



MEMORANDUM

TO: Housing Commission

FROM: Deborah Albert

DATE: October 25, 2016

SUBJECT: Short-term residential rental – authorized advertisement

On October 15, 2016, the County Board authorized an advertisement to consider amending the Zoning Ordinance to define and regulate short-term residential rental. The proposed amendments are scheduled for discussion at the October 27 Housing Commission meeting. The County Board will consider amendments at its December 10, 2016 meeting.

Background. Recently, short-term residential rental services in the on-line marketplace, such as Airbnb, have become more prevalent in Arlington and nationwide. Some recent actions by the General Assembly of the Commonwealth of Virginia related to this type of use, have potential to impact the County. In 2016, the General Assembly passed legislation, that if it had become law, would have:

- Limited local governments' ability to enact or enforce any local zoning laws not
- consistent with this type of short-term residential rental use in any zoning district;
- Kept the identity of short-term rental properties hidden; and
- Precluded local governments from collecting and auditing Transient Occupancy Taxes, as they would for any other lodging property, where rentals are set up using online hosting platforms, and exempted from TOT properties used for short-term residential rental use for less than 45 days a year.

The General Assembly passed a version of this legislation in the 2016 session, but the Governor referred it to the Virginia Housing Commission to study so it could create draft legislation for consideration in the 2017 session. The Virginia Housing Commission created the Short-Term Rental Housing Work Group to accomplish this task. At this

time, staff does not know what the new legislation will include. There is also no guarantee that the General Assembly will pass a bill or that it will be signed into law. Staff does know that there has been a demand from the community, including short-term rental hosts, asking for rules on how to operate legally. By acting prior to the end of December (2016), the County could help inform the State's ultimate direction on this legislation.

This proposed amendment would regulate short-term residential rental by the owner of a dwelling that is his/her primary residence. The proposed amendment is designed to be broad in some of its regulations in order to allow for the County Board to consider input gathered through the public engagement process, as well as to allow for additional analysis by staff prior to a final recommendation on the scope of the ordinance. Generally, the proposed amendment would create a legal mechanism for a homeowner to rent out his/her house, apartment, or portion thereof for overnight stay, such as through Airbnb, Craigslist or other similar on-line services. The amendment would not, however, preclude a condominium or homeowners' association from establishing its own rules about allowing (consistent with County regulations) or prohibiting this type of activity.

The proposed amendment was developed based on a review of best practices in other jurisdictions in Virginia and throughout the country. A summary of regulations in Charlottesville, Virginia; Portland, Oregon; San Francisco, California; and Denver, Colorado will be posted on the [short-term residential rental web page](#).

The proposed amendment would define a new use called "accessory homestay." This use would be allowed only when accessory to a residential use, and would be allowed as a home occupation use, subject to the existing provisions for home occupations, as well as some new additional regulations. The existing home occupation provisions are described below, followed by a table describing the proposed additional regulations for accessory homestay. Home occupations are limited commercial uses that are allowed as accessory to residential use of a dwelling unit, and are allowed in all dwelling units in single-family residential (R), multiple-family residential (RA) and commercial/mixed use (C) zoning districts. Some of the key existing provisions for home occupations are summarized below, and also included in this summary, are areas where home occupation provisions are proposed to be amended for the proposed accessory homestay use:

- Commercial uses that are allowed as home occupations are specifically listed in the Zoning Ordinance, and the Zoning Administrator may allow other uses he/she determines to be of a similar general character to those listed. Accessory homestay is proposed to be added to the list of allowed home occupations.
- There may not be any evidence of the home occupation on the exterior of the dwelling in which the home occupation is located. This includes a prohibition on signs and on exterior display, storage or sale of merchandise or equipment.

