

MINUTES OF HARRISONBURG PLANNING COMMISSION
Work Session on Short-Term Rentals

October 29, 2019

The Harrisonburg Planning Commission held a special work session on Tuesday, October 29, 2019 at 2:00 p.m. in Room 237 of City Hall, 409 South Main Street.

Members present: Gil Colman; Brent Finnegan; Mark Finks; Sal Romero; Kathy Whitten; and Henry Way, Chair.

Members absent: Zanetta Ford-Byrd.

Also present: Adam Fletcher, Director of Community Development; Thanh Dang, Assistant Director of Community Development; Alison Banks, Senior Planner; Rachel Drescher, Zoning Administrator; and Wesley Russ, Assistant City Attorney.

Ms. Dang began the meeting with an overview of discussion topics for the meeting and referred to the memorandum dated, October 23, 2019. During this meeting, the group would:

- (A) Review and discuss the summaries of short-term rental (STR) applications, summary of occupancy and other regulations included within the memorandum.
- (B) Review and discuss the definitions included in the memorandum.
- (C) Discuss questions one through eight included within the memorandum.

Ms. Dang noted that the questions are summarized on the white board and that the Commissioners' responses will be written there as the group works through them. The goal of the work session is for discussions to aim towards building consensus on a set of recommendations for amending the Zoning Ordinance (ZO) to address STRs, where even if individuals disagree, there is overall consent to move forward to create one set of recommendations.

In reviewing the definitions found within the October 23 memorandum, there was acknowledgement that the terms include operations that overlap and that terms can mean different things to different people. The group discussed the importance of definitions and regulations within the City's ZO to describe what the terms mean for Harrisonburg.

Commissioner Whitten said that "homestay" sometimes includes bartering where no money is exchanged. The group discussed examples such as couch surfing and when out-of-town friends or family members might stay at a home, and the group agreed that the City's regulations on homestays and/or STRs should only regulate operations where money is exchanged.

Commissioner Colman asked how staff's recommendations in the memorandum are different from the original proposal that was referred to as Option #2 at the Commission's February 13, 2019 meeting and City Council's (CC) March 12, 2019 meeting, which included both STRs and homestays. Ms. Dang responded that it is substantially similar although some minor changes have been made. The Commission's recommendation at the February 2019 meeting was to approve

Option #2 (with a vote of 4-3) and City Council had voted unanimously to approve Option #1, which was only for STRs.

Commissioner Finks asked what CC's reasons or concerns were for not allowing the by right homestay? Members of the group recalled that CC felt that Option 1 could be adopted and expanded on in the future if desired, and that if the City began with Option 2 and later wanted to become more restrictive, it could create nonconforming issues where by right homestays that were already legally established could continue their operations. The group discussed that if the City changed the regulations now to make STRs more restrictive that the existing STRs would not become nonconforming, they would be allowed to continue operating under their approved SUP and associated conditions.

Ms. Dang introduced question #1 as a foundation question: *Should the City allow homestays and/or STRs?* Commissioner Colman said that we should pursue by right homestays. Chair Way said that he has become more skeptical and that maybe we should not allow STRs and homestays, expressing concern about a more mobile/transient population in Harrisonburg and having heard various neighborhood concerns. Commissioner Whitten agreed with Chair Way stating that 24 people have had their STR SUP applications approved, and more people have voiced opposition and they are not being heard. Commissioner Finnegan agreed with Commissioner Colman and added that there is a difference between neighborhoods not being heard and the Commission and CC members listening and taking the neighborhoods comments and concerns into consideration as part of their decisions.

Commissioner Finnegan said that the two STR applications on 511 Paul Street and 551 Myers Avenue where the neighborhood came out to oppose one application and did not come out to oppose the other application concerned him. The current process appears to create a situation where neighbors/applicants have been or will get singled out, even though the STR SUP is attached to the property and not the owner. Commissioner Colman said this could lend itself to discrimination.

