Albemarle County Planning Commission
FINAL Minutes April 23, 2019

The Albemarle County Planning Commission held a public hearing on Tuesday, April 23, 2019, at 6:00 p.m., at the county Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins, Vice-Chair; Daphne Spain; Bruce Dotson; Pam Riley; Karen Firehock; Jennie More; and Luis Carrazana, UVA representative.

Members absent: None.

Other officials present were Leah Brumfield, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; David Benish, Interim Director of Planning; Rebecca Ragsdale, Senior Planner; Bart Svoboda, Chief of Zoning/Deputy Zoning Administrator; Carolyn Shaffer, Clerk to Planning Commission and Andy Herrick, Deputy County Attorney; Stephanie Banton, Management Analyst.

Call to Order and Establish Quorum

Mr. Keller, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

ZTA201700001 Homestay/Transient Lodging (Short Term Rentals)

Mr. Svoboda reported that the purpose of this ZTA was to review the proposed draft ordinance, and staff is hoping to receive a recommendation from the Commission on the ordinance. He noted that homestays are stays that are less than 30 consecutive days, and this did not pertain to long-term rentals of houses. He stated that there is also a preexisting use exemption that stipulates if a person has a lawfully existing use, that can continue with the same approvals.

Mr. Svoboda stated that the purpose of this review is to address concerns that arose within the Comp Plan that preserve the residential character and afford rural area protections, as well as the safety of guests and the public with these stays. He emphasized that the primary use of those properties is residential and this is accessory -- so they want to maintain that aspect. He mentioned that the process to date had been lengthy, noting that the last work session was in February and they were back on track to a normal schedule.

Mr. Svoboda reported that under the current regulations, someone could rent up to five rooms in a single-family detached dwelling in the development areas; the owner or tenant must reside and in rural areas, rental may be accessory. He said that they could not rent without an owner or manager present, rent rooms in a townhouse or apartment, rent a detached structure in the development area, and have weddings or other special events.

Mr. Svoboda presented a slide that reflected the proposed regulations, showing the residency of owner stipulation that requires them to reside on the parcel to have the use. He stated that parking was also an issue, and this states that it must be onsite. He presented a slide showing uses that were not allowed, clarifying that restaurants and events serving other than homestay guests were not permitted. He said they had also had discussion about creating a designated agent or notice requirements, and the highlights are that there must be a responsible agent designated who can address compliance.

Mr. Svoboda stated that the homestay notice must include the name, telephone number, and emergency contact information to the abutting property owners. He explained that with preexisting use, it must be a lawfully preexisting use that was approved, with an owner subject to the conditions in those prior approvals, effective based on the adoption date of this amendment.

Mr. Svoboda said that they also had discussed special exceptions and various exceptions [???exceptions?] based on certain conditions -- more than two guestrooms, use of an accessory structure -- and this pertained to all districts, including residential, planned development, and rural area properties of less than five acres. He noted that it did not have to be granted but could be under specific conditions. He said that in terms of reduction of minimum applicable yards, there was a setback proposed in the ordinance, and if other criteria is met there may be some ability to allow the use. He noted that special exceptions were only granted after notice to abutting property owners.

Mr. Svoboda presented points of consensus from the Board, noting that there were two categories in rural areas -- less than five acres and more than five acres. He said that the county regulated or enforced by zoning district versus the use on the property. He stated that the 125-foot setback applied in the over five acre category, which was not properly reflected in the staff report before the Commission.

Ms. Spain thanked him for the tables and explanation, and she noted that Attachment A in the "Summary of Changes to Homestay Regulations," annual safety inspections would be required, and she asked where that was in the text.

Ms. McCulley responded that it was not text because it would not be in the zoning regulations -- it would be in Chapter 7 of the County Code under "Health and Safety." She explained that those would be fire inspections by the fire/rescue department, and with the public hearing of this going to the Board, the regulations in draft form that had not received the final okay from the County Attorney's Office would be going at the same time as the zoning regulation. She noted that it would also include a fee for the annual inspection, which is a minimal amount for what they do for family day home inspections -- and that was not something to be approved by the Commission.