- A home occupation may have up to one nonresident employee. The proposed accessory homestay use would be prohibited from having any nonresident employees (other than those employed for regular home maintenance purposes, such as repairs, house cleaning or yard maintenance).
- Instruction of students and/or service to clients and customers is limited to 12 people per day and no more than four at once. The proposed amendment would allow up to the larger of six overnight lodgers or two people per number of bedrooms in the dwelling unit at any one time for an accessory homestay.
- A home occupation is limited to 25 percent of the total floor area of the dwelling. The proposed accessory homestay would be allowed to use an entire dwelling, or a portion thereof.
- No parking spaces may be added to a dwelling during the time in which a home occupation is in operation, and no off-street parking is required. The proposed amendment would allow up to one parking space to be added for accessory homestay purposes and could require up to one off-street parking space.

Proposed Zoning Ordinance amendment for advertisement. Accessory homestay is proposed to have specific requirements in addition to the home occupation requirements described above. The following table describes each element of the proposed amendment. As discussed previously, in order to provide opportunities for public input throughout the outreach process, certain elements of the advertisement described below are broad, and staff’s final recommendation for County Board consideration in December will be informed through the public outreach process. Although the public is welcome to comment on all aspects of this proposal, generally, the proposed advertisement is broad in areas where staff recommends that public input would be the most valuable in helping to formulate regulations. There are other areas where the proposed advertisement is constructed more narrowly, and these include some of the most fundamental and more practical aspects of the proposed use (e.g. regulation as an accessory use rather than a principal use, which staff proposes is most consistent with the goal of protecting neighborhood character; administration of the use by Zoning Administrator approval, which staff proposes is most practical and most appropriate based on a set of required standards rather than through a legislative process such as a use permit). Finally, there are other areas where the proposed advertisement is constructed narrowly based on common and best regulatory practice (e.g. compliance with other County, state and federal laws and regulations; provision of certain safety equipment). The right-most column of the table below includes an explanation of the areas in which the proposed advertisement will allow for continued discussion during the outreach process, and these elements are shaded in grey.

	Element	Proposed Recommendation for Advertisement	Community Discussion
1	Zoning Districts	<ul style="list-style-type: none"> ▪ Single-family residential (R); ▪ Multiple-family residential (RA); and ▪ Commercial/mixed use (C) 	The advertisement allows for consideration of further limiting the zoning districts where the use is allowed.
2	Accessory use	Accessory homestay would be allowed only when it is accessory to a residential dwelling unit use classified in the Zoning Ordinance as Household Living.	The advertisement does not allow for continued discussion of this element.
3	Home occupation use	Accessory homestay would be regulated as a home occupation, and subject to all the same provisions as other home occupations (with the exception of the amendments described in the previous section of this report), plus additional provisions that would be unique to accessory homestay.	The advertisement does not allow for continued discussion of this element.
4	Signs	No signs would be allowed for accessory homestay use. This is consistent with the existing prohibition on signs for all home occupations.	The advertisement does not allow for continued discussion of this element.
5	Non-resident employees	Nonresident employees would be prohibited from performing work on the premises for an accessory homestay. The proposed advertisement would, however, allow nonresident employees to perform work related to normal home maintenance, such as repair and care of the residence or property, including yard maintenance and house cleaning.	The advertisement does not allow for continued discussion of this element.
6	Area of dwelling unit used for accessory homestay	No limit is proposed (accessory homestay could include overnight rental of an entire house or apartment).	The advertisement allows for consideration of limits to the total area/percentage of the house or apartment that could be used for accessory homestay.
7	Parking	<p>The proposed amendment includes an option to consider requiring one off-street parking space for accessory homestay.</p> <p>Additionally, the proposed amendment includes an option to consider allowing up to one additional off-street parking space to be created on the property (subject to all applicable regulations) for an accessory homestay. Other home occupations prohibit the creation of an additional parking space that did not exist at the time of application</p>	<p>The advertisement allows for consideration of:</p> <ul style="list-style-type: none"> ▪ Requiring one parking space; ▪ Not requiring any parking spaces; and/or ▪ Prohibiting the creation of new off-street spaces on a property with an accessory homestay.

