



# City of Harrisonburg, Virginia

## Department of Planning & Community Development

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Building Inspections  
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### TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

**SUBJECT:** Public hearing to consider two options for multiple Zoning Ordinance amendments and modifications to Title 4 Finance, Taxation, Procurement, which are all associated with proposed regulations to allow for “homestays” and “short term rentals” (i.e. Airbnbs, VRBOs, etc.). Changes to the Zoning Ordinance for Option 1 include adding a definition for “Short term rental” and eliminating the existing definition of “Bed and breakfast facilities” within Section 10-3-24, adding regulations for Off-Street Parking Regulations for Short Term Rentals to Section 10-3-25, and adding the “Short term rental” use as a special use permit within the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R. A new article titled Article DD. – Short Term Rentals is proposed with sections regulating and specifying: registration requirements and general regulations including penalties for operating a short term rental without first registering and limiting a contract with a guest for accommodation space to a maximum of thirty (30) consecutive nights. The sections of the Zoning Ordinance impacted by adding “Short term rentals” as a permissible special use permit include: 10-3-34, 10-3-40, 10-3-46, 10-3-48.4, 10-3-52, 10-3-55.4, 10-3-56.4, 10-3-57.4, 10-3-58.4, 10-3-85, and 10-3-180. These sections are amended by either adding “Short term rentals” as a new use for the district or by replacing the existing “Bed and breakfast facilities” use with “Short term rentals.” The “Short term rental” definition within the Zoning Ordinance is proposed as follows: “The provision of a bedroom or accommodation space within the principal building or any accessory building that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” Zoning Ordinance Section 10-3-13 currently states that “[a]ny person, firm, or corporation found in violation of the Zoning Ordinance, upon conviction shall be guilty of a class 1 misdemeanor.” Section 10-3-13 is proposed to be amended to allow violations of Article DD to be subject to civil penalties of \$100.00 for the first offense, \$250.00 for the second offense, and \$500.00 for each subsequent offense arising from the same set of operative facts. Option 2 includes the same proposed amendments as those specified in Option 1, but includes a new use called “homestay.” The “homestay” definition within the Zoning Ordinance is proposed as follows: “In a single-family detached, duplex, or townhouse dwelling, the provision of a bedroom or accommodation space within the principal building that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy, and where the operator is present during the lodging period.” The new Article DD. - Homestays and Short Term Rentals would allow homestays to be rented for guest lodging for no more than forty-five (45) nights per calendar year; would limit the maximum number of adult guests at one time in a homestay unit to six (6); would restrict operators from marketing or using homestays as a location for weddings, receptions, or other events; and would require operators to maintain the property as their primary residence. A homestay would be permitted by right within a single-family detached, duplex or townhouse dwelling within the following zoning districts: R-1, R-2, R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R. In addition to the proposed amendments

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described in Option 1, the sections of the Zoning Ordinance impacted by adding “homestays” as a by right use include: 10-3-33, 10-3-39, 10-3-48.3, 10-3-51, 10-3-53.3, 10-3-56.3, 10-3-57.3, 10-3-58.3, 10-3-84, and 10-3-179. For both Option 1 and 2, Title 4 Finance, Taxation, Procurement Section 4-2-76.1 (2) would be modified by adding “short term rental” to the definition of “Hotel” and eliminating the reference to other lodging places that offer lodging for four (4) or more persons at any one time. Subsection (4) of Section 4-2-76.1 is also being modified by amending the definition of “Transient” by eliminating the words “hereinabove” and replacing them with “in this section.” For Option 2, “homestay” would also be added to the Title 4 definition of “Hotel.”

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: March 14, 2018**

Chair Way said under Other Matters we have City Code Amendments – Short Term Rental Regulations and Related Ordinance Amendments. He then asked staff for comments.

Staff said these are draft ordinance amendments related to short term rental of properties, which include properties rented through online services such as Airbnb and VRBO. During the 2017 legislative session, SB 1578 authorized localities to adopt ordinances requiring the registration of persons offering properties for short term rental.

Below are a few general highlights of what is included in the draft Zoning Ordinance amendments:

1. *Bed and breakfast facilities* would be considered the same as *Short Term Rentals*.
2. Proposed *Short Term Rental* definition.
3. Proposed minimum off-street parking requirements for short term rentals.
4. Short term rentals would only be allowed if City Council has approved a special use permit (SUP). As is typical with all SUPs, City departments would be given the opportunity to review the applications through the staff review process before being presented to Planning Commission. Through the SUP review process, staff may recommend conditions be placed on the property. Example conditions, which would be determined on a case-by-case basis, might include:
  - a. Requiring the owner, tenant, or proprietor to occupy the property during the rental period;
  - b. Requiring additional parking spaces or allowing less parking spaces;
  - c. Limiting the number of lodgers allowed on site at one time;
  - d. Allowing Planning Commission or City Council to revoke the special use permit if violations are found or if it became a nuisance.

After the March Planning Commission meeting, staff will post the draft amendments on [Beheardharrisonburg.org](http://Beheardharrisonburg.org) to allow the public to comment about the regulations before bringing the amendments back to Planning Commission for a public hearing in April. Staff is looking for Planning Commission’s input on the proposed amendments before opening the public comment period.

Additionally, Planning Commission will only review and make a recommendation on the proposed Zoning Ordinance amendments. However, the Zoning Ordinance amendments will be presented with information on proposed amendments to Title 4 of the City Code, which is related to taxation. The Commissioner of Revenue’s Office and City Attorney’s Office have offered amendments that will be considered by City Council at the same time as the Zoning Ordinance amendments. These amendments are also included within this packet.

Chair Way said you are not looking for a formal approval today? This is just an FYI moment.

Mr. Fletcher said it is just for discussion. It is very impactful and we wanted to get it to you so that you could start mulling over it and have an opportunity to read through what we are thinking. This is your opportunity to give us some feedback. If you wanted us to try to incorporate certain things that we can mull over and see if we can incorporate them in here. We plan to go to public hearing in April with this, it would then go to City Council in May.

Another thing that we were thinking about doing was some outreach with Mary-Hope Vass, Public Information Officer, to get it on BeHeard Harrisonburg. The savvy folks that do Airbnb and VRBO would be the same savvy folks that would be on BeHeard Harrisonburg. It is just another opportunity to try and gather as much input as we can and get people “in the know” about this.

Mrs. Banks said we have sent this out for staff review to all the different departments and divisions and we have received their comments back, we have not incorporated those comments into the draft, you are seeing the same packet that they saw. We are going to take everyone’s ideas before we bring it back in April.

Mr. Fletcher said what this is, is almost as bare minimum as you can get with some regulatory control. That was our angle to try and make this as simple as possible, but with some control and giving some peace of mind for folks who have concerns about short term rentals coming into their neighborhood. The proposal is to do a couple of things here. Essentially, create the new definitions for short term rental, which everybody just likes to refer to it as the Airbnb ordinance. What we are doing is we are getting rid of the existing definition of a bed and breakfast and including bed and breakfast as a short term rental. All short term rentals would include hostels, inns, bed and breakfast and other similar facilities in the very similar kinds of arrangements that folks know as Airbnb.

We are proposing the off-street parking regulation, which is a unique take on this because if you pay attention to the language here what we are saying is that the short term rental off street parking regulation shall 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. That is a new take for us because we wanted it to be very site specific. If it was in a space where it seemed to be okay, but we were concerned about the look of the property and what on street parking capabilities there were, we did not want to require people to put in parking on their property. That is why we are saying in cases where a special use permit must be obtained we can condition it to be less than the requirement. Of course, if they would go in B-1, there is no parking requirement.

It would be by special use in every single district, I want to be clear on that, because right now, although I do not think we have any nonconforming short term rentals in the City, we interpret that it would be permitted by right in the B-1 district. This amendment would be changing that. This would be requiring a special use permit in B-1, and I will tell you why we thought about this. There are so many apartment units in the downtown, where there is interest in doing this, and those apartment buildings are built differently. In the Building Code you have different “R” designations; they have nothing to do with anything in zoning. You have your R-1s, R-2s, R-3s, R-4s and R-5s. It is the reverse in the Building Code when comparing it to zoning. R-5 is a single-family home or duplex, where R-1 is a hotel, so it is the reverse of intensity. Your apartment building is built to what is known as the R-2 code, that is non- transient occupancy. Short term rentals are by definition, transient occupancy.

If you have someone who is interested in having an Airbnb or short term rental in an apartment building you are essentially creating transient occupancy and that building is not built for transient occupancy space with regard to fire separation, sprinkler systems, egress requirements, and others. People need to know for handicap accessibility issues, where they can get into the building and where they can get out of the building. That is why we want to require it as a special use permit, because it is

all about safety for folks that are going to use these transient spaces that were not built as transient occupancy.

Mr. Colman said I wonder if you can have a limitation on that, because that is for a full building, it is not a hotel. But if you have limitation in terms of one or two of the units could be used for transient use, not the whole building that changes the nature.

Mr. Fletcher said it absolutely changes the nature, it also gives the opportunity for the folks that reside in the building to apply; although the applicant is the property owner. If we just use the Ice House as an example, where you have residential units that were built to the R-2 building code, they were built as non-transient spaces because they can be leased at a 30-day period. In the building code anything less than 30 days is considered transient. If I am leasing a space in Ice House and I know all my neighbors and suddenly now all these people are coming and going in the unit next to me, I am asking myself, who are these people; that kind of operation would require a special use permit to be able to do that. It does bring up some issues with the Fire Department and Building Code Division to make sure that these spaces are safe.

I anticipate that you are probably going to see an amended definition next month. The amended definition will probably have the same language that is before you, but there is going to be a little more in there which is going to be similar to our boarding and rooming house definition. The boarding and rooming house requires that every October they set up an inspection with the Zoning and Building Divisions. You are likely going to see something very similar to that in this definition because we want the opportunity for the Fire Department and Building Code Officials to go in there and make sure the smoke detectors are in the proper places and that they are connected appropriately. Ron Schuett, Building Official, was saying to us that they will probably look for the type of smoke detectors that are connected, whether they are wired or wireless, so when one goes off they all go off in that unit. Where in my house, my smoke detectors are not connected; if it goes off in one room it will not go off in the other rooms. The smoke detectors are for fire safety and for life safety so that when one goes off they all go off. HFD hopes that we will consider making that a condition on those requests.

Chair Way said I am looking at the draft here on Section 10-3-24, the Bed and Breakfast facilities definition, you are going to keep that in there, that little subsection that says “see short term rentals.”

Mr. Fletcher said yes, that is exactly what we are proposing.

Chair Way said the second thing here, on line 15 should the word “anyway” be two words rather than one word?

Mr. Fletcher said yes sir. Thank you.

Chair Way said the other question I had did you all think about putting in any language about the number of guest or number of rooms.

Mr. Fletcher said we talked ourselves out of it. With the special use, it is site specific, it is circumstantial, every unit is likely going to be different. We did not get into some of the regulations that other localities are getting into, such as, limiting the number of days per year that they could rent, the number of people that they could rent to, any of those things because it is a special use permit. Another thing we talked ourselves out of was not requiring that the owner or proprietor be there at the time that the people are there, although I believe that is going to be high on our condition list. That is where that discussion comes into play, where other municipalities are dealing with, the effects on affordable housing. We do not want to affect that. We want to keep our City as affordable as possible. The issues bigger municipalities are running into is where people are buying properties, they renovate the space and they turn it into an Airbnb only, and the whole house is rented, they are never there and

the cost of living then skyrockets in that block because people cannot afford to buy the unit or the house because they are being rented on the short term basis.

Mr. Finnegan said I think that is one of my biggest concerns, obviously safety of the guest, the host and the wellbeing of the neighborhood, as you mention, as well as not wanting to have non-owner occupied housing. I do see on here it says, “on a case-by-case basis it might include: requiring the owner, tenant, or proprietor to occupy the property during the rental period.” I have stayed at Airbnb’s and I think that is an unrealistic expectation that the owner would be there, in fact most of the times when I have booked out of town, I am looking for where you have the whole house to yourself. This reminds me of some of the conversations we have had about how people use Google maps to get around traffic backups, like it is a technological disruption that did not exist 10 to 20 years ago and now it does. I do think there should be requirements making sure that is not just a house being used to rent out.

Mr. Fletcher said I disagree respectfully, just because I think we are going to have a very high threshold for these and in fact I do not think it is unrealistic because if people are coming in and applying and then they are saying “we are not going to be here” and then it is in an area that we are concerned about, that is where the condition comes into play, where we say “sorry then your model does not work for your space.”

Mr. Finks said could it be a situation where you say the owner must live on the property a certain percentage of the year?

Mr. Fletcher said you can do whatever you wish but enforcement is a very difficult thing for staff to monitor those things and that is why we are suggesting the special use permit, handled on a site-specific basis. We did not get into the details of the realistic enforceability of requiring people to be onsite, but it is those specific concerns that we wanted to be as clear as possible that this is not going to be an easy thing. They are essentially bed and breakfast facilities, whether you want to call them bed and breakfast facilities or not, that is what they are. Your idea of it being unrealistic, I just disagree. In theory they will not get approval if we do not like that model in that space.

Mr. Finnegan said I think we are essentially making a rule that most people will not follow. I am on this body because I went online and I filled out a form that said I would like to be on Planning Commission and then City Council said yes. City Council approved me being here but the people who sign up for Airbnb’s I think they would like to go online and fill out a form. Correct me if I am wrong, we heard about 17 special use permit requests last year, does that sound right?

Mr. Fletcher said half of all the request were special use permits, which it was an awkward year.

Mr. Finnegan said I spoke to Brenda Black, Harrisonburg Tourism, today about this. I was asking what is the ball park figure, how many houses would you estimate are currently being used for Airbnb type use. She said probably 150 to 200 houses. In the region, in the City, I do not know; do you have numbers on how many are operating in the City?

Mr. Fletcher said I do not. We have had to shut some down, we go by complaint.

Mrs. Banks said the number one concern we get is “we do not know who is staying next to us, because the owner leaves and we have no idea who they are.”

Mr. Fletcher said honestly, you are right, some people will get away with it. But the ones that are concerned, so if I live next door to it and I know because I received the notice about the special use permit, I know that it got approved, I know what their conditions are, and if I realize they are not following the rules, I can call and complain.

Mr. Colman said I think with that condition you are going to have more people just doing it without getting the permit at all.

Mr. Fletcher said the only one bed and breakfast we have left in the City, I could not tell you if that proprietor is in that house during their stays. It requires them to reside there. You all can do what you would like, you can suggest this to be reworded to the way you would like. Our recommendation is what is in front of you and we would just like to have onsite accountability, because that is the concern we get. We are not a vacation destination, but we are absolutely a desired destination.

Mrs. Whitten said I think we are a vacation destination.

Mr. Fletcher said maybe we are. I am just saying we are a desirable place to come and want to stay in these places, because of JMU or the National Park.

Mrs. Whitten said because of snow skiing, snowboarding, biking, and fishing.

Mr. Finnegan said I do not want to make it sound like I am arguing against staff, I want there to be regulations in place to enforce the things you are talking about. I do not have a perfect solution for this, but how can we make it easy for people to comply with what we want them to comply with. I feel like asking them to obtain a special use permit all 100 to 200 locations, not only is it not going to not happen, but I feel we would be here all night if it was just special use permits.

Mr. Fletcher said am I hearing you want to allow it by right?

Mr. Finnegan said no, I am not saying allow it by right, is there no license with it.

Mr. Fletcher said they must obtain a business license and they will be collecting tax. We have already talked to the Commissioner of Revenue about going proactive and now seeking them out, because we do not do that now.

Mrs. Whitten said have you researched other places comparable to us.

Mr. Fletcher said yes. It is all over the world, and it is so different in every locality.

Mr. Baugh said I think it is Blacksburg where they did something like this except their big carveout was Bristol. They want grandma to be able to lease out the house on the NASCAR weekends, that became an important thing in the community.

Mrs. Whitten said when we lived in Augusta and Larry was in medical school, we could rent our apartment out for three or four days and get two months' rent. People did it all over the place, there were even mechanisms, they were like brokers that managed it. I am sure they are still doing that.

Mr. Fletcher said you have two options, by-right or by special use permit, that is it, those are your choices.

Mr. Finnegan said there is no way we can require, like backyard chickens where we require a permit some kind of online permitting process?

Mr. Fletcher said they will be getting a business license and they would still be doing permitting no matter what, but it is by-right or by special use permit those are your options.

Mr. Colman said the permitting will still be required.

Mr. Fletcher said what we did with backyard chickens was we made it by-right under certain parameters. If you like what we are proposing we can move forward, if you do not like what we are proposing then we will go back to the drawing board. You might not get our favorable recommendation, however, for the approach you are telling us to do by-right.

Mrs. Whitten said I am not crazy about the owner, tenant or proprietor having to be there. I understand, and I can understand from my neighborhood perspective, if you do not have somebody accountable.

Mr. Fletcher said I think I misunderstood you. Do you like having the proprietor on site?

Mrs. Whitten said I do not.

Mr. Fletcher said you do not and we are not proposing it that way.

Mrs. Banks said that is just a suggested condition, it does not mean that each one that comes through here will require it.

Mr. Fletcher said that is one of the things we will question. Is this a site that will require it? What I was saying is that it is going to be high on our list of things of consideration.

Mrs. Whitten asked how are you going to decide that based on a site.

Mrs. Fitzgerald said the community that has some issues with tenant occupied properties.

Mr. Fletcher said that is exactly why you have the language in there to where it says “a short term rental shall neither contract with guests for longer than fourteen consecutive days nor, in any way circumvent the non-transient occupancy restrictions.” Do you know why that is in there? Because we have student housing in the City. Somebody could contract for fourteen days over, and over, and over.

Mrs. Whitten said can the landlord put in their lease no Airbnb allowed.

Mr. Fletcher said well they could, just like private property owners currently put in the lease that they cannot have parties on their property that they are leasing.

Mrs. Fitzgerald said and that is effective.

Mrs. Whitten said it is sometimes, it has become more and more effective.

Mrs. Fitzgerald said it would be great if we could design something that did not work like the Sign Ordinance that is violated all the time and it is only enforced by complaint.

Mr. Fletcher said with land use regulations we know that there are probably so many violations that nobody knows of and we have to rectify them when we know about them. That is our duty for the community.

Chair Way said under 4(a) here, on your list of suggested things, what if you added the word “outside”, “requiring the owner, tenant, or proprietor to occupy the property during or outside of the rental period.” Would that give a notion of it being an owner occupied or rental occupied sort of place that avoid the need to having a person be there while it is being rented.

Mrs. Fitzgerald said if you wanted to rent your house during graduation, you could go to Washington D.C. for the weekend.

Mr. Fletcher said essentially when the rental is not in use.

Mrs. Fitzgerald said you have to live there sometimes.

Mr. Fletcher said it is your principal residence.

Mr. Finnegan said what does that do Mr. Russ?

Mr. Russ said I do like that idea.

Mr. Fletcher said I do also, I like that idea.

Mrs. Whitten said how is it going to be to remove that special use permit if you have a complaint. We talked about that too, that is not that simple.

Mr. Fletcher said if there is concern about a special use permit going rogue, we can always condition that if there are concerns about it becoming a nuisance it can be called back and revoked. It does make it hard for us to try to figure out, and what staff does not like is what is the threshold, why should we go

out on two complaints from the same person or two complaints from two different people. There is no good way for us to determine at what point is it considered a “nuisance.”

Mr. Finks said is that what we need, do we need guide lines for developing this special use permit, some sort of threshold that needs to be met, whatever that may be. Would that be helpful?

Mr. Fletcher said I do not know, we have come close to bringing a special use permit back for consideration. Usually whatever the nuisance was, we work with them and it goes away.

Mr. Colman said that has to come back to Planning Commission.

Mr. Fletcher said it depends on how the condition is worded.

Mr. Colman said it seems like that would be something that whoever is opposing it, then they would have to come before us to explain the reason and they may not want to do that.

Mr. Fletcher said I am not suggesting that we can do this, but special use permits are the kind of permits that allow for sunset clauses or renewal periods. I would not suggest fees being included, but you can say we want to review this in two years, you come back and maybe staff can give you an update and say we have not had any complaints on this property. Those are options.

Mr. Colman said this has the potential to be a huge work load.

Mrs. Whitten said it is, the cost can be significant, I think there should be something specific.

Mr. Fletcher said to answer the question about have we looked other localities, yes, we have and there are some, even locally, that are doing the special use permit option. I think Grottoes was one, Shenandoah County was doing it also. It is all over the place, some are by-right and some are by special use permit.

Mr. Finnegan said this may not be of any use after this conversation, but I did make a print out, I was researching short term rental regulations. I am not saying that this is what we should model at all, but the reason why Seattle caught my eye is because Seattle is now in their second round of trying to figure it out, maybe they have learned something we can learn from. Two of the pieces from the draft of the Comprehensive Plan that came up when I was thinking about this Chapter 7, Objective 6.1 to promote affordable housing options, as you mentioned we want to protect and not exacerbate affordable housing and the flipside of that is Objective 6.2 to promote home ownership as to increase the proportion of owner occupied units in the City.

