



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801

OFFICE (540) 432-7700 • FAX (540) 432-7777

To: Eric Campbell, City Manager
From: Adam Fletcher, Director – Department of Community Development, and Harrisonburg Planning Commission
Date: August 25, 2020
Re: Zoning Ordinance Amendment – To Add a New Homestay Use and to Amend Short-Term Rental Regulations

Summary:

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. 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. And 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). Staff and Planning Commission recommended approval (5-0) for the Zoning Ordinance amendments.

Background:

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.

Key Issues:

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.

Continues on next page.

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.

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

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.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the Ordinance amendments; or
- (b) Deny the Ordinance amendments.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing. The advertisement was published as shown below:

Zoning Ordinance Amendment – To Add a New Homestay Use and to Amend Short-Term Rental Regulations

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). This amendment does not require action by Planning Commission, but it will be advertised for public hearing for action by City Council.

As required, the request was published in the local newspaper twice advertising for City Council's public hearing. The advertisement was published as shown below:

Zoning Ordinance and Title 4 Finance, Taxation, Procurement Amendment – To Add a New Homestay Use and to Amend Short-Term Rental Regulations

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).

In addition, a notice was provided on the City's website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends (a) approval of the Ordinance amendments.

Attachments:

- Extract from Planning Commission
- Proposed Amendments to Harrisonburg City Zoning Ordinance related to Short-Term Rental and Homestay Properties
- Proposed Amendments to Harrisonburg City Code Title 4 – Finance, Taxation, Procurement related to Short-term Rental properties
- Review of Short-Term Rental (STR) Special Use Permit Applications, updated May 1, 2020
- Map of Short-Term Rental (STR) Special Use Permit Applications, updated May 1, 2020
- Memorandum and Minutes for the October 23, 2019 PC Work Session
- Memorandum and Minutes for the December 12, 2019 PC Work Session

Review:

Planning Commission recommended (5-0, Jim Orndoff absent and Zanetta Ford-Byrd resigned) approval of the Ordinance amendments as presented.