Ms. Firehock mentioned page 9 of the regulation pertaining to the requirement for the owner or resident manager of a parcel with a homestay to reside on and be present at the subject parcel during the use, as well as a stipulation that an owner/resident manager approved for whole-house rental to be absent. She said that the average layperson reading this ordinance would be confused, because it seems to say yes and no, depending on whether a property is a whole-house rental, and she asked if this could be better clarified.

Mr. Svoboda replied that staff could look at the headings there, and his enforcement background processes this similarly to setbacks -- and they've written it because they're applying different uses, different districts. He stated that J-1 is five acres in the rural areas, and J-5 is the other, so when they finish numbering the sections, they can label them accordingly in the ordinance.

Mr. Herrick stated that it was just a distinction between J-1 and J-2, with both pertaining to different types of property -- so different rules applied -- but it may be better labeled to make it clearer to the reading public.

Ms. Firehock asked how they defined “reside” and whether an owner or resident manager had to sleep on the property. She presented an example of a store where the owner rents the upstairs for periodic rentals, and while they are in the store for 10 hours a day, they didn’t sleep there. She asked if they would be counted as residents.

Ms. McCulley asked if she was inquiring as to what “reside” means during the time of rental of the property, explaining that the language states “be present” during the homestay use but is not defined beyond that. She noted that there is an expectation of a response time to any complaints, which is an important improvement later in the process. She explained that the response time by the responsible agent need to be within 60 minutes of being contacted, and the responsible agent must be available within 30 miles of the homestay at all times during a homestay use. She said that in terms of someone being physically there every minute there is a guest on the property, that may not be practical -- so staff focused more on there being an expected response time to any complaint received.

Ms. Spain asked whether there had been any studies or data available as to new guest cottages being built for homestays or whether staff[??? Not sure what this word should be…] were working to preserve historic buildings.

Mr. Svoboda responded that they had not done any formal in-depth studies.

Ms. Firehock said that there were additional staff needs to do enforcement and asked if there was a position being added for that.

Ms. McCulley responded that the Board of Supervisors have directed staff to be proactive to close the compliance gap and then be responsive thereafter as they receive complaints. She said there was quite a gap and they had received approval of the position for many reasons, including the expansion of the zoning code enforcement program, and because of the increase in workload with building permits and other applications, she had requested another code compliance officer to serve the county -- not just focused on this. She stated that they did get approval in the budget for that position to begin July 1, and in addition to that they requested temporary part-time funding with a focused education effort up front to bridge that compliance gap. She noted that there were additional resources to be used for this effort, with the hope that many will come into compliance and very few having to come through enforcement.

Ms. Firehock stated that there were not 24/7 enforcement officials, and she knew that police would not enforce a code violation unless it were something like a noise ordinance issue. She said that there was likely a very small percentage of offending renters, but the County did not have the ability to do that kind of response -- and not all community members would understand that.

Ms. McCulley agreed.

Mr. Keller opened the public hearing.

Mr. Bob Garland, resident of Canterbury Hills subdivision and secretary of that neighborhood’s association, addressed the Commission and referenced an email that had been approved and written on behalf of their board. Mr. Garland stated that he was speaking only about the homestay ordinances that would affect the residential areas of the County. He said that

Canterbury Hills was one of the many neighborhoods in the urban ring that had no protective covenants, relying solely on Albemarle's ordinances to enhance their quality of life and keep the neighborhoods desirable places to live.

Mr. Garland stated that they generally opposed any expansion of business uses into single-family residential neighborhoods, and the lot sizes were small -- averaging under a half-acre and meaning that neighbors had an effect on one another. He said that the one major exception was that they supported the suggested changes outlined in Attachment A and believe that the owner must reside in the house rather than allowing a manager. He emphasized that this made it consistent with other ordinances that required the owner to reside on any residential properly [properly?] used for home occupation or having an accessory apartment.

