



COUNTY OF ALBEMARLE
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MEMORANDUM

To: Albemarle County Board of Supervisors

From: Albemarle County Planning Commission

Date: May 22, 2018

Re: Review of and Recommendations for Changes to Transient Lodging Regulations (Homestays)

For the last eight months, the Planning Commission has studied and considered the Board's suggested changes to the transient lodging regulations, also known as AirBnB, accessory tourist lodging, and homestays. (Early in the process, we agreed to use the term "homestay" to encompass all of the terms typically referred to as Bed and Breakfasts.) In addition to 80 pages of minutes leading up to the April 24, 2018 public hearing, staff provided three reports including attachments along with summaries of input from public meetings. While the Commission would be grateful for you to thoroughly read all of the background information, we recognize limits on your time and asked staff to consolidate our comments by topic. This consolidation (Attachment A) may be useful if you are unable to review all of the minutes. You will see that while there was robust discourse on a number of aspects of the use, there was not universal agreement on all items.

During our three work sessions, we discussed the following issues at length before holding a public hearing and making the recommendation in Attachment B:

- Changes to the homestay regulations should not result in incentives for additional homebuilding or commercialization of the Rural Area.
- The potential for more houses to be built in the RA is mitigated by limiting the number of days for whole house rentals to no more than 7 times in any given month and no more than 45 times/year. To help promote resolution of any immediate problems, the host should provide contact information to adjoining owners.
- Changes to the homestay regulations should not incentivize purchase of affordable housing units for commercial use, thereby reducing the inventory available for residents.
- Balancing individual property rights of individual owners (extra income) with the rights of neighbors and neighborhoods (potential for noise, traffic, parking problems) is essential. Neighborhood stability, safety, and quality of life outweighs an individual's rights for whole house rentals in the Development Areas.
- Allowing for use of up to two rooms in townhouses for homestays should not create nuisance problems for neighbors provided that the owner or resident of the townhouse is present during the homestay and provided that parking requirements of the zoning ordinance are met.
- The County must provide clear rules for hosts and a public information campaign.

- Proactive enforcement to bring current operators into compliance is essential to the success of the regulations. Proactive enforcement includes:
 - Identifying all existing operators of homestays and providing them with expectations and a time period for compliance.
 - Increasing enforcement efforts so that neighbors are not solely responsible for reporting potential violators.
 - Adopting a registry so that repeat offenders are identified and made to discontinue the use if they do not correct violations.
 - Not relying solely on the operator's records on request to ensure compliance.

During our work sessions and at our public hearing, we also found that there were issues with the existing regulations that need reexamination. These items include:

- Increasing the frequency of safety inspections to make sure that they remain in place after the initial inspection.
- Modifying parking regulations to make sure that parking provided for guests does not result in a paved over front yard or parking on the property line that could affect an adjoining property owner or resident.
- Considering whether to regulate the number of guests allowed in a homestay instead of the number of bedrooms allowed for a homestay.
- Preventing the construction of cabins or mini-lodges in the Rural Area which use cannot revert back to a by-right Rural Area use.
- Potentially allowing accessory structures in the Development Areas to be used for guest rooms.
- Exploring ways to allow homestay use on family-owned/inherited properties which the family wants to retain and use periodically.
- Consider treating rural suburban developments in the Rural Area the same as the Development Areas when it comes to whole house rentals, parking, and use of accessory structures.

The Commission asks that the Board direct the Commission to study these items and, if warranted bring back recommendations for additional changes to the homestay regulations.

SUMMARY OF INFORMATION FROM PLANNING COMMISSION WORK SESSIONS

October 17, 2017, December 19, 2017, and March 18, 2018

Comments in Black are from 10-17 Comments in Red are from 12-19 Comments in Green are from 3-18.
Comments in **bold** were stated by multiple persons.

PUBLIC COMMENT*

PROCESSING APPLICATIONS

- Need to streamline and improve communication among agencies.
- Whatever is adopted must be enforceable.