While we are considering the negative impacts that Airbnb and similar rentals can have on the housing market, we should also consider that some people are having trouble making ends meet and occasionally renting out their house could be a way to help them. I went to the ALICE Presentation this morning that United Way put on, and they were talking about affordable housing being a major issue locally. There is a give and take, there is a ying and yang to this sort of speak. I do not know what our role as Commissioners are at this point, if staff is drafting the next round, if there is interest in forming a committee. I would make a motion to form a committee to help draft that regulation; but I also do not want to step on staff's toes if you feel like you have it.

Mr. Fletcher said we serve at your will.

Chair Way said we have in our bylaws this notion of adhoc committees that can meet on various things such as ordinance drafts.

Mr. Finks said yes, according to our current laws we can make adhoc committees.



Mr. Fletcher said what would the committee come up with, because again, you have two options it is by-right or it is by special use permit. By-right makes a significant impact in the City of Harrisonburg, anybody can do it anywhere.

Mr. Finks said I envision the committee discussing the conditions.

Mr. Finnegan said yes conditions, how do we make it. My concern again is how do we make it doable for someone to stay in compliance with, how do we hit that balance between regulating it for safety, making sure we are not exacerbating affordable housing problems and making it something that it will not be too hard to comply with.

Mr. Colman said we are discussing the conditions here we can continue to discuss those without having to create a committee necessarily.

Mrs. Fitzgerald said I want to know what other staff thinks about it too.

Mr. Colman said and once this is open to the public I want to see what they have to say. We can all sit here and discuss it, maybe bring other things we should consider and like I said other staff would have more feedback that I would like to hear.

Mr. Fletcher said the thing about at least giving it to public hearing is that it gets people in here, the media picks up on it and all these sorts of things, which is what we want. If for some reason the group wants to go by-right, then by all means we definitely have to back up and have to do more things to build it into the code. We try to make it as simple as possible you cannot get no slimmer than what we are proposing because we are proposing to do it site specific and you can suggest any conditions you want. Do not forget that everyone is required to get a business license, they are paying an annual license and they would be taxed at the same rate as a hotel or motel.

Mrs. Whitten said I read this online and I will continue to like this little section about requirements for short term rental operator license. It talks about a local contact number for guests, not a person in the house but it is somebody local who can speak to the safety information posted. I think that is important, there are some good things in this short piece.

Mr. Colman said I think if we have a concern the issue would then be how do you regulate this. Is there a concern in terms of do we want the place to be owner occupied? We could limit during the year how many days you can book the place, so you would not be able to rent it 365 days?

Mrs. Whitten said but then how are you going to control that.

Mr. Colman said I do not know and that is very difficult to do, I am stating that just in case there is a mechanism to do that, I do not know if there is.

Mrs. Whitten said it would prevent somebody who is a rule follower from breaking the rules.

Mr. Colman said the reason I bring this up is because some people might just buy a house just to rent it.

Chair Way said this is where it would help requiring the owner, tenant or proprietor to occupy the property during or outside the rental period.

Mr. Colman said it is still the same thing it is still hard to enforce that, but at the very least it is one of the conditions.

Mr. Finnegan said there are not lots of nonconforming things that do not get caught in the proactive enforcement because you do not see it. There are rules being broken all the time. I would hate to set up a rule that will most likely get broken.

Mr. Fletcher said and when you said nonconforming you actually meant illegal, because the term nonconforming is a very special term in the Commonwealth of Virginia. Nonconforming means it is legal.

Mr. Finnegan said yes, illegal use or many occupants in a building, it happens a lot and it flies under the radar. I just wonder how many Airbnbs with the similar sites will fly under the radar.

Mr. Colman said there are things we can regulate to death. I do not know that it is necessary to add more regulations to this simply because we want to control it. If there is a balance in the community that holds that in check, that should be enough. But once it starts going array then yeah you have to regulate it.

Chair Way said what would you like to do at this point.

Mr. Finnegan said if we are not forming an adhoc committee can we be informed of the next staff meeting if we can make it. I would love to sit in.

Mrs. Banks said we will have it put on social media, BeHeard Harrisonburg so we can get comments back in from that. We will compile those comments and we can bring those comments back before this body, we will not make any changes.

Chair Way said will we be set up as public hearing.

Mrs. Banks said no, it will not. Do you want to set it up as a public hearing?

Mr. Finks said I was thinking we would.

Chair Way said if you could.

Mr. Fletcher said on our previous schedule that we talked about, I was thinking that we were going to the public hearing. If you all thought that it was good, we would move forward, but it sounds like you still are a little hesitant about it. So, we do not have to go to public hearing if you do not want to.

Mrs. Fitzgerald said but we can advertise a public input.

Mr. Fletcher said it is the same we are still paying the same amount.

Mrs. Banks said do you want this advertised as an ordinance amendment public hearing.

Chair Way said yes, with the provision that we may not make a decision about it next month.

Mr. Fletcher said that is fine as long as it is advertised and if you decide to table it that is fine. We just need to know how we need to move forward. We are going to put it on BeHeard Harrisonburg, could be up tomorrow, we will advertise accordingly for a public hearing for a Zoning Ordinance amendment, actually a city code amendment because of the business license component, and then we will proceed as we normally would with a staff memorandum.

Chair Way said could you add in the language about for outside the rental period on that 4(a).

Mr. Finks said as a body we can always add to the conditions, right.

Mr. Fletcher said always.

Mr. Finks said we can suggest more conditions even if we do not like what we are seeing here and we decide later it should have more conditions.

Mr. Fletcher said if anyone is ever interested in sitting in on one of our meetings where we talk about these things you are more than welcome to join us.

Chair Way said is there an outbreak of clarity in terms of where we stand with the public hearing.

Mr. Fletcher said I think I understand now.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: April 11, 2018**

Vice Chair Colman read the request and asked staff to review.

Mr. Fletcher said the discussion of short term rentals (STRs) has been ongoing for some time in Virginia, but it was not until the 2016 Session of the Virginia General Assembly (VGA) that the issue came to the forefront of major debate. During the 2016 session, the VGA considered SB 416 and HB 812, which was referred to as the Limited Residential Lodging Act. In brief, that bill was summarized by the Virginia General Assembly’s online Legislative Information System as “allow[ing] persons to rent out their primary residences or portions thereof for charge for periods of less than 30 consecutive days or do so through a hosting platform. Localities [were] preempted from adopting ordinances or zoning restriction[s] prohibiting such short-term rentals, but [were] authorized to adopt ordinances requiring persons renting their primary residences to have a minimum of \$500,000 of liability insurance, prohibiting persons from renting their primary residences if they fail to pay applicable taxes, and requiring persons renting their primary residences to register with the locality. A hosting platform [was also required to] register with the Department of Taxation to collect and remit all applicable taxes on behalf of the property owner using the hosting platform.”

As described by the Legislative Information System, the 2016 bill “contain[ed] a reenactment clause and direct[ed] the Virginia Housing Commission to convene a work group to further study the issues presented in the bill and [to] make recommendations for consideration by the 2017 Session of the General Assembly.” At the October 25, 2016 City Council meeting, staff provided an in-depth review of the 2016 legislation and described how the City regulated STRs. The 2016 memorandum is included within this packet for reference.

In brief, staff’s 2016 memorandum described that STR operations were illegal in the City, except those that might operate within the B-1, Central Business District. Although they were allowed by right within the B-1 district, a property owner could not simply begin advertising online and operate a STR because the occupancy of STRs is classified as transient and the Building Code categorizes transient dwelling spaces as a different use group than nontransient dwelling spaces. In other words, physical renovations could be required within the dwelling to allow for the STR to operate. Furthermore, the 2016 memorandum explained that if the Limited Residential Lodging act was approved in 2017, the City would have been required to allow STRs by right within any residential district and within any type of dwelling unit. As noted in the memorandum, staff believed that allowing STRs by right would have been detrimental to the framework of how our Zoning Ordinance (ZO) protects neighborhoods from undesirable uses and activities not planned for in residential areas.

During the 2017 Session of the VGA, the reenactment clause for the 2016 bill was not approved. Instead, a bill was passed that preserved local authority to regulate STRs through general land use and zoning ordinances, along with providing clear authority for taxing such operations. The regulations are now codified in the Code of Virginia Section 15.2-983 and titled “Creation of registry for short-term rental of property.” (The approved legislation is included in the packet.) Shortly after the 2017 legislation was approved, staff began drafting regulations. By May 2017, a first draft was prepared so that staff could begin internally debating the matter and talking through all the potential issues. (NOTE: The first draft of the ordinance required STRs to be owner or proprietor occupied; as described below, the proposal herein does not.)

First, it should be recognized that STRs, as a use, can be allowed by one of two ways—as a by right use or through approval of a special use permit (SUP). Secondly, this report will not go into detail with all the

talking points and potential ways of regulating STRs, however, the following is a brief list of things to consider. Should STRs:

- be allowed in the City;
- be taxed at the same rates as other lodging establishments;
- be allowed by right or by SUP;
- be owner or proprietor occupied at all times;
- be the principal residence of the owner or proprietor;
- be allowed only within certain zoning districts;
- be allowed only within certain types of dwelling units;
- be allowed to operate only a certain number of days per year;
- have a maximum number of contracts, people, or bedrooms;
- have minimum parking requirements; or
- have signage regulations.

In considering the many questions involving STRs, staff evaluated how other localities are handling and regulating them and learned that there is no “one size fits all” model that works because every locality is different and has distinct community expectations, goals, and concerns. Even locally, cities, counties and towns are taking different approaches. Although neighboring localities are referring to them as different uses and managing them in diverse ways, in general, when asking the question of whether STRs should be allowed by right or by SUP, the following localities are allowing them by right: Broadway (only in their R-3 district), Woodstock, and Staunton. Localities that are requiring SUPs include: Augusta County, Bridgewater, Broadway (within their R-1 and R-2 districts), and Grottoes. At this time, Rockingham County and Elkton allow the use by right, but they have not made any amendments to their codes since the 2017 legislation was approved. With regard to Shenandoah County, it is unclear as to how they will proceed, but they are currently drafting regulations.

Staff understands that STRs are desired uses to operate in the City and further recognizes that the “sharing economy” will continue to be a driving force in the country and in our community. In a joint publication of the Virginia Municipal League and the Center for State and Local Government Leadership at George Mason University, the article *The Sharing Economy: Implications for Local Government Leaders*, written by Frank Shafroth, recognizes that the sharing economy “has created new ways of conducting business” and “is simply stated, a trend towards renting or borrowing goods as opposed to owning them.” The article focuses on the issues surrounding transportation networking services—like UBER and LYFT—and home sharing (or STRs), where operators and consumers use Airbnb-like platforms. The model of the sharing economy typically allows “strangers [to] share goods or services, connect[ed] through a website or an online application that is facilitated by a third-party business.” The central principle of the sharing economy is the “elimination of the need to incur ownership costs for items or services that may be rented cheaply and easily” while “owners of underused assets gain additional income by sharing” the item or service that is “convenient to their schedules.”

Staff recognize there are three sides of the home sharing economy argument. In general, there are individuals that like the idea of allowing STRs as a by right use with no additional “hoops” to jump through, those that want to allow them but with appropriate controls and regulations, and those that would prefer an outright ban. As staff considered the idea of STRs, although there are several angles to concentrate on when drafting the regulations, we focused on allowing them in the City and concentrated our efforts and concerns on the desires of the Comprehensive Plan with regard to affordable housing and protecting and conserving neighborhoods. (NOTE: At the March 14, 2018 regular Planning Commission meeting, under Other Matters, staff and Planning Commission discussed the proposed amendments to the City Code prior to advertising the amendments for a public hearing. The extract regarding the STR code

amendments from the March meeting are included within the packet to review what has already been discussed about this topic and the proposed amendments.)

Staff is proposing to amend multiple sections of the Zoning Ordinance as well as to modify Title 4 Finance, Taxation, Procurement. Know that Planning Commission (PC) only has authority to vote on the Zoning Ordinance amendments, and thus will only make a recommendation on the Code modifications to Title 10. However, the modifications to Title 4 regarding taxation and licensing are included within this information to help understand all the code and regulatory impacts associated with STRs.

With regard to the Zoning Ordinance amendments, staff is proposing to create a definition for “Short Term Rental” and to eliminate the existing definition for “Bed and Breakfast Facilities.” Furthermore, the proposal includes adding regulations for STR minimum off-street parking regulations, and then to add “Short Term Rental” as an allowable special use permit within the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R. If approved, note that STRs would no longer be permitted by right within the B-1 district.

Regarding the definitions changes, the following is proposed (underlined text is to be added and text shown as stricken would be deleted):

*Bed and breakfast facilities:* See “short term rental.” ~~A single family dwelling (including the principal residence and related buildings), occupied by the owner or proprietor, in which accommodations limited to ten (10) or less guest rooms are rented for periods not exceeding ten (10) consecutive days per guest.~~

*Short term rental:* A dwelling, where a room or space within the principal building or any related accessory building is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy. A short term rental shall neither contract with guests for longer than fourteen (14) consecutive days nor, in any way, circumvent the non-transient occupancy restrictions of the zoning district in which the use is located. Short term rentals include but are not limited to bed and breakfast facilities, hostels, inns, and other similar services and operations. Any food service offered by short term rentals shall be limited to guests. The owner of the short term rental, must obtain an annual business license as required by the Harrisonburg City Code. The property owner or owner of the short term rental shall schedule a yearly inspection that shall be conducted between March 1<sup>st</sup> and March 31<sup>st</sup> to ensure compliance with the current Virginia Maintenance Code, current Virginia Statewide Fire Prevention Code, and any other applicable regulations or conditions. Should the property not comply with such regulations or conditions, a specified time shall be given to make corrections. If the corrections are not made within the allotted time, or if the responsible entity fails to have the property inspected by March 31<sup>st</sup> or any later date approved by City staff, the special use permit shall automatically expire and become null and void.

Note that staff is proposing to keep the “Bed and breakfast facilities” definition listed in the ordinance, but to refer readers to the proposed “Short term rental” definition. Since bed and breakfast facilities have been an established use for almost two decades, we believed it was appropriate to help facilitate the understanding that bed and breakfast facilities would be considered STRs.

Regarding specifics of the proposed “short term rental” definition, the reasoning for the proposed limitation to restrict lodging to no longer than 14 consecutive days and the clarification regarding non-transient occupancy restrictions is to prevent people from being able to rent to multiple unrelated individuals on repeated lodging contracts, which essentially would get around the occupancy requirements of the zoning district. Complaints regarding potential overoccupancy in residential units are one of the major concerns that staff receives on a routine basis, and therefore, we did not want to create

any opportunities for abuse of STRs to disrupt the integrity of the Zoning Ordinance’s occupancy regulations to protect neighborhoods.

During last month’s discussion with PC, staff noted that further amendments to the “Short Term Rental” definition might occur. As shown above, the definition is now more detailed than last month’s proposal with requirements that the property owner or the owner of the short term rental shall schedule a yearly inspection during the month of March to ensure compliance with the current Virginia Maintenance Code, current Virginia Statewide Fire Prevention Code, and any other applicable regulations or conditions. If corrections are needed and not made in the allotted time or if the responsible entity fails to have the property inspected by March 31<sup>st</sup>, and unless staff agrees to a later inspection date, the SUP becomes null and void. This yearly inspection practice is similar to staff’s existing boarding and rooming house yearly inspections program. The difference being that boarding and rooming house inspections occur during the month of October. Staff believes the month of March would be the best timeframe to inspect STRs because it is outside of potential high lodging seasons (i.e. summer months, autumn travel for seasonal changes and football game schedules, and holiday travel in November and December).

As explained above, the proposal is for STRs to be allowed by approval of a SUP. As is the case for all SUPs, requests require public hearings at both PC and City Council (CC), advertisements in the local newspaper, adjoining property owners are notified of the public hearing, and subject properties are posted with signage advertising the request. The current application fee is \$375 plus \$30 per acre.

For those unfamiliar with SUP processes, once a SUP application is submitted, staff reviews the application and offers a recommendation of action to PC, who then makes a voting recommendation to CC on whether the request should be approved. The month following the PC public hearing, CC will hold their own public hearing to receive feedback while also reviewing staff’s and PC’s recommendations for action. During this meeting, CC typically votes to approve or deny the request. If the request is denied, the same request shall not be reconsidered within one year of the date acted upon by CC. Depending upon when a property owner submits a SUP application, the process takes about two to three months. Through the SUP review process, staff or PC may recommend conditions be placed on the approval of the permit. CC could reject or accept the conditions and/or establish any of their own. Example conditions for STRs, which would be determined on a case-by-case basis, might include, but are not limited to:

- Requiring the owner, tenant, or proprietor to occupy the property when the unit is not rented or even requiring the owner, tenant, or proprietor to occupy the unit during the rental period. In other words, the condition could be that the STR must be the principal residence of the owner, tenant, or proprietor. (Note: Some localities have built into their regulations that STRs must be a permanent residence for at least 185 days of the year.)
- Requiring additional parking spaces or allowing less parking spaces.
- Limiting the number of lodgers allowed on the site at one time.
- Allowing PC or City CC to revoke the special use permit if violations are found or if the STR becomes a nuisance.

The other main component of the proposed regulations includes establishing minimum off-street parking requirements. To help protect neighborhoods, staff is proposing a new approach to minimum parking requirements for this particular use. The proposed amendment is to add subsection (27) to Section 10-3-25 as shown below:

(27) Short term rentals shall provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.

The new approach referenced above is associated with the ability to lessen the parking requirements, through the SUP, when appropriate. As specified in the review criteria for SUPs in Section 10-3-125 of the Zoning Ordinance, if a particular STR request in a neighborhood is believed to “be consistent with

good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area...” but there is a concern regarding meeting the minimum off-street parking spaces on the parcel by converting yard areas to parking, or where parking might be accommodated via an existing driveway or along the public or street, then staff would like to have the ability to recommend lessening the parking requirements. When appropriate, doing so would also be more environmentally friendly as well as be less expensive for the property owner when paying their stormwater utility fee. Such a practice could maintain a more residential look for STRs.

As noted by many articles, all over the country localities are concerned with the impact that STRs have on affordable housing stocks. In *The Sharing Economy*, Shafroth identifies a question that many are concerned with: “Are investors impinging on the stock of affordable housing, as they purchase homes to market as short-term rentals?” Staff believes there is a real threat to affordable housing costs when STRs are in the marketplace and that by regulating STRs through review and approval of a SUP will help manage the affordable housing issue.

The other side to the question/concern over affordable housing is that some individuals might want to operate STRs to help make ends meet. In terms of STRs, staff wants to allow for the evolution of the sharing economy to occur, but firmly believes it should not negatively impact a community or an individual’s quality of life or to a neighboring individual’s often biggest investment: their home and property. Zoning regulations offer some certainty for home buyers and property owners. For example, when someone purchases a home on residentially zoned property, because transient occupancy is not permitted, there is a degree of confidence that, although it is possible that a property could be rented to different people every month and have high turnover, such a residential environment is not likely to occur, thus there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. When short term renting enters a neighborhood that was not expecting such an environment, community instability can be the outcome. Staff believes the way to manage this use is to allow STRs only by SUP. This option creates the opportunity to allow them in the City while also providing the occasion for the neighborhood to share their thoughts and to protect the ideals of their community.

With regard to the Comprehensive Plan, staff believes the following goals and objective support the approach to regulate STRs as herein proposed:

- Goal 3: To strengthen existing neighborhoods and promote the development of new neighborhoods that are quiet, safe, beautiful, walkable, enhance social interaction, and offer a balanced range of housing choices.
- Goal 4: To meet the current and future needs of residents for affordable housing.
- Objective 4.3: To promote home ownership so as to increase the proportion of owner-occupied units in the City.

Furthermore, in the Comprehensive Plan Chapter 14 Revitalization, the Plan outlines specific programs or approaches to investigate or to implement when trying to protect areas that are identified as Neighborhood Conservation areas. Although these principles are associated with particularly designated neighborhoods, two of these approaches can be utilized throughout the City to help protect all neighborhoods. They include:

- Programs to facilitate home ownership and improve the quality of rental housing.
- Programs to reduce pressures to convert single family houses and lots to other uses.

With regard to the amendments to Title 4 Finance, Taxation, Procurement, the necessary modifications are relatively minimal. To properly tax STRs, the main amendment necessary was needed within Section

4-2-76.1 (2) by adding “short term rental” to the definition of “Hotel” and eliminating the reference to “other lodging places that offer lodging for four (4) or more persons at any one time.” The other proposed amendment was to Subsection (4) of Section 4-2-76.1 and is proposed for clarity. The modification includes amending the definition of “Transient” by eliminating the words “hereinabove” and replacing them with “in this section.”