Chair Way said that geographical and temporal elements of STR SUPs should be considered; location of STRs within neighborhoods and that STR SUPs remain with the property, not with the applicant.

Commissioner Whitten said that STRs raise concerns about noise, trash, and traffic. The group discussed that noise, trash, and traffic violations are regulated and enforced by other sections of the ZO and City Code.

Commission Finnegan said he called a number of Virginia localities to ask about how they regulate STRs. He spoke with Jillian Moore, Zoning Administrator in Roanoke City, who said that Roanoke places a two-year sunset clause on STRs that are permitted by special exception, which is like Harrisonburg's special use permit. A question was asked how Roanoke City can do that, but Harrisonburg cannot. As the discussion continued it was realized that Roanoke City's Board of Zoning Appeals (BZA) reviews and grants special exceptions and that BZAs have expressed authority in the Virginia Code to impose limitations on the life of a special exception/special use permit, which is not a power granted to CC.

Commissioners agreed to move forward with exploring staff's recommendation to create new regulations that would allow homestays to operate by right with restrictions and to consider amendments to the STR SUP regulations. Answers to the following questions might address some concerns.

Question #2 was introduced: *Who is the STR operator and what are the requirements and responsibilities of the operator? What are the expectations of the operator?* Ms. Dang reviewed the memorandum stating that the term "operator" is defined by the Virginia Code and that staff recommended continuing to reference the Virginia Code definition, which would be further defined and regulated by the Harrisonburg ZO.

The group discussed whether STRs approved by SUP should require the operator to be present during the lodging period or not, and if the operator should be required to maintain the STR as their primary residence. Opinions were expressed that homestays are like home businesses and there was discussion of whether operators should be present during the lodging period or not. The group agreed that for homestays the dwelling should be the operator's primary residence. There were differing opinions expressed whether STRs are more like a commercial business and whether the operator should or should not be required to be present, and whether the STR should also be the operator's primary residence.

Concern was raised that people are going to claim a property as their primary residence, when it may not be. Staff responded that they would use a collection of evidence, including, but not limited to, utility bills, driver's license, tax returns, and/or voter registration cards, to determine a person's primary residence.

Commissioners agreed that both by right homestays and STR SUPs should require that the dwelling be the operator's primary residence and that if the operator is not the property owner, then the operator must be present during the lodging period.

The group decided to move to question #4 and return later to question #3. Question #4 was introduced: *Where can homestays and STRs be allowed to operate, and how many guests and accommodation spaces should be allowed?* Staff recommended that homestays and STRs be allowed in all zoning districts in which residential uses are allowed; that homestays be allowed in single-family detached, duplex, and townhouse dwellings, but not apartments/multiple-family units; and that STRs be allowed in single-family detached, duplex, townhouse dwellings, and apartments/multiple-family units. Additionally, for homestays, staff recommended limiting the number of guests to no more than six at a time and for STRs, staff recommended that applicants can request any number of guests and staff, Planning Commission, and CC would evaluate the request on a case-by case basis. Staff did not recommend limits on the number of accommodation spaces for either homestays or STRs.

The group discussed how the number of guests allowed at one time would be enforced by staff? Staff responded that with only one complaint from a neighbor it may be difficult to confirm a violation, but staff would be able to monitor and would likely catch an operator with repeat violations. Additionally, staff can look at online listings for STRs, such as on Airbnb or VRBO,

and if, for example, the number of guests the City allows is six and the operator has listed that they can accommodate more than eight people, then that is a violation.

Commissioners asked why the City cannot inspect homestays and STRs for compliance with the Building Code. Staff replied that because there is no change in use group per the Building Code, localities do not have the authority to require an inspection. However, if there is a property maintenance/Building Code concern or complaint filed by a guest, the City would have the ability to inspect the property.

The group discussed the possibility of determining the maximum number of guests at a time based on the square footage of livable space within a dwelling or by the number of bedrooms within the dwelling.

