These minutes are a summary of the discussion. The audible recording is available at the following website: http://bit.ly/T3S7CB

Planning & Zoning Commission Mid-Meeting
Minutes of June 18, 2015
1st Floor North Conference Room - City Hall

Present: Chairman Jeremy Goldstein, Vice-Chair Holly P. Shriner, Kristy Carter, Jim Edmonds, Laura Berner Hudson (arrived in meeting at 4:53 p.m.) and Karl Koon

Absent: Joe Minicozzi

Regular Meeting - 4:00 p.m.

Chairman Goldstein called the meeting to order at 4:00 p.m. and informed the audience of the public hearing process. He pointed out that at this meeting the Commission will not discuss whether short term rentals should be legalized in residential districts. City Council directed staff to make amendments to the homestay ordinance and the violation of penalties.

Chairman Goldstein disclosed that as of two months ago he has an ownership interest in a legal short term rental in the Central Business District. Since he does not have a direct financial interest in what is before the Commission, he just wanted to be transparent. City Attorney Currin advised Chairman Goldstein that he has no conflict of interest on the matter before the Commission. Chairman Goldstein said that he would be able to make a fair, objective and impartial decision. When City Attorney Robin Currin asked if any other Commissions had a potential conflict of interest, no one did.

Agenda Items

(1) Proposed amendments to the text of the City's Unified Development Ordinance, including amendments to consider amendments to Unified Development Ordinance Sections 7-2-5, 7-8-1, 7-16-1(c)(9) and 7-18-2(b). These amendments relate to: the definition of "Homestay" and the districts in which Homestays are permitted in the Table of Permitted Uses; the standards required for Homestays which are designated as a use by right subject to special standards; and the civil penalties relating to certain Lodging Uses.

Assistant City Attorney Catherine Hoffman said that this proposed ordinance would revise and simplify existing regulations for *Homestays* to expand the opportunity to a greater number of residences in the city.

Asheville's appeal as a tourist destination has helped to support a growing interest in home based lodging as an alternative to visitors travelling to the area. While Asheville does not allow a stand-alone vacation rental, it does allow a *Homestay* rental as an alternative. Both typically rent a residential home for periods of less than 30 days, however, the stand-alone rental is often an investment property that remains unoccupied (except by visitors) while the *Homestay* requires that the owner of the property, or a full-time resident, be present while guests are staying in the home.

With the amazing success and growth in the Air B&B, Vacation Rental by Owner (VRBO) and other internet reservation websites, the number of unpermitted short term rentals has skyrocketed in the last several years. This unregulated growth has resulted in numerous nuisance complaints raising concern in a city where quality of life in our residential areas is a top community priority. Another high priority in the city has been the preservation and creation of safe and affordable housing for all residents. The issue of short term rentals heightened awareness and concern over the lack of available rental housing in the area, and a consultant

was hired to review this and other concerns and offer options for consideration. While the research into the short term rental market's impact on available housing was inconclusive, the report offered a number of other thoughtful considerations and sound research into the practices in other communities.

In an effort to understand the position of the community at large, the City of Asheville has supported and held numerous public input sessions including three different meetings of the Planning and Economic Development Committee, a hearing at the Planning & Zoning Commission, and more recently, the Asheville City Council held a community forum on March 25, 2015. This forum allowed residents, through a variety of media, the opportunity to voice their opinions on the subject of a stand-alone rental, homestay, or other related issues. The Asheville City Council reviewed the results of these public discussions in the context of other city goals and priorities and provided staff direction at their meeting on May 12, 2015.

The proposed standards strive to achieve two things:

1) Clarify that a non-resident occupied short-term rental is prohibited in residential districts, and
2) Provide increased opportunity for residents in Asheville to operate resident occupied and run *Homestays* while protecting the character of the residential neighborhoods

(A third goal of supporting pro-active enforcement and increased penalties for violating the Unified Development Ordinance are addressed through a separate draft ordinance.)

Clarifying that non-resident occupied rentals are prohibited in residential districts is achieved primarily by amending the current definition of a *Homestay*. The current definition reads:

> *Homestay* (formerly known as 'bed and breakfast homestay') means a private, owner occupied dwelling with one to three guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building.