Although staff is supportive of the amendments that are proposed herein, staff is recommending Planning Commission table the amendments. As shown in the Community Engagement section above, staff advertised the ordinance amendments and provided the proposed definition for short term rentals as it was presented during last month’s Planning Commission hearing. Since staff has proposed further modifications to the definition for short term rentals, we do not believe that the advertisement as shown above meets the “descriptive summary” advertising requirements of the Code of Virginia Section 15.2-2204.

Staff will make the appropriate changes for the required advertisement and bring the amendments back to Planning Commission for the May 9, 2018 regular meeting.

Vice Chair Colman asked if there were any questions for staff.

Mrs. Whitten said I have a question regarding cost. It used to be that everyone read the newspaper and things were advertised in the newspaper for that reason, it was easily accessible to most people. I think that is less and less the case. I am wondering, do we have to continue to advertise in that way? Or since we do have access through the library to the web and we do have a city website, could we save some money by advertising on the website and with a sign placed on the property when there is a special use or rezoning? It is not particular to short term rentals but I am just wondering if that would be a way to capture some better advertising and, quite frankly, the newspaper is expensive.

Mr. Fletcher said I am very glad you asked that question. First and foremost, the answer to “do we have to continue to advertise in the newspaper,” the answer to that is yes. We are bound by State law that we must advertise in a newspaper, that is the bare minimum. It must be in a circulated newspaper of the locality. Then there are certain parameters, certain days of the month we must advertise, certain times before the meeting occurs, and we must meet those code restrictions.

The reason I am glad you asked that question is because I failed to mention that we did a little bit more outreach for this particular public hearing. We talked last month about the different strategies in which we wanted to get the word out. On the City website we have a public hearing page for folks; we already do that for all public hearings, they go on the website. None of these additional things are required by State Code. We utilized Beheard Harrisonburg to reach out to folks that way, we did information posted on Facebook and Twitter, we reached out to the Public Information Officer to do a press release.

When an application is submitted, our own code requires us to post the property with signage for public hearings, such as rezonings and special use permits, and the State Code further requires us to give adjoining property owners notifications. Those are all the different outreaches that we do; some required and not required.

Mrs. Whitten said that is a lot.

Mr. Baugh said if anybody knows of better ways to reach people, particularly that are not expensive, just a matter of doing it, please let Council members, City Manager’s Office, or the Public Information Officer know, we do not have a high bar for doing that. We really try to jump on these kinds of things.

Vice Chair Colman asked is this the only comment we have from Beheard Harisonburg.

Mr. Fletcher said there was one other person that provided two different comments.

Vice Chair Colman asked one against and one in favor.



Mr. Fletcher said no, actually the tone of both of them was they were in opposition to staff's proposal.

Vice Chair Colman said even with all the outreach that has been done with this, I do not see a full house here tonight. I am sure for the City Council meeting it will probably be a full house.

Mr. Finnegan said thanks for your report Mr. Fletcher, I think it was really thorough. Mrs. Whitten and I were talking about is there any way to do something either not by right and not special use and it sounds like the answer is definitely no. I did have a question, you said there were two complaints this month.

Mr. Fletcher said in the last 12 months.

Mr. Finnegan said were those two about Airbnb or short term rentals situations?

Mr. Fletcher said yes. An adjacent property owner came in and said my next door neighbor appears to be doing short term rentals, there are people coming and going all the time and I do not know who they are. We get questions from people who are trying to do the right thing, they will call and say "hey, help me establish how I can do a short term rental." We will inform them that unfortunately, the current regulations do not allow you to do it by right, might you fit into the category of a bed and breakfast? They often answer "no, I am not going to do a bed and breakfast."

In years past, as I said earlier on, under the current tax code if it was allowed we could tax them and over the years I say more people actually went straight to the Commissioner of Revenue and tried to apply for the business license. They were told you have to get your zoning approval first just to make sure that the use is okay. Then they come upstairs to zoning and they ask for a home occupation permit, because they have a residential address as their business license. Then we ask what is your business and they say it is a short term rental, then we have to tell them no, sorry. That is how a lot of times folks learn about it.

Mr. Finnegan said by contrast how many complaints yearly come in about over occupancy or occupancy issues?

Mr. Fletcher said every year we give you two annual reports, the Planning Commission Annual Report and the internal planning/zoning report where you see subdivisions, zoning issues and so forth. We provide to you a close estimate of the number of complaints, in fact, we probably will be able to get better at telling you the numbers because we have a new internal software system that tracks all that stuff. I hope actually next year we might have a much more accurate count, but it is a lot. Honestly, I would say the most routine call is probably about over occupancy. We do get complaints about inoperable vehicles on properties, concerns about debris, waste, and materials.

Mrs. Fitzgerald said can you ball park it over the year, it is more than two.

Mr. Fletcher said I honestly cannot. I do not want to overestimate or under estimate, because the number I am thinking of is the total number of complaints of all zoning. What I am hearing you say is a very good idea, we will try to work with our zoning inspectors to categorize them so you have a better idea.

Mr. Finnegan said sort of like a police report, where they have stats on this type of thing.

Mr. Fletcher said I can tell you that occupancy, often times, is higher. People doing work without permits is another complaint; during tall grass and weeds season we get complaints; they put an accessory structure right on the property line we get the complaint. Things that in good faith, people thought they could do and did not know they had to get permission for.

Vice Chair Colman said in terms of the conditions, can we build in conditions, for example within B-1, B-2 or one of the more dense zoning districts, to allow non-owner occupied short term rentals. But in the residential to have owner occupied as one of the conditions. I say that mainly going back to the affordable housing issue. I do not think we want an investor buying 10 houses in a neighborhood and then turn them all into short term rentals. That is my concern on that.

Mr. Fletcher said first let me clarify a few things, B-2 is not one of the zoning district options. In B-2 and M-1 short term rentals are not permitted because residential uses are not permitted in those zoning districts. You said can we build in conditions, let me rephrase your statement, because what I think you are saying, and tell me if I am wrong, is that you want to build in regulations that say that in this particular zoning district you can only have this kind of short term rental and in another district it would be a different short term rental. Those would not be conditions. Conditions are placed upon applications. So, the answer to your question is yes, you can do that if you wish, if you want staff to go back and draft regulations to only allow certain kinds of short term rentals in certain districts, the answer is yes, you can do that.

Mr. Finnegan said I think that to your point it would make a difference at least in parking regulations, say if it were downtown, a downtown location might not have the parking requirements that a residential neighborhood might have.

Mr. Fletcher said if you are in B-1, the default is that you do not have parking regulations; however, because of the way the short term rental regulations were written you do have the authority to require parking in B-1 if you thought it was necessary.

Mr. Baugh said which is consistent with the fact that, depending on the location, we have had a practice of some B-1 encouraging that as a proffer.

Mr. Fletcher said yes.

Mr. Finks said I do not know that we can really come up with conditions that are going to be one size fits all for all the different areas that this is going to cover in the City of Harrisonburg. You can look at it and say "in this zoning you cannot allow it," but like you were saying with Harrisonburg, there is not necessarily one zoning for downtown. I think it is nice if we have some flexibility to take a look at the individual properties and figure out what makes sense for those properties, rather than trying to shoe horn in one thing, and make it work for everyone. I like flexibility. I am not necessarily advocating that has to be done, if there are regulations that make sense, that we could put over top of everything, I am definitely willing to look over them. I am not sure what those conditions would be that would fit over all zoning districts in the City.

Vice Chair Colman said it does not have to fit in all zoning districts, it is for each specific use or density; like a single family residential area is one thing compared to R-3 where you have apartments or townhouses and an investor might own a number of apartments. If one of the requirements is owner occupied, then it would be difficult to do unless they live in one of the units. On the single family that is the aspect that I think is detrimental to home ownership, because if you have an investor that buys five houses and wants to rent all of them, then I have a concern. We can build that into not as a condition but as part of the requirements.

Mrs. Fitzgerald said the special use permit process would effectively take care of that, because if you have a single investor that comes in and buys a dozen houses across the city and then has to get a special use permit for each one, and we are keeping a registry as part of this, as to who is getting what, where, we kind of know.

Vice Chair Colman said if it is owner occupied.

Mrs. Fitzgerald said yes.

Mr. Finnegan said I sent along some stats that were pulled from a site Airdna.com that just collects data from Airbnb, and some of the people with short term rentals in the area have listings; two of which already have at least more than one property. It does not tell you their name, but there are some properties currently in the area that the owner or host has more than one property listed.

Mr. Finks said were you talking about a limiting condition? Something like where you limit the amount of special use permits someone can apply for.

Mr. Fletcher said I do not think so.

Mrs. Fitzgerald said we would be able to track whether this particular approach incentivized someone to do that.

Mr. Fletcher said my concern would be the arbitrary and capriciousness of it.

Mrs. Fitzgerald said tracking is not arbitrary and capricious.

Mr. Fletcher said no and I understand what you meant by the tracking. It is like “X” person gets two approved and then we say “I see you are coming in for your third, well we are not approving your third request just because you have too many.”

Vice Chair Colman said well it will be under the conditions that it has to be owner occupied, but we do not have that in the definition right now.

Mr. Fletcher said no, the way that the proposal was put forth is that it is relatively flexible it is wide open. We talked about so many different ways. One of the versions we had, had it built in, it had to be owner occupied and we talked ourselves out of it because we realized there could be instances in the City in particular locations, where it does not necessarily need to be owner occupied.

Mr. Finks said I wonder what is the key to try and figure out a way to mitigate that without being capricious.

Mr. Baugh said I do see this underlying staff’s approach to this. This is one of those places where your planning comes in. Let us assume you are rejecting an application, the more we articulate a rejection in terms of not being consistent with planning and other things that we already established as values, that is the argument that holds up legally. The one that does not hold up is we are tired of seeing you here doing this, that does not work. But then that gets into the thing of what does our planning say, what have we said and as we point out, the idea that we would like to see them in one part of town is not going to be the same as another and presumably would impact these types of discussions.

Mr. Finnegan said so John Doe comes in for his third special use permit, we can conceivably say that is not consistent with Goal 4, Affordable Housing. If there was an argument to be made we could use that to lean on.

Mr. Baugh said yes, especially if you want it to be true. That is right along those lines of I am coming in for my third application for the third property in the same part of town where we have allowed a lot of these, the bar is probably high for us to say no. If I have three properties in different areas of the City, of course you are evaluating each one, how does it fit in with the neighborhood, the character of the neighborhood, and one of the directions our planning says if they want to go in this neighborhood is it consistent with it, if it is. great, if it is not, then there is a reason to not approve it.

Vice Chair Colman said what if it is not the same person, what if it is the other neighbor, or the next neighbor, they all have the right to apply for it and they should not be limited. I think that the parameters have to be well defined. My proposal is that we establish, maybe not conditions, but maybe within certain zonings that owner occupancy is required so that anybody that owns a house is able to apply for a special use permit to have short term rentals. But in certain areas you do not have to live there. If you own property you can rent 10 houses or 10 apartments and that would be fine as well. But that depends on the type of zoning we are in or the type of zoning we are looking at, which that seems to me to make more sense.

Mr. Finks said I am thinking of scenarios where that could be an issue, like if someone owns a house in R-1, they retire and they are at VMRC now, but they still own the house and do not necessarily want to rent it out year-round, but only at certain points.

Mrs. Whitten said or maybe they go to Florida for the winter.

Mr. Finks said we are talking about someone that is not living on the property at all any more, but they still live in town, they still own the property, but they are not going to ever be living there again. That would be one scenario where it may create an issue, could you take that condition out at that point if we added it.

Mr. Fletcher said if that is what you would like to do we can draft that, but I want you to understand one thing. When we were thinking about this if you go the route of specifying, and let me just use one example, in R-1 and R-2 you say every short term rental has to be owner occupied, but in R-3 you do not. Well, the concern there, at least from a staff perspective, is that you have a lot of single family home neighborhoods that look like R-1 and R-2 neighborhoods and they are zoned R-3, Harmony Heights, Diamond Court, Pearl Lane, and portions of Woodland that are all R-3. How many times have we talked about the fact that someone comes in and says, "I live in an R-1 neighborhood," no sorry you live in an R-3 neighborhood. That is why we were trying to make it as flexible as possible, although that is a lot of text, it is relatively simplified.

Vice Chair Colman asked if there were any more questions for staff. Hearing none, he opened the public hearing and asked if anyone from the public would like to speak.

Janice Fitzgerald, 491 Garbers Church Road, said I had some remarks prepared and I do not feel I need to give them now, but I will. In 1998 we wanted to lease rooms in our vintage house and approached the City for a business license, recognizing that taking money in exchange for goods and services is a business. We called our business a bed and breakfast. The City of Harrisonburg had no ordinance for such business use and as the applicant we had to write, with your help, the ordinance, and over a 90-day period obtain approval of Planning Commission and City Council. Things have changed a lot since then. We also had to obtain a special use permit because we are located in a residential zoning district. Expansion of our business twice, in 2005 and 2012, required re-application and re-approval, which was achieved.

2018 brings us into the era of the sharing economy. The dictionary defines this as an economic system in which assets or services are shared between private individuals, either free or for a fee, typically by means of the internet. Thanks to the sharing economy you can easily rent out your car, your apartment, or your bike, for example. The sharing economy has brought us new business models like Vacation Rental By Owner (VRBO) and Airbnb, and they are key to the sharing economy because they let people reach out and share with anyone. These huge online directories for goods and services have emerged in a lightly regulated economy. That is why this ordinance amendment is necessary.

On the surface it is appealing to make a little income by selling your extra bedroom, but below the surface looms the reality of risk to host and to guest. Issues of safety, health, liability and income are all part of this sharing that well meaning individuals may have never considered. These concerns apply to any sharing economy type agreement no matter how large or how small. The consumers who participate deserve a very clear picture of the risk they are taking. They are real and they are serious. Properties inviting guests to stay for a fee need to be registered by the City, inspected by Fire and Health Departments and pay sales and use taxes necessary to support the infrastructure provided by the City that enables guests to come and go.

A special use permit enables adjacent property owners to be aware that a legitimate business is operating next door or in their building or in their community and be able to consider how it may impact their property. A quick online search of Airbnb and VRBO just today displayed more than 1,500 vendors in

Central Virginia. One website broke it down by attraction, it was interesting how they were telling you how many were here. JMU for instance 234, the City of Harrisonburg 182 it is impossible to know exactly how many are operating within the City limits, because of the way they are presented on these websites. Virginia is the first state in the union to pass meaningful legislation relative to the sharing economy. Currently, there is proposed legislation ongoing throughout the country.

The new statute is driving this effort and Harrisonburg City Planning staff is ahead of the curve and updating the ordinance, for which I am grateful. The impact of the internet on our private lives is clearly illustrated in yesterday and today's hearings on Capitol Hill, relative to Facebook and other such platforms, upon our privacy and the powerful influence wielded by internet companies. The impact of the internet on the business of leasing a bedroom, an apartment, or a whole house for a short period has brought about the necessity of the City to act. All competitors should be subject to the same rules of operation. The proposed amendments justifiably require legal and proper operation of a lodging rental business. As the only City of Harrisonburg business operating primarily as a bed and breakfast and having legally done so for the past 20 years, we support the proposed amendments and hope that you will pass them.

Barbara Anders, 455 Eagle Lane, said I would like to know if that would include Airbnb's, in the short term rental.

Mr. Fletcher said yes, short term rental is the general term defined in classifying all short term rentals. Airbnb is just one business that is a platform for the host to connect with people to do that. Often times people refer this as the Airbnb ordinance.

Mr. Anders said okay I was not quite sure. I once googled Harrisonburg Airbnb's and I was surprised how many showed up. They would have to get a special use permit?

Mr. Fletcher said yes.

Joel Slocum, 742 Roosevelt Street, said you all did an excellent job. I walked into the room not super excited, but I think you all clearly outlined exactly how this should go about and folks who want to provide housing that is safe and fair to the neighbors.

Panayotis "Poti" Giannakaouros, Harrisonburg, said to complicate your deliberation just a little bit, something that is in order of magnitude smaller than what the first person testifying described, but, I think that what you are drafting might affect some other uses that you may have not considered; about which I will be learning a little more on tomorrow morning. That is something that is called Three Quarter-Way Houses, it is like a half-way house, but less so. The defining sort of feature of these has been that people who are in a rehabilitation program of some kind go into a house, they fill up the house because of technicalities of how they are related or not related they can get around occupancy requirements and they operate and this sort of model exists.

There are about 114 around the state with 900 beds, it is moving along in a fairly slower clip than that, but the demand in that kind of use may be increasing, an interest in that may be increasing here in the City especially if the City moves in directions that allow it to more easily bring people under court supervision. Whether that will impact you or not I just thought I would put that on your plate so you can consider it as you think about possible effects.

Mr. Fletcher said I just want to make sure I understood what the term was.

Mr. Baugh said Three Quarter-Way Houses, it is like the half-way house but it is three quarter house.

Mr. Fletcher said okay, thank you. I just wanted to make sure I had the correct terminology.

Mr. Giannakaouros said it entails less supervision than a half-way house, but it is not the ordinary rental. You go there for three months or four months, but there is some level of supervision.

Vice Chair Colman said it is something that we may have to look into whether it affects it or not.

Mr. Fletcher said not necessarily, there are programs that exist in the City, often they are 501(c)3 or charitable and benevolent institutions, and there are zoning districts in which they can properly operate and of course any zoning district allows anybody to rent on a month to month basis. Often times the property owner protects themselves and enforces people to sign a year long lease, but you could just rent it month to month.

Mr. Baugh said obviously we do not have it here. If criminal reform would move faster than it has, then we would already be more familiar with this. I hope we make more effort and are more successful in criminal justice to move away from traditional incarceration models, this is some of the type of things that we are going to need to be seeing more of.

Vice Chair Colman asked if anyone else would like to speak in favor or against this request.

Isaac Bryan, 369 South Willow Street, said I really appreciate the work that has been done on this proposal. I did have a couple questions. What do you believe a business license will entail?

Mr. Fletcher said I have not obtained one myself, but I can tell you from what I just read the business license is free if you do not make more than \$10,000 on the business. It is written in the City Code. It is not that expensive, you apply over the counter and it is yearly. You apply through the Commissioner of Revenue office just for the business license. If you want you can give us a call tomorrow and we will give you the right code section to better understand it.

Mr. Bryan said okay. I am assuming that there will be some insurance, does someone's home insurance qualify as liability insurance?

Mr. Fletcher said I cannot answer those questions.

Mr. Bryan said I sat at last month's meeting and it sounded like that the ideal Airbnb host was someone who lives in the City and maybe wants to rent out their house a few times a year, is that correct, is that generally the sense?

Vice Chair Colman said those were discussions last month, this month we kind of evolved from that.

Mr. Bryan said I think this proposal is a business proposal for someone who wants to act as a business and I did not gather that from the discussion last month – that there was a hope that Airbnb would become a substantial business in Harrisonburg, that they would remain as owner occupied, or someone who is wanting to rent out their house. As I think about the different fees that an Airbnb host would incur based on this proposal, you would have the Airbnb fee, the income tax fee, an occupancy tax fee, the City tax, the business license, the special use permit, potentially insurance and liability and then the inspection fee. Is that correct?

Mr. Fletcher said there will be no inspection fee, unless you had to get a building permit for some reason, then of course the fee is built into the inspection. But that yearly inspection is free.

Vice Chair Colman said you will also have your initial fee, which I guess it is the application for the special use permit.

Mr. Bryan said I think that some of those hoops that an Airbnb host would need to jump through would be a deterrent for someone who wants to do it only a few times a year. It would encourage the people who are maybe wanting to buy investment properties to do it more and act as a business; therefore, creating a further issue with housing affordability. That is why I think that there needs to be some thoughts of these many hoops that we create is actually deterring the people that we would ideally want to host. It sounds like there are way more issues with over occupancy than there is with the two complaints for Airbnb in the last year. I would hate for someone to say there are way more hoops for me to go through to be an

Airbnb host, so now I am just going to rent my house to college students; therefore, again creating more of an issue with the housing affordability here in Harrisonburg.

Mr. Whitten said only if you moved to a district where you could rent your house to multiple unrelated people can you do that. Designing comes into play there too.

Mr. Bryan said the other question I had, are we looking at what the County has been doing and what kind of issues have been going on in the County with Airbnb.

Mr. Fletcher said we spoke to the County and several years ago they had significant issues in Massanutten. But, I spoke with the Director of Planning and Community Development and they have not acted on any of the ordinances since the 2017 Legislation and they are currently just allowing it.

Mr. Bryan asked do we have any idea of how many complaints they have had in the last 12 months.

Mr. Fletcher said no.

Mr. Bryan said thank you.