SUGGESTED CHANGES IN REGULATIONS

- Provide for active enforcement rather than waiting for neighbors to complain. **Reiterated in December.** Reiterated in March.
- **Require HOA permission before County approves ATLS in neighborhoods.**
- **Make consistent use of terms.**
- **Make whole house rentals available only 30 times/year.**
- **Change the existing requirement by reducing the number of guest rooms from 5 to 4 plus the owner's bedroom.** Reiterated in March.
- **Add wording that the owner of the property must be present during the rental.** Reiterated in March.
- **Restrict the number of adults (or bathrooms) rather than number of guest rooms.**
- **Require periodic inspections, paid for by the owner.**
- **Prohibit any use of on-street parking for the homestay.**
- **Do not expand homestay opportunities** Reiterated in March.
- **Remove requirement for resident manager in existing regulations.**
- **Restrict whole house rentals to existing houses** Reiterated in March.
- **In the RA, require that the owner use one dwelling as their primary residence and they must reside there at least half the year.**
- **Change the allowance for renting no more than 5 guest rooms to no more than 6 guests.**
- **Require periodic safety inspections.**
- **Require an owner rather than resident manager to run a homestay.**
- **"Self reporting" of the 7 days/month no more than 45 days/year is not practical.**
- **The County should not make residents spy on their neighbors to ensure compliance by reporting violations.**
- **Do not allow on-street parking to count towards required parking.**
- **Clearly spell out the residency requirement in the ordinance.**
- **Consider a waiting requirement before allowing a new house to be used as a homestay on an RA property. For example, a homestay could not use a newly constructed dwelling until 2 years after it had been built. This would reduce the incentive to build in the RA for homestays.**

POLICY

- **Let the market decide. Right now, the traveling public wants whole house rentals.**
- Consider the extent to which whole house rentals in the RA could spur additional development in the RA.
- **There should be no problem with a renter (as opposed to owner) of property making it available for AirBnB unless the renter has a contractual relationship with the owner that prohibits homestays.**

- Parking issues are less problematic than the Commission believes. It is likely that more cars are parking on residential yards during football games than during an AirBnB stay.
- Increasing opportunities for homestays in the RA will not be beneficial if it encourages construction of new houses in the RA that would not otherwise be built. Reiterated in March.
- Do not restrict development rights based on two years from C.O. for short-term rentals.

OTHER COMMENTS

- Canterbury Hills does not support whole house rentals. Reiterated in March.
- Transients who use homestays create uncertainty in who is in the neighborhood, more traffic, and potentially more noise.
- Large parties held by transients will be detrimental to the neighborhood.
- In the Rural Area, allowing for older carriage houses or cottages to be fixed up for use is better than dormancy. These accessory building can create some unique and personable spaces which benefits both the owner and the surrounding community.
- A residency requirement results in a serious hardship and discourages rehab of existing vacant structures.
- Canterbury Hills does not want expansion of business operations beyond what is currently allowed since they have no HOA or covenants.
- Proactive monitoring of this use is essential if the regulations are to be effective.
- There should be a way for a family to rent out an inherited property in the RA rather than sell it or rent it to someone if no one in the family can live on that property but still wants to use it. If someone lives in the County 10 minutes away from the family property, they can be available in case of an emergency.
- Expanding opportunities for whole house rentals will help preserve the RA and enable people to continue farming.
- BnBs can be a problem for neighbors, even in the RA, if guests have outdoor parties. It is a major problem if guests cannot easily find their way to the right house. Sometimes strangers knock on our doors at 11 or 12 o'clock at night looking for the BnB they cannot find.

CLARITY

- Clarity is needed in the presentation of this information so that it does not get confused with basic property rental.
- **Provide for greater clarity in the regulations.**
- Parking requirements are not clear in the ordinance. What is the difference between a BnB and accessory tourist lodging?

PLANNING COMMISSION DISCUSSION BY BROAD CATEGORIES*

WHAT ARE THE CURRENT REGULATIONS?

- The Zoning Ordinance isn't very user friendly when it comes to this subject. It is difficult to know what the regulations are and where to find them. This situation must be improved.
- It is difficult to distinguish accessory tourist lodging from a Bed and Breakfast use, which may have up to 10 rooms in up to two bed and breakfast uses.
- Why does the County regulate rooms and not guests?
- Is it really illegal for owners to have multiple houses that they rent out for short term rentals?
- Where are guests allowed to park? On-street? In the front yard (outside of the driveway or garage)?
- Are carriage houses or accessory structures allowed as guest rooms in the development areas?
- Must the owner or manager reside in the dwelling used for a homestay?
- How are homestays regulated in villages or the Village Residential zoning district?

- How much of a front yard can be turned into a parking area? Is there a rule that says no more than a third of the front yard can be for parking?
- What are the setbacks for parking?
- What are the homestay rules for rural suburban subdivisions in the RA that are much like suburban subdivisions in the DA?
- What does the City allow and should we adopt something similar to what was just adopted in the City?
- Is there really only one inspection and no follow-up in successive years?
- Why don't we allow accessory structures for homestays in the DAs?
- What is the current residency requirement for a homestay?
- Why does the City limit the number of guests and the County limits rooms?

