



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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September 6, 2022

**TO THE MEMBERS OF CITY COUNCIL
CITY OF HARRISONBURG, VIRGINIA**

SUBJECT: *Consider a request to amend regulations pertaining to Homestays and Short-Term Rentals*

**EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION
MEETING HELD ON: August 10, 2022**

Chair Finnegan read the request and asked staff to review.

Mr. Fletcher said in March 2019, the City adopted regulations associated with short-term transient lodging uses commonly referred to as short-term rentals (STRs) or “Airbnbs.” Prior to March 2019, these operations, unless previously approved by the City as a bed and breakfast, had been illegal in the City. A few months later in July 2019, the City made amendments to the regulations associated with STR registration requirements as well as to the penalties section associated with violations to the regulations.

After the City had approved many STR applications, in the fall of 2019 Planning Commission decided that the STR regulations should be reviewed and to consider making amendments. After two Planning Commission worksessions, the City, in September 2020, adopted amendments to the STR regulations, which, among other things, created the by right “homestay” use.

In total, there have been 30 approved STR SUP applications and 17 issued by right homestay permissions. (Note: Since September 2020, six STR SUP applications have been approved and are accounted for in the 30 total approvals.)

Since the 2020-amendments, staff has observed the need for additional modifications for updates to the code and to adjust details of the regulations so that the original intent for operators to maintain the dwelling in which a homestay or short-term rental occurs is the primary residence of the operator.

Staff is proposing to modify the title of Article DD and to amend three sections of the Zoning Ordinance. All modifications are associated with regulations for homestays and short-term rentals.

First, staff would like to amend Article DD by adding “homestays” to the name of the title description. This amendment should have occurred when the homestay use was added to the Zoning Ordinance in September 2020. The amendment is shown as follows:

Article DD. HOMESTAYS AND SHORT-TERM RENTALS

Secondly, staff would like to modify Section 10-3-24 Definitions by deleting the reference to “Bed and breakfast facilities” from the Zoning Ordinance (as staff no longer believes this reference is necessary) and then by modifying the definitions of both “Homestay” and “Short-term rental” to clarify what is meant for each use. The modifications are shown below:

~~Bed and breakfast facilities: See “short-term rental.”~~

Homestay: In a single-family detached, duplex, or townhouse dwelling unit, the provision of ~~a the dwelling unit guest room~~ or an accommodation space within the dwelling unit principle 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.

Short-term rental: The provision of a dwelling unit, an accessory building, or an accommodation space within either building ~~a guest room 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.

The next amendment is to Section 10-3-25.1, which is associated with off-street bicycle parking regulations. This modification would simply eliminate the reference to “bed and breakfast facilities” and to replace it with “homestays and short-term rentals.” (Homestays and STRs should have been added to this section during previous amendments.) The regulation remains the same, which is that off-street bicycle spaces are not required for either use. The amendment is shown below: (Note: For brevity, rather than displaying the entire table, only the part of the table associated with the amendment is shown.)

(3) *Bicycle parking space requirements by use:*

Use	Parking Requirement
Hotels, motels, and similar transient housing	4 spaces minimum (Bed and breakfast facilities <u>Homestays and short-term rentals</u> have no minimum requirement)

The last section to be modified includes amending Section 10-3-205 (2), which is part of the General Regulations section for both homestay and short-term rental uses. The amendment is shown below:

Sec. 10-3-205. General Regulations

(2) Operators shall maintain the ~~property~~ dwelling as their primary residence, as indicated on a state-issued license or identification card or other documentation deemed acceptable by the Zoning Administrator.

As shown, the amendments have two separate components. With regard to the second component, the modification provides additional flexibility to potential applicants by allowing other types of documentation other than a state-issued license or identification card be submitted to confirm the intended dwelling, for either a homestay or STR, is the applicant's primary residence.

Regarding the first component, by exchanging the word "property" for "dwelling" this eliminates the ability for an operator, who resides onsite and where there might be more than one dwelling in a structure or more than one dwelling in separate buildings on the property (i.e., a duplex or a triplex or two separate single family detached dwellings on one property) from renting dwelling units that are not their primary residence as a homestay or STR.

For reference, there have been seven STRs approved allowing a property owner to have one dwelling unit be the operator's primary residence and then to have a second dwelling unit on the same property be used for transient lodging. The seven examples include:

- 1451 Hillcrest Drive (Park View) (approved in June 2019), which is a duplex,
- 981 Summit Avenue (approved in June 2019), which is a duplex,
- 957 Summit Avenue (approved in July 2019), which is a duplex,
- 845 College Avenue (approved in July 2019), which has two dwellings in separate structures,
- 168 Pleasant Hill Road (approved in August 2019), which is a duplex,
- 111 Campbell Street (approved in August 2019), which has two dwellings in separate structures, and
- 217 Franklin Street (approved in February 2022), which has two dwellings in separate structures.

