



City of Harrisonburg

Municipal Building
409 South Main Street
Harrisonburg, VA 22801

Master

File Number: ORD 18-015

File ID: ORD 18-015	Type: PH-Zoning Ordinance	Status: Tabled
Version: 1	Agenda Section:	In Control: City Council
Subject: Short Term Rentals		File Created: 08/30/2018
		Final Action:

Title: Consider multiple Zoning Ordinance amendments and modifications to Title 4 Finance, Taxation, Procurement, which are all associated with Short Term Rentals (i.e. Airbnbs, VRBOs, etc.). The proposed Zoning Ordinance amendments consist of allowing the short term rental of dwelling units only via approval of a special use permit while the modifications to Title 4 are to establish appropriate taxing of such uses.

Internal Notes:

Sponsors:

Enactment Date:

Attachments: Memorandum Staff Report, Extract, 2016
 Memorandum - Limited Residential Lodging, Code of Virginia Section 15.2-983, Beheardharrisonburg
 Comments, Current ordinance reflecting recommended amendments, Public Hearing notice, PowerPoint presentation

Enactment Number:

Contact:

Hearing Date:

Drafter: alison.banks@harrisonburgva.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	09/11/2018	tabled				Pass
	Action Text: A motion was made by Vice Mayor Baugh, seconded by Council Member Jones to approve the ordinance amendments and enactments with the specific changes mentioned. Vice Mayor Baugh withdrew his motion. A motion was made by Vice Mayor Baugh, seconded by Council Member Jones to table this agenda item. The motion carried with a recorded roll call vote taken as follows:						
	Notes: Adam Fletcher, director of Planning and Community Development, presented a request to amend multiple zoning ordinances and modifications to Title 4 Finance, Taxation and Procurement, associated with short-term rentals. He stated these amendments are to allow short-term rentals only via a Special Use Permit and then properly tax for this type of use. He stated staff has been working on this for approximately two years and reviewed the recommended amendments and enactments to the ordinances. He stated there was an						

original proposal from State Legislation referred to as the Limited Residential Lodging Act which was created in 2016, that allowed the rentals of primary residences for less than 30 days, required a minimum liability insurance, must be registered, rental platforms would be responsible for collecting taxes and paying the localities and the localities were pre-empted from adopting zoning regulations or ordinances to regulate short-term rentals. However, during that legislation there was a re-enactment clause that was proposed and the Virginia General Assembly asked the Housing Commission to review and study the matter and bring it back up during the 2017 General Assembly in order to make the determination to either move forward with the legislation or not. He stated the amendment was not re-enacted in 2017 and we now have the codified section in the Virginia State Code Section 15-2-983. He reviewed the code section and noted retaining ability for local zoning authority was kept in the legislation. He stated staff had their first draft of the proposed ordinance amendments completed in May 2017, they have reviewed every possible way to look at short-term rentals including regulations and different approaches, and discussed whether they should be allowed in the city, how should they be taxed, be allowed by-right or special use permit, should we require the property to be occupied by the proprietor at all times, should it be the principal residence of the owner, allowed only in certain zoning districts or types of dwelling units or number of bedrooms, maximum rental days per year, maximum number of contracts, minimal parking requirements and sign regulations. He stated other localities regulations were researched and provided findings of that research and noted there is no one size fits all policy.

He stated Planning Commission discussed short-term rentals in the public realm in March, 2018, April 2018, May 2018 and August 2018, there were three separate public hearings, different ideas proposed, and ultimately two different versions were proposed: Option One is being proposed this evening; Option Two was similar but a slightly different take where there was a totally different use that was proposed called Limited homestays, and it would only allow rentals at peak times during the year, associated with graduations etc.,. He stated ultimately Planning Commission followed staff's recommendation to go only with allowing them by special use permit with a 6-0 vote. He reviewed the proposed zoning ordinance amendments and enactments.

