



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections
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To: Eric Campbell; City Manager
From: Adam Fletcher; Director – Department of Planning and Community Development and Harrisonburg Planning Commission
Date: March 12, 2019
Re: Amendments to the Zoning Ordinance and Title 4 Finance, Taxation, Procurement – Homestays and Short-Term Rentals

Summary:

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.).

The options that will be discussed include:

- Option 1, recommended by staff, allows short-term rentals exclusively by special use permit.
- Option 2 allows limited short-term rentals (“homestays”) by-right in single-family detached homes, duplexes, and townhouses. Homestays must be the operator’s primary residence and may be rented no more than 45 nights per year, may have up to 6 guests at one time, and the operator of the homestay must be present during the lodging period. Short-term rentals may exceed the homestay regulations by special use permit.
- Planning Commission recommended (4-3) to approve Option 2, except the recommendation increased the rental nights per year to 90 and does not require the operator to be present during the lodging period.

Background:

During its 2017 Session, the General Assembly passed a bill, codified as Section 15.2-983 of the Virginia Code, providing authority for the creation of a local registry for short-term rentals (STRs) while acknowledging that the legislation did not supersede the general authority of a locality to regulate STRs through its zoning ordinance.

First, it should be recognized that STRs can be allowed by one of two ways—as a by right use or through approval of a special use permit (SUP). Secondly, there are many ways of regulating STRs. For example, 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;
- 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; or
- have minimum parking requirements?

In considering the many questions involving STRs, staff evaluated how other localities regulate them and learned that there is no “one size fits all” model that works. Virginia cities, counties and towns are taking different approaches. A summary of how other localities regulate STRs is included in the packet.

Staff understands the desire to allow STRs 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 online 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 recognizes there are three sides of the home sharing economy argument. In general, there are those who favor allowing STRs as a by right use with no additional “hoops” to jump through; those who want to allow them but with controls and regulations; and those who would prefer STRs not be legal. As staff considered STRs, we initially 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.

Key Issues:

Staff is offering two options to amend the ZO to regulate how STRs may operate in the City as well as to modify the City Code’s Title 4 Finance, Taxation, Procurement to establish appropriate taxing for such uses. Planning Commission (PC) offers a third option, based on staff’s Option 2. In brief, Option 1 proposes a use termed “short-term rentals” that would be allowed by special use permit (SUP). Option 2 proposes the same STR use and an additional “homestay” use allowed by right with restrictions. Planning Commission recommended (4-3) to approve Option 2 but with less restrictions on the operation of homestays. A two-page table comparing homestays and STRs as proposed is included in the packet.

Option 1:

Option 1 is similar to Planning Commission’s August 2018 recommendation, presented to City Council on September 11, 2018. Option 1 would add a definition for “Short-term rental” and would eliminate the existing definition of “Bed and breakfast facilities”:

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: The provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.

Note that staff proposes keeping the “Bed and breakfast facilities” definition, 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.

The new “Short-term rental” use would be added to the SUP sections of each of 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.

The amendment would also include the creation of a new article of the ZO, titled Article DD. – Short-Term Rentals with sections regulating and specifying registration requirements and general regulations, which would require operators to complete a Short-Term Rental Operator Registration following approval of the SUP by City Council and prior to beginning operations. The Registration would be valid January 1st (or from the date the registration first occurs) through December 31st and must be renewed annually. The fee for Registration is \$50 per year. Note that while the proposed ordinance states that each registration shall be specific to the operator and property and is not transferable, SUPs are tied to the property; thus, the purchaser of a property with an already-approved SUP would be entitled to register and begin operating a STR without additional review. The remaining portions of proposed Section 10-3-204 describe penalties for not registering, which would be \$100 for the first offense and \$500 for each subsequent offense.

Proposed Section 10-3-205 limits lodging contracts to a period of fewer than 30 consecutive nights, the maximum number of nights allowed by the Code of Virginia § 15.2-983. While the proposed ordinance allows food service to be offered to guests, a separate Lodging Permit from the Virginia Department of Health may be required and would be the responsibility of the operator to obtain. The proposed ordinance requires STRs to have the dates of trash and recycling collection posted prominently and requires operators to comply with the Uniform Statewide Building Code and Statewide Fire Prevention Code.

Those following the City’s progress with short-term rental regulations may recall that in August and September 2018, Option 1 contained language that would have required operators to have an inspection of the property performed prior to operation and once annually to ensure compliance with the Uniform Statewide Building Code and Statewide Fire Prevention Code. This requirement has been removed from the proposed ordinance. While staff continues to have concerns for the safety of guests, staff has learned that localities generally do not have the authority to require inspections. Note though that because apartments may require a Change of Use and physical renovations under the Building Code, they would be inspected for compliance following the change.

The proposed regulations include minimum off-street parking requirements. To help address concerns over parking in residential areas, staff proposed the following amendment to the parking regulations in Section 10-3-25:

(28) 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.

This approach allows City Council to consider alternative parking requirements during the SUP review. For example, City Council may opt to require fewer parking spots where a property has sufficient

parking along public streets and where the conversion of yard space into a parking lot might detract from the residential nature of the area.