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8	Owner-occupancy and primary residence	Accessory homestay would be allowed only in dwelling units occupied by the owner of the unit as his/her primary residence, which would require that he/she live there for a minimum of 185-275 days of the year (a range is proposed to be advertised).	The advertisement allows for consideration of defining primary residency as the owner of the dwelling unit occupying the unit anywhere between 185 and 270 days per year. However, the advertisement does not allow for continued discussion of whether owner-occupancy is required.
9	Cap	The proposed amendment would include an option for consideration to limit the number of dwelling units within any multiple-family building to the larger of either one unit, or 25% of the total number of dwelling units in the building. Townhouses, duplexes, semidetached and two-family dwellings are not considered to be multiple-family buildings and thus would not be subject to the proposed cap.	The advertisement allows for consideration of either no cap, a smaller cap (fewer units) or a larger cap (more units).
10	Maximum number of guests	An accessory homestay would be limited to a maximum of the greater of either: <ul style="list-style-type: none"> ▪ Six overnight guests per night; or ▪ Two overnight guests per night per number of bedrooms in the dwelling 	The advertisement allows for consideration of limiting the provision to fewer guests
11	Number of simultaneous contracts	An accessory homestay would be limited to no more than one contract for any overnight stay (e.g. a contract may be for a party of six, but an accessory homestay host could not contract with six separate individuals under separate agreements on the same night).	The advertisement does not allow for continued discussion of this element.

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12	Accessory dwellings	The proposed amendment would include an option to allow a dwelling unit with an approved accessory dwelling to be used for an accessory homestay, but the maximum number of guests for the accessory homestay would be reduced by the number of occupants of the accessory dwelling. Either the accessory dwelling or the main dwelling could be used for the accessory homestay.	The advertisement allows <ul style="list-style-type: none"> ▪ Accessory homestay to either be allowed or prohibited in a dwelling with an accessory dwelling; and ▪ The additional limitation on the number of overnight guests to be included or omitted.
13	Family/caregiver suites	The proposed amendment would allow a family/caregiver suite to be used for accessory homestay	The advertisement allows for consideration of allowing or prohibiting use of a family/caregiver suite for accessory homestay.
14	Detached accessory buildings	An accessory homestay would be allowed only within the main dwelling on the lot (which could include an approved attached accessory dwelling). Accessory buildings, garages or other structures on the lot could not be used for accessory homestay.	The advertisement does not allow for continued discussion of this element.
15	Safety equipment	The dwelling unit used for the accessory homestay would be required to have working smoke and carbon monoxide detectors and a working fire extinguisher accessible to all overnight guests of the accessory homestay.	The advertisement does not allow for continued discussion of this element.
16	Building code	All applicable requirements of the Virginia Uniform Statewide Building Code must be met as follows: <ul style="list-style-type: none"> ▪ For the dwelling ▪ Any sleeping room used for accessory homestay must have met the requirements for a sleeping room at the time it was created or converted ▪ The accessory homestay must be allowed under the building code for the subject dwelling 	The advertisement does not allow for continued discussion of this element.
17	Food and beverages	The owner (or his/her agent or contractor) could prepare or serve food or beverages to any overnight guests of the accessory homestay.	The advertisement allows for consideration of prohibiting or allowing the preparation and serving of food and beverages to overnight guests.