Councilman Romero said that he has heard from some community members that the cost of applying for a STR SUP is high and prohibitive. Referring to the map of STR SUP applications, Ms. Dang said that there appears to be STR applications in certain neighborhoods and not in others, and she believes there is some correlation with income. She added that if there is a limit, for example on the number of guests or requiring that the property be the operator's primary residence, that the Commission is comfortable approving for STR, then the Commission should consider allowing these as by right homestays. Commissioner Finks added that he has been concerned about the cost of the SUP application and excluding certain residents.

Chair Way suggested mirroring the allowed number of STR guests to the number of long-term tenants allowed by the ZO (occupancy regulations). For example, if the R-3 district allows a family or up to four people to reside at a residence year-round, then the same residence could also allow a family or up to four people to stay at the residence for STR, acknowledging that long-term residents and STR guests could be staying there at the same time. Chair Way stated that he assumed that occupancy regulations have been established to protect neighborhoods. Commissioner Finnegan cautioned this assumption because zoning regulations, such as regulating lot sizes, has been used across the country to discriminate.

The group continued to discuss how a "family" is defined. Staff said that for zoning enforcement, a family is defined by blood, marriage, or adoption. Ms. Dang offered the example that if the number of STR guests is to mirror the ZO (long-term) occupancy regulations, she and her (nuclear) family of three and her brother's (nuclear) family of four could rent a home together because they are related by blood, marriage, or adoption. Some Commissioners expressed concern with the suggested approach. Councilman Romero noted that working in the city school system, that he has observed the definition of "family" to vary.

Commissioner Colman suggested a limit on the number of guests in by right homestays to be four. All the commissioners agreed with this approach for by right homestays.

The discussion continued regarding how many guests should be allowed in a STR? Commissioner Way said that there are nuisances with the R-1, R-2, and U-R districts and asked if we should do something different with these districts? He advocated for the maximum restriction for STR SUPs to protect R-1, R-2, and U-R neighborhoods. The group discussed that there are neighborhoods

zoned R-3 that have similar characteristics to R-1 and R-2 neighborhoods. For, example the Woodland neighborhood is zoned R-3 and consists of single-family detached and duplex homes. There was discussion of R-1 zoned neighborhoods in the City that do not meet today's area and dimensional requirements of the R-1 regulations.

Commissioner Finnegan said that Staunton treats STRs like a home occupation. Staunton limits the number of adults to two per bedroom and has no off-street parking requirement. There is nothing in the Staunton regulations that would prevent investors from purchasing homes for whole-home rental in homes that are not the operator's primary residence.

Commissioner Finks said that he supports determining the maximum number of STR guests on a case-by-case basis.

Commissioner Colman had concern that without parameters for the number of STR guests, that the Commission would still have the same challenges reviewing STR applications.

The group discussed bed and breakfasts which are proposed by staff to continue to be incorporated into the proposed regulations as by right homestays or STRs by SUP, depending on how they planned to operate. Operators may choose to use the term bed and breakfast to market their homestay or STR use. There was discussion of evaluating the uses based on their primary purpose. Some Commissioners felt that bed and breakfasts are different from STRs. Bed and breakfasts are allowed to have signs and are therefore an obvious business. Staff noted that the new Sign Ordinance, which will be presented to the Commission at their November 13 meeting, will be increasing the allowable sign area for residential zoning districts from 24 square feet to 32 square feet and that the Sign Ordinance cannot regulate signs based on content or messaging.

Without resolution on question #4 for STRs, Ms. Dang suggested that the group move on to question #3. Question #3 was introduced: *How many nights per year can homestays and STRs be allowed to operate and how long are guests allowed to stay?* Staff recommended that homestays can operate for no more than 90 nights per calendar year and that there is no limit on the number of nights at a STR can operate unless conditioned by the SUP. Additionally, staff recommended that lodging contracts be limited to a period of fewer than 30 consecutive nights.