The proposed STR regulations also have civil penalties at a rate of \$100 for the first offense, \$200 for the second offense, and \$500 for any subsequent offense for violation of the use regulations. A separate penalty structure is proposed for failure to register prior to operation. The penalties for such a violation would be \$100 for the first offense and then \$500 for any subsequent offense.

As explained above, Option 1 would only allow STRs to operate with an approved 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 hearings, and subject properties are posted with signage advertising the request. The application fee is \$425 plus \$30 per acre. Something that is different from previous proposals is that if a property owner receives approval of their SUP to operate a STR, we are now proposing that the operator would be required to pay a \$50 fee to register the use. Remember that the \$425 plus \$30 per acre application fee is used to cover the costs for advertising the SUP in the newspaper. That fee does not cover administrative costs associated with registering the use and maintaining the register.

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 operator to occupy the property when the unit is not rented or even requiring the owner, tenant, or operator 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 or operator.
- Requiring additional parking spaces or allowing less parking spaces.
- Requiring the establishment of quiet hours.
- Limiting the number of lodgers allowed on the site at one time.
- Limiting the number of guestrooms allowed to be rented.
- Allowing the STR to be used for weddings, receptions, or events.
- Allowing PC or CC to revoke the SUP if violations are found or if the STR becomes a nuisance.

Option 2:

Option 2 includes the same proposed amendments in Option 1, but also includes the addition of a new use called “homestay” that would be allowed by right with some limitations. The homestay definition is proposed as follows:

Homestay: In a single-family detached, duplex, or townhouse dwelling unit, the provision of a bedroom or accommodation space within the principal building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy, and where the operator is present during the lodging period.

Homestays would be allowed by right within a single-family detached, duplex or townhouse dwelling unit 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. Note that homestays would not be allowed within apartments, and would not be allowed in nonconforming dwellings within the M-1 and B-2 districts.

The proposed new article, Article DD, would address registration requirements and regulations for both STRs and homestays. The registration process for both STRs and homestays would be the same in that registrations would be valid January 1st (or from the date the registration first occurs) through December 31st and must be renewed annually for a fee of \$50. Additionally, both STRs and homestays would be limited to contracting with guests for a period of fewer than 30 consecutive nights, food service would be limited to guests, and operators shall comply with the Uniform Statewide Building Code and Virginia Statewide Fire Prevention Code.

Additionally, homestays must also comply with the following:

- Accommodation space may be rented for guest lodging for no more than forty-five (45) nights per calendar year.
- The number of guests at one time shall be limited to six (6).
- This operation shall not be marketed or used for weddings, receptions, or other events.
- Operators shall maintain the property as their primary residence, as indicated on a state-issued license or identification card.
- Operators shall be present during the lodging period.

Any operator who desires to do more than what is allowed in a homestay would have the option to request approval of a SUP to operate a STR.

Lastly, there are no off-street parking requirements proposed for homestays. Homestays are accessory uses to the principle residential use of the property. Given the limits proposed on the number of nights a homestay could be rented and the number of guests renting the homestay, staff has proposed no minimum parking requirements.

As noted above, PC recommends an amended version of Option 2. In this option, the homestay must be the operator's primary residence, but operators would **not** be required to be present during the lodging period and would be allowed up to 90 rental nights per calendar year, rather than 45.

Additional Considerations

For brevity, and for this section only, use of the term STRs includes both STRs and homestays.

STRs are intended for transient occupancy. Proposed Section 10-3-205(1) in all options, along with the proposed definitions for STRs, are intended to prevent operators from being able to rent to multiple unrelated individuals on repeated lodging contracts, which essentially could circumvent the occupancy requirements of the zoning district in which the use operated. Complaints of potential overoccupancy in residential units is one of the major concerns that staff receives on a routine basis, and therefore, we do not want to create any opportunities for abuse of STRs to disrupt the integrity of the ZO's occupancy regulations to protect neighborhoods. This is the main reason why staff has proposed the 45-night limit on the STR by right ability.

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 threat to housing costs in Harrisonburg when STRs are in the marketplace, particularly if there are no regulations that require STRs to be occupied by long-term nontransient residents. If STRs were allowed as a by right use without regulations, then current property owners who rent property will be encouraged financially to switch operating long-term rentals (in which residents are more likely to use) to operating short-term rentals (in which non-residents are more likely to use) and real estate investors (who may be local or non-local) will be encouraged to buy dwelling units with the express purpose of renting them short-term. Because the total supply of housing is fixed in the short run, this drives up the rental rate in the long-term rental market. Therefore, staff believes that there must be regulations and limits imposed on STR operations.

The other side to the question/concern over affordable housing is that some individuals might want to operate STRs to supplement their income 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, 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. While homestays as proposed in Option 2 would require that the dwelling be the operator’s primary residence and for the operator to be present during the lodging period, which alleviates some of staff’s concerns about nuisance and high turnover, the City would have no ability to recall, review, and revoke Homestay Operator Registrations for violations that are not related specifically to a short-term rental as listed in Article DD.