Jeremy Litwiller, 1720 College Avenue, said I think everything you all have put together is fantastic. I think if people are doing short term rentals they should be licensed with a business license. There should be a level of professionalism brought to what they are trying to do. Some of the questions that I have would be more related to the special use permit side of it, rather than the by-right side of it. If I am an investor and I own a four unit building in Parkview, by-right I can rent every 30 days to somebody different, I do not have to have a special use permit, I do not have to have inspections, fire code, I do not have to have a business license, I do not have to have any of those things that are now projected to be a part of it if I want to rent it for 29 days instead of 30 days or if I want to rent it for two full weeks or whatever the case may be.

I think some thought should be given to the idea of in zoning districts where I can have a four unit building and have rentals, could that be less restrictive in terms of the special use permit and maybe use that more as a way to deal with the housing affordability in terms of an investor buying five houses in a single family detached residential neighborhood and using that for Airbnb. Or can the restriction be more owner occupant for a single family detached home, you have to have an owner occupant if you want to do a rental. But, in a place where I can already rent it by-right to multiple tenants, why do I need a special use permit when I can do it for 30 days at a time versus a week at a time. I feel like that is a little bit of adding a few more layers of restriction than what I personally would agree with.

The rest of it I think is fantastic, but if it does not currently apply to my ability to rent a townhouse or my ability to rent an apartment in my four unit building I guess I do not quite see why then I now need a special use permit to do it for a shorter period of time or those inspections, or those other things, what is "kind of good for the goose is good for the gander" type conversation. I do not see the huge distinction. I do not see we have a rampant issue as well if we have only had two complaints in the last 12 months. It does not seem to be like there are lots of people who are misusing this. Potentially the business license and a few of those other things could raise that level of professionalism to a point where they may even eliminate those, so we do not have people just running around doing it.

Initially I was thinking maybe just for R-1 do the special use permit, but then you make a great point that there are many neighborhoods that are single family residential that may not be zoned R-1. Could it be more looked at the type of residence, single family detached versus townhomes or whatever the case may be. I just had some concerns about the special use permit side of it.

Mr. Finks said as far as when we talk about affordable housing it is not necessarily just single detached homes. The issue in my mind is that if we are taking those four room buildings and making it easier for someone to turn that into an Airbnb rather than rent it out, then that is possibly affordable apartments that

are being taken off the stock that can be rented by residents, students or anyone. Now they are Airbnb, so they are not for residents of Harrisonburg anymore. If you make it easier to turn apartments and townhomes into an Airbnb rather than rent out to residents or students, in my mind it is affecting affordable housing because that means there is going to be less apartments in the City and it will require more apartments to be built to make up; hypothetically, to make up for the fact that so many of those apartments are now being turned into Airbnb's rather than having residents annually sign a lease.

Vice Chair Colman asked if anyone else would like to speak in favor or against this request.

Randy Velker, 1207 South Dogwood Drive, said I am not really against. Obviously, you have put a lot of energy and time into putting this together. I was just looking for some clarification, is this special use permit a one time thing or is this something that happens every year?

Vice Chair Colman said it is a one time thing, unless there is a lapse in terms. Some of the definitions that we have on the short term rental is if the inspection reveals that there is something that needs to be corrected, in which that is not done within a period of time that has been established then the special use permit would lapse and it would have to be reapplied for.

Mrs. Fitzgerald said otherwise, it is a one time thing,

Mr. Velker said and from then on it will be a business license, essentially.

Mrs. Fitzgerald said you are commissioned to use that way.

Mr. Fletcher said special use permits are a one time fee. They are not guaranteed. If the SUP is approved, as long as you maintain the use and there is not a lapse in use for 24 consecutive months, it is a State Code provision that you can keep the use. As long as you maintain that use, I can buy the property from you, I can have the use, it stays with the property not the property owner, but it is a one time permit.

Vice Chair Colman said however, there could be conditions on it that it could be recalled by the Planning Commission or the City Council.

Mr. Velker said if there are complaints or other things like that.

Mrs. Fitzgerald said it is not something that you would have to do yearly under normal circumstances.

Mr. Finnegan said part of it is not just giving us leverage to do something but, to give the neighbors some kind of traction to do something if it becomes a problem.

Mr. Velker said thank you.

Vice Chair Colman asked if anyone else would like to speak in favor or against this request. Hearing none, he closed the public hearing and asked Planning Commission for a motion on the request for discussion.

Vice Chair Colman then said the points that were presented were very valid and those are worth discussing more.

Mr. Fletcher said would you like for me to explain the transient and non-transient definition.

Vice Chair Colman said yes.

Mr. Fletcher said the zoning ordinance states the difference between transient occupancy and non-transient occupancy. You find it in the definition of dwelling. The zoning district will then tell you the types of dwellings that are permitted. Once a dwelling is considered transient, that also impacts the Building Code, because with the building code certain types of dwellings are built to different regulations; transient occupiers are not aware of their surroundings, you then get into ingress and egress issues, bathroom spaces, accessibility standards, and others.



The Zoning Ordinance basically says if it is leased less than 30 days, it is considered transient. If it is more than 30 days it is considered non-transient. I did not get into this in the presentation, but it is in the report, about what does the Zoning Ordinance do for you. Some people say “it protects me from my neighbor and my neighbor from me.” I do not like to think about that way, but it sets out potential consistencies, when you buy property you know what your neighbor can do with his or her property.

There are certain levels of confidence about the permanentness of your neighbors. You buy into a R-1 neighborhood you know it is non-transient occupancy, you know it is possible that there could be turn over every 30 days, but the reality is that our culture and the way property owners protect themselves into requiring leases, you usually do not have that high turnover. It is usually a year long thing. It is that level of certainty that the Zoning Ordinance provides to people when creating a community and other things.

Vice Chair Colman said I think that Mr. Finks makes a good point also in terms of the apartments or multi-family buildings. Sometimes those are affordable housing and therefore we also want to protect it. I think maybe to counter your point that is exactly why we want to have this special use permit across the board, so that we can determine whether that is allowed or not. It might not be everybody’s intention, but somebody could use that property for that and then it is limiting. Certainly, most people want to own a single home, but it is not always the case, most cases affordable housing is a rental property.

Mr. Finnegan said in speaking of apartments if you go on Airbnb right now you can see that certain apartments are being rented out on Airbnb as well. Some of the ones on the east side of town, when you peruse those listings you see these are places that are probably in violation not only of the ordinance but of their lease. According to the information on Airdna.com, which collects information from Airbnb, there is at least one property in the Harrisonburg area that is making over \$100,000 in annual revenue, according to their stats and several others that are making \$50,000 or less through Airbnb revenue. I think it is significant when you think about what that might be doing to the housing market. I personally do not believe it is a huge problem yet, but I also do not want to wait for it to become a problem. When I look at that, it is like there is gasoline leaking out and we need to do something about it.

Mrs. Whitten said it definitely has that potential.

Mr. Finks said we already have an affordable housing blooming issue.

Mrs. Whitten said I think trying to separate out zoning districts and say we do not need it here, but we need it over here, I feel like it is even handed to say across all zoning districts where people are living, because neighborhoods matter, no matter where somebody is living. We want them all to be safe and to be a nice place to live and we care about our neighborhoods, that is the bottom line.

Vice Chair Colman said the question is whether we can have as a condition that it be owner occupied, is that a valid condition.

Mr. Fletcher asked whether he meant circumstantially or built in the regulations.

Vice Chair Colman replied circumstantially.

Mr. Fletcher said yes. You can tie it back to the special use permit. That is a valid condition.

Vice Chair Colman said one of my concerns would be in a single home neighborhood.

Mr. Fletcher said when you mean owner occupied that can mean two different things to me. One, the person has to be there, like a bed and breakfast, someone is present. Or two, it is their primary residence.

Vice Chair Colman said it is their primary residence of the owner of the property.

Mr. Fletcher said there are different ways we can go about doing it, in fact the limited residential lodging act going back to 2016 that was one of the requirements. It said that spaces could be rented as their primary residence.

Vice Chair Colman said I think that gives us tools to make those conditions when people come in for special use permits depending on what the situation is. If it is an apartment building we would have a different approach to it compared to a single-family home.

Mr. Fletcher said when you get into that I am going to tell, it becomes problematic. We have talked about these other localities that are saying that the owners would have to occupy 185 days of the year.

Mrs. Whitten said how would you track that.

Vice Chair Colman said I understand that is not easy to do, but if it is a thriving business, then the City would be getting revenues from it.

Mr. Fletcher said I eventually wanted to ask the question and I wanted to ask the question after you voted. I will ask you now, and unless we are directed otherwise, you all know we have three different ways that we enforce the Zoning Ordinance. By complaints, proactive enforcement, and whenever properties are under scrutiny for some other issue. This one is a little different for us because the Commissioner of Revue is involved, there is money involved and they all want to tie it to revenue. Much of the argument is that there is a loss of revenue because people are staying in Airbnbs and not paying taxes like they would be if they stayed at a bed and breakfast, a hotel or motel. The question is, staff would like to have direction as to whether or not you want us to proactively go out and find these operations and enforce the ordinance.

Mr. Baugh said and ultimately that is a City Council decision, but I think the input of Planning Commission on that would be valuable.

Mrs. Whitten said I like proactive zoning enforcement.

Mr. Finks said I like the idea of it, but I do not know what that looks like.

Mr. Fletcher said my reply to that would be, yes, it seems like a lot of work, but there is no use in not allowing us to try it if that is what you want us to do; and then we can explain any kind of issues we might be having.

Mr. Finnegan said it would be a person and man power hours problem potentially.

Mr. Fletcher said some of the short term rentals I understand you can see them quite easily where they are, some provide outdoor pictures, some do not. But our folks know our City quite well and if we have the direction to go proactive, I think we could do the wishes of Planning Commission and City Council.

Mrs. Fitzgerald said but you would know who has applied and you would know who has gotten the special use permit, the logistics are in the special use permit phase as well.

Mr. Fletcher said I am talking about the ones that do not have the special use permit.

Mr. Baugh said the whole situation we have right now is that any of us can go get on Airbnb and get a place in town from somebody who obviously is in violation of the existing rules.

Vice Chair Colman said I think right now we are providing the avenue for everybody to be legal and let us provide that first.

Mr. Finnegan said I think a grace period once the word gets out there.

Mrs. Whitten said I agree, but I think we need to say we are going to be proactive otherwise what is your incentive to go through the process.

Vice Chair Colman said we will have a grace period.

Mr. Finks said we can give a deadline.

Mrs. Whitten said you can post the speed limit and never enforce it.

Mrs. Banks said would that be the same for the Commissioner of Revenues' office enforcement.

Mr. Fletcher said no, and that is the thing the Commissioner of Revenue operates a little different than us. In our world, we deal with your second most important asset, your property, and that is why we have this system that we have, which is planning, proactive and the cycle we do and then when the property is under scrutiny, so we are not out there just trying to find violations all the time. But the Commissioner of Revenue is money and when they know, they go; but they do operate differently than us.

Mr. Baugh said in fact they are required by law to do that.

Mr. Fletcher said I never go on the Airbnb website because I do not want to know, because once we know, then we know.

Vice Chair Colman said there is an overlap here between, we can get a grace period from our part but the Commissioner of Revenue would not.

Mr. Fletcher said I am not sure what you mean by grace period.

Mrs. Fitzgerald said getting the permit in place before you are subject to proactive enforcement.

Mr. Baugh said if we decide to adopt this policy, we could also decide when we want to tell staff to start enforcing.

Mr. Fletcher said thank you, I am not sure about the grace period because it is not like we are waiving fees or letting people get by for a while. Those are not fees, those are covering costs.

Mr. Baugh said I think if we are going to go this route obviously there is going to be staff discussion between Community Development and the City Manager's office to work this out. There are going to be things in there about resources and possible funding, so it is probably not something that it would be just okay we are going to do it.

Vice Chair Colman asked if there were any more discussions regarding this request.

Mr. Finnegan moved to table the Zoning Ordinance and Title 4 Finance, Taxation, Procurement Amendments – Short Term Rental as presented by staff.

Mr. Finks seconded the motion.

Vice Chair Colman said we have a motion and a second to table this matter until next month's meeting, which will be held on May 9, 2018. This means that staff will re-advertise the new definition. Do we have to have another public hearing next month?

Mr. Fletcher said yes you will have to hold another public hearing next month. We will not do the whole presentation, we will just bring it back up and you all can vote the way you wish.

Mr. Baugh said one thing for the benefit of the gentleman that was asking about the business license. Anything under \$10,000 it is free; \$10,001 to \$25,000 it is \$25.00; and \$25,001 to \$50,000 is \$50.00; and after that you look like a real business and it gets complicated.

Mr. Finks said I think the largest fee is going to be is the special use permit.

Mrs. Fitzgerald said and that is a one time thing to cover costs.

Vice Chair Colman called for a voice vote on the motion.

All voted in favor (6-0) to table the Zoning Ordinance and Title 4 Finance, Taxation, Procurement Amendments – Short Term Rental as presented by staff.

Mr. Finnegan said I wish we had more latitude to do more things with this in order to address affordable housing.

Mrs. Whitten said did we find out that we had no latitude at all with that.

Mr. Finnegan said I emailed Mr. Russ and yes that is what we found out.

Mrs. Whitten said no fees could be associated with this.

Mr. Russ said we can charge fees, but they are essentially processing fees.

Mr. Fletcher said we also talked about it this morning, can the City have the authority to somehow force online businesses to provide data of business in the City and the answer we believe is no.

Mrs. Whitten said if I buy something from Amazon, they have to tell you that I bought that and that I owe tax on it, how is this different.

Mr. Russ said do you mean when Amazon collects sales tax. I do not know how other Virginia localities are doing it, but in a lot of places Airbnb has been relatively cooperative and will collect the transient occupancy tax for you.

Mr. Fletcher said I do not know.

Mrs. Whitten said why should you be able to be anonymous.

Vice Chair Colman said let us move on to our next item.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: May 11, 2018**

Chair Way read the request and asked staff to review.

Mr. Fletcher said a public hearing was held at Planning Commission's April 11, 2018 meeting. Following staff's recommendation, Planning Commission tabled the item so that the matter could be readvertised to reflect modifications made to the definition for short term rentals. The staff report presented to you currently remains substantially the same as the report presented in April, except for an additional note on page 5 describing proposed increased application fees, the updated advertisement in the Community Engagement section of this report, the April 11, 2018 Planning Commission Minutes Extract, and additional comments from Be Heard Harrisonburg are included as attachments.

Chair Way asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if anyone would like to speak.

Ritchie Vaughan, 665 Lee Avenue, said I am 100% behind making short term rentals legal for a variety of reasons. I think the way that you are going about doing it is so onerous that you are going to be disincentivizing homeowners from doing short term rentals; they will either do it illegally or we will lose short term rentals in the City. As a realtor, I work with a lot of people who are in transition from one home to another. It is far more common than you might think for a family or an individual to be stuck without housing for two days, two weeks, or two months when their rental ends and they are waiting to close, or when they have a home that is being built and the finish date gets pushed back. These people do not have anywhere to go if they do not have family members to stay with or they get stuck in long term motel rentals with two kids, a dog, and two cats. That is the only option available if there is no short term rental housing available.

Similarly, we live in a college town and there is major peak demand for short term housing on football weekends, or like last weekend for graduation. We do not want to provide enough hotel rooms for every single person who comes here for graduation to have a hotel room; because they will be vacant the rest of the year and that would be a very inefficient use of resources. Those of us who live here, who maybe do not want to be here during graduation weekend can rent out our houses and we can give families a really good experience; they stay in town, they eat in town, they buy their gas in town. That all comes back to

Harrisonburg, to our businesses, to our community. If we do not have space for people to stay here, they end up staying in Staunton. I mean that literally, people have to stay in Staunton because we do not have short term housing.

If we make it so onerous that an owner, maybe someone like myself, who just wants to rent out on a football weekend or just wants to rent out on graduation weekend, has to spend \$375, spend three months going to meetings, and have their house inspected every single year to do this, they are not going to do it or at least they are not going to do it legally. If we are then incentivizing people to do it illegally we are probably not going to be collecting taxes on what they are doing. Those are some of the major things that I wanted to bring up; that there is demand.

I know there is a lot of talk about how allowing short term rentals incentivizes people to hang on to vacant homes so they can rent them out for six weekends a year. I do not know how many of you have ever listed a short term rental, but it is a pain in the butt. It is a lot more effort than just renting out to somebody whether it is month to month or year to year. I do not foresee that happening. I own five rental houses in addition to my primary residence and I would never turn those into short term rentals. It sounds like a terrible idea and I think that if it does become a problem, which I do not foresee as someone in the industry, but if it did become a problem, I think it is something that could be fixed retroactively. But the way you are going about it now is just so onerous that you are causing new problems.

Scottie Pendleton, 211 Emerson Lane, said I am an employee of JMU and can speak to the demand for short term rentals as it being a college town. My introduction to Harrisonburg was about two years ago when I interviewed for my job. There was an event that weekend and I do not remember what event it was, it was not a football weekend or graduation since it was mid-April. I had to stay in Staunton because every hotel room was booked in Harrisonburg. I had to eat in Staunton for breakfast and for dinner after my interview and then drive to and from Staunton. I was coming in from Norfolk so it was a fairly long hike. With the expansion of Hotel Madison, we will have a little bit more hotel space, but for peak weekends we still simply do not have enough space for out of towners to come stay in our City. That is cumbersome to JMU employees, cumbersome to residents in the City who also want to be able to use and invite guests here during that same time.

The other thing I can speak to is that if you are traveling with a pet, as many of my friends from out of town who come visit the City do, a hotel room especially for a long weekend is not necessarily an option. Not all hotels allow dogs, and it can be expensive to get a pet sitter, so that preemptively ends up pushing people outside the City either to camping or in the winter months to simply not travel here in general. We need short term rental capacity that can vary with seasons and with peak weekends or peak times. I agree with Ms. Vaughn that the way this is going about is simply too cumbersome and will dis-incentivize owners to do that or just simply do it illegally as they have been doing for a couple years now. If you go look, you can find plenty of Airbnb's in the City. A fee or a tax on that is one thing, making a long application process that requires multiple levels of approval is basically going to make people just do it illegally.

Janice Fitzgerald, 491 Garbers Church Road, owner of By the Side of the Road Inn & Cottages, said last month I spoke a little about the need for this amendment. I mentioned that 20 years ago we put the bed and breakfast ordinance on the books in this City, because that is the right way to do business. I could have opened my house rented rooms and never come downtown to ask for permission until you caught me. I did not do that because any prudent business person knows that there are risks involved in operating a rental business. Even if you have a lovely home and a hospitable disposition and you love your City and you want to house guests easily to maintain our reputation as a "Friendly City." That is not wise when you invite someone into your home and take money and in turn you immediately have a situation that requires regulations.

We have operated By the Side of the Road for 20 years almost. In that time, it is true that we had a shortage of rental space especially for those weekends particularly in our university town. Now that the universities have sort of planned to have graduation all on the same weekend you would think that it would be worse than ever, but it is not the case. Over the 20 years of operation of a luxury accommodation for lodging in the City, development has occurred and now it is not uncommon to have availability on special event weekends. That has certainly been the case since the growth of vacation rentals like VRBO and Airbnb. Many good-natured citizens without a lot of study or understanding have jumped on that bandwagon to rent the bedroom or the whole apartment, even a house in Massanutten; but, they are doing that at a risk not only to themselves but to the guest they invite in.

If you do your research you will see there are some terrible occurrences because of lack of regulation in short term rental. Dennis and I over the years have worked with the City through a couple of expansions, we pay fees every time and that is expected. The City is offering services to us and to the citizenry to keep ordinances well developed and business owners in compliance and that is how it should be, that is what your job is and I have no complaints about that. Standing here before you I came to the podium just to defend the need to regulate. We need a short term rental regulation. We already know it will be very difficult to enforce that.

People that wish to illegally rent a room run the risk of whatever might occur as the result of that illegal rental and if they are not properly insured, if they are not inspected, if a fire occurs, if there is a health issue, a guest could bring a case against them. That is not your fault unless you have failed to protect the City and protect the businesses in the City by offering a way to properly regulate and control that kind of business use of property.

Karen Stinson, 424 East Wolfe Street, said I have been at this location for almost four years and it has been fabulous to see this area change with gentrification of the neighborhood. This area has changed over to beautiful blocks, beautiful streets, beautiful well-kept homes with young families, retirees and a sense of community. I desire to open an Airbnb in my home and of course I am thinking to make a little extra money with it; but, I am also very proud of the City and I want to be able to share the City with those coming in from out of town. When families come in for college visits or for weekend events I want to be able to promote the downtown. I have already started to collect menus for downtown restaurants. I have been working on this to be able to make it happen.

