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Department of Planning & Community Development

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Building Inspections
Engineering
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To: Eric Campbell, City Manager
From: Adam Fletcher, Director – Department of Planning and Community Development
Date: September 11, 2018
Re: Amendments to the Zoning Ordinance and Title 4 Finance, Taxation, Procurement – Short Term Rentals

Summary:

Public hearing to 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.

Background:

The discussion of short term rentals (STRs) has been ongoing for some time in Virginia, but it was not until the 2016 Session of the Virginia General Assembly (VGA) that the issue came to the forefront of major debate. During the 2016 session, the VGA considered SB 416 and HB 812, which was referred to as the Limited Residential Lodging Act. In brief, that bill was summarized by the Virginia General Assembly’s online Legislative Information System as “allow[ing] 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 [were] preempted from adopting ordinances or zoning restriction[s] prohibiting such short-term rentals, but [were] 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 [was also required to] register with the Department of Taxation to collect and remit all applicable taxes on behalf of the property owner using the hosting platform.”

As described by the Legislative Information System, the 2016 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.” At the October 25, 2016 City Council meeting, staff provided an in-depth review of the 2016 legislation and described how the City regulated STRs. The 2016 memorandum is included within this packet for reference.

In brief, staff’s 2016 memorandum described that STR operations were illegal in the City, except those that might operate within the B-1, Central Business District. Although they were allowed by right within the B-1 district, a property owner could not simply begin advertising online and operate a STR because the occupancy of STRs is classified as transient and the Building Code categorizes transient dwelling spaces as a different use group than nontransient dwelling spaces. In other words, physical renovations could be required within the dwelling to allow for STRs to operate. Furthermore, the 2016 memorandum

explained that if the Limited Residential Lodging Act was approved in 2017, the City would have been required to allow STRs by right within any residential district and within any type of dwelling unit. As noted in the memorandum, staff believed that allowing STRs by right would have been detrimental to the framework of how our Zoning Ordinance (ZO) protects neighborhoods from undesirable uses and activities not planned for in residential areas.

During the 2017 Session of the VGA, the reenactment clause for the 2016 bill was not approved. Instead, a bill was passed that preserved local authority to regulate STRs through general land use and zoning ordinances, along with providing clear authority for taxing such operations. The regulations are now codified in the Code of Virginia Section 15.2-983 and titled “Creation of registry for short-term rental of property.” (The approved legislation is included in the packet.) Shortly after the 2017 legislation was approved, staff began drafting regulations. By May 2017, a first draft was prepared so that staff could begin internally debating the matter and talking through all the potential issues. (NOTE: The first draft of the ordinance required STRs to be owner occupied; however, the recommended proposal does not require units to be owner-occupied.)

First, it should be recognized that STRs, as a use, 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 (the 60 pages of minutes from the Planning Commission meetings likely cover most of those issues), however, the following is a brief list of things that could be considered when drafting regulations. 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;
- have minimum parking requirements; or
- have signage regulations?

In considering the many questions involving STRs, staff evaluated how other localities are handling and regulating them and learned that there is no “one size fits all” model that works because every locality is different and has distinct community expectations, goals, and concerns. Locally, cities, counties and towns are taking different approaches. Although neighboring localities are referring to them as different uses and managing them in diverse ways, in general, when asking the question of whether STRs should be allowed by right or by SUP, the following localities are allowing them by right: Broadway (only in their R-3 district), Woodstock, and Staunton. Localities that are requiring SUPs include: Augusta County, Bridgewater, Broadway (within their R-1 and R-2 districts), and Grottoes. At this time, Rockingham County allows the use by right, but they have not made any amendments to their codes since the 2017 legislation was approved. The Town of Elkton is holding a public hearing on September 20th, where the proposal is to allow them by SUP. As to Shenandoah County, it is unclear as to how they will proceed, but earlier this year they were drafting regulations.

Staff understands that STRs are desired uses 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 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 individuals that like the idea of allowing STRs as a by right use with no additional “hoops” to jump through, those that want to allow them but with appropriate controls and regulations, and those that would prefer an outright ban. As staff considered the idea of STRs, although there are several angles to concentrate on when drafting the regulations, we 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.

Staff introduced the STR regulations to Planning Commission (PC) in March 2018. PC then discussed and debated the matter in April, May, July, and finally made a recommendation to City Council in August. Advertised public hearings regarding different versions of the proposed amendments occurred in April, May, and August. PC discussed this matter in great detail as can be read in the 60 pages of minutes from their meetings on the proposed regulations.

Key Issues:

Staff is proposing to amend multiple sections of the ZO to establish how short term rentals can legally operate within the City as well as to modify the City Code’s Title 4 Finance, Taxation, Procurement to establish appropriate taxing for such uses.