Staff believes the best way to manage STRs is by SUP as proposed in Option 1. This option creates the opportunity to allow STRs in the City while also providing the occasion for the neighborhood to provide input. Additionally, as with any SUP, City Council will have the opportunity to place conditions on the permit and, if necessary, review or revoke the permit at a later date.

In *The Sharing Economy and Housing Affordability: Evidence from Airbnb*, Kyle Barron, Edward Kung, and Davide Proserpio found that STRs have led to increases in both rental rates and housing prices. However, the study further acknowledged that STRs increase the value of homes by allowing owners (and renters) to better utilize excess capacity. They suggested that regulations on STRs should “at most” (emphasis of Barron, et al.) seek to limit the reallocation of housing stock from the long-term to short-term markets, without discouraging the use of home-sharing by owner-occupiers. Staff has proposed in Option 2 that homestays could be operated by anyone who uses the dwelling as their primary residence, which would include both owners and renters.

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

- Goal 5: 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 6: To meet the current and future needs of residents for affordable housing.

Furthermore, in the Comprehensive Plan Chapter 15 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.

For the amendments to Title 4 Finance, Taxation, Procurement, the necessary modifications are relatively minimal. To properly tax STRs, the main amendment needed within Section 4-2-76.1 (2) is to add “homestay” and “short-term rental” to the definition of “Hotel” and to eliminate 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.”

Lastly, one aspect of this issue PC and staff discussed is whether we need to change the way we enforce the ZO. As most are aware, the longstanding policy of enforcement for land use matters occurs via three separate approaches: 1) during the pro-active code enforcement program; 2) when complaints are received (which may be submitted anonymously), properly investigated, and substantiated; and 3) when properties are under scrutiny for any kind of project or development proposal (i.e. subdivision, rezoning, special use permit, street closing, and other matters). The topic of enforcement might need to be discussed as a separate matter at a different time, but ultimately staff would like direction on how to proceed. As described earlier, operators found in violation of the code will receive an immediate civil penalty of \$100 and they will need to rectify the violation. At this time, this type of code enforcement is new to the ZO.

Staff and the Commissioner of Revenue suggest at least a 30-day grace period from the enactment of the amendments to the Zoning Ordinance and to Title 4 – Finance, Taxation, Procurement to allow for the community to learn about the approved regulations and to cease any illegal operations so that they may prevent themselves from penalties. To help spread the word, staff can issue a press release and communicate on social media to inform the public. Staff will also create a webpage on the City website dedicated to STRs explaining the regulations as well as the registration and licensing procedures.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

Staff introduced STR regulations to PC in March 2018. PC then discussed and debated the matter in April, May, and July, and finally made a recommendation to City Council in August 2018. City Council received Planning Commission’s recommendation on September 11, 2018, but tabled the proposed STR regulations and noted that they wanted more time to understand the different options. They specifically asked to know what other localities were doing. At that time, Council Member Byrd noted that he liked the idea of somehow allowing the use by right. Staff returned to City Council in November 2018 to seek additional guidance to create opportunities for STRs as a by right use. Staff generally described where the process

was heading with a by right option and while Council members expressed interest in continuing to explore the option, there was no indication as to whether that was the preferred option.

Alternatives:

- (a) Recommend approval of Option 1 (short-term rentals);
- (b) Recommend approval of Option 2 (short-term rentals and homestays);
- (c) Recommend approval as endorsed by Planning Commission, which was a modified Option 2 with less restrictions for homestays; or
- (d) Recommend alternatives.

Community Engagement:

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

Zoning Ordinance and Title 4 Finance, Taxation, Procurement Amendments – Homestays and Short Term Rentals

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 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.”

In addition, a notice was provided on the City’s website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends alternative (a), which is approval of Option 1. Planning Commission recommends alternative (c), which is a modified Option 2 with less restrictions for homestays.

Attachments:

1. Planning Commission Extract (20 pages)
2. Comparison of Proposed Homestays and Short-term Rentals (2 pages)
3. Option 1 – Proposed Amendments to Harrisonburg City Zoning Ordinance and Title 4 Finance, Taxation, Procurement related to Short-term Rental properties (5 pages)
4. Option 2 - Proposed Amendments to Harrisonburg City Zoning Ordinance and Title 4 Finance, Taxation, Procurement related to Short-term Rental and Homestay properties (6 pages)
5. Other Virginia Localities – Summary of Short-term Rental (STR) Regulations (5 pages)
6. Code of Virginia Section 15.2-983 Creation of registry for short-term rental of property (2 pages)
7. 2016 Memorandum – Limited Residential Lodging (5 pages)
8. Planning Commission Minutes Extracts from March, April, May, July, and August 2018 (61 pages)
9. City Council Minutes Extract from September and November 2018 (7 pages)
10. Comments submitted on <http://beheardharrisonburg.org/>. (4 pages)

Review:

Planning Commission recommended (4-3) to approve Option 2, except the recommendation increased the rental nights per year to 90 and does not require the operator to be present during the lodging period.