I think that Harrisonburg has a lot to offer, I think that short term rentals are necessary as explained earlier by some of the other speakers. This is my home and I love my house and I do not want anything to happen to it, but I am willing to make it available to people who need a space to stay and who may not be able to afford the higher end rentals that may be available. Also, the hotels may be full or do not accommodate family oriented or home oriented environments for people coming in from out of town. I understand the sense of community was a concern, I do not foresee that in my neighborhood because we are promoting community. I want to bring people into the City that will enjoy the City and perhaps not staying in a hotel they would more likely experience the downtown restaurants.

I work in Staunton and it is surprising to me how many people come from Staunton to shop in Harrisonburg, but do not know about the downtown at all, and that needs to change. I want to help that with this little business endeavor of mine. I do not expect tons of money, I want to be there when my guests are there. I will do what the Commission recommends to be able to make this happen, but I can imagine there are people who cannot afford additional fees, do not want to go through that process and all the time that is going to take for that to process. I agree there must be some kind of regulation, I can see where that can be possible, but I think it does have to be doable by your ordinary resident to be able to promote the City and promote the growth of the City.

Lisa Hawkins, attorney at Lenhart Pettit, PC, said I am here on behalf of my client who chooses to remain anonymous. I have read the report that was submitted to you, I read the excerpts of your minutes and your conversations that you had in April and essentially, I am here to advocate for a request that was made by Planning Commission at that time, which was to establish a committee to further look at and explore options to address short term rental issues. The response of the staff to that suggestion in April was and I am going to read it, "what would a committee come up with because you have two options, it is by-right or it is by special use permit. By right makes a significant impact in the City of Harrisonburg, anybody could do it anywhere." That message was repeated again and again through those minutes as if really the only options were a complete free for all or complete control and I respectfully disagree that is the case.

There is a new state law that allows a registry for short term rental properties. It creates a mechanism for the City to require people desiring to use their property in that way to register. Short term rentals, which the State has defined as less than 30 days; which is a little different from what you are proposing, but that is how they define it. It allows you to collect lodging taxes and fees from those owners who are listed on the registry, it allows you to fine people who lease their property without registering or who violate noise or other ordinances and it allows you ultimately to deny repeat violators the right to offer their property for short term rental. It addresses some of the concerns that were discussed by Planning Commission members.

I think that what you have is an opportunity here for the City, not just from a revenue perspective, and I think that was a very real opportunity from a land use perspective as well. There was a lot of discussion, for example at the Planning Commission, about apartments presenting more risks and concerns than single-family houses when it comes to short terms rentals. A lot of times the safety of those structures is not in control of the tenants of the apartments and there is more risk for conflict with neighbors in close quarters such as an apartment building.

One example, the City could provide that short term rental is allowed only by special use permit in multi-family structures. Allowing that concern to be addressed, but allowing more flexibility for those in single-family homes. You could allow short term rentals to families only, essentially continuing your no more than two unrelated person restriction that currently apply to single-family homes more generally to short term rentals. Essentially then, say if you want to short term rent your property to fraternities or large groups that are less consistent with the neighborhood or community, then you require a special use permit. But if you are going to lease it to families, then you could apply through the registry, so essentially drawing the line in a different place to address a different set of considerations. It could require the registered property to have an annual inspection to make sure they meet minimal standards, such as having smoke detectors that operate and so forth.

My nephew just graduated from Radford University this past weekend and my extended family, some traveled from California to come, and I went down. My mother went through every room in that house to make sure that there was a functioning smoke detector and so my mom would be happy to know that someone was looking at those considerations and I think those are appropriate. But I will also tell you that it was much more affordable and enjoyable for my family to be able to all stay in the same house, where we sat around the table, we played games, we shared cake, and we would not have had the opportunity to do that in a hotel room. It would have cost us a lot more money and we would not have had the together time that we were able to enjoy in a home. We did go out to eat but we were able to have bagels for breakfast, which was nice. But again the safety standards, smoke detectors can be built into a registry requirement and other types of structures to address this.

You could require a special use permit if there have been a certain number of substantiated complaints, or continued violations at a particular property. If there are multiple noise ordinance violations at a particular property that can be a trigger for removing them from the registry and thus requiring it to be

approved only by special use permit. My point is that there are a lot of places to draw this line, consistent with the City's authority under applicable law, and I am troubled that the default seems to be a special use permit, which I consider to be a very high bar. That imposes burdens on owners in terms of costs, which they just went up, and time in terms of the process. But more than that, staff has made it clear to you that they intended it to be a very high bar and in fact say we intend to have a high threshold for these uses in the City.

I think what that means is a lot of folks are going to ignore it, they are just going to continue to do what they have done to date, they are going to operate and take their chances. What that does is worse for the people who are renting these homes, worse from the land use perspective, it is worse from a revenue perspective, and it creates burdens on the City staff, who now have to go out and try to hunt these people down in order to collect lodging and tax revenue and pursue enforcement of the land use regulations that say you need a special use permit.

A registry, in contrast, I think, if properly structured, could create an incentive for people to comply. If it is structured so that if they are caught two times without having registered, then they are in a special use permit territory; now, you have an incentive for people to come forward, sign up for the registry, collect and pay their taxes and get their inspections without creating a substantial financial or time burden associated with getting the right to do this on a periodic basis for most people. I am concerned that a lot of this push for special use permit seems to be predicated on the assumption that short term rental or Airbnb hurt property values in some way. I am not aware of any evidence that is the case. I would suggest that long term rental is more harmful for property values as I think most long term tenants do not take very good care of the property, it is not theirs. Airbnb and other rental companies impose very high standards on their hosts in terms of maintenance of their property, care of their property and it is a function of the reviews. So, you want to have a well-maintained property that is going to have high reviews so that other people would want to rent it, which means you will have a high standard of care for your property.

I think there is a related assumption that short term rentals will create problems with the neighborhoods and be somehow incompatible. What I would say in response to that is it does not seem to be the case to date. If you go online it does not take but five minutes to see that there are hundreds of properties available through Airbnb, VRBO, Home Away and so on. It is my understanding that there have been two complaints to the zoning office to date. It cannot be but so huge of a problem in terms of compatibility if that is the extent of the volume of complaints to date, given what we know is an underground economy that has been operating for several years. I am not saying there are not valid land use considerations here, I think there are, but I also think that there are multiple approaches to addressing them that strike a much better balance than the ordinance that has been presented to you.

I think you are building a bridge too far, I think that people will ignore it and that hurts the City, it hurts the people that come here and stay in those homes, and it creates an enforcement burden for the City. I struggle to see how that makes sense and would encourage the Planning Commission to continue its efforts to find a better way, I have every confidence that it exists.

Chair Way asked if staff has explored the registry idea.

Mr. Fletcher said we have explored this in so many ways and I think there is a misconception about what a registry means. We presented the information in a way that we thought makes it the most understandable from a context that there are two choices, you can allow it by-right or by special use permit. The by-right default is that you have to create a registry, if we want to tax them. So, the by-right option will immediately kick in the requirement to have a registry, it would be very similar to what we do with our chicken permits. So, yes, we absolutely evaluated the registry; we evaluated many different options.



Mr. Baugh said if you run a registry, I agree, I think staff's categorizing of by-right is accurate, it would be a by-right use that you have the ability to lose if you structure a registry permitting system.

Chair Way asked if anyone else would like to speak on this request. Hearing none, he closed the public hearing and asked Planning Commission for a motion on the request for discussion.

Mr. Colman said we are talking about yearly inspections, what is the extent of the inspections.

Mr. Fletcher said the annual inspection is defined. If you go directly to the definition where it talks about the annual inspection, it is to make sure that the property is in compliance with the Virginia Maintenance Code, the Fire Prevention Code and any other conditions that might be placed on the use at the time the special use permit was granted.

Mr. Colman said that would be for residential use. I am thinking what are we going to require in terms of Fire Code and so forth.

Mr. Fletcher said first off know that I am not an expert of the Virginia Maintenance Code or the Fire Prevention Code, but it has everything to do with public safety and making sure that there are smoke detectors. They were going to the extent of making sure that the smoke alarms are the type of alarms that are required in today's world, where they are either wired or wireless. Where when one alarm goes off, they all go off. Probably many of us have the smoke detectors in our homes today that they only go off in one room. They are the battery-operated type; those are different than what is required today. So, if one goes off in the bedroom upstairs, they are going off everywhere, so everybody in the home knows that there is a potential fire in the house.

I would hate to mis-categorize the different things the regulations might be looking for, but the reality is that the type of dwelling unit will then push the regulations in a different direction. Because a single-family home has different regulations than say a multi-family structure or a townhome. We talked about so many ways and we did research and reviewed other localities ordinances and different ways they are trying to deal with it, even the local jurisdictions are doing special use permits, some are doing by-right, some are breaking it down between different zoning categories that are by-right in this category, but are by special use permit in another category.

Regarding the concern about going on complaints, we do not really like doing inspections on a complaint basis, because we do not want there to be any kind of "somebody just does not like somebody" and then they call and complain three times – that is not fair. Then what is justified, what is the complaint, what is the nuisance. In this way we are looking at them on a case-by-case basis, where are they in the City, it gives an opportunity for public input. We are talking about uses that nobody had envisioned five years ago, popping up in people's neighborhood and yes, there are lots of arguments being made about the business aspect and the revenue aspect. Right now, we have two engineered comprehensive site plans in review for two new hotels in the City, one on the east side and one on the south end.

Our objective as a Community Development Department is to look long term, look at what the Comprehensive Plan states, listen to what the public is telling us, and we recognize there will always be opposing sides. We recognized very early on that this was not going to be a one size fits all model. This is almost the most flexible option, but I can understand that some might see it as onerous because of the special use permit hearing. It is a public hearing, your adjoining property owners get notified. There may be no concerns, or your neighbors might come out and speak opposed to it. We hear the concerns about conserving neighborhoods and over occupancy issues, and know there are objectives in the Comprehensive Plan about not transitioning single-family homes into other uses.

This body, months ago, was talking about home occupation permits and about extending home occupation permit abilities and there was concern about how these other uses were occurring in single-family homes and the traffic, and the coming and going of people. As soon as it turns into a business, people are like

“whoa this is a residential use, we do not want this traffic coming and going all the time and people we do not know coming and going.” The short term rental issue is a take on that, it is a different variety because it is a quote unquote a residential use; it is a transient versus a non-transient issue. I do not know how else to characterize this; the same thing that folks are expressing tonight you can read almost anywhere, in every locality and everybody is dealing with it across the nation.

Staff believes there is an affordable housing concern, we believe instead of waiting for it to be worse than what it might already be, to try and get ahead of the curve and to help prevent the burdening.

There were comments about how people would never own more than one of short term rental because they can be a nuisance to own and manage. But there are people that buy properties and have multiple short term rentals. And there have now been three complaints because one of the complaints in which we had told the operator to cease operation, that person just went back to operating it again, and they got complained upon once again. We investigated it and confirmed that they were in violation again. So, they disregarded the regulations knowing it was already illegal. Is it a problem? Yes. Will there be an inspection and enforcement problem? Maybe. But we have not been given the directive to go proactive and enforce them yet and that is one of the questions we talked about last month.

It is really a question to ask City Council. They would welcome this body’s input and we welcome it as well, as how you want us to approach short term rentals and enforce the code. Yes, we can go and look and let people know. The concern about people ignoring the law and just doing it illegally, well it is a misdemeanor if you get criminally charged. We do not want to take people to court for it and we typically do not have major issues when we notify folks of violations because they work with us in complying and they respect the law. But if this body wants us to go back to the drawing board and make it by right and create a registry and put in regulations that we have mulled over for a while, we can do that. Our recommendation is that it is by special use permit, to allow them in the City by special use permit, and to allow opportunity for the public to give feedback.

Mr. Colman said the registry still requires people to register, which means perhaps in terms of if I wanted to do it in the spur of the moment, I would not be able to do it because I need to register to do short term rentals, otherwise I would be in violation.

Mr. Finnegan said that bill that passed the Senate it says there is a maximum \$500 fine per violation for violating that registry, but again, that is by right. I think we had talked before that my biggest concern is affordable housing, how this might affect the housing market. Correct me if I am wrong, if it is by right, there is no mechanism in place for us to say no you cannot come in and buy 10 to 20 houses for short term rentals. Can we say no more than one house?

Mrs. Whitten said it could be a cottage industry.

Mr. Fletcher said you read about it in the news and websites and you showed us one where entities were buying homes, multiple homes and then renting them out solely on this basis. Would we individually be able to have the capital to do that? I do not, but other folks might.

Mrs. Whitten said but the concern has not been that the property would become run down and that it would lose value, that really has not been the concern that anybody has had with Airbnb. It has been more of the reverse affect, they would drive costs up for buying homes.

Mr. Fletcher said yes for buying homes, for being able to afford that house. The numbers we talked about last month, where somebody could rent a short term rental 82 days of the year to make the same amount of money as if they did a 12-month lease.

Mrs. Whitten said I was responding to Ms. Hawkins assertion, that neighborhoods would become run down and long term rentals would be more of a problem. I do have a bone to pick there, because long term rentals do tend to cause property values to go down when they are in mixed neighborhoods where

we have single-family and multi-family. In Airbnb, you are putting your picture up and advertising what it looks like inside and it is a different standard.

Mr. Finnegan said for me the biggest sticking point, I agree with several of the comments that were made tonight about it being onerous and that was my concern two months ago. Just this idea of if it is too many hoops to jump through, people are just going to ignore it or it is going to cause its own problems. If it were not for what we just discussed, that it is by right, then there is nothing to stop one owner from having multiple houses, and giving the data that I found on Airdna.com, there are houses in Harrisonburg, in the City limits that are making \$50,000 a year off this. That is a major concern for me and it is what would stop me from wanting to support the idea of a by right registry.

Mrs. Whitten said that is not your home owner who is living there and having people rent a room.

Mr. Finnegan said they call it the sharing economy, but to me that indicates you are sharing a home and not buying houses and turning them into non-owner occupied. I think that would be a huge problem.

Mr. Colman said so I do not see somebody that is making that kind of revenue on their house opposing a special use permit and retrofitting their house because the cost should be minimal to them. My concern and one of the questions I have is to what extent would the house be retrofitted to meet possible requirements, because that means there is a cost on top of your special use permit, the special use permit is a one-time fee.

Mr. Fletcher asked are you referring to what physical renovations might be necessary per the Building Code.

Mr. Colman said correct.

Mr. Fletcher said I cannot really answer that question and honestly if the Building Official was here he might not be able to answer that question. Number one, it depends on the type of dwelling you have, how old the dwelling unit is, and it could be grandfathered for some reason.

Mrs. Whitten asked does ADA come into play with that at all.

Mr. Fletcher said the Virginia Building Code Association is already struggling with this, from what I can tell there is no definitive way to characterize what they are, but it seems like they are potentially going to say that, and this is not the final say, but that bed and breakfast facilities and short term rentals might be similarly handled. I do not know what the Fitzgerald's had to do to make sure that their unit was in compliance. Theirs is a different category because their home was built in the late 1700s, so there are lots of things that come into play, just like if you took a turn of the century home downtown and convert it into a professional office building, you are exempt from a lot of those ADA issues because of the structure's age. Now there are improvements that need to be made, but there are a lot of things you do not have to worry about.

Mr. Colman said that presents an uncertainty in terms of what the cost would be.

Mr. Fletcher said also because we did not go down the route of creating a registry, I did not want there to be a picture that the registry would be very simple and not onerous. Let me start by explaining the special use permit process. If the increased application fees get approved by City Council next month, you are looking at a bare minimum cost now for a special use permit at \$455. Depending upon when you apply, the process is about a two to three-month process. You have to have a public hearing at Planning Commission and a public hearing at City Council. If you did a registry, there would be some kind of application fee and time making sure you have all your documents in place for having a business, such as insurance, and also time to set-up inspections. Those things could probably happen relatively quickly, but they are still working with the scheduling of inspections and making sure that they are compliant and getting those signed off. A by right registry might shorten the schedule by maybe a month. We can

create a brand new article for short term rentals, make it by right, create the registry, and go back to the drawing board.

Mrs. Fitzgerald said the point being that a registry is not some sort of cost free painless quick alternative to the process.

Mr. Fletcher said yes and the comment about “what would it do for us?” That was in context of what would it do for staff because we believe we have talked through all the issues and we also understand all the different types of things you have to take into consideration. Like, do we want to talk about the number of nights available that they can rent it, what types of dwelling units, how many bedrooms or is it only a certain number of bedrooms, can it be the whole house. We have talked through all the different things, there are so many other things that we did talk about and we ended up here, because there are so many ways that you could not take every single option to fit it into a perfect category. You have off street minimum parking requirements to consider, should there be off street parking requirements, if you have off street parking requirements in a public street, can they just park on the street. We get complaints from neighbors when people are parking in front of their home and they believe that space is their parking spot, but it is a public street and anybody can park in front of their house.

Mr. Finks said I have a question about this, what would the mechanics look like or is it even possible to do a situation where certain zoning is by right and other zonings are special use permit. What would that look like?

Mr. Fletcher said for us it was all about keeping it uniform, keeping it equitable. Why does a certain zoning district take precedence over other zoning districts? We have people that say I live in a single-family home neighborhood, it is R-1, and then they find out later it is R-2, R-3, or possibly R-4. You may not even be a residential classification, you might be a nonconforming B-2 or M-1. There are so many misconceptions about it. It gets quite complex and a lot of folks may not know what zoning is and they just learn about Airbnb when they go to the beach and think they could do that in their home and have no idea there are regulations that regulate occupancy, they do not even know there are regulations about where they can put buildings on their property. Unless you live in our world or your world or a developers’ world, zoning does not mean much to folks.

Mr. Baugh said in my recollection, we did talk about that and I totally agree if you look around the City, typically the folks in the residential categories it just does not work. We have certain images of what a classic R-1, R-2 or R-3 look like and then you start finding examples of all sorts of stuff in between. The thought that I have had here, this one I do not remember us discussing. Have we considered whether it could work in B-1? That is the one thing I was wondering about, it seemed like we did not really think about that piece. I do agree I think the idea of a registry for R-1, R-2 and R-3, I feel like I already know what the problems will be.

Mr. Fletcher said can you rephrase your question on what you mean by have we thought about it in B-1.

Mr. Baugh said this idea of you can do both. You could say it is a special use permit item except for you create a registry for certain classifications. So, then the question is what would those classifications be? I think we have looked at it already with our residential zoning. The ones that start with R and U-R. I was just wondering about the idea of what would the issues be for letting it be by right in B-1.

Mr. Fletcher said we have talked about this, not Planning Commission, but staff did. It was in the report last month. B-1 is the only zoning district today that you can do short term rentals, it is by right. It is the only zoning district that it is allowed. The proposal would take that right away and make it by special use permit. We can continue maintaining it as a by right use in B-1, if you want. Our concern came into play especially with multi-family structures in the B-1.

Let us use the Ice House as an example. You have a building that is owned by an LLC essentially, no one that lives in there is an owner. First and foremost, you need to understand that if you have to apply for a special use permit, the property owner applies, not the tenant, so the property owner always has to apply. You have to get your property owner's permission, they have to sign off on it. The bigger issue for us was more about how the building was built and for what "use" group. With regard to the Building Code, an R-1 use code, is a hotel or motel; R-2 is a multi-family apartment building like the Ice House facility; and then you jump to R-5, which is your single-family homes. The numbers are reverse for building codes compared to zoning districts. R-1 is the strictest or most intensive in building codes, and in zoning, R-1 is the least intensive. Transient uses are built to the R-1 "use" group in the Building Code, non-transient uses like the Ice House apartments are built to the R-2 "use" group in the Building Code as there are different egress requirements, there are different bathroom requirements, there are different things that come into play.

So, the question of can you begin welcoming transient uses within a non-transient-built structure becomes more difficult to answer because now you are trying to apply a transient land use to a building that was built to a non-transient building code.

Mr. Baugh said we had talked about it, but I think we talked about it more like for R-3, we talked about it more in that context than a B-1. What you are saying there is yes you are going to have buildings that were built to different standards.

Mr. Fletcher said I do not know how far the planning mind set gets into the sense of community in a building. But if you are renting on a particular floor you begin to learn who your neighbors are on your floor, but if one or two of those apartments are nothing but short term rentals that are constantly turning over, then you do not know who is coming in the building, how they get access to the building. I know how they are getting access, renters and operators of short term rentals are giving the code out, but is there a sense of security with that concern for the other tenants that reside there? There are lots of things that I do not know what the right answer is. So, we could, if you want, allow it by right in B-1, but there are some concerns.

Mrs. Whitten asked do we have business owners that are allowing it.

Mr. Fletcher said I do not know that answer. I have been told there are apartment buildings that have Airbnb rentals, but whether or not the owner of the property knows that their tenant is doing it is a totally different thing.

Mrs. Whitten said that is a liability for that owner, I would think.

Mr. Fletcher said it is all about what is in the lease. They are the ones that are responsible, are they allowed to sublease or rent out their unit.