PRESENCE OR ABSENCE OF RESIDENT MANAGER (WHOLE HOUSE RENTALS)

- Clarity is needed regarding the presence of the owner/manager. Is it during the stay? On-premises? somewhere else? What is the definition of a resident? A primary residence?
- Enforcement of regulations involving whole house rentals will be difficult without an owner or manager present.
- Is it even possible to enforce a resident or resident manager requirement?
- It is not essential that a permanent resident live in a homestay. **Reiterated in Dec. Reiterated in March.**
- In rural villages (Howardsville, Batesville, and Esmont, for example), an owner might live three doors down from another property they own and want to have as a homestay. The proximity suggests that the owner can adequately oversee the activities of a homestay in which there is no permanent resident.
- Even with a resident manager, on a large farm (say 1000 acres) with a rental cottage it could be difficult to oversee what goes on in the rental cottage.
- How practical is it that an absentee owner will live in a house for half the year and leave the house vacant for the other half? Will the property get run down?
- Whole house rentals may be more economical for consultants and business teams doing work out of town.
- Should we limit whole house rentals to existing structures only?
- If an owner provides for whole house rentals responsibly, why should we limit the use to only existing structures?
- **Whole house rentals in the Rural Area should be allowed.**
- **Whole house rentals should not be allowed.**
- **The Development Areas and Rural Area are different and the potential for nuisances is greater there. No whole house rentals should be allowed in the Development Areas.**
- In the RA, how would the maximum number of days allowed affect an owner's bottom line? Would a more generous number of days become an incentive for more construction in the RA?
- There should be a minimum acreage requirement to allow for whole house rentals – you would need a large acreage.
- Since we cannot have separate regulations for inherited properties, the owners will need to find a tenant who can be the resident manager.
- We are not all in agreement that this is the answer for inherited properties. It is not so easy to find residents or managers to live on rural properties and manage the uses on those properties. Some of my rural neighbors have really struggled with this.
- The situation with inherited properties and needing to find something to do with is not unique to the Rural Area. It can also be an urban issue.

FREQUENCY OF WHOLE HOUSE RENTALS

- The proposed 90 days per year seems excessive in the Rural Area. This seems to be an inordinately large proportion of the year.
- There should not be a difference in the number of days for whole house rental between the Development Area and Rural Area.
- What is the tipping point for economic viability between whole house rentals 30 days per year or 90 days per year? All localities dealing with AirBnB are trying to make this determination.
- More research is needed to develop the right number of days for whole house rentals.
- Perhaps a limit on the number of days per year is not necessary because there are other ways to address the frequency of this occurrence.
- What is the right number 90 days? 60 days? 45 days? 30 days?
- With limitations on the number of days per year that whole house rentals can take place in the Rural Area, it is very unlikely that investors will go out and buy or build new houses. There is no “cash-cow” in the very limited number of times the house could be used.

NUISANCE ISSUES

- Renters may be prone to do things that would not occur if the owner was present.
- Knowing the aspirations of the ACC and UVA, there may well be results that are not desired. In cities with universities in the Big 12 conference, on football weekends it is not unusual for 8 cars to be pulled up in the front yard of a whole house rental, parties going non-stop for 48 hours, etc.
- Has the police department been asked for input? They may have information to offer concerning enforcement.
- Is this use really going to increase crime? Right now, it looks like the issue is about parking and noise.
- Responsible hosts advise guests on the importance of good behavior and set rules for guests.
- Allowing for whole house rentals should be approached very cautiously due to potential impacts on neighborhoods.
- If common sense prevails, some of the potential bad situations will not occur.
- What is the minimum amount of change we can make without creating nuisances for neighborhoods and others?
- Is staff recommending a neighbor notice requirement regardless of whether the homestay is a whole house rental?

AFFORDABLE HOUSING

- Are we incentivizing a loss of affordable housing?
- The impact of allowing for whole house rentals may well affect provision of affordable housing in the County. The more you remove housing units at any price range from long-term rental the greater the affordability problem.
- Allowing for whole house rentals in the Development Areas will remove rental units from the housing inventory for the long term. There is a direct correlation between short-term rentals increasing and affordable housing decreasing.
- Having an income stream from homestays can help defray the costs of housing. Townhouses shouldn't be excluded from this opportunity.

ENFORCEMENT

- Is “enforcement” correction of the violation or shutting down the operation?
- Is the increase in numbers of applications a result of more activity or more enforcement?
- Nuisance violations occur on weekends when there is no one working to whom one might report the need for abatement.