Mr. Garland said that it also ensured that homes would not be purchased solely for bed and breakfast use, which would inevitably lead to a decrease in the number of affordable homes in Albemarle County -- and anyone purchasing homes from $300-500K for rentals would be renting them out for more than just a few weekends. He stated that Canterbury Hills supported the requirement of an owner to be present during rentals, as well as the allowance of homestays in single-family detached buildings, a requirement for off-street parking with one space per rented room, annual registration and taxing of income, annual safety inspections to help prevent fires and possible loss of life such as that at Clifton Inn and in establishments in Lexington, Orange, and Harper's Ferry, and a limit of four adult guests but with special exceptions only with a special use permit and notification of adjacent homeowners.

Mr. Garland stated that they believe these proposals represent a reasonable compromise between protecting the quality of neighborhoods while allowing individual homeowners the freedom to operate a property licensed homestay in a residential area.

Mr. Travis Pietila of the Southern Environmental Law Center thanked staff and the Commission for a careful review of the various issues involved in homestays and for the many public input opportunities and meetings throughout the process. He said that the SELC understood homeowners wanting to rent space in their homes to help defray housing costs, and expanding the current homestay allowances could help with that. He stated that in considering whether and how to do so, those interests must be carefully balanced with other important goals of the Comp Plan, as well as the interest in neighbors who may be affected.

Mr. Pietila stated that the ordinance must ensure that they don't make homestays so lucrative that they start encouraging the construction of new houses in the rural area that would not otherwise be built. He said that they feel the County should avoid any changes that create a rush to convert existing homes to mainly serve these uses -- and the current proposal includes some key safeguards against these unintended consequences, which the SELC encourages them to keep as part of their recommendation to the Board.

Mr. Pietila explained that the SELC supports the currently proposed limit of 45 days per year and seven days per month, and the amount of time that whole house rentals can occur without an owner or a manager present. He said that would still enable a house to be rented nearly every other weekend of the year, including every major travel weekend. He stated that going beyond that creates a risk that commercial motivations will overtake the residential nature of many of these properties.

Mr. Pietila said they also support keeping the existing requirement that the property must be used as a primary residence for at least half the year, and if they allow whole-house rentals without this condition in place, it would be much easier for people living out of town or out of state to build and rent new vacation homes in the County. He added that it would also make it easier for one person or management company to convert several existing rural homes into vacation rentals. He stated that these were reasonable measures to make sure the County was taking the careful and thoughtful approach called for in the Comp Plan when considering changes in use in the rural area.

Ms. Dolan Baber of Glendower Road in Scottsville addressed the Board, stating that she lives next to her family farm there. Ms. Baber stated that she has been a teacher for 28 years, and she purchased a home that she has almost paid off. She said that a month ago, a neighboring lot that shares her driveway was sold -- and the owners plan to rent their house out regularly to pay their mortgage. She stated that this would be their job and they would not work outside of this business, and they have also brought in two tiny homes and a yurt, which they prepare to rent to pay income.

Ms. Baber emphasized that she did not want to be mean, but this was hurting her and her home values and what she's worked for over the past 28 years. She said that she would like the County to pass regulations that included a timeframe, as well as home inspections and an extra enforcement person. She stated that she appreciated what they were doing to make it better for everyone else, but she was very upset and her heart rate had been elevated because of this.

Mr. Dotson said that the proposal before them differentiated between smaller rural lots.

Ms. Baber clarified that the property in question was just under five acres.

Ms. Thea Tupelo-Schnuck addressed the Commission and stated that she is a resident of the Key West neighborhood. She said that she operates a small homestay out of her house, and she offers three bedrooms -- and almost exclusively gets entire families with children. She stated that three bedrooms seems ideal for this kind of family, and this seemed like a "sweet spot" for attracting families, so she would recommend that three bedrooms be the limit, not two.

Mr. Dotson asked about her lot size.

Ms. Tupelo-Shnuck responded that it was one acre.

There being no further public comment, the Chair closed the public hearing.

Ms. Riley asked about the grandfathering and whether the operators currently in business could be grandfathered -- or if exceptions could be made if they were not currently in business. She asked if Ms. Tupelo-Shnuck could continue to operate with her three bedrooms.

Mr. Svoboda responded that the answer to both questions was yes.