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18	Commercial meetings	An accessory homestay could not be rented out for any other commercial use, such as parties, banquets, weddings, meetings, charitable fund raising, commercial or advertising activities or any other gatherings for direct or indirect compensation	The advertisement does not allow for continued discussion of this element.
19	Accessory homestay application	<p>The zoning application for an accessory homestay permit would require:</p> <ul style="list-style-type: none"> ▪ Contact information for either the owner of the dwelling, or a responsible party, who is available 24 hours per day, 7 days a week, and who is located within 30 miles of the accessory homestay ▪ Proof that the dwelling unit used for accessory homestay is occupied by the owner of the dwelling as his/her primary residence (as defined in this regulation See item 2 in this table) <p>Additional application requirements, not proposed to be included in the Zoning Ordinance, are discussed later in this report.</p>	The advertisement does not allow for continued discussion of this element.
20	Accessory homestay permit	<p>An accessory homestay permit would be required and would be issued by the Zoning Administrator upon approval of an accessory homestay application. The permit would:</p> <ul style="list-style-type: none"> ▪ Be valid for up to two years ▪ Be required to be renewed by the owner of the dwelling upon expiration on his/her own recognizance ▪ Require the owner and the responsible party (if not the owner) to agree to abide by all the requirements for the accessory homestay ▪ Be conditioned to authorize the Zoning Administrator and his/her designee to enter the dwelling unit upon reasonable advance notice at least one time per year in order to verify that the accessory homestay is being operated in compliance with all regulations and all conditions of the permit <p>Additional permit requirements, not proposed to be included in the Zoning Ordinance, are discussed later in this report.</p>	The advertisement allows for consideration of the validity of the permit for a period of a maximum of two years.

	Element	Proposed Recommendation for Advertisement	Community Discussion
21	Revocation of an accessory homestay permit	<p>An accessory homestay permit could be revoked by the Zoning Administrator as follows:</p> <ul style="list-style-type: none"> ▪ If there are three or more substantiated complaints about the accessory homestay within a one year period; ▪ For failure to comply with all requirements of the accessory homestay and conditions of the accessory homestay permit; ▪ For refusal to allow county inspectors to access the dwelling unit after reasonable advance notice, in order to ensure compliance with all requirements of the accessory homestay and conditions of the accessory homestay permit; <p>If an accessory homestay permit is revoked, the applicant would not be eligible to receive a new accessory homestay permit for up to two years.</p>	The advertisement allows for consideration of the revocation period before a new accessory homestay can be approved, for a maximum of two years.

Proposed definitions and other related amendments. Staff also proposes to add and amend certain definitions to support the proposed accessory homestay use, and to update the use classification system in the Zoning Ordinance to incorporate accessory homestay. The following definitions are proposed:

- Accessory homestay. This proposed new term defines a new home occupation use, whereby an individual who is the owner of the dwelling unit and occupies the dwelling unit as his/her primary residence, hires out as lodging, such dwelling unit or portion thereof.
- Dwelling or dwelling unit. This is an existing term, defined as a building or portion thereof designed exclusively for residential occupancy, including one-family detached; semidetached; duplex; townhouse; multiple-family building. As part of the final phase of the Zoning Ordinance update, a 2015 Zoning Ordinance amendment introduced a use classification system to the Zoning Ordinance, as well as updated a number of definitions. As part of this amendment, two previously defined terms (“dwelling” and “dwelling unit”) were combined into one term, and portions of the “dwelling unit” definition were omitted. Staff proposes that with the proposed allowance of accessory homestay, a lodging use, within dwelling units, that this definition should be restored to clarify the one-family use. The two terms prior to the 2015 amendment were defined as shown below.
 - Dwelling. A building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multiple-family dwellings, but not including hotels, boarding houses and rooming houses.

- Dwelling unit. One or more rooms designed, arranged, used or intended for occupancy by one family for living purposes and having a) separate cooking facilities for the exclusive use of the occupants; or b) any separate entrance thereto either by an exterior door serving said rooms exclusively or by a common hall, stair or entry way.

Staff proposes to amend the current “dwelling or dwelling unit” definition to capture the intent of the previous “dwelling unit” definition that was omitted during the update. The proposed revisions would be more descriptive than the current term, by adding that the building or portion thereof is designed exclusively for residential occupancy by one family and includes provisions for living, sleeping, eating, cooking and sanitation.