Internally, the STR review for 217 Franklin Street sparked debate among staff as to a potential problem with the existing use of the term "property" (rather than "dwelling") and we had considered proposing a version of the amendment discussed herein earlier this year in March. Ultimately, a homestay annual registration sparked further debate, forcing staff to decide about whether one unit of a duplex, where both duplex units are on the same parcel, could be used as a homestay transient lodging operation. (Note: It was determined that the application must be approved given the use of the term "property.") In researching information to help staff make a determination during the homestay scenario noted above, and in providing additional support for the amendments proposed herein, staff reviewed the PC worksession minutes from October 29, 2019, where on page 3 of the minutes, it is noted that "[t]he group agreed that for homestays the dwelling should be the operator's primary residence" (emphasis added). And then later that "[c]ommissioners 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" (emphasis added). Unfortunately, at this time, is unclear whether the term "property" was used as a universal term to include "dwelling" or whether "property" was erroneously used instead of "dwelling."

In all, staff believes the proposed amendments will provide further clarification and better implementation for the intent of the homestay and short-term rental regulations and supports approving all of the discussed modifications.

I want to go back to Section 10-3-24 and to focus on the definition of “short-term rental.” If approved, it would state that the provision of a dwelling unit, an accessory building, or an accommodation space within either building could be used for transient occupancy. I want to clarify that when we use the term “accessory building” it is not an “accessory dwelling.” I think casually the public might consider an accessory building that might be a dwelling would be permissible, but as we use the term accessory building in the Zoning Ordinance, it is not a dwelling, it is simply an accessory structure on the site. It could be a detached garage, it could be a building that you erect on your property to be a living space, a room, but it is not a full on dwelling. It cannot have a full kitchen and it cannot be a dwelling space or an abode for someone.

Chair Finnegan asked if there were any questions for staff.

Chair Finnegan said there are a lot of houses on the north end of town, acquired in one of the last annexations that happened, where there are a lot of basement apartments that are non-conforming. This does not really apply to them because those are part of the dwelling unit or it is just the same structure? I understand an accessory dwelling unit, granny flat, whatever you want to call it in the back. That is easy for me to understand. There are a lot of houses, particularly in the Parkview neighborhood that have these basement apartments.

Mr. Fletcher said it is not an easy answer because there are many different scenarios of how those spaces came to be. It is great that you gave this example of the basement apartment. What is that space? Is it a separate dwelling space where you cannot get from unit to another? Or can you go to the basement door, open it up, go downstairs and it happens to be another living space downstairs. I do not know that I can give you a straightforward answer because we have to have these conversations when these scenarios come up. What is the structure? What is the space? If it truly is a separate dwelling unit, the Code amendments we are talking about this evening would prevent a person who resides in the structure from renting the second dwelling unit as a transient operation. If it is not a second dwelling unit and it happens to be a space with a kitchenette, free-flowing, completely open to the structure, then it is a possibility that they could. We may even run into scenarios where people have a space like that, have traditionally used a basement area as a second dwelling, with an understanding that they do not go into each other’s spaces. We may request that they remove the stove facility which often times is the determining factor about whether or not it is a separate dwelling. There are different scenarios.

Commissioner Whitten said you talk about kitchens. What about bathrooms?

Mr. Fletcher said typically, from a building codes perspective, bathroom spaces is not one of those things that makes it a dwelling space. Examples are all across the City where someone may have renovated the second floor of a detached garage into a living space with a bathroom. Oftentimes it is the kitchen that makes that determining factor. The terminology that is used in the building code is “sanitary cooking facilities.”

Commissioner Whitten said that is weird because STR folks typically are not planning on doing a lot of cooking anyway. I think kitchens is immaterial to all of this. If you had enough facility to cook and you have a bathroom, I think managing accessory buildings in backyards in a college town could be an enforcement nightmare.

Mr. Fletcher said remember that a Homestay must be in the principal building and any time there is an accessory building, that is not a dwelling. If someone wants to use it as a STR, they must come and get a SUP.

Commissioner Whitten said I still think it is going to be an enforcement nightmare.

Mr. Fletcher said this does not change this in any way. If I am understanding your concern, the code amendments that we are talking about this evening do not change the scenario that it sounds like you are concerned about.

Commissioner Washington said you said a lot about accessory units. Could you over that one more time?

Mr. Fletcher said I focused a lot, in that last section, about the terminology of accessory building. In the Zoning Ordinance when we refer to an accessory building, we are talking about is a structure on a piece of property that is subordinate to the principal building. It could be a detached garage, a storage shed, or even a structure that is erected from the ground up that includes a living space and a bathroom. Those things are not dwellings. If someone is casually referring to an accessory dwelling, it must include all of the functions that you must have in a space to reside in it. The kitchen is usually the determining factor.

Chair Finnegan asked is this body going to be trying to make that determination or is that going to happen in the Community Development office?

Mr. Fletcher said it happens in our office. We make those interpretations.

Chair Finnegan asked so you decide if this is a separate dwelling unit, and this is not?

Mr. Fletcher said correct. If a property owner or an applicant disagrees with staff's interpretation, that is the type of scenario that goes to the Board of Zoning Appeals. It does not come to Planning Commission or City Council.

Commissioner Orndoff asked did I understand you to say that if this were put into effect that there are several that would no longer qualify?