Chair Way asked for Planning Commission's thoughts at this stage of the conversation.

Ms. Vaughn said I heard you throw out that there are maybe 200 short term rentals in the City right now. I know as a realtor that average occupancy is about five years before people move up or downsize. If you do that math, that is 40 special use permits hearings every year if we keep the same number of short term rentals. Maybe you feel like there are way too many short term rentals in the City and we need fewer.

Mrs. Fitzgerald said a special use permit is a one-time thing.

Mr. Fletcher said yes, a special use permit is a one-time application. You go through that process and the permit goes with the property, so if I owned a short term rental and I apply for it and received the special use permit, and if Mrs. Fitzgerald bought my property, she can rent operate a short term rental. The short term rental goes with the property, it is a one-time permit, but the annual inspection would occur once every year, if it is approved as presented.

Mrs. Fitzgerald said the core of that comment though is a reasonable one because we have been talking about the onerous effects on the property owner who wants to use their property for this.

Mr. Fletcher said one thing that is not talked about and maybe it is a misunderstanding of what a special use permit is, but it is a risk on the property owner. You are not just guaranteed to get the special use permit. You have to apply, staff does their evaluation, gives a recommendation, the public can come and speak, then Planning Commission can go with staff's recommendation or go against it, and then City Council can overturn either one. So, there is a risk and if there is a perspective in the community or from City Council that we do not like them in certain areas of the City, people will begin to figure out or weed themselves out. I might as well not apply because I probably will not get it. People meet with us all the time and say "what are your thoughts?" We do not immediately look at it and say yes or no we cannot, that is what the review process is for. We go on precedence and see what the Comprehensive Plan says. What does the Comprehensive Plan want this particular street to look like? And we look at it and say, for example, "oh it is planned for neighborhood residential," probably not a transient use, so we think you will have an uphill battle. Then, they think if it is worth their risk to pay the application fee and go through the process.

Mrs. Fitzgerald said suppose in a perfect world that we just got through graduation weekend and we had 500 short term rentals available in various platforms, I heard one estimate. Suppose in a perfect world that all those people who wanted to use those properties for that did apply at one point or another for the special use permit. I think about how that process would be.

Mr. Fletcher said I do not know what the number was and I do not know what it means to have that number in the City limits. Was that in the City limits or in the region, was it in Rockingham County? I do not know. I have not gone onto that website and looked. Because once you have the knowledge, you have the knowledge.

Mrs. Fitzgerald said but it is a reasonable question to wonder what that would look like.

Mrs. Whitten said I think a lot of people that would do it for graduation weekend, might think about it in April.

Mr. Fletcher said let me throw out a suggestion and I do not even know if I like my suggestion. In the City of Harrisonburg, we have parking permits on certain streets. You have to have a parking permit all the time except for three certain weekends of the year: JMU graduation, JMU homecoming, and JMU family weekend. We as staff would have to try and interpret how this would play out, but if there is this idea of lessening the rules at certain times like that from a zoning perspective, you can kind of capture those high demand things. But it would be very specific on certain weekends and of course that means that it changes every year and we would of course know when those are. But there is at least a middle ground there and it is recognized. I do hear people say, "on graduation weekend, on this particular weekend you just cannot find a place and they want to come here."

Mrs. Fitzgerald asked you are talking about almost creating a temporary flexible supply to match the temporary really big increase in demand but not a blanket thing for year-round.

Mr. Fletcher said I think that on the fly here you can just do special use permit for a permanent or year-round short term rental, but somehow write in the code that on these days of the year, which would be confirmed by the Department of Planning and Community Development, short term rentals are permissible. Like I said I do not know that I like it, but it is an option we can evaluate.

Mr. Baugh said I thought of something like this before and I have not looked at Blacksburg's ordinance. My understanding was that Blacksburg is doing something like that.

Mr. Fletcher said we can write whatever are the desires of the Commission. I do not know what staff would end up recommending from an application stand point in the ordinance. I do not know if we can even do this.

Mr. Finnegan said the challenge is to what all days do you include. You just listed three of the big ones.

Mr. Fletcher said I did that because of the precedent of the parking permit, that concern has already been thought through. In the Old Town neighborhood, where you have permit parking, during graduation weekend, for example, you cannot call the police and have that car towed because they do not have a permit.

Chair Way said there is another benefit of mirroring that is the people that are going to come and stay at Airbnbs or whatever are going to park on the street as well.

Mr. Fletcher said and then the concern about everybody meeting at one house. I am going by memory of what our inspector said, which is related to the repeat offender of operating a short term rental, at this particular location they had 10 to 12 people staying at the one house. I do not know if all of them came in one vehicle, or if there were multiple vehicles parking along the street or parking in the yard. So, then your neighbors are like "this is not what I thought our zoning ordinance allowed." There are those concerns also, that is why staff believes there is not just a one size fits all model. That is why we promote the special use permit option.

Mr. Baugh said I just looked up the Blacksburg ordinance and the way Blacksburg is dealing with it and it is not the specific way we are talking about it. They have limited it to owner occupied and they have limited it to a certain number of days per year. What they have in mind is football weekend and Bristol.

Mrs. Whitten asked is there no fee, just the registry.

Mr. Baugh said I do not think necessarily they are doing a registry, I think they are saying that you can do it in that limited fashion.

Mr. Finnegan said then my question is, does that address the tax issue? If you are flooded with people and not getting any of that tax.

Mr. Baugh said they have an application process.

Mr. Fletcher said we thought about half a year, you have to be owner occupied 185 days of the year. We then discussed enforcement of that option. How would you know who is residing in a certain dwelling that number of days a year? There are people I know that live in Harrisonburg half the year and go to Florida for the other half of the year.

Mr. Finnegan said another piece of data point that I wanted to enter into this from Airdna.com, just as we are thinking about what the fees are and what the revenue would be. According to the data currently available on Airdna.com it says for Harrisonburg a private room is on average \$56 a night and an entire home is on average \$107 a night. Those are averages and they are not for everyone. That is over the year on average.

Mr. Fletcher said when you said the cost I was thinking of the different hotels that have that cost. I also stand corrected and remembered that there are three engineered comprehensive site plans that are in review right now. One on the south end of town, one along Neff Avenue, and one Evelyn Byrd Avenue.

Chair Way said am I sensing to explore a little further this approach about specific weekends and those kinds of things.

Mr. Colman said I think it sounds like a good idea. The opening it up during certain times of the year seems to me like perhaps appropriate, beside the special use permits.

Mr. Finnegan said the only question is which weekends, I think that is something that can be worked out later.

Mr. Fletcher said I thought my idea might open a can of worms, but it is an option.

Chair Way asked do we want to table this for now and like give you some time to explore that.

Mr. Fletcher said we do the wishes of the Commission.

Chair Way asked if there were any motions.

Mr. Baugh said it did come up at the end of our last meeting and we discussed it but I think it caught on at the end. Mr. Fletcher mentioned it tonight, he and I talked about this a little bit last night and I did bring this up at the City Council meeting last night after you left. Whatever we do, I think this is really exposing that if we want to maintain our commitment to be a complaint driven system in every other respect the way we have always been, I am happy to argue in favor of that, but it is not going to work here. That this massive disconnect between what any of us can instantly review on our devices versus what is allowed legally whether we adopt the conservative standard or liberal standard or in between, I do not think it makes a whole lot of sense. That direction ultimately has to come from Council. City Council has to be the ones going back to staff and say whether to start working on what that is going to look like. I do think that is just the most obvious thing that makes everybody snicker, about the whole thing is a regime where you have one rule set and then we get in two seconds to find out how nobody is paying attention to it.

Mr. Fletcher asked may I get some clarification on two things. First, time line, so we have a pretty hefty next month I believe. I would say, I would not expect us to come back to you in 30 days with something, so let us plan for at least two months for now. We will set our own internal clock for July, so folks here know that we will come back with something in July. The public hearing advertisement has already been published so we do not need to re-advertise in July. Then, I want it to be known that we will draft it up, we will apply it in our ordinance, and we will offer a recommendation one way or the other. I am not saying that because we offered the idea we will like it, but we will apply it, and we will let you know what our thoughts are.

Chair Way said we still need a motion.

Mr. Finnegan moved to table the Zoning Ordinance and Title 4 Finance, Taxation, Procurement Amendments – Short Term Rental until we can add the desired language.

Mr. Colman seconded the motion.

Chair Way said we have a motion and a second to table this matter. He called for a voice vote on the motion.

All voted in favor (7-0) to table the Zoning Ordinance and Title 4 Finance, Taxation, Procurement Amendments – Short Term Rental.

Chair Way said this matter will come back to Planning Commission in our July 11, 2018 meeting.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: July 11, 2018**

Mr. Fletcher said at the May 11, 2018, regular Planning Commission (PC) meeting, a second public hearing was held regarding staff's proposed ordinance amendments for the use and operation of short term rentals (STR), where it was decided for staff to draft additional amendments for PC's review and to be discussed during the July regular PC meeting. As a reminder, the overall objective is to amend the Zoning Ordinance as well as to modify City Code Title 4 Finance, Taxation, Procurement to appropriately regulate and tax transient occupancy in dwellings and neighborhoods. As also previously explained, PC



only has authority to vote on the Zoning Ordinance amendments, and thus will only make a recommendation on the Code modifications to the Zoning Ordinance.

After having discussion with PC in March regarding the draft STR regulations, holding a public hearing in both April and in May, receiving public comments, and having a great deal of discussion with PC, during the May meeting staff offered to draft an ordinance amendment option that would allow some type of transient occupancy operation to function on a limited basis, as a by right use. As discussed at the meeting, the concept was to allow the by right permission to function during James Madison University's (JMU) parents/family weekend, homecoming weekend, and graduation weekend—essentially during recognized, potentially high peak demands for lodging in the City. It was explained that such a framework had already existed for a separate regulatory matter in the City, which pertains specifically to permit parking regulations that the City has in place for certain neighborhoods to park along the public street.

Section 13-1-60.01 of the City Code, titled Residential permit parking zones, designates specified permit parking zones and states that it is unlawful to park any motor vehicle on a public right-of-way or street within the identified zones unless the vehicle properly displays a parking permit validly issued in accordance with regulations adopted pursuant to Sections 13-1-60 through 13-1-68. However, Section 10-3-60.01 (7) states that certain permit parking zones are not in effect during the Saturdays of JMU's parents and homecoming weekends and on the Friday and Saturday of JMU's graduation.

Since the May PC meeting, staff has drafted the option for allowing a limited, by right transient lodging accommodation. After drafting these regulations, staff decided to apply some of the same concepts to staff's original draft proposal. Included herein are two, separate options, identified as Option #1 and Option #2. Because of the changes staff made to the original proposal, regardless of the option that PC ultimately desires, the amendments must be re-advertised for public hearing.

To summarize the differences between the two options, first, Option #1 includes staff's proposal (which we recommend over Option #2) to only permit the short term rental of dwellings by SUP. In brief, this continues to consist of referring to such uses as short term rentals (STR), where property owners could apply to operate a STR by way of approval of a SUP in the R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R zoning districts. Minimum off-street parking requirements remains proposed at one parking space for each guest room or accommodation or as may be more or less restrictive as conditioned by the SUP. Staff has shortened the definition of "short term rentals," but has taken some of the regulatory language from the definition and placed it within a proposed new article of the Zoning Ordinance, titled Article DD. Within the proposed Article DD, there are sections regulating and specifying: the purpose of the regulations; general use regulations and requirements; suspension, cancellation, or revocation details; and specifications for penalties, which staff is now proposing to include civil penalties at a rate of \$250 for the first offense and \$500 for any subsequent offense.

Some of the new requirements that are included within the proposed Sections 10-3-205 and 10-3-206 consist of regulatory matters that would have been handled on a case by case basis as conditions on SUPs had the original proposal been maintained. Two other new matters of interest include: (1) a proposed \$50.00 yearly inspection fee (the initial inspection being free) and (2) granting STR operations the ability to host events such as weddings, receptions, or similar events, occasions, or happenings so long as the operations are approved as part of the SUP.

Option #2 includes essentially the same proposed amendments as those specified in Option #1, but it includes a new use called "limited homestay." A limited homestay would be permitted by right within all of the same zoning districts that allow STRs by SUP. A limited homestay would be defined as:

"A dwelling that is the operator's primary residence, where a room or space within the principal building or any related accessory building is suitable or intended for occupancy for dwelling,

sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy. Overnight lodging shall only occur the Friday and Saturday of James Madison University's and Eastern Mennonite University's Parents/Family Weekend, Homecoming Weekend, and graduation weekend (both fall and spring semesters). Limited homestay operations are applicant and location specific and cannot be transferred to a separate operator."

Note that a limited homestay must be an operator's primary residence (which is determined by the address shown on the operator's driver's license or state issued identification) and would only be permissible for the Friday and Saturday of both JMU's and Eastern Mennonite University's (EMU) parents/family weekend, homecoming weekend, and graduation weekend. If Option #2 is approved, this means, at this time, limited homestays would be able to operate a maximum of six weekends throughout the year, which is a maximum of 12 days. The summation of these weekends and days consists of JMU currently having a parents/family weekend (2 days), a homecoming weekend (2 days), and two graduation weekends (one for each the fall and spring semesters—totaling 4 days). Whereas, EMU currently has a combined parents/family and homecoming weekend (2 days) and one spring graduation weekend (2 days). If EMU began to offer separate parent/family and homecoming weekends and began to offer a fall graduation, those weekends would also be permissible, which brings the maximum operating weekends to 8 and days to 16. Of course, if the JMU and EMU events occur on the same weekends/days, then the number of possible operational days throughout the year would be less.

Also note that limited homestays would be applicant and location specific and that such operations could not be transferred to a new operator. This is because limited homestays will be required to obtain a home occupation permit. STRs, on the other hand, would only be site specific as they would be classified as a SUP and all SUPs are transferrable to new property owners. Given the number of days limited homestays could operate, staff has proposed no minimum off-street parking requirements for this use.

With Option #2, staff also included "limited homestay" within the text of the changes to Title 4 Finance, Taxation, Procurement.

As one reviews the two options, remember that Option #1 consists of only allowing STRs and only by SUP, while Option #2 consists of allowing limited homestays as a by right use and maintaining that STRs are only permissible with an approved SUP. As noted above, staff recommends Option #1.

Mrs. Fitzgerald asked does that mean we are not looking for a vote tonight, since we must have another public hearing anyway.

Mr. Fletcher said not necessarily, but hopefully you can give staff some indication which direction you are going so that we know how to advertise.

Mr. Colman said it states, "shall obtain a business license," what kind of business would that be.

Mr. Fletcher said a short term rental or limited home stay. If you go to the back of the page where it defines the type of lodging establishment.

Mr. Colman said the license would still be for the short term rental.

Mr. Fletcher said limited homestays would also require a business license. But instead of receiving a special use permit, limited homestays would get a home occupation permit. Home occupation permits are sort of a secondary thought of an applicant when they come in. Because if they are using their home address for their business license, the Commissioner of Revenue's office immediately says that it is a residential address, you need to go upstairs get a home occupation permit, which is currently free, it is right over the counter, so that we can verify what your business is, and that it is allowable at your residence. Then, we issue them a home occupation permit, they walk back downstairs to the Commissioner of Revenue's Office and continue on their way.

Mr. Colman said that would be the same here with the special use permit. The special use permit carries on to the new owner, then the new owner would need to get the business license.

Mr. Fletcher said yes, but they do not have to get a home occupation permit in that instance because they got a special use permit.

Mrs. Fitzgerald said staff recommends option 1.

Mr. Fletcher said yes, we maintain our line of thinking and we are recommending option 1, which is more of what we had originally put down with all the regulatory controls.

Mrs. Whitten said no limits on how many days.

Mr. Fletcher said yes, no limits on how many days, because it would be site specific applications. Some might come in and say it is the primary residence and they want to operate like a limited homestay.

Mrs. Fitzgerald said neighbors would have input as well.

Mr. Fletcher said yes, neighbors would have input for special use permits and not just neighbors, anyone.

Mrs. Fitzgerald said this time it comes back with some penalties for both options.

Mrs. Whitten said penalties, plus you lose your special use permit.

Mr. Fletcher said we are not proposing the ordinance that way; but if you want to, we can build that in.

Mrs. Whitten said if you have unlimited days and you are making enough money, then would \$250 be that much of a deterring factor?

Mr. Finks said let us set a number of violations before the special use permit would be revoked.

Mrs. Fitzgerald said I read this as \$500 for every subsequent violation.

Mr. Fletcher said yes.

Ms. Dang said we have that section, it is under option 1 on line 152, Suspension, cancellation, or revoking.

Mrs. Whitten said okay. Three or more substantiated complaints, so it is in there.

Mr. Fletcher said it has to be associated with the short term rental; a substantiated violation that is found. It cannot just be a complaint associated with some other thing in the Zoning Ordinance.

Mr. Finks asked why would Section E, line 171, still be in there.

Mr. Fletcher said it is when applicable, so if you condition a special use permit to be a primary residence.

Mr. Colman asked do we have anything on occupation in terms of how many people can actually be there.

Mr. Fletcher asked whether he meant for home occupations.

Mr. Colman said no, the number of people that can come to the house.

Mr. Fletcher said we have not proposed it that way.

Mr. Colman said that was one of the things that we have been discussing pretty seriously, density of people. This could certainly impact the neighborhood.

Mrs. Fitzgerald said like if a house gets rented for a JMU graduation and somebody brings 20 people in.

Mr. Fletcher said human occupancy of residential dwellings is a lot higher than you might think. You can have a lot more people residing in a dwelling than you think, from a Building Code perspective.

Ms. Dang said I do not know if I misunderstood the comment or the question Mr. Colman was getting at. But maybe the answer is that with the special use permit we can condition how many people the short term rental is limited to lodging. The reason why we did not put it in here is we were thinking it could be determined on a case-by-case basis.

Mr. Baugh said if you went with a limited homestay you would not have that, presumably you can cover that in the special use permit.

Ms. Dang said correct.

Mr. Fletcher said but limited homestay is those 12 to 16 days of the year, unless you build it in the regulation. There is nothing that would restrict them to a certain number because it is by right.

Chair Way asked can you briefly explain why you are preferring option 1 to option 2.

Mr. Fletcher said when we go back to our original idea, if we went with option 2 you are immediately exposing neighborhoods to a use that was never planned to be allowed. One might make the argument that, "well it is occurring," yes, but it is illegal and there is control. Because if a complaint is made and it is a substantiated found violation, then we have recourse to help that community who might desire to not have that use in that neighborhood. I think that is one component. I think that there is still a little bit of control from a perspective where they occur, how often they occur, once you have a limited homestay type operation. I will not claim to be an expert about affordable housing, but with a very, controlled limited homestay type operation, I do not know if that becomes an issue. I think it boils down to, in a big picture perspective, is this is a use that if you begin to allow anywhere, you just really change the way the Zoning Ordinance works.

Mr. Colman said a question along those lines, how likely is it for Harrisonburg to be able to be taken over by short term rentals?

Mr. Fletcher asked do you mean short term rentals or limited homestay.

Mr. Colman said at this point it is just a blanket question for the whole thing, without separating them, just assuming it is one thing. I realize for those specific days we assume there is going to be a lot of people in the City and they will be looking for places to stay. But how about the rest of the year, do you think it is going to be that intensive?

Mr. Fletcher said I cannot answer that question.

Mrs. Fitzgerald said with a little bit of market demand estimation you can do the math with the website AirDNA that Commissioner Finnegan was talking about; to see even with the open environment.

Mr. Fletcher said I think that is part of it. We do know that other localities, often time the larger metropolitan areas, are dealing with it from an affordable housing perspective. Staff does not want to be behind the issue, we want to be ahead of the issue.

Mr. Colman asked could we take a first step where we make it by right.? Nothing is keeping us from six months from now, realizing this was a mistake, we are going to change it, and make it by special use permit. I would like to see a test of the market.

Mr. Fletcher said if you do that, you can create nonconforming uses. Once you allow it by right and people begin operating, they have that right and now they can continue it, as long as they do not discontinue it for 24 consecutive months.

Mrs. Fitzgerald said you can do it the other direction. You can corral it, regulate it pretty tightly, and then see what you have as a result of that, and then loosen the regulation.

Mr. Fletcher said that is correct.

Mrs. Whitten said let us see how it goes for one year. The registrations will be good for one year and then you take a look at it and decide.

Mr. Colman said if the registration expires that is a different thing.

Mr. Fletcher said I still think the people have a vested right.

Mrs. Whitten asked do they.

Mr. Fletcher said of course, if you give them a by right permission.

Mr. Colman said I guess that is the question, does it become a vested right?

Mr. Russ said there is also a third option continue doing what we are doing now, essentially look the other way and let it go on and see how bad it gets and then address it when it becomes a problem. We have had two complaints and Airbnb has been around for how long?

Mr. Fletcher said I would say that we are not looking the other way.