The amended definition reads as follows:

> *Homestay* means a private, resident occupied dwelling, with up to three guest rooms where overnight lodging accommodations are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. A homestay is considered a "Lodging" use under this UDO.

This new definition clarifies that the renting of a residential dwelling to transients is considered a <u>lodging</u> use and can be classified as a *Homestay* only if it is a resident occupied, and resident run operation. If it is not resident occupied and run, then it is classified as a lodging facility which would not be allowed in residential districts.

The second goal is accomplished by updating and clarifying the development standards, and by removing existing standards that have proved difficult for a great number of residences to satisfy. The complete list of standards is detailed in the ordinance but can be summarized as follows:

<u>Removed</u>

- 500-foot separation requirement
- Minimum home size
- Additional off-street parking

- Need to provide a morning meal
- Option for a full-time employee
- Option for signage

Added

- Urban Residential (UR) as a zoning district where the Homestay use will be permitted
- Only one homestay shall be permitted per lot/parcel
- Homestay may not be operated concurrently with a home occupation
- Must carry liability insurance for the homestay use
- Must pay all applicable taxes
- Must comply with all building codes
- Will be inspected annually

Retained/Clarified/Updated

- No displays of goods or services
- Manager of the Homestay shall be a full-time resident of the dwelling and must be present during overnight accommodations
- A maximum of 25% of the home may be used exclusively for the Homestay guests
- No activities other than lodging shall be allowed
- No accessory structures shall be used to accommodate guests
- Exterior lighting shall be residential in nature

This wording amendment complies with City's Comprehensive Plan as it relates to 1) Affordable Housing Goals and Strategies (Goal III) by seeking to explore the full range of zoning tools necessary to increase both the supply of affordable housing and the compatibility of such housing with existing neighborhoods; and 2) Economic Development Goals and Strategies (Goal II) by reviewing and amending city development regulations and incentives to meet the technological and social changes of the local economic development situation.

This wording amendment aligns with the City Council's 2015-2016 Strategic Plan primarily in the focus area of *Economic Growth and Sustainability* by providing an economic opportunity for homeowners and residents of Asheville, and by supporting the tourism industry through providing alternative lodging opportunities for visitors.

Increased opportunity for Homestays in Asheville will increase the number of applications placing a greater burden on staff resources. This combined with the effort to increase pro-active regulation and enforcement requires the addition of one full-time staff person. Estimated impact is approximately $50,000.

Staff recommends approval of the wording amendment text modifying Homestay standards.

In response to Mr. Koon, Interim Planning Director Alan Glines said that the revision proposed would allow a renter, with the permission of the owner, to undertake this operation of a homestay. That permission would be a signed affidavit by the owner as part of the application to establish the use.

When Ms. Carter asked if there was a way to quantify the numerous nuisance complaints, City Attorney Robin Currin said that there were probably 60 over a 3-5 year period and they continue to multiply because of the internet use. She felt that most of the complaints were from short term rentals that are not owner resident occupied where the problem was from an unresponsive or inaccessible absentee owner. Mr. Glines said that some complaints the character of the residential neighborhood from short term rentals.

In response to Chairman Goldstein, Assistant City Attorney Jannice Ashley said that the Homestay definition change from owner-occupied to resident-occupied, and a resident run operation, was a legal change. The City does not have the authority to regulate occupancy, only use. Regardless of any other changes, this change will need to be made to be consistent with State law.

Chairman Goldstein opened the public hearing at 4:21 p.m.