Mr. Bivinis commented that he understood the provision for rural area greater than five acres and under five acres, but he would like to speak for the residential part of the community -- particularly Page 9 and the parcel-based regulations 1 and 4, where it says "owner or resident manager occupancy" and stipulates they may be on or present at the subject parcel during the homestay use. He said that he would like to move that away from the resident manager

occupancy and say that with less than five acres or the residential zoning area, the owner of a parcel with a homestay must reside upon or be present at the subject parcel during the homestay use.

Mr. Bivins explained that he lives in the Jack Jouett District, with properties there being closer together in higher density and often in older neighborhoods. He expressed concern that if they put forward a situation in which an owner could reside in a house for six months and then be able to turn the residence over to a manager or agent for the other six months, because that would start to dilute the close-in neighborhoods in the County. He stated that those areas tended to be more accessible, with people closer to one another and the aspect of living together being different than for parcels above five acres. He added that it would be important to have the requirement for those owners to be on the property if they're doing homestays, and he would like to see this action promote and maintain neighborliness.

Mr. Keller commented that he would like Commissioners to indicate what they were and were not in support of, so they can see which areas warrant discussion and modification for their recommendations.

Mr. Bivins stated that the one thing he would ask would be the modification of the requirement on Page 9 for owner presence on the property. He said that he would also like clarity on the language of special exceptions and what that might entail.

Mr. Dotson commented that he had technical questions about inserting by-right uses, homestays in R-10 and R-15, and he asked if these had to be in single-family units. He added that they could always under-build the zoning density.

Mr. Svoboda agreed.

Mr. Keller asked Mr. Dotson to further elaborate.

Mr. Dotson stated that an R-10 or R-15 would be the number of units per gross acre, and the way zoning ordinances were typically constructed, that's the maximum intensity and a lesser intensity can always be built instead -- although it would be unlikely for someone to build single family on R-15 land.

Mr. Svoboda agreed, adding that there may also be an existing structure and existing residence with a homeplace that has not developed -- and it may be a preexisting structure.

Mr. Dotson said his second question is on the grandfathering, with legally permitted uses existing prior to the date of the new ordinance. He asked if someone had made an addition for purposes of doing a homestay but had done so without building permits whether they would be considered grandfathered or would have voided their opportunity.

Mr. Svoboda responded that if there was a current homestay approved, that would be grandfathered -- or a preexisting use exemption. He said if an owner had a house with approval and maintained the conditions of that approval prior to the adoption date of this revision, that would be acceptable. He stated if there were a building code violation for a use that didn't yet exist, the County would make that addition come into compliance based on those regulations and not necessarily homestay regulations. He emphasized that the structure would first need to be brought into compliance with the applicable code.

Mr. Dotson asked if the County would have lost its opportunity to bring a property into compliance if someone had an existing homestay without the proper building permits.

Mr. Svoboda responded that there were different sundown clauses within the building code, if not necessarily the zoning ordinance -- and that would be a case-by-case determination.

Mr. Dotson said that there was an in-between category with RA under five acres, and they were stipulating a 125-foot setback, and he asked if the walls had to be set back that far on any side of the property line. He said that it couldn't be achieved on all sides with one acre, and the RA under five acres was more like the residential and should be treated as such. He noted that he had counted three instances where they were making this more liberal and six instances where they were making it more protective -- and he felt this might be an overreach. Mr. Dotson emphasized that 125 feet was good in the large rural area, but he wasn't sure it was practical or needed with under five acres, which was more like residential.

Ms. McCulley stated that this suggestion had come up towards the middle of the process, with a situation with an under-five-acre lot in the rural area, and at that time staff was trying to address impacts to neighbors such as noise, lighting, and outside activity. She said that at the same time, they were trying to restrict the number of guests, and the idea of the setback -- which was the same as for wineries, breweries, and distilleries -- was to more internalize the activity and remove it from the adjoining property lines to limit the impact on the neighbors. Ms. McCulley said that it was an opportunity for people to get a special exception, and the County could come back and suggest performance standards. Ms. McCulley emphasized that it also applied only if someone did not own the abutting lot, so they were trying to build in some safeguards.

Mr. Dotson stated that he supported the proposal as it stands, but he wanted to add that once the Board acted, staff would develop a brochure for the public that made this very simple and clear -- and he would suggest developing that first and then sharing it with the Board, as trying to write it may point out things that were needed in the ordinance.