Mr. Russ said but we are not looking for it though.

Mr. Fletcher said we have not been directed to.

Ms. Dang said the other component that is missing is that it is an illegal use, we cannot collect taxes on it.

Mr. Finnegan said I have struggled with our role in this and it feels like we need a screwdriver and someone brings you a toolbox that has a hammer and a wrench in it and it is not the right tool. I think I am frustrated with the limitations of both of those.

Mrs. Whitten said the difference is there. Can you kind of do a little hybrid of both of those? I would like to see some limitations on the number of nights, not open it up to whenever you feel like it. But, I think the special use permit is too much because if you are somebody who just wants to do those weekends, why would you ever spend \$450 and all the hassle to go through the special use permit just to do it 12 nights out of the year?

Mrs. Fitzgerald said it is interesting after tonight's discussion about density and neighborhoods I end up in the other direction. Because I feel like we are going over and above and beyond in protecting some number of people who knows how many people, who want to do this periodically. What we are losing is sight of all of the rest of the people in the neighborhood, like me, who do not want to do this, who like a calm quiet neighborhood that is a little bit predictable. When I go out on vacation I do not do Airbnb because there is enough going on and there are industries that I would rather go to, a regular and reliable hotel. I value that option and yes, give people the opportunity, but let us make it not onerous enough that if they want to do it then they have to be serious that they want to do it. That we have a regulation in place if we want to do it and that we have some control about how housing evolves here in the next ten years. It is a destructive, disruptive industry and I care about everybody here and I am including the businesses who operate this for money, and I am including the people who cannot find a cheap place to live.

Mr. Colman said what I do not like about the short term rental special use permit is you can have an investor buying all these houses and that is what they are going to use it for. That certainly affects affordable housing, but if you are going to have some that are owner occupied, then it should not be a short term rental.

Mr. Finnegan said I believe strongly that local governments do have a responsibility to address short term rentals, but I do not think I fall exactly where Commissioner Fitzgerald falls on making people jump through the short term rental hoops. Option 1 with the special use permit, effectively unless you are a person of means like whoever it was that hired a lawyer that came in here to speak on his or her behalf, those are the people that will be able to apply for a special use permit. People who are doing it to make

some extra money, trying to pay the bills, those folks will not have the time or money to apply for a special use permit.

Mr. Finks said will they have the time to apply for the business license and the home occupation license too?

Mrs. Fitzgerald said not everybody has the right to do every single thing that they want to do.

Mr. Finks said I wonder if the special use permit is too high of a bar, will they say the same with the business license and the home occupation permit?

Mr. Fletcher said the cost of business licenses are based on the income.

Ms. Dang said applying for a business license and home occupation permit is something you can do in one day.

Mrs. Whitten said that is easy, a special use permit is not so easy.

Mrs. Fitzgerald said I do not know why we would want it to be trivial.

Mrs. Whitten said trivial is not the point, I do not think. It is a barrier. I agree with Mr. Finnegan. I think it would be too much of a barrier in that case. I think your penalty puts teeth into it. Screw up once you are going to pay if you are not following the rules and if you do it twice or a third time, then you lose your special use permit.

Mrs. Fitzgerald said how do you respond to the people who showed up, not the last time but the time before, the people who owned a business.

Mrs. Whitten said I have a response for that. My response to that is you have a business that has been very successful for a period of time just like any other business. You have to change your business model to reflect what is current now. That is what you have to do. Hotels and motels do not operate the same way as they always did. You do not get a mint on your pillow at Holiday Inn, right? If you want that you are going to pay for that and there is a certain population that is going to pay for that. Everybody does not drive a Cadillac because they cannot afford it.

Mrs. Fitzgerald said I am thinking about the business model though that has been existing in the City for years now, that has disrupted neighborhoods already, and that is the business model of flipping. Flipping single family homes and examples that we had here tonight, single family homes are flipped, turned over to student rentals and disrupt neighborhoods in a different way. Making this easy opens the doors to similar kinds of disruption to existing neighborhoods.

Mrs. Whitten said I do not think you have to make it easy in terms of your enforcement end of it, it is the same. You are saying this scrutiny of this special use permit narrows down where these are appropriate in some way.

Mr. Colman asked do we have any data or any information in any other communities that are similar to ours, not so much as what their approach is, but what is the extent. How many special use permits do they have, or something along those lines.

Mr. Fletcher said I do not think that people have had the special use permit option in other localities long enough.

Mrs. Whitten said Abingdon has had their registration for one year.

Mr. Fletcher said I think what Abingdon did was adopt what Blacksburg adopted. They did it to get it on the books. They do not have a lot of people participating.

Mrs. Whitten said they have lots of motels, hotels, and bed and breakfasts.

Mr. Fletcher said the Abingdon area is so different that is it hard to compare them to the City of Harrisonburg.

Mr. Russ said in Alexandria the spokeswoman for Airbnb said that they had 510 residents who rented out to at least one guest for one night in the year 2017. They made an average of \$3,700, they rented out for an average of 31 nights, they have had their registry open for about a month and only 23 of those 510 had actually gone through the operative of registering. The vast majority of people have someone stay for a couple of weekends, they are not making a ton of money.

Ms. Dang asked how is their registry set up.

Mr. Russ said I do not know how their registry is setup.

Ms. Dang asked is it by right.

Mr. Russ said it is by right.

Mr. Fletcher said this is like the chicken ordinance thing again. It is so different in every locality, because every locality has their own special things that define who they are.

Mr. Finnegan said and like the chicken ordinance, it is going to be people just not knowing about this process that they are supposed to go through, it is knowing about it and not applying. I know that you have said in the past not to worry about enforcement, that is your deal, we do the regulations and you all do the enforcement. With the short term rentals there is already a repository, it may not give you the addresses, but it gives you the pictures. Unlike some of the other violations there is a website you can go to find all the violations. That does make it different as people are not geotagging pictures of their illegal backyard chickens.

Mr. Fletcher said you are saying that it will help us to enforce it better.

Mr. Finnegan said it is something that is different from the backyard chickens, there is no repository for all the backyard chicken violations, a website that you can call backyardchickenviolations.org. But there is one called Airbnb, where you just go and look at all the places that are available.

Mrs. Whitten said if people are signed up with Airbnb, you are assuming.

Mr. Finnegan said and there are other websites, there are multiple places.

Chair Way said the chicken situation reminds me of this as well. Is there any way that one can capture a central component of this special use permit, which effectively is neighbor veto or neighbor input on things and thoughtful consideration without the full public hearing? Like a special use permit lite, or special use permit mini, because we talked about this with the chicken permit.

Mr. Fletcher said the chicken ordinance did not have a neighbor waiver. There was this discussion about encouragement of having conversations with your neighbor. We are not in favor of those approaches, I mean we can craft ordinances the way you wish, but we are not in favor of the neighbor waiver.

Chair Way said I am not saying neighbor waiver, I am saying neighbor input. There is an ability for the neighbor to know that is going on.

Mrs. Fitzgerald said the special use permits that we have here always have the opportunity.

Mr. Fletcher said we advertise and adjacent property owners are notified.

Chair Way said is there a way to capture that without having the multi stage process that the special use permit is and the cost associated with it. The special use permit is necessarily a careful, deliberative, very publicly open process and there are at least three levels, starting with staff, then Planning Commission, and then City Council. Is there something that captures the ability for people to raise objections or to have input?

Mr. Fletcher said you would have to build it into the regulation. If the City sends a notice, then what? Staff cannot vet those issues by saying neighbor A said they like it, neighbor B said they did not like it, neighbor C did not like it. We then have three people with their own opinion.

Chair Way said that is exactly what I am saying. I wonder if the bigger conversation here is whether there something in between the home occupation permit, where nobody has any input, and the special use permit? Legally is that the case or can we think about putting something in there?

Ms. Dang said like a committee that is just reviewing short term rental requests?

Mr. Russ said I do not see how their input will have any value if there is no one that is evaluating their input and following up on it in some way. We can post on the website everywhere that we have a registry.

Chair Way asked is there something that can be done imaginatively, thinking outside the box here, creatively.

Mr. Fletcher said I say no. But the reality is that you can create a regulation that creates some kind of committee, maybe an advisory committee to review these on the side. I am not aware of a structure like that in other localities, but I am sure it can be done. We used to do street and alley closings with a review committee.

Chair Way asked are there some things that do not go to City Council.

Mr. Fletcher said the only thing you have authority with are preliminary plats and that is when they are doing everything that is embodied within the subdivision regulations. You have the authority to deny dead end public streets.

Chair Way said like when we get our packet on a monthly basis, in the same way that there is a proactive code enforcement in there, there is a listing of requests for limited home stays and any public input associated with them. We can review them and think about them and maybe that is the point where we proactively say which one we would like to look at closely or approve.

Mr. Finnegan said these websites were practically designed to break the regulatory system that we have.

Mr. Fletcher said we were just talking about whether or not the State gives Planning Commission that authority.

Mr. Russ said it sounds like no. That would essentially be everyone is applying for a special use permit, we are just saying we are going to approve all of them unless someone comes in and objects.

Mr. Fletcher said I do not know that the State gives Planning Commission that authority because you are not an elected body.

Mrs. Whitten said like the large party ordinance there is a checklist of things that you must bring in when you apply for your large party permit and somebody in an office here says yes or no.

Ms. Dang said we would need guidance on the checklist you would like.

Mr. Fletcher said I think you just have to go back to answer the basic question. Do you want to allow it by special use permit or by right? You have to make that decision.

Mr. Colman said so we cannot do it by right with conditions, then.

Mr. Fletcher said yes that is what the limited homestay is, but the conditions have to be built into the regulations.

Ms. Dang said that apply equally to everyone.



Mr. Fletcher said that is why the original proposal that staff brought to you, after having done a lot of research on this, we kept it as simple as possible. Without going into this stuff, it is so circumstantial, every property is different. I can name a few parcels where it could be that maybe the primary residence of the occupant may not be necessary, because you have these homes that are located in between business on very busy streets. You have to make the decision one way or the other; is it by special use permit or by right?

Mrs. Fitzgerald said I think it should be by special use permit.

Mr. Finnegan said I actually have a google alert for short term rentals and Airbnb regulations and every day I get tons of notifications. Every city all over the world is struggling with what we are struggling with right here. Harrisonburg is not unique in that regard. No one has found a magic bullet that does what a lot of people want it to do.

Mrs. Fitzgerald said is that not because every city is different. It has to be tailored to the circumstances of living with a huge public university, a relatively small private university, surrounded by agriculture. Of course, there is not a medicine that works for every patient.

Mr. Baugh said and it is still new in economic terms, because what is the data? Well there is none, there is not enough data. The whole thing is too new and still developing.

Mr. Colman said I think to that point it is not the end of the world to go with one of these. We are not giving it by right to one of those, which means we can change it.

Mr. Fletcher said if you are giving it by right to limited homestay for a limited time of one year, you would never see them, they will be handled administratively by staff.

Chair Way said the current situation is in terms of the process. Right now it is illegal, it is not allowed. If it is causing somebody conniptions in their neighborhood, they can report it and it is stopped. Are we actually in a very demanding situation now where we have the best of both worlds that people can do it and it is sort of flexible and fine, but if there is a problem there is a super easy out, but it is illegal.

Mr. Russ said we are losing out on a few thousand dollars of taxes every year. Arlington thought that they would get at most \$100,000 a year. I cannot imagine we would be taking in that amount, they have a higher tax rate and it is more expensive there.

Mr. Fletcher said it is a lot more complicated than that. Today we do not have the enforcement ability to stop it so quickly, because we have to send a notice of violation, go through the process and we have to do all those things. We have already learned that even after the person acknowledged that they were doing it illegally and we sent them a notice of violation, they just went back to doing it.

Mr. Colman asked do we not have any fines for it.

Mr. Fletcher said no, this would create a fine.

Chair Way asked if somebody is doing something that is against the ordinance that we have, there are no penalties.

Mr. Russ said we never heard of a locality actually doing it. But I think technically you could charge them with a misdemeanor.

Chair Way said I am just thinking – if I do something sketchy in my U-R district that is not allowed there, is there truly nothing that can be done apart from a stern letter from Mr. Russ?

Mr. Russ said right now we would send you a notice of violation. You have either 10 or 30 days, depending upon the type of violation, to fix the issue. We give you that period because you also have 10

to 30 days to appeal the interpretation. We would charge you at that point, but even if you have fixed the violation, we can still charge you.

Mrs. Whitten said if you have a zoning violation and you do the appeal to the Board of Zoning Appeals and you get the appeal denied, then what do you get charged?

Mr. Russ said and you can charge them with a misdemeanor and you would have to do the whole thing over again in criminal court because the burden of proof is different. If we had civil penalties, it would be a done deal.

Mrs. Whitten said so right now we do not have civil penalties. We have 20 years of cases flaunting the law with no penalty and we are worried about this.

Mr. Fletcher said we send many people notices of violation; many times they did not know they were in violation and then they correct it, then it is a non-issue, case closed. It is in the cases where people just say no, and they continue to do it. We do not like to go to court with people, we are just trying to enforce the law.

Mr. Colman said the issue here is if we terminate the use of somebody because they are in violation and now they know they cannot do it, that is the end of it. There is no other recourse for them to come back and do it legally if we do not provide an avenue for them.

Mr. Finnegan said it feels like abdication of responsibility of this body. Does this criminalize the short term rental activity more than what it already is?

Mr. Russ said it would sit through a civil penalty.

Ms. Dang said I cannot remember exactly what the comment was, but we were talking about the two complaints that we have received. One of the complaints that was received was that somebody did not feel safe that people they did not know were coming in and out of the house next door to them. It was not a noise nuisance.

Mr. Fletcher said this language is what other people are doing, we were doing what was advised by Planning Commission. What are the other folks doing, we handle them on a case by case basis, every once in a while, you will hear for special use permit conditions that says, "if it becomes a nuisance Planning Commission or City Council can call it back." We have never called back any special use permit for a nuisance. One, maybe we are just lucky we have not had complaints about special use permits becoming a nuisance and, two, we have had these conversations internally, but, how many times does somebody complain about a nuisance, I am not a huge fan of saying just one person who makes the same complaint over and over again. We never had to make that judgment, we should not be making that judgement.

Mrs. Fitzgerald said we have the option of doing nothing.

Mr. Fletcher said staff's recommendation is to not do nothing, staff's recommendation is to do short term rental option #1.

Mrs. Fitzgerald said and then we have option #2 and the question for us tonight is what we would like to move forward for the next meeting with the public hearing, is that right?

Mr. Fletcher said you tell us.

Mr. Finks said I am curious Commissioners Whitten and Finnegan, as far as your points that you both have made are you leaning towards scrapping both of these options and going towards by right in some sort of permit basis? What are your thoughts in that area, because I get the sense you all do not like either option.

Mr. Finnegan said I do not want to speak for Mrs. Whitten, I want to speak for myself. I think it is better to start with the goals as Mrs. Whitten's email had pointed out, what are our goals. I feel for me the goals are the safety of the host and the guest, the best interest of the neighbors and the neighborhood, and making sure we capture that tax revenue. But also, to make sure we are not exacerbating the affordable housing situation. It seems like both of the options kind of address that, but I think my biggest issues with the special use permit is, as I said before, people are not going to know about it, they are not going to do it, they are just going to violate it.

Mrs. Whitten asked then what are you going to do, are you going to go after them.

Mr. Finks said if we want to setup what our goals are, the issue that I am seeing is the only way to figure out how to accomplish those goals, we have to make a decision whether it is special use permit or by right. We can come up with a lot of goals and we may not be able to accomplish those in a special use permit as we could by right, or vice versa. Whether we come up with the goals or not, that first question Mr. Fletcher asked us a few months ago, we still have to determine how we are going to move forward on the goals, would it be by right or would it be by special use permit?

Chair Way said the upside of the special use permit is that it makes the naughty, when they get caught, it becomes less onerous. In doing the special use permit, we can pass that, makes some of us happy here, it also makes other people happy as well, because it means that, we can let things carry on as they are and for the most part it is going to be an ignorance, it is going to be a blind eye. But when it does come up and taken to court, it will be a civil penalty it reduces that. In some ways I have come around that option #1 is actually the way to square the circle here because it gives a process if they want to do it, but it also gives an option to people.

Mr. Fletcher said there can always be more options. Any of the options can always have the civil penalty, it sounds like you all like the civil penalty; that can always be an option. Do not lose sight of that. It can be built in, no matter what you choose by right or special use permit, if you want it you can recommend to City Council to adopt that.

Mrs. Fitzgerald said still that fundamental question is by right or special use permit.

Ms. Dang said I am trying to think how to help you all make that decision. When you say something about the safety of the host and the guest, which I can appreciate, what are those tools or mechanisms that we would have in place to do that. How do we require that?

Mrs. Whitten said they do require that in Abingdon and they do not have a special use permit.

Mr. Fletcher said that is not Ms. Dang's question. What is your question?

Ms. Dang said I am just trying to walk through this and I am not suggesting an answer. Maybe another question would be "what is the best just for neighbors?" I heard in some cases maybe limiting the number of people, I know that for staff we were thinking, well maybe in one case it is appropriate to have more people than another house. But, if you do it by right you are stuck with setting a specific number. Maybe kind of thinking through any of these concerns or elements that are of concern to you and thinking about how it might unfold and be implemented.

Mrs. Whitten said if you read the ordinance from Abingdon it does have a limit of days in a year. But they are not specific like this. I do not like this because I think that it is only JMU or EMU. There are certain weekends that are obviously busier in Harrisonburg and I understand that direction.

Mr. Fletcher said we thought through all those scenarios. Other localities limited it to 90 days, or 120 days, or 185 days because it is half of the year. It becomes then a question of how do we know when are people doing it or not doing it.

Mr. Colman said the reoccurring cost of this is the yearly inspection, the special use permit is a one-time fee.

Mr. Fletcher said the way it is proposed the special use permit is a \$455 one-time application fee, so long as you maintain the special use permit you have it forever. But every year, and in my mind the way it would likely be working is that every time they go get their business license, they are basically doing everything once, so they are doing their inspection, they are applying for it all at once. Then, every year there is a \$50 annual inspection. If Planning Commission does not like the \$50, you can make it something else. We suggested \$50 because it is going to take at least two staff from zoning and building inspection, I do not know if the Fire Department needs to be involved, this is where we started.

Mr. Colman said I think that the off-street parking requirement could be a barrier, especially in a neighborhood like mine where not everybody has a driveway or place to park a car. That is a requirement which pretty much puts them at where they cannot do a special use permit unless you build a parking lot or driveway.

Mr. Fletcher said not necessarily because, as is built into the proposed regulations, it provides you the flexibility, or City Council the flexibility, to reduce or increase the number of parking spaces based upon the specifics of the site. It could be that certain special use permits in certain neighborhoods for short term rentals have no minimum parking requirements, it just depends. We wanted to have a base, just as a starting point, but we did not want to create these scenarios where people were changing the character of their residential home. The one parking space per bedroom per accommodation regulation was not arbitrary, that is what our bed and breakfast off-street parking requirement is today; it is one parking space per bedroom.

Mr. Finnegan said I think the reason why so many of our conversations here run so long, is because there is option A that we do not like and then option B we like even less and I think that is the nature.

Mrs. Fitzgerald said I disagree. I think it is because we still have not decided whether it will be by special use permit or by right.

Mr. Finks said I kind of see us, at least for tonight, as having three options. We can either tell staff we either like option 1 or option 2 with minor or major changes, moving forward; or option 3 we can say we do not like either option and go back to the drawing board with some form of by right process based on what Abingdon or Blacksburg does. I think essentially those are the three options we have to make a decision on.

Chair Way asked can I ask a question about the by right option. It is probably not exactly what we are talking about with by right and what kind of associated conditions can be associated with by right, can you ever have something that by right could be rescinded in any situation? Like, if there are enough complaints.

Mr. Fletcher said that ability is built into the proposed ordinance. So, if you did option 2 that allows limited homestays, they are permitted by right.

Ms. Dang said I think it can only be revoked if they were in violation, if they did not apply for a business license or they did not do whatever else was required.

Chair Way said that is what I am asking, so can you not do something on a basis of complaint. Subsection C, "three or more substantiated complaints including but not limited to," those things, can one create a situation where short term rentals are by right, but with the condition that if there are three or more substantiated complaints that by right ability can be withdrawn.

Ms. Dang asked can you give us an example of what you have in mind of a complaint that might be made.

Chair Way said it is written in there, noise, trash and violations of the Zoning Ordinance.

Mr. Fletcher said it is difficult. For noise, we have to rely on cooperation with the Police Department. With trash where we have a definite collection of junk and debris violation, we go out, we see it, we document it, and thus it can be substantiated.

Chair Way said what you are saying there is, in fact, we cannot actually revoke it. This is unworkable, we cannot use this if you wrote it, say this is meaningless, so let us take option 2 off the table, right?

