

COUNTY OF ALBEMARLE PLANNING COMMISSION

EXECUTIVE SUMMARY

<p>AGENDA TITLE: ZTA 2017-01 Homestay zoning ordinance amendments</p> <p>PURPOSE OF PUBLIC HEARING: Review changes, public input, and provide recommendation to the Board of Supervisors</p> <p>STAFF CONTACT(S): Bart Svoboda, Rebecca Ragsdale Amelia McCulley</p>	<p>AGENDA DATE: April 23, 2019</p> <p>ACTION: X INFORMATION:</p> <p>CONSENT AGENDA: ACTION: Public Hearing</p> <p>ATTACHMENTS: Yes</p>
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BACKGROUND: On [May 3, 2017](#), the Board of Supervisors (BOS) prioritized the review of homestays by adoption of a Resolution of Intent along with updates to the tax code. Many unlicensed homestays are not permitted under the current zoning ordinance regulations because they involve whole house rental (rental when the owner/manager is not present). Some of the proposed changes to the Homestay regulations include whole house rental when the owner/manager is not present, parking requirements, the use of accessory structures, and updating definitions. Work sessions have been held by the BOS and Planning Commission (PC) regarding the scope, process and proposed text for the zoning text amendment (ZTA). The results of these meetings are summarized with a chart found in Attachment A.

PUBLIC INPUT: The County has received valuable stakeholder feedback as a result of the roundtable discussions, public work sessions, and public hearings. The summary of public engagement (Attachment B) includes the comments from a January 2019 survey and comments received through the website.

PUBLIC PURPOSE TO BE SERVED: The purpose of these ordinance updates is to strike a balance between maintaining safety and residential character, addressing neighborhood impacts, protecting the Rural Area, and allowing reasonable accessory use of residences for homestays. The Comprehensive Plan adopted in 2015 acknowledged the existence of a number of homestays that are not in compliance and suggested that we examine this issue as noted in Attachment C.

DISCUSSION: The original purpose of ATLs was to supplement lodging for visitors to the City and County for events such as graduation and football games. It also allowed for homeowners to gain income from periodic rentals without changing the character of the area.

The proposed ZTA addresses the following concerns regarding the impacts and opportunities related to Homestays in the district(s) in which the use is allowed;

- Potential for nuisance (noise, parking)
- Effect on Rural Areas development
- Effect on affordable housing stock

Staff believes zoning changes should be balanced with the County's goals of protecting existing neighborhoods, ensuring affordable housing is available, and not commercializing the Rural Areas. Staff believes that the current Albemarle County goals for tourism are different than those of resort cities. The draft ordinance language is contained in Attachment D.

BUDGET IMPACT: Additional staffing needs have been identified to close the compliance gap and implement annual inspections. This impact has been addressed through a budget funding request.

RECOMMENDATION: Staff recommends that following the public hearing, the Commission recommend approval of the draft ordinance found in Attachment D.

ATTACHMENTS:

- Attachment A: Summary of Changes to Homestay Regulations
- Attachment B: Summary of Feedback from January 2019
- Attachment C: Comprehensive Plan reference to Strategy 4c and 5e
- Attachment D: Draft Proposed Ordinance

Summary of Changes to Homestay Regulations

HOMESTAY REGULATION MATRIX	Current		Proposed		
	Residential	RA	Residential	RA under 5 ac	RA 5 ac or greater
Owner/operator or manager must reside on parcel	✓	✓	✓	✓	✓
Only permitted in single family detached dwellings	✓	✓	✓	✓	✓
All parking must be off-street		✓	✓	✓	✓
Required annual registration on short-term rental registry (§ 15.2-983)			✓	✓	✓
Annual safety inspections			✓	✓	✓
Up to 5 guest rooms	✓	✓			✓
Limited to 2 guest rooms			✓	✓	
125-foot setback from abutting lots				✓	✓
Accessory structure may be used for homestays		✓			✓
Allowed second homestay use (with development rights)		✓			✓
Special Exceptions possible			✓	✓	✓
Whole house rental for maximum 45 days/year					✓

Summary of Public Engagement

Outreach methodology

Public roundtable of approximately 60 residents – January 8, 2019

Online survey – open January 8, 2019 to January 25, 2019

Emails from public – received January 10, 2019 through January 28, 2019

Issues with proposed regulations

- HOA rules sometimes contract zoning regulations
- Concerns of number of guests in few bedrooms
- On-street vs. off-street parking unreasonable
- Applications/violations may overwhelm County staff
- Annual regulation process too burdensome
- Residency requirements/proof
- Neighbor notification should be for all Homestay uses
- Need data for violations/number of operations in County
- Special exceptions for property type (e.g. townhomes) too lenient
- Inspection of long-term rentals should match short-term rentals
- “Disproportionate” response to number of violations

