



**County of Albemarle
Department of Community Development**

Memorandum

To: Members, Albemarle County Board of Supervisors
From: Amelia McCulley, Zoning Administrator
Date: May 25, 2018
Subject: **ZTA 2017-01 Transient Lodging (Homestay) Existing Compliance Gap and Long Term Enforcement**

This zoning text amendment will expand the opportunities for various types of homestays beyond what is currently allowed. As identified in the Comprehensive Plan and in various meetings on this topic, there are currently a number of homestays that are not approved because they currently lack the required zoning clearance ("unapproved homestays"). A certain percentage of those do not comply with the current provisions and some may not comply with the proposed provisions. Staff recommends an interim enforcement approach to close this gap with the goal of having existing homestays in compliance with the required zoning clearance approval.

While the numbers vary greatly even from day to day, staff estimates at least 120 and perhaps as many as 200 unapproved homestays exist within Albemarle County. We further estimate that 2/3 of those can potentially comply with the proposed ordinance. That leaves 1/3 of homestays that would need to either change their operation to comply or cease operation.

As the Board is aware, with the exception of public health or safety concerns and illegal signs in the right-of-way, we follow a responsive rather than a proactive approach to zoning enforcement. Unapproved homestays represent a loss of revenue to the County as well as an uneven playing field for those who have followed the regulations and obtained the necessary approvals. Homestays operating without approvals have not been reviewed for compliance with health and safety requirements such as Building Code, Fire Code and Health Department regulations. Based on all these reasons, staff recommends an interim proactive approach over the next year to close the compliance gap.

Various aspects of the current and proposed regulations present some challenges for enforcement. The primary issues relate to residency and tracking the numbers of days for whole house rental. Actually disproving someone's residency claim can be difficult. With regards to tracking days for whole house rental, the proposed ordinance includes a provision requiring the owners to maintain a log of days for whole house rental that is provided upon request to the Zoning Administrator. The Virginia Code includes further enforcement measures available through the Short Term Rental registry provisions.

Compliance Gap – Existing Unapproved Homestays

Staff recommends an initial informational outreach program to those who are providing unapproved homestays. This would lead to enforcement action if the necessary approvals are not sought and obtained within 6 months. This approach is one that many localities have adopted. The effort would begin with publicizing information on the requirements for obtaining a zoning clearance and taxation requirements. Staff intends to host workshops, create interactive/video tools on regulations, and provide streamlined processes with on-line help. If the initial outreach takes place over 6 months, staff believes the outreach and permitting process for those who are voluntarily complying can be accommodated within existing staffing.

However, the second phase involving enforcement action has budget impacts because it cannot be accommodated within existing staff resources and is most efficiently done with specialized software we do not currently have. On the high end of the proactive enforcement spectrum is rental enforcement tracking software that scans the various platforms for rentals, matching them to specific addresses, permits and finance reporting. Nashville has recently contracted for a five-year 1 million dollar multi-feature service which includes a complaint and tracking component. While staff does not think it is necessary to have all of these features, the basic enforcement software is necessary to efficiently investigate and enforce in cases of existing unapproved homestays. We haven't fully investigated pricing with all vendors for the basic enforcement software but understand that it is likely about \$20,000 for the initial purchase, likely with an ongoing lesser maintenance cost. Because the various homestay rental platforms generally do not provide property addresses, it is time-consuming and difficult to find them. This type of investigation is extremely time-consuming because it can involve matching photos on a homestay platform with several properties in the area, to try to determine which is involved. Based on our experience, this could take as long as a full day of research per rental just to confirm each specific property involved in homestays. Once the property is identified, we can then determine if the necessary approvals have been obtained. If they haven't, we can contact the property owner to inform them and assist them with these approvals.

Please keep in mind that even if we obtained software to locate the properties, we would not be able to close this compliance gap using existing staff resources without detrimentally impacting our ability to meet mandates such as provide inspections for building permit applications and to respond to citizen complaints on other alleged zoning violations. Staff suggests that proactive enforcement not be prolonged over an extended time period. We recommend contracting for one (1) temporary position working full time for a 12 month period to assist us in closing the compliance gap. Staff believes that funding this position would involve a one-time cost of approximately \$45,000. This position will investigate and obtain an inventory of current homestays. They will determine who is already permitted and will assist homestay owners in the process of compliance. If the homestay owner is unwilling to obtain the necessary approvals, they will provide documentation for enforcement action.

Alternatively, if the Board chooses to not proactively enforce those existing unapproved homestays in this compliance gap, we will handle those in response to citizen complaints.

Long term enforcement

Staff recommends that this remain a process by which we are responsive to citizen complaints. They often become aware of these and have the most relevant information that allows us to begin an investigation. In the event the Board wishes to consider something different such as a proactive approach, we recommend this consideration take place in the context of other enforcement priorities and initiatives. After the compliance gap is closed, staff has not been able to identify reasons for treating this type of potential zoning violation differently than others.

Summary

Staff recommends an initial public outreach to inform those existing unapproved homestay owners of the regulations and to assist them in the approval process. We recommend closing the current compliance gap with specific measures. These include funding rental tracking software and a temporary position to assist with outreach and compliance for those homes stays in the compliance gap. We also recommend that ongoing compliance be based on a responsive approach as with current zoning enforcement that does not fall within the prioritization of public health or safety.