Mr. Fletcher said I gave at least one example in which you could. If there is a whole bunch of trash on the property all the time. We have gone out because there were red solo cups and trash bags sitting on properties just strung across properties. We work in cooperation with the Public Works Department if we have to call them and say is this going to fall under your regulations or does it fall under our regulations? Did they attempt to place the garbage out on the curb and then they just dropped it half way there? Did the wind blow it across and they just have not picked it up?

Chair Way said but the issue is: can you prove that this was because of the short term rental? That gets tricky.

Mr. Fletcher said if you do not like it we can strike it.

Chair Way said I like the spirit of it, I like the emotion, it is just that this is tricky. My concern is I see the special use permit, but I do not see what a by right looks like.

Mr. Colman asked what are the short comings of the special use permit.

Mrs. Whitten said I know that we can revoke the special use permit, but we often talked about the fact that it is not as easy as we like to believe that it is.

Mr. Fletcher said it is the same thing whether it is some kind of nuisance, we still have to see if this is a nuisance that we need to bring to Planning Commission; we have to make that decision first. Then you all substantiate it, at that point you all say yes, it sounds like a nuisance, then you all send it to City Council for revocation.

Mrs. Fitzgerald said I would make the argument that because the special use permit is a little bit harder to get, it takes more time, it is costlier that there would be less of an incentive to put yourself in the position to be revoked.

Mr. Fletcher said in either option here, if City Council were to give us direction to proactively go after those that might be flying under the radar and if we have to go proactively enforce it, they get a civil penalty immediately of \$250. It is here a \$250 violation and you have to stop.

Mrs. Fitzgerald said to Councilman Baugh, do I remember you bringing this idea up at a Council meeting quite a while ago, that this was coming up and you said at that time probably this is going to be the issue where we have to talk pretty much directly about enforcement.

Mr. Baugh said yes, I think this enforcement issue overrides the whole thing, regardless of what you do. I do think that a very frank honest discussion at the Council level of whatever you do if you really mean it, we really need to think about the implications for enforcement, and not just relying on the complaint driven system as we have in the past.

Yes, I do think that is an overriding factor; but while it is certainly on the list of things that Council is happy to have this body discuss and make recommendations on, Council is where the decision has to be made as to if you are going to be serious about it or not. In this floutingly data base that is developing for this new thing, that we still do not know entirely what it is, because that is one thing that I have not seen a whole lot of is communities that have done that. You can see the different communities are making different choices, I cannot say I have seen a whole lot and certainly have not seen anybody that has done it long enough to be able to give us any meaningful data.

Mr. Fletcher said when I spoke to the person in Abingdon he said “it is just me.” Because these small communities do not have a lot of staff. They are the zoning administrator, they are the planner, sometimes they are the town manager. Mr. Russ is correct, we can just do nothing and just not adopt it; but I think, and I am not going to speak for everyone, but something has to be done. I went and spoke to a group in the hospitality industry (including local hotel and motel managers), I was invited by Brenda Black, and they wanted to understand what is the City thinking about doing for short term rentals. b Tourism has to help promote these types of industries and they have to be able to tell people the right way of going about it. I told them what staff was proposing. They are seeing the hit and their numbers are dropping and the rates are higher because people are staying in other places and not hotels.

Mr. Baugh said if you look at Alexandria and you read what they have done, what that amounts to, at least in my view, is that it is an open declaration that we have decided as a jurisdiction to be what, a very friendly community for this type of activity. We are where we are, we are in immediate proximity to the Nation’s Capital and there are lots of people who would like to come here and we are opening the doors. We can tell our tourism folks as they are explaining to people, yes, this community is very friendly for this type of activity. Any of these places that are saying owner occupied or anything along those lines you are really making a declaration “okay, we only want to do this under some circumstances,” I mean this is all part of this. It really is the overriding thing of how do we feel about this, in some respects that is part of the debate. Do we like the idea of pronouncing this as a very open and friendly community to this type of new lodging alternative or do we want to take a more conservative view toward that?

Mrs. Fitzgerald asked so where are we with respect to the discussion tonight.

Mr. Finks asked do we want to take a vote on some sort of either moving forward with option 1 or option 2 or a third option of to be determined.

Mrs. Fitzgerald said the next step would be a public hearing.

Mr. Fletcher said it depends on what you do.

Chair Way asked is it worth drafting what a by right would look like or is that kind of mundane.

Mr. Fletcher said by right would basically look like what is already in front of you, it is just going to be called something different. The framework is here.

Mr. Fletcher said if you pick an option 3 and you want staff to call them short term rental and you want them by right, you are going to get a document that looks just like option 2. It is going to have a definition of the short term rental, it is going to take out the code sections associated with special use permit, it is going to put in the by right ones and then you are going to have this new Article DD, the way it is written now, with these generic regulatory controls. If you want to cap occupancy, if you want to cap the number of rooms, if you want to make that it must be a primary principal dwelling, you pick the regulation you want to make and it can fit in there.

Mr. Finnegan said is there a way to, if we went with option 2, could there be a path to option 1 for people who do not own the primary residence. If you are not the primary resident then you can apply for the special use permit and go through this other process.

Mr. Fletcher said you can do that too.

Mr. Finnegan said I am trying to find a way to kind of hybridize it somehow.

Chair Way asked what do we want to do.

Mr. Colman said I go back to what they were saying, we are trying to protect our neighborhoods, we need to consider that also. That is a key element, to me that is one of the goals, how do we do that?

Chair Way asked do we want to throw it to the public, have both of these presented and see if that changes anything?

Mr. Fletcher said just so you know every time we advertise we have to pay. If we advertise these both and it is okay, we totally can, it is just the more you advertise the more it costs.

Ms. Dang asked is there a third draft that somebody is asking us to consider writing.

Chair Way said that would be to consider what the by right would look like.

Ms. Dang said I heard a suggestion of going down the road of if it is by right, we are requiring it to be owner occupied, and if it is not owner occupied, then a special use permit.

Mr. Finnegan said it allows that option. That ties into identifying the investor property versus the property owner occupied. Actual home sharing as opposed to investor properties.

Chair Way said I think there is a notion of exploring a cap on the number of people.

Mr. Russ asked have we given any thought to if you were to describe the sorts of property you would be okay with this, what would it be. We could just say any property whose address is on Main Street or Market Street, or any property that is over 1 acre and zoned residentially.

Mr. Baugh said I thought about that, because we keep wrestling with this thing. Part of what I am having a flash back to was the first chicken debate. The 2009 chicken debate, where we had 100 people speak at the public hearing and it was 50/50 and it was all this stuff. One of the things that I found frustrating about that process and I do think is an element here, is that the reality of Harrisonburg right now is depending on what part of town you are talking about; people would either be okay with this or they would be really against it. Right now you can actually do it in B-1. I am not really convinced that there a whole lot people living in B-1 who would object to this type of thing. Is there such a thing of figuring out some sort of overlay district where you have one set of rules. I hesitated in bringing that up because of acknowledging the level of complexity. The additional level of complexity that you are bringing something to people who already spent a considerable amount time on it. But I do think that does get to one of the issues here. There are some parts of town where I know nobody wants this and there are some parts of town that want this.

Ms. Dang said I am just trying to think of how do we, today, decide all of the cases or situations and create that overlay district.

Mr. Fletcher said you do not have to do an overlay district. The framework is there and then one of the sections can be all properties with addresses fronting East Market Street, South High Street, North High Street, something like that, it can be built in there like these are by right uses.

Mr. Finnegan said I like the idea of the overlay district.

Mr. Fletcher said we can't call it an overlay because that is where somebody has to decide proactively, which properties we are placing the overlay on, then we have to advertise all those properties to place the overlay on them. It gets complicated.

Ms. Dang said then we have to sit down and determine what sections or corridors we are talking about and you have to be comfortable making that determination.

Mr. Colman said if we did a special use permit to begin with and see what response we have and if we see a huge response in certain areas that we feel comfortable with, we can come back and say that area is going to be special use permit or switch it to by right.

Chair Way said there is some logic to that. Start off maximally and then work backwards. Do we want to raise the trial balloon in public hearing of the maximum option? Then start with that and work backwards and think about geographical configurations.

Mr. Finnegan said I think that is the closest we are going to get to a hybrid kind of solution; starting with one and then creating the corridors where by right is allowed.

Mrs. Fitzgerald asked you are saying option 1 with corridors.

Mr. Finnegan said of all the options that have come up so far that is the one that feels like we are trying to address multiple concerns.

Mr. Finks said I am missing that, option 1 as the special use permit with corridors.

Mrs. Fitzgerald said yes, with corridors by right.

Mr. Baugh said declaring that some areas of the City is an outright use.

Mr. Finks said the limited homestay, so option 2, you mean instead of having weekends where you can do it, you would have locations that you can do it by right.

Ms. Dang said can I ask of examples of areas that you have in mind, so I understand what kind of character of an area that we would make it by right?

Mr. Finnegan said I think downtown.

Mr. Colman said what I am thinking by right, I would put into the B-1 and Mixed Use zoning. Because the mixed use, you are looking at corridors to have the mixed use. B-1 is already by right.

Ms. Dang said B-1 I understand, mixed use areas, we do not have any mixed use zoned areas.

Mr. Colman said maybe with that we need to preamp it with a corridor instead of the zoning district because that use is not in place yet. We can preamp it to say this area here we are going to allow it because we can see into the future.

Ms. Dang said I would be concerned a little bit of kind of like what happens when a house gets rented by unrelated individuals, it becomes more economical to keep that property, to rent it out that way. Would we be encouraging some kind of short term rental venture.

Mr. Finnegan said I do appreciate your patience with us and your work on this.

Mrs. Whitten said I think all the points are valid and you need to hear each other.

Chair Way said in terms of this, do we want to move forward to next time to have a public hearing on option 1, we are not quite ready to talk about the geographical, some overlays and those types of questions quite yet.

Mr. Finks asked what substantial changes have been made to option 1 since the last public hearing.

Mr. Fletcher said option 1 now has all the new sections. Article DD has proposed all new sections of the Zoning Ordinance.

Mr. Finks said I do not mean in the sense that we do not have to do a public hearing, I am just saying as far as the public looking at it, are they going to say this is the same thing, essentially to what the public concerns are, from what you had last time?

Chair Way asked you are saying we may just want to do option 2.

Mr. Finks said I think as far as the publics perspective, as far as the concerns that I heard that the special use permit cost was too high and that seems to be the major thread from opposition to that originally.



That is why I am saying maybe we should present option 2 for public comment, because nothing of major concern, nothing has changed in option 1.

Mrs. Fitzgerald said a formal public hearing or just a public input period. They are different and they would have different advertising.

Mr. Fletcher said one has an advertising and one we can reach out to the community with the avenues that we have, but it would not be advertising in a newspaper.

Mrs. Fitzgerald asked so we are talking about public input just to gather a little more data in some of the new things we are talking about.

Chair Way asked to send it up to Council for a recommendation do we have to do a public hearing for that.

Mr. Fletcher said yes.

Chair Way said it might be worth while doing a public hearing.

Mrs. Fitzgerald said except we do not know what people think about this.

Ms. Dang said if time was not a heavy consideration, if we do not have a deadline, do you want to have a public comment period that is not a public hearing where these options are put out there? Maybe we can do BeHeard Harrisonburg again, we have done that once before, we can share these options. This table is nice to help summarize the comparison for folks. Get those comments, review them here with this body, and then when that time is appropriate, and we are comfortable with an option then we do the public hearing. If that would work, then what elements do you think the public needs to receive?

Chair Way said I think it just needs to be clear that the left hand column (as shown on the screen) is option 1 and the right-hand column is option 2.

Mr. Fletcher said it is difficult to explain the differences between option 1 and option 2. Because they are so similar that you almost have to have a one on one with staff to understand the differences. We just sat here tonight for however long and discussed it to understand the differences between the two.

Chair Way said I agree, but can you set out option 1 and say option 2 is the same as option 1 but with this extra bit of the limited homestay.

Ms. Dang asked is the public input only for these two options. We are not entertaining other options. For most people it is going to be easy for them to say I do not like it, if they are limited with what they have to review and have to comment on. it might help you all, otherwise you will be filtering a lot.

Mr. Colman said if the people want to propose something different, then we want to hear it.

Mr. Russ said basically ask which of these is your preference if you had to pick one of these two, but also if you have any additional comments please give them to us.

Mrs. Fitzgerald said are we reluctant to actually make a decision because every decision that we are going to make is going to upset somebody. There is no perfect fit.

Mr. Finks said we are going to make a decision that is going to upset someone. Someone is going to be upset at either side of this issue.

Mrs. Whitten said if you choose either one you are still going to have a public hearing. You are going to have to hear people out and there are going to be changes made because of it.

Chair Way said what about a motion of next time is the public hearing where actually we discuss both of them, I know it is a pain.

Ms. Dang said okay if both of them are advertised, which is fine, and it is discussed at the next meeting. Is the expectation that, you all of course could table it if you wanted to, you would make a decision at the next meeting?

Chair Way said let me just ask if we did table it and we wanted to make some tweaks or decisions, do we have to have another public hearing?

Mr. Fletcher said it depends on what you discuss at the meeting.

Mr. Colman said but if we change the language we need to have another public hearing.

Mr. Fletcher said in my opinion no. If you change the language at the public hearing, the public knows what you are changing because it was advertised for you to come and listen. You cannot change it between Planning Commission and City Council.

Chair Way said we are going to have a public hearing next time on both options and with the full expectation that there may be some tweaks going on here and we may have to table, we may have to come back, even again, for another public hearing. But hopefully we can get to a point where we have a way forward at our next meeting.

There was a consensus to Chair Way's recommendation.

Mr. Finks said in this situation with the ordinance if it gets a majority NO votes, then it would just stay within this body, a NO recommendation on the ordinance would not go to City Council.

Mr. Fletcher said not necessarily. It is kind up to you all, because staff is grooming it for you. Our recommendation to you all is option 1.

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: August 8, 2018**

Chair Way read the request and asked staff to review.

Mr. Fletcher said this is exactly the same thing you saw last month. The definitions are available for you and staff is offering the same recommendation. We did advertise accordingly, we advertised for both options and we continue to recommend option number 1.

Chair Way asked could you please go back to the previous slide which has rental summary on there, just to have it as the go to slide, is that okay.

Mr. Fletcher said absolutely.

Chair Way asked if there were any question for staff. Hearing none, he opened the public hearing and asked if anyone would like to speak in favor or against this request.

Mike Stoltzfus, Summit Avenue, said I recently purchased a house on Summit Avenue. I moved from College Avenue, so I transferred from one house to another within the City. Actually, this is the fourth house I have lived in now in the City. One of the things that attracted us about the house that we moved into now is the option of having one of the rooms be a short term rental. I have been reading with interest the information that has been released to the public concerning some of the deliberations that have been going on. I was made aware quite a while ago that short term rentals are technically against ordinance in the City and yet with a quick search of Airbnb it looks like there are over 200 short term rentals currently operating in and/or immediately around the City. I was here last month at the Planning Commission meeting as well and heard that discussion. I am glad that the current way of just sort of looking the other way is not going to happen because as someone who is interested in doing this, I want to do it legally. I want to do it right, I am eager to have the City solidify an ordinance to make this a permissible thing to do and I am willing to go through the steps whatever those steps are determined to be. I am in favor of

option 1, I would not want option 2, partially because there are a lot of events that are happening in our City and with our Universities, that are not included in that list of events, that I think would be prime opportunity for short term rentals to be beneficial for visitors coming into our City.

Partially, I feel like it is important for there to be some control by the City over short term rental landlords, if that is what they are called, and as someone who is interested in doing this, I would like to see some effort have to be put on by the part of the owner to do this right. That will create some self-selection, people that are kind of doing it casually may decide that is not really worth it. Which would thin out the supply and help those of us who want to do it well to be one of the few, rather than one of the many, which could benefit those who want to do it right. Certainly, the special use permit I think is reasonable, having a business license I think is reasonable, paying City tax is reasonable, all of those options under option 1, I think are reasonable and something that I would certainly be willing to do.

Chair Way asked if anyone else would like to speak in favor or against this request. Hearing none, he closed the public hearing and he asked Planning Commission for a motion on the request or for discussion.

Mr. Fletcher said, I just want to bring this up because Mr. Stoltzfus is here and I do not know if he knows the history of Summit Avenue. There was a special use permit requested on Summit Avenue about six years ago, for a bed and breakfast, which is essentially a kind of short term rental, same kind of deal, and that neighborhood in particular was very like, well, what we saw here this evening with the Lucy Drive Mixed Use Development rezoning request against a short term rental on Summit Avenue. I would encourage you touch base with us at another time and if you want to learn a little about the history of it. I am not saying that you could not apply, I am not saying that your future request might not get approved, I just feel like you should know the history of the previous request.

Mr. Stoltzfus said I was not aware of that, I do have knowledge of two Airbnb's that are on that street, one of which is the entire house, it is not an owner occupied.

Mr. Fletcher asked are you making a complaint about any particular property.

Mr. Stoltzfus said I am not making a complaint, I am just saying that I am aware that it is happening and I would love to see some of these requirements apply to those short term rentals primarily off street parking would be one and some other things. That is another reason why I am excited about these regulations. Because I think, I am not opposed to other short term rentals on the street where my family lives, but I would love to see some sort of regulations put in place and be enforceable so that people follow the guidelines.

Mr. Finnegan said just as a follow up to Mr. Fletcher's comment I think that was a full blown bed and breakfast, they wanted to do onsite. We think Airbnb has changed the way we think of short term rentals, but this was prior to Airbnb being a household name.

Mr. Fletcher said that is why I am saying I encourage you to touch base with us in a different setting, so you can learn the history.

Chair Way said I have closed the public hearing, so now it is on our part for any discussion or motion.

Mr. Colman moved to recommend the option suggested by staff, Option 1 of the short term rentals.

Mrs. Whitten seconded the motion.

Chair Way said there is a motion and a second, any further discussions?

Mr. Fletcher said can we give some clarity that you are recommending Option 1 and basically declining Option 2, that you want us to move forward with advertising only for Option 1, if you vote that way.

There was consensus among the Planning Commissioners regarding Mr. Fletcher's comment.

Mr. Colman said yes, Option 1 and to decline Option 2. An additional comment that I have is that it makes sense throughout our discussion that we protect property and we protect the homeowners and that is the reason I feel like we need to do it.

Mr. Finnegan said I have struggled with this trying to find some kind of middle ground and not knowing, not being as well versed in the law and the codes and that kind of stuff, but there needs to be some kind of lever for the neighborhoods to have input on what is happening in their neighborhood. I feel like, I do not think Option 1 is perfect, but I do think it is the best option available given neighbors needing to have input and that there is no one size fits all option that will work for the entire City. I just want to go on record saying that I do not think it is a perfect solution, but I also I feel like it is the best option that we have.

Mr. Fletcher said you all can keep tabs on how we are doing, on how many complaints we are receiving, how many violations, it depends on how Council gives us our directive as to how to enforce it. If we are a year out, and you ask how is it going, maybe you want to loosen some regulations, you can always do that, those are options.

Mrs. Whitten said I would just add that I would love to see Council recommend those fines be extended beyond just this ordinance, fines pertaining to people breaking the rules in zoning.

Mr. Fletcher said you are saying zoning fines in general for any violation.

Mrs. Whitten said yes absolutely.

Mr. Baugh said I will say that would probably be something that, I think, would be most effective going to Council if it was vetted by this body and came up.

Chair Way said adding it to the Comprehensive Plan, maybe is one of the ways.

Mr. Baugh said that is not something we want to sit there one night and one of us make a motion under other matters.

Mr. Fletcher asked are there any localities that do it. I am not sure that there are.

Mr. Russ said yes, most do, Charlottesville, Fairfax, and Lynchburg do.

Mr. Fletcher said these are the things we need to learn.

Mr. Russ said I just do not like the idea of sentencing someone as a crime for having an inoperable vehicle in their yard.

Mrs. Whitten said I did not mean to start down this path, but these two things are relevant and are tied together. If we are interested in protecting neighborhoods, then let us be serious about it.

Chair Way said we have a motion and a second to recommend approval of Option 1 to City Council and declining Option 2. Is there any more discussion?

Mr. Fletcher said we are only moving forward with Option 1?

Mrs. Whitten said yes.

Mr. Fletcher said we talked about this as I read the recommendation on the screen, someone could of taken it to mean we are recommending Option 1, declining Option 2 almost as a message that there was another option for City Council to consider. But we are not giving City Council the second option.

Chair Way called for a voice vote on the motion.

All voted in favor (6-0) to recommend Option 1 for the Zoning Ordinance and Title 4 Finance, Taxation, Procurement Amendments – Short Term Rental as presented by staff.

Chair Way said this item will move forward to City Council on September 11, 2018.

Respectfully Submitted,

*Alison Banks*

Alison Banks  
Senior Planner