Repeated questions/confusion

- Confusion over grandfathering/non-conforming status of existing homestays
- Confusion over changes to regulations impacting existing, permitted homestays
- 45-day whole-house maximum – confusion over definition and selection of number of days

Clarifications Needed

- Annual regulation fees
- Tax ramifications
- Hotel industry's involvement in this process
- Special exception criteria

Suggested regulatory approaches – establishing homestays

- Continuity in regulations with City Homestay regulations
- Require HOA notification/compliance on application
- Reduce regulations, as majority of Homestays are not causing issues
- Reduce regulations but tax homestays
- Adjacent owners/managers should be sufficient, esp. on family division parcels
- Emphasize “primary use of these parcels is residential”
- Make number of guest rooms proportional to size of parcel

Suggested regulatory approaches – managing homestays

- Limits on number of guests in addition to bedrooms
- Require proof of homeowner's insurance for annual inspection
- “Responsible party” nearby instead of on-site manager

Comprehensive Plan reference to Strategy 4c and 5e

Strategy 4c: Study the nature of and extent to which transient lodging is currently taking place and consider whether policy and regulatory changes should occur to better accommodate this use. If such changes are determined not to be needed or appropriate, develop and implement a plan to bring errant operators of transient lodging into conformity with the County's regulations in a timely fashion.

The quantity of historic buildings, multiple houses on large properties, and large estates in the Rural Area creates many opportunities for rural transient lodging. Such uses can provide additional income to help owners retain their land and thereby avoid pressure to subdivide. Current regulations for transient lodging allow for B&Bs in the Rural Area. The Zoning Ordinance states that a homeowner may have up to 5 guestrooms inside a home and up to 5 additional guestrooms in a second residential structure on the same property. A resident manager must live on the property and the second residential structure must comply with density standards of the County, as well as health and safety standards.

While there are a number of licensed B&Bs in the Rural Area, internet research shows that there may be many more B&Bs that have not been properly permitted. In addition, it appears that some of these B&Bs and guest lodges lack a resident manager. This can be problematic -- the chief concern being that, absent an on-site manager, emergency situations cannot be quickly or appropriately addressed. Neighbors may not know whom to contact when a rental house is being abused. Some of the facilities advertise accommodations in excess of the number of rooms or buildings allowed by the Zoning Ordinance.

The City of Charlottesville studied this issue in 2014 to determine the extent to which transient lodging was occurring in City neighborhoods and its impacts to neighborhoods and on availability of affordable housing. The City is currently looking at these issues as well as potential revenue impacts for the City.

The County should undertake a similar study of both the Rural Area and Development Areas to decide if B&B and tourist lodging regulations should be changed in the County. The County might benefit from using the same research techniques to develop data for analysis. The County could also benefit by reviewing the issue in a broader community context than just at a County-level. In the Rural Area it is important to understand the extent to which new guest cottages or residences are being built for transient lodging or whether such facilities are helping to preserve historic buildings and sites. For the Development Area, the County will want to understand the impacts to neighborhoods when guest houses are operating with non-resident managers.

Strategy 5e: Study the nature and extent to which transient lodging is currently taking place and consider whether policy or regulatory changes should occur to accommodate this use. If such changes are determined to not be needed or appropriate, develop and implement a plan to bring errant operators of transient lodging into conformity with the County's regulations in a timely fashion.

As indicated in the [Rural Area Chapter](#), rental vacation and tourist homes are operated throughout the County and some are in the Development Areas. The Zoning Ordinance allows tourist lodging in the Development Areas which means that a homeowner may have up to 5 guestrooms inside a home provided that the owner or a residential manager lives in the home. Internet research shows that some of these facilities are operating without permits.