Mr. Fletcher said what I was trying to explain is that there are approved STRs that have that ability. They can maintain that ability. They received their SUP. The code provisions tonight would prevent that situation from ever coming to an application scenario. You would not be able to apply for a second dwelling on the same property to be a transient lodging operation.

Chair Finnegan asked those become non-conforming?

Mr. Fletcher said I would not call them non-conforming. They have a SUP and they can maintain their status.

Chair Finnegan said they would be legally operating on old rules.

Councilmember Dent asked if they discontinued it for two years, would that kick in that they no longer have that ability?

Mr. Fletcher said yes. That is the case for any STR. In fact, I believe that there is one of them that has lost their ability to be a STR. I had a conversation with an individual who mentioned to me that they had received a SUP. They were talking about a different scenario and said that they have gone back to a long-term rental. I told them that they have lost their ability to have the STR. They have to maintain the use of an approved SUP.

Commissioner Whitten said the “other documentation deemed acceptable by the Zoning Administrator.” What are we talking about?

Mr. Fletcher said we are talking about utility bills, any kind of official documentation that can assist in help staff determine that that place is their principal residence.

Ms. Dang said I had this conversation with our prior Zoning Administrator Rachel Drescher on identifying what documents we might tell people that would be acceptable. We looked at the DMV website and what they deemed acceptable to prove residency. They could be a recent utility bill, voter registration cards, recent payroll stubs, or a collection of items that we could review to feel confident that it is their primary residence.

Chair Finnegan asked is it like the I-9?

Ms. Dang said not quite. We do list examples on the website.

Councilmember Dent asked is it up to staff to make the determination that there is proof that they live there?

Ms. Dang said that is right.

Chair Finnegan said I do not know if you ever interact with HEC or the water bill from Public Utilities. Is there a way to verify an address by looking at that, whether they have used any electricity or water?

Mr. Fletcher said we work in coordination with all the departments. We request information and water usage data quite a bit.

Commissioner Whitten said we had that situation in the last two months.

Mr. Fletcher said we did. We requested information for water use for a request on Broad Street which helped us determine that the units had been vacant.

Councilmember Dent said I also remember a case on New York Avenue where there was a question of whether the person actually lived there. This would give you that leeway to make that determination.

Mr. Fletcher said we would not bring an application to this body if we believed that it was not their principal residence. We had already made that determination. It is before you. If an applicant disagrees, it goes to the Board of Zoning Appeals. If they disagree with our interpretation, or the Zoning Administrator's determination, then they appeal to the Board of Zoning Appeals.

Commissioner Whitten said the one on Newman Avenue is an accessory building. Is that correct? It is a garage.

Mr. Fletcher said on the corner of Newman Avenue and Ott Street. That is an accessory building, not a separate dwelling.

Commissioner Whitten said it would not be able to have a proper kitchen.

Mr. Fletcher said correct. We had a couple of meetings and conversations with that applicant about that specific scenario.

Commissioner Washington asked, in terms of terminology such as bed and breakfast, is that a national or regional trend, or something that is just easier for you in terms of it being outdated in using bed and breakfast with homestays or STRs?

Mr. Fletcher said it is the latter. We only had two or three bed and breakfasts ever since the creation of the bed and breakfast use which was approved in 2001. We kept it in the code because there were still people that would refer to these types of operations as bed and breakfast facilities. As we have experienced different scenarios and phone calls and questions about these things, we kept coming back to "what do you mean by this?" or "what do you mean by that?" We have had enough time from March of 2019 and enough experience that we decided to get rid of the term. It is no longer used from the local Harrisonburg perspective.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and asked if there was anyone in the room or on the phone wishing to speak to the request.

Austin Bell, Harrisonburg resident, came forward regarding the request. Would this affect long-term rentals?

Chair Finnegan said this affects Airbnbs, STRs, VRBOs and the like. What my goal is to try to prevent outside investors from buying up housing, turning it into hotels in the middle of a neighborhood and not living there.

Mr. Bell said that is very acceptable. I have been looking forward to creating an accessory dwelling in my backyard and be able to rent it out as an Airbnb or STR. What you are saying is that with these amendments, that would not possible anymore. It would have to be stripped down to not have a full kitchen. I do not quite understand the why.

Chair Finnegan said, speaking for myself, a lot of it is trying to stop rental stock from going to the highest bidder from people from out of town.

Chair Finnegan asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Chair Finnegan said these are so hard to regulate. We have been dealing with this since 2018, 2019, trying to figure out the best way to do this. I support staff's recommendations here to change this. There are a few that if I had to do over again, I would vote against them. Those are the ones that would have been filtered out by this amendment. I support these amendments.

Commissioner Armstrong made a motion to recommend approval. I compliment staff on the presentation of this. We are really lucky.

Commissioner Byrd seconded the motion.

Chair Finnegan said staff is doing all this with at least one arm tied behind their back. Thank you for your work on this.

Councilmember Dent said I am still wrestling with the terms "accessory building" and "accessory dwelling." It sounds like it could be a fine line in some cases. Does a kitchenette make it a dwelling? Does it have to have a stove? I guess you review that on a case a case basis.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the amendments passed (7-0). The recommendation will move forward to City Council on September 13, 2022.