Commissioners asked what if someone rented a STR for 30 days and then renewed their contract again immediately renting for another 30 days. In other words, what if they rented for two or three consecutive months? Staff responded that the guest would then be considered a long-term tenant, and so long as the property complied with the (long-term) occupancy regulations, then there would be no violation. Staff suggested considering long-term occupants and short-term guests as two separate abilities. A recommendation was made to edit the words "lodging contracts" to "lodging periods." The group agreed.

Commissioners asked if someone has their STR SUP revoked, could they operate a by right homestay? Staff responded that the City could establish a homestay registry and set up the regulations such that if there were a certain number of nuisance violations that have occurred, the City could revoke an operator's homestay registration.

Commissioner Finnegan said that the Forest Hills neighbors did not know that a STR had been operated at 907 Ridgewood Road for 10 months. Commissioner Whitten stated that people, especially older people, may not feel comfortable calling the City to make a complaint about their neighbor. Ms. Dang said that while some Forest Hills neighbors did state that they did not know there was a STR operating, it is also possible that some people may have thought that STRs were previously legal because Airbnbs are so common across the country.

Commissioner Whitten said she has read about cities that are trying to remove the ability to have STRs.

Chair Way is concerned with people operating businesses in a residential neighborhood.

Chair Way suggested that neighborhoods should collectively agree on guidelines that they could share with the City for evaluating STR SUP applications. This could be a way to empower the neighborhood. Commissioners Finnegan, Finks, and Colman were not comfortable with this suggestion. Commissioner Finnegan said that neighborhoods could establish their own HOA and covenants to control or restrict uses.

Commissioners agreed that homestays should be able to operate for no more than 90 nights per calendar year and that there is no limit on the number of nights at a STR can operate unless conditioned by the SUP. Additionally, lodging periods should be limited to a period of fewer than 30 consecutive nights.

Question #5 was introduced: *What are the parking requirements for homestays and STRs?* Staff recommended that by right homestays would have no parking requirements and that STRs by SUP would require one parking space for each accommodation space, or may be more or less restrictive as conditioned by the SUP. Commissioners supported this recommendation.

Question #7 was introduced: *Should the City require homestay operators to register?* Staff recommended requiring an annual Homestay Operator Registration that would cost \$25/year, and not requiring any additional registrations for STRs.

There was group discussion and opinions expressed that STRs have already gone through the SUP process and should not have to apply for annual registrations, as well as, STRs were being granted extra privileges and that an annual registration is a way to monitor their activity of the individual STR and how many STRs and homestays there are operating throughout the City. If the City required through the City's Tax Code for STR operators to apply annually for a registration to operate, this requirement would apply to already approved STR SUPs. However, if the requirement was made through the ZO, then existing STRs would not be required to apply annually for the registration.

Commissioners agreed that both by right homestays and STR SUPs would have to apply annually for a registration to operate.

Question #6 was introduced: *Should the City rename "short-term rentals" to "bed and breakfasts?"* Staff considered bed and breakfasts and STRs as the same use. Some Commissioners expressed that bed and breakfasts are a more intense use than STRs and expressed concern with

bed and breakfasts having signs in residential districts. Staff said that the City cannot regulate signs based on content or use. Bed and breakfasts in residential districts would be afforded the same ability (sizes and types of signs) that are allowed for all other properties in the same district. Question #6 was not resolved at the meeting.

The group revisited question #4: *Where can homestays and STRs be allowed to operate, and how many guests and accommodation spaces should be allowed?*

Commissioners discussed other possible options to regulate the maximum number of guests based on zoning district or by future land use (as described in the Comprehensive Plan's Land Use Guide), acknowledging that future land use does not always reflect current neighborhood conditions.

Ms. Dang suggested that since this question remained unresolved, that Commissioners can take time after this meeting to develop recommendations to share with the group. Ms. Dang will send an email with information to Commissioners and time will be reserved at the Commission's November 13 meeting to continue discussing STRs.

The meeting adjourned at 4:05 p.m.

Henry Way, Chair

Nyrma Soffel, Secretary