Ms. More stated that she understood the allowed second homestay use, and in looking at the RA of five acres or greater with development rights, she wondered if the number of accessory structures allowed would be controlled by a development right.

Mr. Svoboda responded that it would be the number of rooms that were let, and the primary use is residential and the homestay was accessory to that, so they can only let up to the five rooms on five acres or greater.

Ms. More asked if they could be five small accessory structures.

Ms. McCulley responded that they could be, and that was the current language in the ordinance, with the most recent amendment before this one being the allowance of use of accessory structures in the rural areas for what now was called bed and breakfast, allowing them to come out of the main house itself. She added that there really was not a restriction as to how many separate accessory structures could be used for guest rooms, but the hope was that people would take existing things like barns and convert those into guest rooms, with five being the limit regardless of how they were arranged.

Mr. Keller said that on the second parcel, if there was an historic farmstead with the five rights that could occur in that house or in a chicken house, kitchen house, etc., and there was a development right for the five additional, he wondered if there had to be a second dwelling with five available rooms for that to happen.

Mr. Svoboda said that this would not be required with a second parcel.

Ms. McCulley further clarified that each bed and breakfast use entitled to the guest rooms five and under must be associated with a dwelling that exists on the property.

Mr. Keller asked if the dwelling must have as many bedrooms as they were trying to recoup from the ancillary buildings.

Ms. McCulley responded that it did not, and you could use accessory structures in a way that allowed guests to experience life in the country without being in the main house.

Ms. More said that if you had another development right on that property and had the main house occupied, you could do five more accessory structures that could also have rooms -- but that would be a more than five-acre property.

Ms. McCulley confirmed this, adding that as long as no one structure had more than five guest rooms in it and each B&B use entitled to the five guest rooms is associated with a legal dwelling.

Ms. More asked for clarification as to the existing less-than-five-acre parcel that had two small homes and a yurt that were being use for that purpose that was currently an allowed use.

Mr. Svoboda replied that he wanted to be cautious on a particular instance. He stated that camping was only allowed in campgrounds in the County, and if there was a recreational vehicle, there would be stipulations based on whether it was registered with the DMV, etc.

Mr. Keller commented that they recently had the definition reworked on that through a ZTA, and he asked if it had gone to the Board of Supervisors yet.

Ms. McCulley responded that it had not, and Mr. Svoboda clarified that it would be soon.

Mr. Svoboda said if they were to take a parcel under five acres, they would not be able to do anything more than a single-family -- and without a special exception under five acres, they could not use an accessory structure.

Ms. McCulley stated that to the question of whether small self-contained accessory structures could be used as guest rooms, they could be if they were permanent and met building and fire codes. She said that this is different than what Mr. Svoboda mentioned in terms of a camper.

Mr. Keller asked if they would require bathroom facilities.

Mr. Svoboda responded that to be a dwelling, they would need to have cooking, sanitation, and sleeping facilities -- but to be accessory as a bedroom, they would not necessarily have to. He said that it may regulate itself by requiring a guest to walk to a main house to use the bathroom, and when properties under five acres started to bump up to additional houses without a

development right, it wouldn't be permitted anyway. He said that this ordinance required that under five acres only allowed for one use in the rural area.

Mr. Svoboda stated that the example given by the last speaker was peculiar, so that would be something to look into as to whether it was within the town limits versus just the County.

Ms. More said that the answer seemed to be that it was only grandfathered in if it were acceptable to begin with.

Mr. Svoboda confirmed this.

Ms. Firehock stated that she had a concern regarding requirements for off-street parking, with concerns previously raised that in some communities without covenants that prohibited paving, so people could literally pave their front yards to allow for homestay parking. She said this would be a bad unintended consequence, with declines to nearby property in quality and value.

Mr. Svoboda responded that this had been part of the discussion throughout, and the Board wanted this to be off street and on street -- so if there were more parking needed, it would either need to be on street or not at all, which would eliminate the congestion. He pointed out that there were people parking on grass even without homestay use, and there was no zoning ordinance requirement that said you had to park in your driveway. He said that under homestays, the inspectors would go out and say that particular space met parking requirements in terms of surface, etc.