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Draft Proposed Ordinance (Homestays)

ORDINANCE NO. 18-18(2)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE II, BASIC REGULATIONS, AND ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, Article II, Basic Regulations, and Article III, District Regulations, are hereby amended and reordained as follows:

By Amending and Renaming:

Sec. 5.1.48 Bed and Breakfast

By Amending:

Sec. 3.1 Definitions
Sec. 4.12.6 Minimum Number of Required Parking Spaces for Scheduled Uses
Sec. 5.1.17 Tourist Lodging
Sec. 5.1.48 Bed and Breakfast
Sec. 10.2.1 By Right
Sec. 12.2.1 By Right
Sec. 13.2.1 By Right
Sec. 14.2.1 By Right
Sec. 15.2.1 By Right
Sec. 16.2.1 By Right
Sec. 17.2.1 By Right
Sec. 18.2.1 By Right
Sec. 19.3.1 By Right
Sec. 20.3.1 By Right
Sec. 20A.6 Permitted Uses
Sec. 20B.2 Permitted Uses

CHAPTER 18. ZONING

ARTICLE I. GENERAL PROVISIONS

3.1 DEFINITIONS

...

~~Tourist lodging: A use composed of transient lodging provided within a single family dwelling having not more than five (5) guest rooms, where the single family dwelling is actually used as such and the guest rooms are secondary to the single family use, whether or not the guest rooms are used in conjunction with other portions of the dwelling. (Amended 6-6-12)~~

Change to one common new use term, "homestay."

...

~~Bed and breakfast: A use composed of transient lodging provided within a single family dwelling and/or one or more structures that are accessory to the single family dwelling, having not more than five (5) guest rooms in the aggregate, and which also may include rooms for dining and for meetings for use by transient lodging guests of the bed and breakfast provided that the dining and meeting rooms are accessory to the bed and breakfast use. (Added 6-6-12)~~

Change to one common new use term, "homestay."

...

Homestay: An accessory residential use providing transient lodging and rooms for dining and meetings for use by homestay guests provided that the dining and meeting rooms are subordinate to the homestay use. A homestay use may offer no more than five (5) guest rooms for lodging.
Establish and define the new term, "homestay."

...

Responsible agent: For a homestay use, an owner, manager, management company, rental agent or individual who is identified in the zoning clearance.

Establish and define the new term as used in §5.1.48.

...

Whole house rental: A homestay use during which the owner or manager is not required to be present. (See § 5.1.48).

Define the limited use allowed in Rural Areas parcels greater than 5 acres.

ARTICLE II. BASIC REGULATIONS

4.12.6 MINIMUM NUMBER OF REQUIRED PARKING SPACES FOR SCHEDULED USES

Except when alternative parking is approved as provided in section 4.12.8, the following schedule shall apply to determine the number of required off-street parking spaces to be provided in a particular situation. If a particular use is not scheduled, then section 4.12.7 shall apply.

...

~~Bed and breakfast Homestay: One (1) off-street (4) space per guest room in addition to the parking required for the dwelling unit a single family dwelling. (Added 6-6-12)~~

Explicitly state that parking must be provided off-street. See also provision for special exception.

...

~~Tourist lodging: One (1) space per guest room in addition to the parking required for a single family dwelling. (Amended 2-5-03, 6-6-12)~~

...

5.1.48 BED AND BREAKFAST HOMESTAYS

Each ~~bed and breakfast~~ homestay is subject to the following regulations:

- a. Residency. The owner of the parcel or a manager of the ~~bed and breakfast~~ homestay must reside on the parcel for a minimum of 180 days in a calendar year.
- b. ~~Number of bed and breakfast uses.~~ Any parcel may have up to two (2) bed and breakfast uses.

