



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider amending the Zoning Ordinance by creating and defining a new use called “Homestay” and adding this use as a by right use in the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, R-8, MX-U, B-1, and U-R. The proposed “homestay” use would be defined in the ZO as follows: “In a single-family detached, duplex, or townhouse dwelling unit, the provision of a guest room 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.” In addition, the amendments would modify Section 10-3-205. – General regulations by adding regulations that would apply to homestays and amending regulations that apply to short-term rentals. The amendments propose the following regulations for homestays: must be the operator’s primary residence; if the operator is not the property owner, the operator must be present during the lodging period; lodging periods are limited to less than 30 consecutive nights; may operate up to 90 nights per calendar year; may have a maximum of four guests; would have no parking requirements; and would be subject to a \$25 annual registration unless exempt by Section 15.2-983 of the Code of Virginia. The amendments propose the following changes to short-term rental regulations: the short-term rental must be the operator’s primary residence; if the operator is not the property owner, the operator must be present during the lodging period; and all short-term rentals would be subject to a \$25 annual registration unless exempt by Section 15.2-983 of the Code of Virginia. Short-term rentals would continue to be allowed only by approval of a special use permit. In addition to the Zoning Ordinance amendments, one amendment to Title 4 - Finance, Taxation, Procurement is necessary to occur for taxation purposes. The amendment would modify the definition of “hotel” and add “homestay” to the list of examples within Section 4-2-76.1(2).

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: July 8, 2020

Chair Colman read the request and asked staff to review.

Ms. Dang said that On March 26, 2019, City Council adopted new Zoning Ordinance (ZO) regulations associated with short-term transient lodging commonly referred to as “Airbnbs,” which is associated with the webservice www.airbnb.com. Although known as Airbnbs, operators may use other services including but not limited to VRBO, HomeAway, and FlipKey to advertise their

properties. These operations, unless previously approved by the City as a bed and breakfast, have been illegal in the City of Harrisonburg. A short-term rental (STR) is defined in the ZO as “[t]he 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.”

On July 23, 2019, City Council amended the STR regulations. The first amendment was to Section 10-3-13 Penalties, which included changing a reference to “Section 10-3-205” to “the Zoning Ordinance” so that the current section reads: “Operating a short-term rental in violation of the Zoning Ordinance.” The second amendment was to remove requirements for STR operators to annually register the use and to pay a registration fee as described in Section 10-3-204. (As noted above, staff and Planning Commission believes it is appropriate to reinstate this requirement, but, as noted herein, at a lesser cost.)

Since March 2019, City Council has approved 25 STRs, 24 of which were approved unanimously. A summary of the 33 applications received by the City is provided as an attachment. Note that seven applications listed were either withdrawn by the applicant prior to Planning Commission or City Council meetings or were denied by City Council. One application remains tabled by City Council.

Last year, after reviewing many SUP applications for STRs, Planning Commission recommended that the STR regulations be reviewed and amendments be considered. Planning Commission held work sessions on October 29, 2019 and December 12, 2019 to develop a framework for regulating transient lodging that does not include hotels. Work session memorandums and minutes are included as attachments herein.

During the first work session, the following questions were used to initially guide discussions:

1. Should the City allow homestays and/or STRs?
2. Who is the STR operator and what are the requirements and responsibilities of the operator? What are the expectations of the operator?
3. How many nights per year can homestays and STRs be allowed to operate and how long are guests allowed to stay?
4. Where can homestays and STRs be allowed to operate, and how many guests and accommodation spaces should be allowed?
5. What are the parking requirements for homestays and STRs?
6. Depending on the responses above, should the City rename “short-term rentals” to “bed and breakfasts?”
7. Should the City require homestay operators to register?

Discussions during the second work session focused on question number 4.

Over the course of the two work sessions, Planning Commissioners reached consensus to recommend several amendments to the STR regulations including the addition of a new use to be termed “homestay.” Attached herein are the proposed amendments. Table 1 below summarizes the

similarities and differences between a proposed new by right homestay use and the proposed amendments for the STR use by SUP.

Table 1. Summary of Proposed Zoning Ordinance Amendments to Add By Right Homestays Compared to Existing Short-Term Rentals (STRs)

Italicized text are proposed new or amended regulations.