Ms. Firehock mentioned that she was sympathetic to the resident who talked about the three rooms, and it was hard to imagine that made a tremendous amount of difference to the neighbors with just one more room.

Ms. Riley commented that she was in support of staff recommendations and did not have any changes to suggest.

Ms. Spain stated that as to whether a manager should be able to live onsite instead of the owner, she asked how the "or manager" language got into this and whether there were examples of managers running bed and breakfasts or tourist lodgings that caused it to be included.

Mr. Svoboda responded that some of the ordinances they had looked at allowed for it, and some did not -- and this was one of the points of discussion the Board had. He said it was somewhere in between having an agent run it versus only the owner, and how they would meet in the middle of owner or occupant and trying to reach a balance.

Ms. Spain asked if this meant from other localities.

Mr. Svoboda confirmed this, adding that if they looked at that further, some of the response times and language were from more tourist communities, such as Vail and Breckenridge, Colorado, and preventing it may not be that realistic a possibility.

Ms. McCulley added that the current B&B regulations, which were the rural area equivalent for homestay use, allowed a manager that resided on the parcel to be the responsible one. She

said that residency was either the owner of the property or manager of the homestay, in rural areas but not in residential, according to the language.

Ms. Ragsdale stated that she and Ms. Brumfield had been doing the day-to-day permit review, and when they updated the ordinance in 2012 for the rural areas, they specifically said that the person residing on the parcel in a single-family dwelling to establish the primary use, it was added to be a manager -- so a renter could have a homestay use or long-term tenant who acted as a manager. She noted that there were examples of this in the County, and in the rural areas they added “reside on the parcel” because there may be multiple dwellings and an owner or manager could reside in one with the guestrooms in another house. She emphasized that a tenant that met all residency requirements could also meet the responsible party requirements to satisfy that in the residential districts.

Ms. McCulley asked if a manager resident was allowed with current tourist lodging regulations, which were what applied in the residential districts.

Ms. Ragsdale responded that the ordinance did not specify that it had to be owner-occupied, so a tenant could take advantage of that -- and the only place owner-occupied was specified was certain types of accessory apartments. She said that tenants could have a home occupation, as they were not restricted on owner-occupied properties.

Ms. Spain stated that she was in support of the staff report.

Mr. Carrazana said that regarding the inconsistency with the under five-acre use in terms of the setbacks of 125 feet in residential, he wanted to understand what they were trying to mitigate with that -- and what an issue was for rural versus residential.

Mr. Svoboda responded that some of the amenities in the larger parcels, such as swimming pools, etc. ended up in both -- but staff’s experience has been that the environment is freer in the larger parcels, and if they’re erring on the side of caution, it was easier to reduce the 125 feet if they were doing a lot of special exceptions than it was to put it back in on something that would be a preexisting use condition.

Mr. Carrazana asked if they were both limited to the same number of rooms.

Mr. Svoboda responded that this was correct for the properties under five acres.

Mr. Carrazana stated that he lives in a neighborhood with parcels having a minimum of two acres, and there were probably six homes in a row -- and none of them were more than 125 feet from the property line, with the side yard setbacks being about 90-100 feet. He said that the restriction was more than just an acre, and he doubted they would be able to accommodate that with two acres, as it would likely be three acres and above before that could be achieved, particularly in an existing home.

Mr. Carrazana noted that the issue of potential disruptions to neighbors was the primary driver, and one could argue that a larger parcel in a residential area could handle the traffic better without disturbing neighbors. He said there seemed to be an inconsistency there, and if they were limiting the number of rooms to be rented, he could see that potentially they’d have the same amount of people regardless of rural or residential.

Mr. Svoboda responded that he saw that point, and his enforcement angle may have been stuck on RA.

Mr. Keller stated that he supports the regulations as staff developed them, but there were four issues that came up that warranted more discussion. He said that there has been pushback on Airbnb legislation nationally, with opposing forces wanting more or less regulation -- and concerns expressed over the impact on affordable housing. He stated that the City's housing study showed a proposed reduction in affordable housing units that have been converted to Airbnb. He commented that staff had done a masterful job in working through this.