- e. ~~Required development rights, density and limitation.~~ Each single family dwelling to which a bed and breakfast homestay use is accessory shall comply with the following: (i) on any parcel less than twenty-one (21) acres in size, the single family dwelling shall be authorized by a development right as provided in section County Code §18-10.3; (ii) on any parcel, regardless of size, the single family dwelling shall comply with the permitted density; and (iii) no single family dwelling shall have more than one bed and breakfast homestay use accessory to it.
- d. ~~Minimum yards.~~ Any accessory structure used for a bed and breakfast homestay use shall comply either with the applicable minimum yard requirements for a primary structure or a lesser yard approved by the zoning administrator that is not less than the minimum yard required for an accessory structure that would otherwise be applicable, if the zoning administrator finds that: (i) the distance between the accessory structure and the closest primary structure on the closest abutting parcel is greater than the applicable minimum yard requirement for a primary structure; and (ii) written consent has been provided by the owner of the abutting lot consenting to the alternative minimum yard. The minimum yard for any parking area shall be twenty-five (25) feet.
- b. Notice. The owner of a parcel conducting a homestay use must provide the name, telephone number, and emergency contact information of the owner and of any manager or other designated agent to abutting property owners on an annual basis. The owner must retain and provide a copy of the notice to the Zoning Administrator within five (5) business days upon request.
- ec. Parking. In addition to the parking required for a single-family dwelling, the number of off-street parking spaces required by section County Code §18-4.12.6 must be provided on-site.
- fd. Information and sketch plan to be submitted with request for zoning clearance. The following documents must be submitted to the zoning administrator with each request for a zoning clearance under section 31.5:
1. Information. Information pertaining to the following: (i) the proposed use; (ii) the maximum number of guest rooms; (iii) the provision of authorized on-site parking; (iv) the location, height and lumens of outdoor lighting; and (v) two (2) forms of verification of the permanent residency of an owner or manager. Acceptable proof of permanent residence includes: driver's license, voter registration card, U.S. passport, or other document(s) that the zoning administrator determines provide equivalent proof of permanent residence at the subject property.
 2. Sketch plan. A schematic drawing of the premises with notes in a form and of a scale approved by the zoning administrator depicting: (i) all structures that would be used for the homestay bed and breakfast; (ii) the locations of all guest rooms; and (iii) how access, on-site parking, outdoor lighting, signage and minimum yards will be provided in compliance with this chapter.
 3. Signatures. The responsible agent and the property owner must sign the application.
- ge. Building code, fire and health approvals. Before the zoning administrator approves a zoning clearance under section 31.5, the owner of the parcel or a manager of the homestay bed and breakfast must obtain approval of the use from the building official, the fire official, and the Virginia Department of Health.
- hf. Uses prohibited. The following uses are not permitted as uses accessory to a homestay use: 1) Restaurants; 2) Special events serving attendees other than homestay guests.

g. *Responsible agent.* Each applicant for a homestay must designate a responsible agent to promptly address complaints regarding the homestay use. The responsible agent must be available within 30 miles of the homestay at all times during a homestay use. The responsible agent must respond and attempt in good faith to resolve any complaint(s) within sixty (60) minutes of being contacted. The responsible agent may initially respond to a complaint by requesting homestay guest(s) to take such action as is required to resolve the complaint. The responsible agent also may be required to visit the homestay if necessary to resolve the complaint.

h. *Lawfully pre-existing uses.* Any bed and breakfast or tourist lodging use approved prior to (Board's adoption date), may continue, subject to conditions of the prior approval(s).

i. *Special exception.*

(1) Waiver or modification of this section is prohibited except to permit:

(i) More than two (2) guest rooms and/or the use of an accessory structure in association with a homestay on parcels in Residential, Planned Development Zoning Districts or on Rural Areas Zoning Districts parcels of less than five (5) acres;

(ii) Reduction in minimum applicable yards for a structure or parking used in whole or in part for a homestay.

(2) Special exceptions may be granted after notice to abutting property owners upon consideration of the following:

(i) there is no detriment to any abutting lot;

(ii) there is no harm to the public health, safety, or welfare; and

j. *Parcel-based regulations*

1) Each homestay located on a) a parcel of less than 5 acres in the Rural Areas Zoning District or b) a parcel of any size that allows residential use in the Residential Zoning Districts or Planned Development Zoning Districts is subject to the following regulations:

(i) *Number of homestay uses.* Any parcel may have only one (1) homestay use. An accessory apartment may not qualify as a dwelling unit for a homestay use.

(ii) *Dwelling types.* Homestay uses may only be conducted in a single-family dwelling.

(iii) *Number of guest rooms.* A maximum of two (2) guest rooms may be permitted with each homestay use.

(iv) *Owner or resident manager occupancy.* The owner or resident manager of a parcel with a homestay use must reside on and be present at the subject parcel during the homestay use.

(v) *Minimum yards.* 1) In the Residential or Planned Development Zoning Districts, the minimum applicable front, side, and rear yard requirements for primary structures apply to all structures used for homestays; 2) In the Rural Areas district, the minimum front, side, and rear yard shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the homestay, for parking and for structures used in whole or in part to serve a homestay.

