense, but he does not necessarily agree. It would be nice to get us all on the same page with what the expectations are about what we are trying to achieve, given the experience that we have had up to now.

Commissioner Finnegan said that considering the amount of time spent on these requests, the amount of voting against people's wishes, breaking people's hearts, crushing their hopes and dreams for whatever they want in their neighborhood, and then it ends up as well, what was it for? This table points to the need to do this a different way. There need to be some rules in a by-right option.

Mr. Fletcher said that is why staff is bringing this to the Planning Commission. We saw the trends. We stood by option #1 because we believed that location mattered, but the decisions clearly say to us that for this type of use, location does not matter. Some of our early recommendations for denial were based on their location and distance to major roads. It was clear with the approvals and the results of the votes that it was not a concern. We do not recommend against them anymore for those reasons because for good land use practices we need to be consistent. When decisions are made, the precedent begins to be set.

Commissioner Colman said that his concern is not about location, but about occupancy. If we approve ten, fifteen, or twenty people in a zoning district that does not allow more than two unrelated people, it is contrary to the zoning district. That is my concern.

Chair Way said that we are also hearing from people that are supportive of a particular person's Airbnb request, but what about the next owner of that property?

Commissioner Finnegan said that the opposite also happens. People are opposed to a request because they have had problems with the person making the request.

Chair Way said that we have to try to find a way to disassociate the person from the request.

Commissioner Colman said that we have both examples tonight.

Mr. Fletcher said that we will be meeting next month for other matters.

Ms. Dang said that we have ten items on the agenda, two of which are STR. Of the ten items, four of them are related to one site; it is a rezoning to R-5 with three SUPs. It will be seven unique sites.

Commissioner Romero said that he believes there is a lot of value to having the Planning

Commission and City Council meet. I do not know what the procedures would be, but I am happy to discuss the option with my colleagues. Before we continue to move forward, we need to have a better vision of how we want to proceed.

Chair Way and the other commissioners agreed.

Commissioner Whitten asked how many of the requests heard tonight were as a result of having received a compliance notice from staff.

Ms. Dang said that the notices were sent by other colleagues and that she does not have that information, but she can bring it next month.

Chair Way reported on the Plan Our Park initiative to develop some land for a downtown park. The committee has been meeting monthly. There has been some conversation regarding what the footprint of the park might be and what City Council is going to support. There is a desire to look at park questions in parallel to the Downtown Master Plan and the downtown parking and traffic connectivity studies. The park plan is still moving forward pending these studies.

## 10. Adjournment

The meeting adjourned at 10:03 p.m.

### NOTE TO THE PUBLIC

Staff will be available at 4:30 p.m. on the Tuesday before the next Planning Commission meeting for those interested in going on a field trip to view the sites on the next agenda.

Language interpretation service in Spanish is available for City Council meetings. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least four (4) calendar days in advance of the meeting by contacting the City Clerk at (540) 432-7701 or by submitting a request online at: [www.harrisonburgva.gov/interpreter-request-form](http://www.harrisonburgva.gov/interpreter-request-form)

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<https://www.harrisonburgva.gov/interpreter-request-form>