<i>By Right Homestay</i> City Council approval would not be required for this use.	STR by SUP Anyone who wants to operate outside of what is permitted through a Homestay use may apply for a STR SUP. Below are minimum regulations for STRs. Remember that during review/approval, conditions can be placed upon a STR SUP that are more restrictive.
<i>Must be operator's primary residence.</i>	<i>Must be operator's primary residence.*</i>
<i>If the operator is not the property owner, then the operator must be present during the lodging period.</i>	<i>If the operator is not the property owner, then the operator must be present during the lodging period.*</i>
<i>Lodging periods limited to less than 30 consecutive nights.</i>	Lodging periods limited to less than 30 consecutive nights.
<i>May operate up to 90 nights per calendar year.</i>	No limit on number of nights that the STR can operate per year unless conditioned by SUP.
<i>Maximum of 4 guests.</i>	No maximum number of guests unless conditioned by SUP.
<i>Allowed in all zoning districts in which residential uses are allowed.</i>	Allowed in all zoning districts in which residential uses are allowed.
<i>Allowed in single-family detached, duplex, and townhomes.</i>	Allowed in single-family detached, duplex, townhomes, and multi-family units. Note that multi-family units will likely require physical renovations, which will necessitate proper Building and trade permits and associated inspections.
<i>No off-street parking requirements.</i>	One off-street parking space for each accommodation space, unless conditioned otherwise.
<i>Annual registration - \$25/year</i>	<i>Annual registration - \$25/year</i>

*Currently, there are no requirements for the STR to be the operator's primary residence or for the operator to be present unless conditions were placed on the SUP by City Council at the time of approval. Most STR SUPs were approved with these details as conditions.

The proposed “homestay” use would be defined in the ZO as follows:

Homestay: In a single-family detached, duplex, or townhouse dwelling unit, the provision of a guest room 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.

The “STR” definition is proposed to be amended as follows:

Short-term rental: The provision of a dwelling unit, a ~~bedroom~~ 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.

Planning Commissioners discussed concerns that STRs and homestays are businesses operating in residential areas and recommended requirements to mitigate concerns. Planning Commission recommended that the dwelling be the operator’s primary residence. This would provide accountability for the activities taking place on the property and would help to prevent the City’s housing stock from being purchased by investors and then being reallocated from owner-occupied homeownership and long-term rentals to STRs. Additionally, Planning Commission recommended that for both homestays and STRs that if the operator is not the property owner, then the operator must be present during the lodging period. Both requirements described above have been approved as conditions in the majority of STR SUPs previously approved by City Council.

Differences between by right homestays and STRs by SUP include:

- 1) Homestays may operate only up to 90 nights per calendar year, whereas there is no limit of nights that the STR can operate per year unless conditioned as part of the SUP approval;
- 2) Homestays may have a maximum of four guests at one time, whereas there is no limit to the number of guests that a STR can have at one time unless conditioned as part of the SUP approval;
- 3) While both homestays and STRs can operate in all zoning districts in which residential uses are allowed, individuals within apartments/multi-family units cannot operate homestays and must apply for a STR SUP due to Building Code requirements; and
- 4) Homestays have no off-street parking requirements, whereas STRs are to provide one off-street parking space for each accommodation space unless conditioned otherwise by the SUP.

Regarding annual registration, Planning Commission recommended that both by right homestays and STR SUPs should have to submit the annual registration to operate. The annual registration is a way to monitor activities and to track how many homestays and STRs are operating throughout the City. STR SUPs that were previously approved would not become nonconforming to the requirement to annually register and therefore must register. Section 15-2-983 of the Code of Virginia allows localities to establish a registry and require all operators to register. This authority is a general power and not related to zoning and land use. The annual registration would be \$25 per year.

It should also be understood that Section 15.2-983 of the Code of Virginia exempts the following people from having to register with the City: persons “(i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.” It should be noted that while these individuals are exempt from the proposed annual registration, they are not exempt from following zoning regulations and are not exempt from receiving approval of a SUP, when necessary.

In addition to the Zoning Ordinance amendments, one amendment to Title 4 - Finance, Taxation, Procurement is necessary to occur for taxation purposes. The amendment would modify the definition of “hotel” and add “homestay” to the list of examples within Section 4-2-76.1(2). The proposed amendment is included within the attachments for reference. This amendment does not require action by Planning Commission, but it will be advertised for public hearing for action by City Council.

Staff recommends in favor of the Zoning Ordinance amendments as presented.

Chair Colman said that staff was able to take weeks of discussions into a very concise account. It is now very clear in the form of a spreadsheet that shows the Homestays and the STR SUPs. Thank you.

Commissioner Finnegan thanked staff for putting this together. There is no perfect way to regulate STRs, given our experiences with the SUPs. This table does a very good job of showing the differences and capturing the commonalities with the ones that have been approved and rejected and address those issues.

Commissioner Whitten asked why it was decided to not require off-street parking for the by right option and only one for the STR?

Ms. Dang said that since the operators would not come in to request any special permission with the by right option and because the use is limited to the four guests, we thought that it made sense to not require that they put any new parking spaces in. For the STR by SUP, we required one minimum parking space, but there is a section that allows staff and the Planning Commission to recommend and City Council to adopt additional parking requirements or modifications where we might not require additional parking. There is flexibility in requiring less or more depending on the specific request.

