City of Harrisonburg, Virginia

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To: Kurt Hodgen, City Manager
From: Adam Fletcher, Director of Planning and Community Development
Date: October 18, 2016
Re: Harrisonburg's Zoning Regulations and its Application toward Limited Residential Lodging Uses

Summary:

The following information is regarding the 2016 Virginia General Assembly's approved Limited Residential Lodging Act (commonly referred to as the Airbnb bill) and describes, from a land use perspective, how the City currently allows and regulates such residential short-term rental uses. This information was compiled to report on the legislation and to explain how the City must allow these uses if the legislation is reenacted by the 2017 Session of the General Assembly and implemented the way it was approved. At this time, no action is requested.

Background:

Earlier this year, the Virginia General Assembly considered SB 416 and HB 812, referred to as the Limited Residential Lodging Act (the Act), which, as summarized by the Virginia General Assembly's online Legislative Information System, "allows 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 are preempted from adopting ordinances or zoning restriction prohibiting such short-term rentals, but [are] 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 must register with the Department of Taxation to collect and remit all applicable taxes on behalf of the property owner using the hosting platform. The bill defines 'limited residential lodging,' 'booking transaction,' and 'hosting platform' and provides for penalties for violations of the Act. The 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." (For reference, the entire three-page legislation is attached hereto.)

Before getting into the key issues, from a land use perspective, there are a few specific components of the legislation that should be known. First, the following two definitions should be understood:

- "'Limited Residential Lodging' means the accessory or secondary use of a residential dwelling unit or a portion thereof by a limited residential lodging operator to provide room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy, provided only that (i) the primary use of the residential dwelling unit shall remain residential, (ii) any applicable taxes required to be collected and remitted by state and local law for each booking transaction are collected and remitted by a registered hosting platform pursuant to the provisions of this chapter or

directly by the limited residential lodging operator, and (iii) such accessory or secondary use does not regularly include simultaneous occupancy by more than one party under separate contracts."

- "'Hosting platform' means any person or entity that is not an operator and that facilitates reservations or collects payments for any booking transaction on behalf of an operator through an online digital platform.

Examples of hosting platforms include but are not limited to online services such as Airbnb, HomeAway, VRBO, FlipKey, and others.

As briefly noted in the summary above, the legislation also required for the Virginia Housing Commission "to convene a work group with representation from the hotel industry, hosting platform providers, local government, state and local tax officials, property owners, and other interested parties to explore issues related to expansion of the framework set forth in [the] Act related to registration, land use, tax, and other issues of public interest associated with the short-term rental of dwelling[s] and other units." The work group is also to consider existing governing activities of bed and breakfast operations, vacation rentals, and other transient occupancy uses. The work group must finish developing recommendations by December 2016 for the 2017 Session of the General Assembly.

Key Issues:

Currently, limited residential lodging, also known as short-term rentals, is not permitted in the City's residential zoning districts. Property owners cannot rent dwelling units on a daily, weekend, or for weekly time periods because such a practice is considered **transient** occupancy. Transient dwelling units, or transient occupancy, is not permitted within any residential district unless the dwelling is considered a bed and breakfast and meets the requirements for being such a use. The Zoning Ordinance (ZO) defines a bed and breakfast as:

> "[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."

To become a bed a breakfast, a property owner must first obtain a special use permit (SUP) per zoning requirements. Like all SUP requests, public hearings are required to be held by both Planning Commission and City Council. Prior to both public hearings, signage regarding the SUP request is posted on the subject site, the request is published twice in the local newspaper, and adjoining property owners receive notifications via mail; all of which give notice to the public hearings that are held in City Council Chambers. If the SUP is approved, depending upon the specifics of the buildings in which the use is to operate, the property owner could be required to apply for appropriate building permits (and other sub-trade permits) to make physical changes to the buildings so that Building Code requirements are met.

Unfortunately, to the lay person, understanding whether limited residential lodging is currently allowed is not obvious in the ZO without a strong understanding of the difference between **transient** and **non-transient** housing as they are applied in the code.

Within the ZO Section 10-3-24 Definitions, a "dwelling unit" is defined as the following:

> "One (1) or more rooms located within a building and forming a singular unit with facilities which are used or intended to be used for living, sleeping and dining purposes. A dwelling unit shall have customary kitchen facilities. An efficiency apartment unit is defined as a dwelling unit. Dwelling units which will be occupied for predetermined periods of time of more than one (1) month in succession shall be termed **nontransient** dwelling units" (emphasis added).

Because the ZO is a "permissible" zoning code, meaning it states what uses are permitted rather than those prohibited, and because our residential districts state that single family detached dwellings, duplexes, multi-family units (apartments), and townhouses are all considered "dwelling units," such units cannot be used as **transient** dwellings.

The simplest way to explain the above information is to state that when renting a dwelling unit in a residential district, the ZO does not permit the rental of a dwelling unit for any less time than on a monthly basis. If there is transient occupancy occurring, then it is illegal.