2) Each homestay located on a parcel of five (5) acres or more in the Rural Areas Zoning District is subject to the following regulations:

- (i) Number of homestay uses. Any parcel may have up to two (2) homestay uses, provided all other applicable requirements are met.
- (ii) Accessory structures. Homestay uses may be conducted in accessory structures.
- (iii) Number of guest rooms. A maximum of five (5) guest rooms may be permitted with each homestay use.
- (iv) Required development rights, density and limitation. Each single-family dwelling to which a homestay use is accessory must comply with the following regulations:
 - (i) on any parcel less than 21 acres in size, the single family dwelling shall be authorized by a development right as provided in County Code § 18-10.3;
 - (ii) on any parcel, regardless of size, the single family dwelling shall comply with the permitted density; and (iii) no single family dwelling may have more than one accessory homestay use.
- (v) Minimum yards. Any accessory structure used for a homestay use shall comply either with the applicable minimum yard requirements for a primary structure or a lesser yard approved by the zoning administrator that is not less than the minimum yard required for an accessory structure that would otherwise be applicable, if the zoning administrator finds that: (i) the distance between the accessory structure and the closest primary structure on the closest abutting parcel is greater than the applicable minimum yard requirement for a primary structure; and (ii) written consent has been provided by the owner of the abutting lot consenting to the alternative minimum yard. The minimum yard for any parking area shall be 25 feet.
- (vi) Owner or resident manager occupancy. The owner or resident manager of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals. The owner or resident manager of a parcel conducting a homestay use that is approved for whole house rental may be absent during the rental period for up to seven (7) days in any calendar month and up to 45 days in any calendar year. The owner shall maintain a log of all homestay uses including the date of each rental for which the owner is absent. This log shall be provided within five (5) business days to the Zoning Administrator upon request.

SECTION 10. RURAL AREAS DISTRICT, RA

10.2 Permitted Uses

10.2.1 By right

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14. ~~Bed and breakfast~~ Homestays (reference 5.1.48).

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SECTION 12. VILLAGE RESIDENTIAL - VR

12.2 Permitted Uses

12.2.1 By right

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10. Tourist lodgings Homestays (reference 5.1.4748).

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SECTION 13. RESIDENTIAL - R-1

13.2 ~~Permitted~~ ~~ERMITTED~~ Uses ~~SES~~

13.2.1 ~~By~~ ~~RIGHT~~ right

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10. Tourist lodgings Homestays (reference 5.1.4748).

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SECTION 14. RESIDENTIAL - R-2

14.2 ~~Permitted~~ ~~ERMITTED~~ Uses ~~SES~~

14.2.1 ~~By~~ ~~RIGHT~~ right

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10. Tourist lodgings Homestays (reference 5.1.4748).

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SECTION 15. RESIDENTIAL - R-4

15.2 ~~Permitted~~ ~~ERMITTED~~ Uses ~~SES~~

15.2.1 ~~By~~ ~~RIGHT~~ right

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12. Tourist lodgings Homestays (reference 5.1.4748).

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SECTION 16. RESIDENTIAL - R-6

16.2 ~~Permitted~~ ~~ERMITTED~~ Uses ~~SES~~

16.2.1 ~~By~~ ~~RIGHT~~ right

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8. Tourist lodgings Homestays (reference 5.1.4748).

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SECTION 17. RESIDENTIAL - R-10

17.2 PermittedERMITTED UsesSES

17.2.1 BYy RIGHT right

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8. Tourist lodgings Homestays (reference 5.1.47 48).

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SECTION 18. RESIDENTIAL - R-15

18.2 PermittedERMITTED UsesSES

18.2.1 BYy RIGHT right

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8. Tourist lodgings Homestays (reference 5.1.4748).

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SECTION 19. PLANNED RESIDENTIAL DEVELOPMENT - PRD

19.3 PermittedERMITTED UsesSES

19.3.1 BYy RIGHT right

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14. Homestays (reference 5.1.48).

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SECTION 20. PLANNED UNIT DEVELOPMENT - PUD

20.3 PermittedERMITTED UsesSES-Residential

20.3.1 BYy RIGHT right

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14. Homestays (reference 5.1.48).

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SECTION 20A. NEIGHBORHOOD MODEL – NMD

20A.6 ~~Permitted~~ERMITTED ~~Uses~~SES

The following uses shall be permitted in an NMD, subject to the regulations in this section and section 8, the approved application plan and code of development, and the accepted proffers:

- a. *By right uses.* The following uses are permitted by right if the use is expressly identified as a by right use in the code of development or if the use is permitted in a determination by the zoning administrator pursuant to subsection 8.5.5.2(c)(1)

...

13. Homestays (reference 5.1.48).

SECTION 20B. DOWNTOWN CROZET DISTRICT - DCD

20B.2 ~~Permitted~~ERMITTED ~~Uses~~SES

The following uses shall be permitted in the DCD, subject to the regulations in this section

...

- D. *By right uses; residential.* The following residential uses are permitted by right, provided that the first floor of the building in which the residential use exists is designed for and occupied only by a use permitted by subsections 20B.2(A), (B), (C) or (E):

...

9. Homestays (reference 5.1.48)