Council Member Byrd asked why staff recommend requiring a special use permit. Mr. Fletcher stated staff had concerns over affordable housing and what the hidden impacts could be when individuals are able to buy up multiple short-term rentals and in turn, drive up housing costs. Council Member Byrd asked how many short-term rental properties exist in the city. Mr. Fletcher stated he has not been on the websites to find out. Council Member Byrd stated regulations were developed without knowing exactly how many will be impacted in the city. Mr. Fletcher stated that is not completely accurate, if he knew then he would have to begin enforcement. Council Member Byrd asked if localities with major state universities were researched. Mr. Fletcher stated many were

researched. Council Member Byrd stated he would hope that comparable localities were researched and to understand special use permit versus the registry where the state did allow us the by-right use that the majority of other localities of same size seem to be going with. Mr. Fletcher stated staff's concerns were also over neighborhood protection, a special use permit is required for Bed and Breakfast facilities and there have been concerns about people coming in and out of neighborhoods that are not readily known. Mr. Fletcher stated by requiring a special use permit the neighbors have a say in what goes on in their neighborhood.

Mr. Fletcher continued to review the proposed ordinance amendments and noted penalties will be civil penalties which is new to the zoning ordinance and may require additional changes to some of the language in the ordinance before the second reading. He reviewed the definition of special use permits and potential conditions that could be placed. He reviewed the Plan Framework Comprehensive Plan map and stated the city should be concentrating on programs to facilitate home ownership and improve the quality of rental housing as well as programs to reduce pressures to convert single-family houses and lots to other uses. He stated this is why they decided to require short-term rentals be done under the special use permit application process.

He stated staff and Planning Commission (6-0) recommended to approve the zoning ordinance amendment as presented and staff recommends approval of the amendments to Title 4 Finance, Taxation and Procurement. He reviewed the enforcement procedures and staff suggests a 30-day grace period be allowed to educate people of the new regulations once the amended ordinances are approved.

Council Member Jones asked if staff could change regulations so that complaints can be submitted anonymously. Mr. Fletcher reviewed the normal enforcement of violations. Mr. Brown stated, under the zoning enforcement state law, anonymous complaints can be received and under FOIA they can request anonymity. He stated the theory behind that is you don't want to discourage people from reporting violations of the law and to keep the peace with neighbors.

Mr. Fletcher stated staff has not gone on any AirBnB sites yet, but if council approves, violations will be investigated actively and handled accordingly.

At 9:07 p.m., Mayor Reed closed the regular session and called the third public hearing to order. A notice appeared in the Daily News-Record Monday, August 27, 2018 and Monday, September 3, 2018.

Pamayotis "Poti" Giannakaouros, stated this issue has gone back and forth quite a bit in Planning Commission, and he can't speak strongly enough against what has been presented. He stated this is an innocuous use, it does not

warrant the extreme heavy-handed approach that has been outlined. He stated he doesn't feel that having these types of businesses will deplete our stock of affordable housing or raise property taxes as housing markets are limited by the salaries and available credit to purchase. He stated regarding residential character, neighborhood protection, and 2 reports of concern regarding strangers in neighborhoods could be misconstrued as racial issues however, he feels this is not a concern in the city. He stated Vice Mayor Baugh did mention this issue during a Planning Commission meeting and cited one of the most significant deliberations he has seen regarding the neighbor waiver on back yard chickens, where staff thoroughly evaluated this issue of residential character that has come up on many cases such as business gardens, tall grass and weeds, stormwater, etc. He stated a break-through discussion led by Professor Fitzgerald concluded that the city doesn't have a neighbor waiver because that is not the kind of community that we are. He stated this type of targeting were mechanisms for potential discrimination and harassment leading to segregation and with the diversity we have in our neighborhoods we don't like that and we don't want to encourage that. He stated a Class 1 Misdemeanor for running an AirBnB seems heavy, as we have moved other ordinances away from criminalization, and if you look at how one can lose their license, per Section 10-3-206, it reflects a three strikes rule, determined by staff, from substantiated complaint but does not say guilty of a violation. He stated we have notoriously vague code, that has been arbitrarily enforced and we have had to rewrite some of the ordinances. He stated he strongly speaks against these ordinance amendments and requests council send this item back to Planning Commission.

Jeff Hill, managing member of the Joshua Wilton House, stated he came to this meeting to listen and try and get an understanding of what is going on, how it effects his business and how it effects the city. He stated he was concerned when Bed and Breakfast businesses got grouped into the same genre as AirBnB or Vacation Rentals, and feels his business is more of a dedicated business and inn, similar to a boutique hotel rather than anything else. He stated staff does not live there, but yet could still fall under short-term rental per the recommended amendments presented, they are not a part time revenue stream business.