- Guest. This existing term is defined as any non-family member who is invited to occupy a dwelling unit by the occupant for not more than 30 days in any one calendar year. This definition is proposed to be amended for consistency with the proposed definition of lodger (see next bullet), and consistent with longstanding administrative practice, to change 30 days within one calendar year, to 30 days within one year.
- Lodger. This proposed new term is defined as an individual who contracts with an owner of a dwelling unit, with compensation, to occupy the dwelling unit, or portion thereof, for not more than 30 days within one year.
- Responsible party. This proposed new term defines an individual or business entity designated by the owner of a dwelling unit in which an accessory homestay is conducted, who will be available 24 hours a day, seven days a week to respond to and resolve issues and complaints that might arise during the period of time in which an accessory homestay is in use, and who is located within 30 miles from the accessory homestay during the time in which is being rented to overnight lodgers. The owner of the dwelling unit could be the responsible party, or another individual could be identified.

Other considerations. There are several other aspects of implementing and administering regulations for accessory homestay that, while not proposed to be incorporated into the Zoning Ordinance, are important to consider. These include development of an application for accessory homestay, application fees, conditions of an accessory homestay permit, enforcement, and to compliance with the Virginia Uniform Statewide Building Code. These aspects are discussed further below.

Accessory homestay application. An accessory homestay application would include the following requirements in addition to those proposed to be included in the Zoning Ordinance.

Notification. As part of an application for accessory homestay, the owner would be required to prepare a notification letter that describes the operation and the number of bedrooms that will be rented to overnight guests, includes information on how to contact the owner, and the

responsible party if the responsible party is not the owner, by phone; and describes how the Zoning Ordinance requirements for the use are met.

The owner would be required to mail the notification letter certified mail to all residents and owners of property abutting and immediately across the street from the accessory homestay if the homestay is in a single-family detached or attached dwelling; and to all residents and owners of dwelling units abutting, immediately across the hall from, and immediately above and below the accessory homestay if the accessory homestay is in a multiple-family building.

Other documentation. The applicant for an accessory homestay would be required to show proof of the following:

- Business license from the commissioner of the revenue;
- Payment of taxes;
- Valid certificate of occupancy for use as a dwelling unit (if applicable);
- Certified mail receipts showing proof of delivery (signature of recipient is not required) of all notification letters as articulated above;
- Copy of evacuation plan that will be posted on the inside of the front door of the dwelling unit if it is in a multiple-family building

Fees. No fee is proposed for an accessory homestay permit at this time. However, staff may consider a fee proposal as part of the Fiscal Year 2018 budget.

Permit conditions. An accessory homestay permit would include the following conditions, in addition to those proposed to be included in the Zoning Ordinance.

- The dwelling unit must comply with all zoning regulations (or as otherwise approved by the Board of Zoning Appeals) for the dwelling unit; and
- For multiple-family buildings, an evacuation plan must be posted on the inside of the front door of the dwelling unit, and accessible to all overnight guests.

Enforcement. As discussed previously in this report, the zoning office has received some complaints about use of short-term residential rental, which is not currently allowed under the Zoning Ordinance. With no standards in place, enforcement can be particularly challenging. However, by allowing the use, which is occurring, and is anticipated to increase as the hosting services enabling short-term residential rental are still a relatively new, but growing industry, regulations can help manage the use. Zoning inspectors would enforce the proposed use on a complaint basis. Should the proposed amendment be adopted, users of such on-line residential rental hosting services will have defined standards to look to, which should increase compliance.

Building Code. Although the proposed accessory homestay could be allowed in a variety of zoning districts, this use would also be subject to other federal, state and local laws and

regulations, including the Virginia Uniform Statewide Building Code (Building Code). With regard to multiple-family development, there are Building Code issues that may prevent the accessory homestay use from occurring, such as varied fire protection, accessibility, accessible parking, and means of egress requirements.