- If the regulations change, what will enforcement cost?
- What will we do with the subset of people who are running a chain of whole house rentals?
- It may be possible to enforce a limited number of days for whole house rentals if homestay hosts submit a report with their monthly taxes indicating the numbers of days that month of whole house rental.
- It is better to require that a host certify the occurrence of something rather than only provide information if asked. A violation would be an error of commission than an error of omission.
- Enforcement is key to success.
- Until enforcement mechanisms are understood, it is difficult to support making changes.
- Spot checks are a good way to ensure that hosts come into compliance.
- The rental registry may be a very good way to help ensure enforcement.
- If the police are doing enforcement, response times can be up to 50 minutes and the police probably have better things to do than investigate noise and parking complaints with homestays.
- Whatever we do, there should be adequate notice to the public so they are well aware of the rules. This needs to be factored in as a budget item. Everyone who is currently operating a homestay needs to be notified.
- There is no one dedicated to bringing violators into compliance. If the rules aren't enforced, there is no reason to have them. How many people are out of violation?
- Take County enforcement seriously and not just enforce based on complaints.
- What happens if a neighbor just doesn't like a neighbor and they make multiple (unsubstantiated) complaints? Do we shut down the operation?
- What exactly are the violations? It seems like a mishmash? We need to have clarity in "what is a problem" and be able to recommend solutions.
- We are not comfortable expanding the opportunities and the potential risks without a really strong compliance approach.
- **Enforcement based on complaints isn't fair to the neighbors.**
- Homestays where there is no resident manager or owner creates a situation for violations.
- The County needs a game plan on dealing with the local entities managing multiple vacation homes without owners present or resident managers.
- A game plan for enforcement is essential.
- Is the "3 strikes you are out" just "3 complaints" or are the strikes "legitimate violations"?
- Parking requirements need to be clearly spelled out so that people really understand the criteria.

PREVENTING IMPACTS ON THE RURAL AREA

- We do not want create an incentive for commercial development or new housing for homestays in the Rural Area.
- **Is it possible to allow a whole house homestay option only in existing houses in the Rural Area? This would help reduce the opportunities for building more houses in the Rural Area just for homestays.**
- Only allow homestays in the RA in existing houses or structures; however, allow don't provide restrictions in the number of days an owner can do a whole house rental. If someone is a resident manager, they would need to be subject to limitations.
- Consider allowing only existing houses.
- Consider a waiting period for using a newly constructed home – such as 5 years. 2 years is too short.
- Do not put a limit on using a new home for a homestay.
- Have a minimum lot size in the Rural Area for whole house rental without a resident manager present.
- Allowing for vacation homes could be a way to allow for people with inherited property to retain their property in Albemarle and pay for improvements.

TAXING AND REVENUE

- Is there a way to predict an increase in revenue as a result of allowing whole house rentals?
- If a management company is located outside of Albemarle County, is the management company's jurisdiction getting the TOT?
- **What exactly is the revenue we will get by increasing opportunities for homestays? Will that revenue be worth what it takes to enforce the ordinance with its new provisions?**

BALANCING MARKET FORCES and RESIDENTS' ABILITY TO EARN EXTRA MONEY WITH AVOIDANCE OF NUISANCES

- An owner wishing to make money or help pay for a property should be allowed to do so as long as the owner avoids creating a nuisance. As with home occupations, there should be no indication from the outside that a homestay is occurring inside.
- Owners of existing buildings, farms, and land in the Rural Area need opportunities to make money in order to keep those properties from becoming run down.
- Creating a balance between property rights and neighbors' rights is a concern everywhere, not just in the Rural Area.
- Generating income out of one's home must be balanced with other rights of the community. If someone wants to open a brewery to generate income, we place limits to ensure that the public good is preserved.
- **Neighborhood stability is important.**
- **Greater weight should be given to neighborhoods and neighbors than for a few people to be able to do things at the expense of the majority. The neighborhood was there first and should be able to rely on enjoyment of their property. What are the minimum number of steps that can create benefit for some without damage to the many.**
- **Fairness and equity need to be present in terms of property rights and opportunities for owners to use their units for homestays.**