Mr. Keller asked if they could propose something to address the issue of paving front yards. He stated that the second issue was the bigger debate of owner-occupancy, particularly whether a renter would or would not be able to accumulate more income by renting for a homestay versus people who own. He added that there was also the issue of maintenance if someone did not have ownership of the property on which they resided.

Mr. Keller noted that there had been thoughts that special exceptions could handle family rentals, so perhaps the owner-occupancy was a philosophical approach that building officials would have to deal with. He stated that the third issue was the size of the setback and relating that to the size of the parcel and the yard. He asked if they were comfortable calling out these issues for the Board to reflect on, or if they wanted to attempt to make changes first.

Mr. Dotson asked if they had addressed the question of what it meant to be present or reside.

Mr. Keller said that owner-occupancy was the second issue he raised, but there were two different aspects to that.

Mr. Dotson said the issue was whether reside meant overnight, per Ms. Firehock's question.

Mr. Dotson asked Mr. Bivins if he still had the same concerns regarding owner versus manager.

Mr. Bivins responded that he did and now had an additional concern regarding renters or someone who leases a piece of property, who would have the opportunity to do homestays -- and he would suggest that subleasing would not be allowed under the terms of a traditional lease. He emphasized that this was really how they remained accountable to the people they lived next to and also sensitive to pressures put on residential properties, given economic issues, the community's rise in notability and increasing visitation. He said that they have prohibited homestays in townhouses and condominiums, and he felt the same factors existed for close-in residential areas.

Mr. Bivins stated that they would be sending a message to the Board that as they're thinking this through, they should carve out not being a manager or lessor and that it be owner-occupied in the residential area.

Ms. Riley said that in talking about a manager in residential areas, other than the 180 days the owner needed to play that role, a renter is possibly a long-term renter. She stated that where she lived, about half of the people were long-term renters and half were owners, and she viewed her renter neighbors similar to owners -- with most being there and fully participating in the community. She said that she was more comfortable with that scenario.

Mr. Dotson commented that another scenario would be an owner moving into assisted living but still owned their home, with their children living there -- so they would be long-term occupants but not owners.

Mr. Bivins said that if someone went into long-term care, they would have a conversation about how long to leave the property open and a lifestyle situation was different from a weekend solution and thus having a different impact. He clarified that he was asking them to stand on the side of the neighbors, realizing there were lots of opportunities for medium-sized to longer-term rentals. He said that the issue is what they are doing to the fabric of a particular community, and whether they are encouraging a local degree of stability there or are encouraging a flexibility that makes sense.

Mr. Bivins stated that given the nature of how some of the properties were developed when people moved away from Charlottesville, their neighbors are close to them. He added that they needed to respond to “life happens” versus “profit happens,” so those two aspects needed to be compatible. He said that with the smaller lot, close-in neighborhoods, there were very few options as to how they lived together, and there were ownership factors he would like to emphasize. He added that perhaps the conversation would help the Supervisors dwell on this, and he was in line with everything else.

Mr. Dotson commented that perhaps they could proceed on the owner-only question, with someone else offering a motion on what it meant to be present or reside, and then they could have a remainder motion based on the outcomes of the narrower issues.

Ms. More stated that they could also proceed by drawing these with special attention to what Mr. Bivins had brought up, as well as the 125-foot setback in the rural area, but they could still approve this without attempting to make changes and instead just highlight it for the Board.

Mr. Keller agreed. He asked if there was a motion for either of the recommendations.

Ms. Firehock asked that at the end, after they vote it up and down, that they rearticulate the five points.

Staff agreed that this would be helpful.

Mr. More **moved** to recommend ZTA 2017-01 as show in the revised draft zoning ordinance dated April 23, 2019 in the staff report. Ms. Firehock **seconded** the motion, which passed by a vote of 7:0.

Ms. McCulley asked if the second concern was whether renters were permitted to do homestays, and it was stated as a preference to be reserved for owner-occupancy.

Mr. Keller agreed that the strong majority seemed to be saying that, but there was a viable subset -- and a national discussion on wealth and privilege, with the question of whether this would preclude some people from this opportunity. He added that there was Ms. Riley’s point about long-term renters that became almost quasi-owners through their long tenancy.