If the Act becomes effective as it is currently written, the City would be preempted from adopting zoning regulations that would prohibit or regulate in any way, via the ZO, short-term rentals within any dwelling unit. As specified within the Act, among other stipulations, Sections 55-248.54 A 1 and 2 and D 1 state:

> "A. Notwithstanding any other law, general or special, and except as expressly provided in this chapter, no local ordinance or other law shall:
>
> 1. Prohibit or restrict any residential unit from being used for limited residential lodging. Any such limited residential lodging shall (i) be deemed to be consistent with residential use; (ii) be authorized in any zoning district established pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 allowing residential use; and (iii) not require the residential dwelling unit or the owner or primary resident of the residential dwelling unit to adhere to any zoning or licensing requirements applicable to hotels, motels, bed and breakfast inns, lodging houses, or other commercial enterprises.
> 2. Impose or purport to impose any additional regulation or obligation on a limited residential lodging operator based on the use of such operator's residential dwelling unit for limited residential lodging purposes;…"
>
> "D. Nothing in this section shall be construed to prohibit a locality from:
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> 1. Adopting and enforcing ordinances and regulations generally applicable to residential use and zoning including those related to noise, health and safety, the quiet enjoyment of property, parking, litter, yard signs, and other related issues, so long as such ordinances shall not be drawn or applied in such a manner as to create burdens or restrictions on limited residential lodging not placed on other authorized uses of residential property;…"

In other words, the City shall allow short-term rentals by right within any residential district and within any dwelling unit because limited residential lodging would be considered as an accessory use to any dwelling unit.

With regard to permissible **transient** uses in the City, currently, the ZO states that hotels, motels and similar transient housing is primarily for transient or temporary occupancy. Such uses are permitted by right in the B-1, Central Business District, the B-2, General Business District, and the M-1, General Industrial District. As noted above, bed and breakfast operations are also considered transient occupancy uses and are only permitted by SUP within the City's residential districts (except R-4 and R-5) and within the MX-U, Mixed Use Planned Community District. (Note that no property in the City is currently zoned MX-U. This district was added to the ZO in 2009.)

Per today's regulations, the only zoning district where someone can legally operate a short-term rental use, without a SUP, is within the B-1 district. This is because the B-1 district allows hotels, motels, and buildings used for dwelling units by right. The ZO also differentiates that dwelling units in the B-1 district are different than dwelling units in all other districts that allow residential uses by defining the following:

> "[d]welling units, CBD: [o]ne (1) or more dwelling units of nontransient occupancy within the Central Business District (CBD) that are designed to promote the most desirable uses and rehabilitation of the district."

Furthermore, the B-1 district also allows for dwelling units to be occupied by a family or not more than four persons.

What this means is that buildings or any portions thereof in the B-1 district used for residential dwelling units (or nontransient occupancy) are permitted by right and can be occupied by a family or four persons. Hotels, motels, and bed and breakfast operations (or transient occupancy) are also permitted by right in the B-1 district. Therefore, property owners that desire to operate short term rentals, and whether they want to use hosting platforms or not, may do so by right. It should be understood, however, that from a Building Code perspective, dwelling spaces of a nontransient nature will likely be classified as a different use group than dwelling spaces of a transient nature, and therefore, must meet different Building Code requirements. In short, the ZO allows both kinds of occupancy uses in the B-1 district—they just have to be built according to the correct use group of the building code per the desired use.

Although it is not exactly clear at this time, it appears that if the Act is reenacted as it is currently written, regardless of a property's zoning classification or the type of residential dwelling that the short-term rental occurs within, the Building Code will likely not require any additional improvements beyond those applicable to the residential use because the Building Code may have to treat the use as accessory to a residential dwelling. Staff will continue to monitor how this particular component of the matter should be handled.

Regarding potential violations, like all land use code matters, the longstanding policy of enforcement occurs via three separate approaches: 1) during the pro-active enforcement program; 2) when complaints are received (which may be submitted anonymously), properly investigated, and founded; and 3) when properties are under scrutiny for any kind of project or development proposal (i.e. subdivision, rezoning, special use permit, street closing, etc.).

For those unaware of the pro-active enforcement program, in 2003, Planning Commission directed staff to undertake an active approach to rectifying land use violations. Typically, the matters most documented are when properties have the collection of trash/debris, inoperable vehicles, tall grass and weeds, and sign violations. Other land use matters are also documented when they are easily identifiable, such as operating uses not permitted in particular zoning districts, construction without proper permitting, and others. Part of this program also includes ensuring noticeable proffers of conditionally zoned sites are in conformance as well as ensuring that noticeable conditions of special use permits are being followed. Implementation of this program occurs by targeting one "sector" of the City each month, where the City is organized into 36 sectors, and thus, the entire City is pro-actively enforced once every three years. At the end of each cycle, the order of the sectors is re-organized so that sectors are enforced at different times of the year.

A common complaint that our office receives is regarding illegal occupancy. This violation is usually not obvious to the casual observer or to staff during the monthly pro-active enforcement program. Illegal occupancy can take the shape of more individuals residing in a dwelling than the zoning district permits or through, the issue at hand, limited residential lodging. Unless someone complains about a particular property, staff usually is not aware of over-occupancy issues. The same is also true for short term rental spaces.

Specifically regarding potential violations of limited residential lodging uses, one might question why staff does not utilize online hosting platforms as an investigatory tool to seek out violators of the code. Although this approach could be taken if advised to do so, this approach will not always be successful because the location of lodging facilities are not always obvious due to the way the operator advertises on the site and/or does not make the physical location known until reservations are paid by the requestor. To

use staff time and resources most efficiently, we have relied on the longstanding policy of allowing neighborhoods to self-regulate; when concerns are had, they can call our office and we will investigate.

In closing, if the General Assembly implements the legislation as is written, the City must allow short-term rentals by right within any residential district and within any dwelling unit. Allowing this operation by right could be detrimental to the framework of how our ZO protects neighborhoods from undesirable uses and activities not planned for in residential areas.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

N/A

Community Engagement:

N/A

Recommendation:

N/A

Attachments:

1. A copy of the approved Limited Residential Lodging Act Legislation (3 pages).

Review:

N/A