DIFFERENT TYPES OF RESIDENTIAL LOTS AND UNITS

- The closer the units are to one another, the greater the opportunity for problems, so we should be the most restrictive in the densest locations and least restrictive in the Rural Area.
- There are many suburban neighborhoods in the Rural Area. The Rural Area is not just large lots and farms.
- **The question of increasing opportunities for whole house rentals should not be based on the potential for nuisances but on the potential for reducing affordable housing stock, especially if we are thinking about opening up opportunities for condominiums, apartment complexes, and townhomes.**
- There is a greater possibility of nuisance in a multifamily situation than single family situation. Townhouse rentals and apartment rentals need to be avoided.
- Townhouses should be limited to rental of two bedrooms, not whole unit rentals.
- **We should not allow homestays in townhouses or apartments.**
- **Two rooms should be available in townhouses/Only one room should be available/Homestays should not be allowed in townhouses.**
- **We need to be thinking about whether parking needs for homestays in townhouses are going to create an adverse impact on the rest of the townhouse development.**
- **A maximum of two rooms should be available in townhouse units. These would not be allowed for whole house rentals. Parking will be the defining factor in whether zero, one, or two rooms area available for the homestay.**

HEALTH, SAFETY, AND WELFARE OF GUESTS

- Will there be annual building and fire marshal inspections?
- Will the County take this situation seriously for the safety of occupants and fairness to the hotel industry?
- A one-time inspection is not sufficient.

PARKING

- Will creating more opportunities for homestays increase the likelihood that people will pave over their whole front yard, or a significant portion of it. If someone were to make most of their front yard available for parking it will affect the character of the neighborhood. The same is true if someone paved or put gravel across their entire front yard. ? We don't want that. Reiterated in December.
- Can we create setbacks for parking or requirements for specific locations of parking on a lot?
- Parking will be a problem in townhouse developments and apartment complexes.
- On-street parking is only allowed if the (VDOT or private) street has been approved for on-street parking, right?
- What happens on cul-de-sacs?
- Is insufficient parking enough to deny a request for a homestay?
- Parking should be on-site.
- Parking should occupy no more than 50% of the front yard.
- Parking should have the same setback as the buildings. Guests should not be parking on the property line. This should be true for all types of housing.
- Parking is an issue for townhouses as well as detached housing.
- Parking for townhouses can take place in multiple forms – it can be on the lot itself, it can be in a parking lot, or it can be in a garage. Each situation would have to be evaluated on a case-by-case basis to determine if sufficient parking is available for overnight guests.
- **The Commission should explore how parking plays out on single family and townhouse lots, when a homestay is involved. Limitations on paved areas, their location, and setbacks from adjoining properties should be reviewed and possibly changed. If someone in a single-family detached unit wanted 5 guestrooms and they needed 7 spaces total, they should not be on-street, so as to jam up the street. The owner should not pave over the entire front yard, wall-to-wall. They should still need to provide 50% green space so it still seemed like a front yard. The setback should be whatever the minimum setback is for structures in that particular zoning district so that you do not shoehorn seven cars into the site and it starts to look like outdoor display for an auto dealership.**
- Parking must be addressed in townhouse situations. For example, in Avinity where there are one-car garages, Most of those garages have probably been converted to a room or are just filled with stuff so they do not hold a car. Then there is a driveway than can hold 1 ½ cars, but everybody is parking on the street.
- When townhouse residents use a jointly used parking lot, there may be scattered random places that are not used at any given time. The County cannot agree to allocate a floating guest space to a particular unit.

POTENTIAL CHANGES TO EXISTING REGULATIONS

- Only allow homestays 30 days per year (not just whole house rentals) in the Development Areas if there is not an owner occupant.
- Do not allow new construction of 1-2 bedroom “cottages” or “cabins” in multiples on a property. This facilitates construction of mini-lodges or retreat centers.
- We should consider a minimum lot size for homestays.
- **Treat rural suburban developments in the Rural Area like the development areas.**

- **If we are not allowing whole house rentals in the DAs, should we consider allowing accessory structures or units to be used for homestays?**

OTHER COMMENTS

- Do we really want to allow new accessory structures and cottages to be built for homestays in the Rural Area? Do we want lots of little cabins on a property that becomes a retreat location? We should be limiting construction of new accessory structures for homestays.
- More hotels may be needed to relieve pressure for whole house rentals.
- Shouldn't staff be finding out how UVA's programs for guest accommodation relate to homestays?
- Maybe if our regulations were lighter for owner managers it would help to incentivize owner occupancy which would be good for neighborhoods.
- What exactly is the problem we are trying to solve in the Rural Area? There does not seem to be a problem right now with the way rentals are happening.
- Are we trying to allow for more opportunities for homestays because of pressure from people currently out of compliance hoping to be able to continue to do what they are doing? Are we just trying to keep up with the times?
- **If we are not allowed to make recommendations on existing regulations, we need to make sure that our concerns are passed on to the Board.**

* These comments do not reflect the prior staff proposal to allow for BnB use on adjoining properties owned by the same person.