Commissioner Whitten said that she understands the SUP parking requirement flexibility. I would feel more comfortable knowing that there was at least one off-street space for the by right option. With four people, they are not all necessarily coming in one car. If there is going to be tension in a neighborhood, it is usually related to parking, trash or noise. If we could eliminate the parking part of that, or help to soften it a bit, it would be a good thing.

Chair Colman said that the idea with the by right option is to allow the homeowners to be able to do that. They could be doing it on a regular basis, and it might become a nuisance, but if it is occasionally, it would be an additional burden to require the parking. In some areas, you might only have street parking. On one hand, I like to advocate for less pavement and less impervious areas and more green areas. If we require off-street parking from every homestay request, then it would go against some of the other values that we want to preserve in the City. There was some tension and discussion on that, but part of the reason was the unnecessary burden on the homeowners.

Commissioner Whitten said that Chair Colman is missing the point that we are putting the burden on the neighbors of those homeowners who are doing this as a business. It is an income producing opportunity. Should we really ask a neighborhood that does not have off-street parking, or very limited off-street parking, to absorb that inconvenience. It can be more than an inconvenience because it is 90 days out of the year, and it is going 90 days where the City is already full of other people because that is when you can capture that market. I live in a neighborhood where there is not enough parking at certain times of the year.

Chair Colman said that he does not dismiss the concern. I do not like it when a bunch of people park around my house, either. We have to compromise at some point, and this is where we arrived.

Commissioner Finnegan said that there is a psychology that goes along with parking if you live in a neighborhood where you expect on street parking and you expect to be able to park in front of your house. I can understand that. I have lived downtown, in five different apartments in my life. I never expected to find parking nearby. I do not know that you and I see eye to eye with on-street versus off-street parking, but I do think it is a valid concern, especially for people who have trouble walking or need a wheelchair or other access to their house.

Commissioner Finks said that he agrees with Commissioner Finnegan. We will not be allowing homestays in apartments. We are looking at townhouses, duplexes and houses. How many neighborhoods are we talking about that would be impacted if we required one off-street parking space that would not be able to have a homestay because they live on a street that does not have off-street parking? What areas do we have in town that do not have off-street parking? There are a lot of neighborhoods that do have off-street parking. There are places on Mason Street and some other places in Old Town that do not have off-street parking. How many households do we think that would impact? I realize that we cannot answer that right now, but if we were to consider that, it is something that I would want to know.

Commissioner Finnegan said that many of the townhouses that I am familiar with are associated with an HOA or have assigned parking. It would not be enforceable, but could the City put out guidelines regarding providing parking options for their guests? The point would be to help people understand and mitigate some of these concerns before they become a problem.

Ms. Dang said that HOAs in townhouse communities with self-regulate. We can certainly put together common concerns and suggestions to add to the FAQs for people to consider when they operate STRs or homestays.

Commissioner Finnegan said that when he had people to his house, it was common practice to park our cars somewhere else so that our guest could park in front of our house. It is common courtesy for the neighbors.

Commissioner Finks asked Commissioner Finnegan if what he is saying that although unenforceable, we suggest that if you have off-street parking or designated on-street parking that you make that available for your renters.

Commissioner Finnegan said that it would not hurt to have guidelines, suggestions, or best practices to hand out to people when they pay the fee for the homestay.

Chair Colman asked staff if there have been any complaints related to parking or noise related to the STR SUPs. That would be a gauge of how things are going with the STRs.

Ms. Dang said that staff cannot recall any complaints regarding the STRs that have been approved.

Chair Colman said it is the responsibility of the host to have the common courtesy of yielding their parking spaces to their guests and find parking elsewhere, without infringing on someone else's parking. We have talked about this and we are here to vote on it, but we can discuss it some more, if need be. I will leave it up to the rest of the Commission. If there is something more that we need to add or recommend, then we should bring it up now. Otherwise, we should move this forward. We are not all fully comfortable with it, but as with the previous request, we were uncomfortable with the sidewalk variance, but we compromised on it. That is how we move forward when we have conflicting opinions or different perspectives. Eventually, we reach a consensus and make a decision that we feel comfortable enough with it to move it forward.

Commissioner Finks thanked staff for all their hard work on the STRs. I would like to point out a clerical matter in attachment number 16, under Planning Commission recommendation, I believe that should be red instead of green.

Commissioner Finnegan said that these neighborhoods have been zoned so that there is little to no taxable economic activity. Some people may think that is a good thing. I do not think that it is sustainable. As tax revenues are going to be down for the next couple of years, we need to be thinking about what kind of activities we are willing to allow to bring in tax revenues for the City to maintain our services. That is another reason why I am supportive of this.