Mike Stolzhus, 981 Summit Avenue, stated he has been interested in the business of AirBnB and has been eagerly watching and listening to this process hoping that there will be a legal way to do it soon. He stated he has held off on beginning the business because he wanted something to be in place within the bounds of the ordinances. He stated he is in favor of the special use permit requirement because he values the neighborhood he lives in and doesn't want it to change significantly as he has seen a number of neighborhoods he has lived in the past where housing was purchased by landlords as rentals and those properties sometimes aren't kept as well as owner occupied properties. He stated if it was a by-right use it might encourage landlords to continue buying

single family homes.

At 9:19 p.m., Mayor Reed closed the public hearing and the regular session reconvened

Mr. Fletcher stated Section 10-3-206(1)(C) proposes three or more substantiated complaints can be changed to show three or more violations. Mr. Brown stated that would follow Section 10-3-207 more closely. He clarified that inns fall under more of a hotel category and even though this is permitted in the B-1 zoning category by-right, these amendments would take it out of the B-1 by-right category and place under a special use permit required category

Vice Mayor Baugh stated normally he would go with what Planning Commission recommends; however, it seems as if this needs to be discussed a bit more.

A motion was made by Vice Mayor Baugh, seconded by Council Member Jones to approve the ordinance amendments and enactments with the specific changes mentioned.

Council Member Byrd stated if we have 400-500 operating illegally in the city, it seems to be very similar to our taxi regulations and then Uber or Lyft operates in the city without the required Certificate of Use permit. He stated the State recognized this when giving municipalities the option of the registry. He stated there are two ways we can go: Registry by-right will give citizens, who have already accepted this economy and the use of their property, the ability to operate legally by giving them a time frame to get on the registry; or require a special use permit which he feels is somewhat of a heavy hammer to get people into compliance. He stated he would prefer the use of the registry, a lot of the work in the definitions still apply, but with that said he would like time to look at other similar localities to make sure we are comparing apples to apples. He stated he feels 400-500 people trying to go through the special use permit, likely a 3- month process, could cause many of these businesses to continue to operate illegally.

Mayor Reed asked if it was clarified as to why certain localities similar to ours were not researched. Mr. Fletcher stated he does not have the complete file, but Blacksburg and Abingdon were reviewed. Council Member Byrd stated we need to look at Charlottesville, Richmond, Lynchburg, Farmville and Fredericksburg. Vice Mayor Baugh stated we are in unchartered waters, and feels that each council member needs to feel comfortable on this decision and reach their own conclusions. He stated Planning Commission agreed with some of the points Council Member Byrd raised, and we keep coming back to the fundamental point of what does this body think is best for the community. Further discussion took place regarding what could and could not happen and enforcement.

Mayor Reed stated she is agreeing partly with Council Member Byrd and would like to see information on other localities. Council Member Jones stated this should be looked at from an economic development side as well and stated it is already happening and is being well self-governed.

Council Member Hirschmann stated it is interesting at how this is developing and blossoming, he feels we are in the process of catching up, so let's catch up right and take a moment to research other localities.

Yes: 5 Mayor Reed, Vice-Mayor Baugh, Council Member Byrd, Council Member Jones and Council Member Hirschmann

No: 0

OTHER MATTERS

Adam Fletcher provided updates on three items: Short term rentals, the I-81 Overlay Sign District and the Tall Grass and Weeds data. He stated staff presented to council in October with recommendations on how Short-term rentals may be handled. He stated staff was directed to look at creating opportunities for by-right use, staff went back to the drawing board and came up with similar options that were discussed very early on in the short-term rental discussion. He stated if council wants staff to continue down that route, they would have to go back to Planning Commission to re-advertise zoning ordinance amendments. He stated staff drafted two different uses, home-stay (by-right use) and short-term rental (special use permit required), and he reviewed the differences and the zoning categories. Council member Byrd stated we can cap occupancy and number of stays. He stated renting a property is a by-right use. Mr. Fletcher stated they will continue to discuss with internal staff and he is looking for guidance from council. Some discussion took place about what other localities are doing. Council Member Jones stated he needs to see what the enforcement of violations will look like. Vice Mayor Baugh stated that is why Planning Commission went the direction they went. Mr. Fletcher stated we have no idea how to enforce the number of nights used in a years-time, the number of individuals renting etc.