In brief, the proposed ZO amendments consist of allowing the short term rental of dwelling units only via approval of a SUP. The new use would simply be identified as “short term rental,” where the 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. Minimum off-street parking regulations would be added to the code with the requirement being one parking space for each guest room or accommodation or as may be more or less restrictive as conditioned by the SUP. The amendments also include adding a definition of “short term rental” (and amending the “Bed and breakfast facilities” definition) and the creation of a new article of the ZO, titled Article DD. Within the new article, there are sections regulating and specifying: the purpose of the regulations; general use regulations and requirements; suspension, cancellation, or revocation details; and specifications for penalties, which include civil penalties.

Regarding the definitions changes, the following is proposed (underlined text is to be added and text shown as stricken would be deleted):

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.~~

Home occupation: Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building, other than business gardens as defined, by a member of a family or other legal occupant residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in connection with which no person outside the family or other legal occupant is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors' offices for the treatment of patients. The foregoing notwithstanding, providing professional counseling services by appointment only for not more than ten (10) clients per week, and giving music lessons shall constitute home occupations.

Short term rental: A dwelling, where a room or space within the principal building or any related accessory building is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy. A short term rental shall neither contract with guests for longer than fourteen (14) consecutive days nor, in any way, circumvent the non-transient occupancy restrictions of the zoning district in which the use is located. Short term rentals include but are not limited to bed and breakfast facilities, hostels, and other similar services and operations.

Note that staff is proposing to keep the “Bed and breakfast facilities” definition listed in the ordinance, 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.

Regarding specifics of the proposed “short term rental” definition, the reasoning for the proposed limitation to restrict lodging to no longer than 14 consecutive days and the clarification regarding non-transient occupancy restrictions is to prevent people from being able to rent to multiple unrelated individuals on repeated lodging contracts, which essentially could get around the occupancy requirements of the zoning district in which the use operated. Complaints regarding potential overoccupancy in residential units are one of the major concerns that staff receives on a routine basis, and therefore, we did not want to create any opportunities for abuse of STRs to disrupt the integrity of the ZO’s occupancy regulations to protect neighborhoods.

The additional text shown to be added in the “Home occupation” definition is unrelated to the STR regulations. PC had evaluated two primary options for potential amendments for STRs and one of those options had other amendments to the “Home occupation” definition. PC ended up recommending an option that did not necessitate the other text changes, but for clarification purposes of how “Home occupation” uses are already interpreted, the above demonstrated amendments were desired to be made.

With regard to the general use regulations and requirements within the proposed Article DD, STR operators will be required to:

- obtain a SUP;
- obtain an annual business license;

- have an annual inspection performed (at a rate of \$50.00 per year) to ensure compliance with the Virginia Maintenance Code, current Virginia Statewide Fire Prevention Code, and any other applicable regulations or conditions that might have been approved as part of the SUP;
- limit food service to STR guests;
- ensure the STR is not used for weddings, receptions, or similar events, occasions, or happenings unless approved as part of the SUP;
- prominently post dates for trash and recycling collection;
- ensure the principal guest is at least 18 years of age; and
- when applicable, prove that the location of the STR is the primary residence of the operator.

As written in the proposed ordinance, a STR may be terminated for the following reasons:

- failure to obtain a business license;
- failure to collect and/or remit the transient occupancy tax;
- obtaining three or more substantiated complaints within a 12-month period;
- failure to schedule the yearly inspection or failure to comply with corrections identified resulting from the inspection; and
- when applicable, failure to maintain the property as his or her principal residence.

The proposed STR regulations also have civil penalties at a rate of \$250 for the first offense and \$500 for any subsequent offense. Therefore, if a STR is operating without obtaining the legal permissions as required by the proposed regulations, or if they are found in violation of any regulation or requirement after having received legal permissions to operate, then they will be required to pay the penalty and rectify the violation.

Regarding the yearly inspection, the property owner or the owner of the STR shall schedule a yearly inspection during the month of March to ensure compliance with the current Virginia Maintenance Code, current Virginia Statewide Fire Prevention Code, and any other applicable regulations or conditions. If corrections are needed and not made in the allotted time or if the responsible entity fails to have the property inspected by March 31st, and unless staff agrees to a later inspection date, the SUP becomes null and void. This yearly inspection practice is similar to staff's existing boarding and rooming house yearly inspections program. The difference being that boarding and rooming house inspections occur during the month of October. Staff believed the month of March would be the best timeframe to inspect STRs because it is outside of potential high lodging seasons (i.e. summer months, autumn travel for seasonal changes and football game schedules, and holiday travel in November and December). (NOTE: The initial inspection will be free and shall occur prior to final approval for operation.)

As explained above, the proposal is for STRs to be allowed only by approval of a 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.