Commissioner Finks said that we also want to consider the citizens. There are going to be a lot of people who are having economic hardships, and this might be something that they need to rely on if they are unable to find work or are working less than they had previously. People need to be able to support themselves.

Chair Colman asked if there were any further questions for staff. Hearing none, he opened the public hearing and invited the first caller to speak.

Panayotis Giannakouros, City resident, called to make the following comments. I want to commend the Planning Commission for finally considering this. I do want to recall that Mr. Finks, a long time ago, modified a proposal that was sent forward to City Council to do something somewhat like this. In retrospect, that could have saved us so much unnecessary anguish. That said, glancing through this proposal, I believe, if I am not mistaken that by right use does not include auxiliary dwelling units. If I am correct on this, I would suggest to you that this is an oversight, that especially, under the current COVID conditions, needs to be reconsidered. We heard many poignant pieces of testimony from people with regards to why they needed this kind of accommodation. Now under the present conditions, it will be much harder for people to have guests in their own home, in close contact with them. If they did have an auxiliary dwelling unit, that would make it an ideal use for something like this. Again, if I am not mistaken and that is not allowed, I would urge you to consider amending this proposal to allow that. I would also suggest that the deliberation that you had about the length of time in the STRs that also, as was testified to by staff, there has not been complaints. I would suggest that you also increase that time limit, as well. With regard to how you are reasoning about this, how you are deliberating about this, there has been a pattern in how City Council has treated these STR applications and it is a shame that you did not get to have the joint meeting that had been requested so that you could discuss with Council what their reasoning was, but I will tell you, as somebody who sat through many of those hearings, that the common theme was that City Council, representing our City, had no taste for exclusionary practices. These exclusionary practices, as I tried to testify to you on numerous occasions, were rooted in segregation and race. On several occasions, the previous chair interfered with my first amendment rights to try to share these with you. I did share some of that reasoning with City Council and they were receptive. On an eighth occasion, the Director of Community Development intervened and prevented Mr. Finnegan from similarly abridging my first amendment rights. Under the current conditions, I would strongly recommend to you that the exclusionary practices that have been institutionalized, not only in our Department of Community Development, but in departments of community development statewide and in zoning in general are things that need to be directly confronted. Just as there are calls to defund the police, there are growing calls emerging in the state and elsewhere to defund departments of community development in the same spirit to weed out institutionalized inequities. Many of the things that we take for granted, it is just normal, are not normal. They are rooted in very pernicious, very negative elements of our history. Just as people are accustomed to taking confederate monuments on Monument Avenue in Richmond something that is just normal. Well, those taking things as just normal are very rapidly changing, just as is happening in Richmond. I hope that you will take this seriously and try to do the best job you can, starting with that new way of approaching our City and our communities by amending and improving and sending forward this proposal.

Chair Colman asked if there were any more callers. As there were no more callers, he closed the public hearing and opened the matter for discussion.

Commissioner Finnegan asked if the accessory dwelling units were included in the by right homestays.

Ms. Dang said that we do not allow accessory dwelling units as a defined use. In the R-1 district, you can have one dwelling unit per parcel. In R-2, depending on how you develop a duplex dwelling, somebody might consider that as an accessory dwelling unit, by design. We would

consider that a duplex. In short, the answer is that Mr. Giannakouros is correct in that the by right ability would not allow a homestay to operate unless in a single-family home, a duplex dwelling or a townhouse dwelling. Somebody could not have the accessory structure in the back rented out through the homestay. They could come in with a SUP request to ask if a bedroom that is set up outside, that is not a full dwelling, could operate as a STR. We are considering the by right homestay to only allow accommodation spaces to be rented out in the dwelling structure on the property.

Commissioner Finnegan said that we have approved a couple. There is some debate. I know I voted for some and against some accessory dwelling unit type situations. One of my core concerns is taking housing stock for local residents out of circulation in order to turn it into a full-time hotel room. That is a concern of mine. We need to be careful not to be turning livable full-time housing units into something that the landlord could make a lot more money off of through Airbnb.

Chair Colman said that in moving this forward to City Council there is another opportunity to convey that to City Council and they can amend those conditions. Our discussions have been thorough, and we arrived at this point. I think there are some limitations when it comes down to zoning. In the R-1 district only one dwelling is allowed, so having another dwelling would be in violation of zoning rules. That would be a bigger issue and would need to be addressed differently.

Commissioner Finnegan moved to recommend approval of the Zoning Ordinance amendments as presented.

Commissioner Finks seconded the motion.

All members voted in favor of recommending approval of the Zoning Ordinance amendments, as presented (5-0). The recommendation will move forward to City Council on August 11, 2020.