Ms. McCulley asked if they would suggest removing setback for less than five acres in rural areas, the 125-foot provision, and the question was whether they would suggest removing it from the smaller rural area lots, and whether it would make sense to impose it on the larger rural

area lots or if they were suggesting to eliminate it altogether.

Mr. Keller responded that by leaving it in, they were precluding some from doing it. He said that his choice would be to leave it in, but not every Commissioner felt that way.

Ms. More said that this would be a candidate for special exception, because if they were looking at the distance to a lot line versus the home, there may be a situation in which the home was set in a way from the property line that was closer than 125 feet. She emphasized that it would be a case-by-case basis, with a special exception made.

Ms. McCulley noted that it was written that way in what's proposed.

Mr. Carrazana said that his point was what the difference of having a three-acre lot with two rooms rented versus a half-acre lot where you can rent two rooms -- one residential and one rural -- and what the impact would be to the neighborhood. He stated that the question was whether there should be a distinction for under five-acre lots from residential or if they should be the same.

Mr. Keller responded that it was an issue because of the subdivisions.

Mr. Svoboda stated that it was also related to the character of the area, which was different with smaller, tighter lots that were busy and less rural depending on acreage.

Mr. Keller said that a community was affected by allowing the homestay on a five-acre parcel -- and also by not allowing it on a two-acre parcel.

Ms. McCulley said that the question pertained to the validity of the setback in the larger rural area lots, if it could be struck in the smaller rural area lots.

Mr. Keller stated that he liked it and was not prepared to strike it.

Mr. Dotson commented that he was fine with having it stand and see what happened with special exceptions and experience, and on a purely logical basis, there was similarity between residentially zoned and under five-acre RA with a similar character. He noted that above that, they started to change.

Ms. More stated that she was inclined to keep it as is and send their concerns and conversations to the Board for their contemplation.

Ms. Firehock said that she concurred, adding that she was thinking of some actual rentals where on one side they would be too close but abutted a large parcel of woods with the other house, but with the owner and neighbor agreeing it was fine.

Mr. Bivins stated that he would support it as it is now too, but asked to look at what the exceptions being requested were.

Ms. Riley said she was fine with keeping it as is, for all the reasons stated.

Ms. Spain concurred, stating that she would ask if the people applying for exceptions in terms of the number of bedrooms or setbacks know that they are able to do that -- and if it was clear to

the person reading the regulations and wanted to be in compliance with them but was off by one room or a short distance. She asked how they would learn they could ask for a special exception.

Mr. Svoboda responded that it would most likely be on the flyer with the basics of the homestay provisions, as part of the checklist for the public, with information about special exceptions. He added that they would make sure they informed the owners and neighbors as to how this works, and they were developing a sheet for both scenarios.

Mr. Carrazana stated that it was a fair approach to start with, and if they were getting a number of exceptions with homes already built and within the 125 feet but they wanted to rent rooms out, they could reevaluate.

Mr. Keller **moved** to that the Board of Supervisors consider the following issues of ZTA 2017-01:

The ramifications of the potential paving front yard areas to meet the off-street parking, and whether that this could be possibly remedied not in this but through other regulations in residential areas in the county.

1. The possible negative neighborhood streetscape ramifications resulting from the paving of homestay front yard areas to meet the homestay off-street parking requirement. Could this detrimental effect be remedied through new parking or design regulations in residential areas in the county?
2. The macro owner/occupancy requirement issue. In residential and small RA properties should renters as well as owners be able to “build wealth” through homestay? If so, must it be stated in their lease?
3. What is the definition of “reside”? Does the owner need to be present in the homestay during the day? Overnight? How much of a 24- hour day must they be present?
4. Do the configurations of properties in RA less than 5 acres physically allow for a 125’ setback? If not, should this be handled by special exception or should this requirement be eliminated?
5. Should 3 rooms (rather than 2) be allowed in RA less than 5 acres, or by special exception? This came from public comment.

Mr. Bivins **seconded** the motion, which passed 7:0.

Mr. Keller thanked staff for their work.