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 proprietor to occupy the property when the unit is not rented or even requiring the owner, tenant, or proprietor 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. (Note: Some localities have built into their regulations that STRs must be a permanent residence for at least 185 days of the year.)
- Requiring additional parking spaces or allowing less parking spaces.
- Limiting the number of lodgers allowed on the site at one time.
- Allowing PC or CC to revoke the SUP if violations are found or if the STR becomes a nuisance.

The other main component of the proposed regulations includes establishing minimum off-street parking requirements. To help protect neighborhoods, a new approach to minimum parking requirements for this particular use was proposed. The amendment is to add subsection (27) to Section 10-3-25 as shown below:

(27) 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.

The new approach referenced above is associated with the ability to lessen the parking requirements, through the SUP, when appropriate. As specified in the review criteria for SUPs in Section 10-3-125 of the Zoning Ordinance, if a particular STR request in a neighborhood is believed to “be consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area...” but there is a concern regarding meeting the minimum off-street parking spaces on the parcel by converting yard areas to parking, or where parking might be accommodated via an existing driveway or along the public or street, then staff would like to have the ability to recommend lessening the parking requirements. Such a practice could maintain a more residential look for STRs.

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 real threat to affordable housing costs when STRs are in the marketplace and that by regulating STRs through review and approval of a SUP will help manage the affordable housing issue.

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, because transient occupancy is not permitted, 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. Staff believes the way to manage this use is to allow STRs only by SUP. This option creates the opportunity to allow them in the City while also providing the occasion for the neighborhood to share their thoughts and to protect the ideals of their community.

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

Goal 3: 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 4: To meet the current and future needs of residents for affordable housing.

Objective 4.3: To promote home ownership so as to increase the proportion of owner-occupied units in the City.

Furthermore, in the Comprehensive Plan Chapter 14 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 “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 of the most important pieces to the implementation of these regulations is enforcement. 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 others). If the regulations are approved, staff would like direction from CC as to how enforcement should occur. Should enforcement be handled as described above? Or, because of the concerns regarding STR impacts on affordable housing and for protecting and conserving neighborhoods, as well as the issue of the loss of the transient lodging tax, should staff take a more pro-active approach by utilizing the online platforms? As described earlier, property owners found in violation of the code will receive an immediate civil penalty of \$250 and they will need to rectify the violation.

If CC would like to pro-actively enforce this ordinance, staff suggests a 30 day grace period from the enactment of the ordinance to allow for the community to learn about the approved regulations and to

cease any illegal operations so that they may prevent themselves from receiving a \$250 fine. To help spread the word, staff can issue a press release and communicate on social media to inform the public.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the ordinance amendments as proposed;
- (b) Direct staff to draft further modifications to the ordinance amendments; or
- (c) Deny the ordinance amendments.

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 for the ordinance amendments. The advertisement for City Council was published as shown below:

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

Public hearing to 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.). Changes to the Zoning Ordinance include adding a definition of “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. Additionally, a new article, to be titled Article DD. – Short Term Rentals, is proposed with sections regulating and specifying: the purpose of the regulations; general use regulations and requirements; suspension, cancellation, or revocation details; and penalties. 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.” Additionally, 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 at a rate of \$250 for the first offense and \$500 for any subsequent offense. The “Short term rental” definition within the Zoning Ordinance is proposed as follows: “A dwelling, where a room or space within the principal building or any related accessory building is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy. A short term rental shall neither contract with guests for longer

than fourteen (14) consecutive days nor, in any way, circumvent the non-transient occupancy restrictions of the zoning district in which the use is located. Short term rentals include but are not limited to bed and breakfast facilities, hostels, and other similar services and operations.” In addition to these amendments, the “Home occupation” definition would also be clarified to state that home occupations may be carried out by a family member or other legal occupant. Changes to Title 4 Finance, Taxation, Procurement include modifying Section 4-2-76.1 (2) 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.”

In addition, during PC’s deliberations information about the ordinance amendments was posted on <http://beheardharrisonburg.org/>, the Public Information Office published a press release, information was shared on Facebook and Twitter, and as always a notice was provided on the City’s public hearing website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends alternative (a) to approve the amendments as proposed.

Attachments:

1. Draft Amendments to the Zoning Ordinance and to Title 4 Finance, Taxation, Procurement (6 pages)
2. Planning Commission Minutes Extracts from March, April, May, July, and August (60 pages)
3. 2016 Memorandum – Limited Residential Lodging (5 pages)
4. Code of Virginia Section 15.2-983 Creation of registry for short-term rental of property (2 pages)
5. Comments submitted on <http://beheardharrisonburg.org/>. (4 pages)

Review:

Planning Commission voted to approve the amendments as proposed (6-0). Commissioner Finks was absent.