The following individuals voiced their opinions regarding amendments to the homestay ordinance, with some speaking to the short term rental issue and accessory apartments. While many supported homestays, some concerns expressed regarding the homestay ordinance amendments include, but are not limited to: expansion of commercial lodging activities in residential neighborhoods; amendment will increase population, traffic and parking in residential neighborhoods, which will require additional City staff and resources; homestays will take units out of the housing supply; amendment should be postponed until the community has more opportunity to review the amendment; enforcement of homestays from community complaints rather than a City enforcement mechanism; City needs to take a comprehensive approach to vacation rentals, short term rentals and homestays; need to require off-street parking; need for enforcement of people parking too close to intersections; will enforcement include annual inspections and what will that inspection consist of; what is the rationale for the restriction on using accessory apartments for guests; would an accessory apartment located in the footprint of a home be treated differently than one that is located separately from a home; allow accessory apartments under certain conditions; if amendments are adopted, there should be a grace period before enforcement to allow applications to be submitted, etc.; more than one homestay per lot/parcel should be permitted; owner should not have to carry liability insurance because Air B&B carries insurance; with the elimination of the 500-foot separation requirement, possibility for people to do multiple homestays on one street as a fulltime commercial operation, which will change the residential character of the neighborhood; when a neighborhood has no off-street parking, the applicant should have to show that there is sufficient parking somewhere; property values will be decreased when you have a commercial property in your neighborhood; the maximum of 25% of the home being used for homestay guests seems an arbitrary number and should be more; homestay should be allowed to operate concurrently with a home occupation as long as the homestay activity is less than 25% of the home; need for 500-foot separation requirement; should not remove the requirement that the homestay be owner-occupied; and do not remove the prohibition of retail sales on premise:

Ms. Alice Helms
Mr. Alan Escovitz
Ms. Sue Schweikart
Ms. Cathy Williams
Ms. Judy Tierney
Ms. Brandee Boggs
Mr. Matt Levin
Mr. Stuart Alford
Mr. Will Hornaday
Mr. Hal Brindley
Mr. Doug Ellingson
Ms. Sandy Ellingson
Mr. Tom Gallo
Ms. Sage Turner
Ms. Valorie Miller
Ms. Anne Marie Doherty
Mr. Scott Riviere
Ms. Camille Cummings
Ms. Jane Mathews
Mr. Manley Nelson

Mr. Jason Mann

Chairman Goldstein closed the public hearing at 5:17 p.m.

In response to Chairman Goldstein, Mr. Glines explained that the current ordinance for a homestay does not permit an accessory dwelling to be used to accommodate guests. City Council discussion surrounded the loss of housing units. Accessory dwelling units are important for long-term rentals in Asheville. He noted that City Council will be reviewing amendments (flexibility on size and where those can be permitted) to the accessory dwelling units on June 23, 2015. City Council's direction was not to open up the accessory structures being used as homestays but rather make sure it's basically the main house on the property, affording the primary residence to operate this and have some income generated through this effort.

In response to Ms. Carter, Mr. Glines believed after City Council reviewed the results of the various public discussions on stand-alone rentals and homestays, this proposed ordinance is staff's attempt to capture their compromise. City Council will review this amendment at their August 25, 2015, meeting.

Throughout discussion, Mr. Glines, Ms. Hofmann and Ms. Ashley responded to various questions/comments raised by the Commission and the public, some being, but are not limited to: how do you differentiate between an in-house accessory dwelling unit vs. a homestay; the maximum of 25% of the home being used for homestay guests has not changed since the ordinance was adopted in 2003; Bed & Breakfast accommodations are still allowed with current requirements in the Unified Development Ordinance; what is the rationale behind the 25% maximum of the house being used for homestay guests; what type of things will the inspections consist of; how can we ensure that the owner-occupant of the unit is not just a property manager running a hotel under the guise of a Bed & Breakfast; has there been discussion on limiting the number of days per calendar year or number of total guests per day for the homestay use; how will we keep 10 college kids from renting out two bedrooms under the homestay regulations; will people who operate homestays be required to obtain a permit annually; how are safety regulations distinguished between a homestay vs. a detached accessory structure; since we can limit the number of visits per day to a home office, can we limit the number of guests per day to a homestay; is there a number of people who can be in a rental house; how is the 500-foot separation enforced; and can we limit the number of cars per day for a homestay use.

Ms. Carter was concerned about the enforcement of this ordinance, including putting the onus on the neighborhood to police the activity. Along with the enforcement, acknowledging that the City has no control over this, we are not going to have long-term rental housing meet minimum Housing Code standards. She feels this is a commercial activity in a residential area and in a commercial area there are certain activities that one expects. She has no problem with homestays in commercial and business districts. If it is our intent to protect the character and quality of neighborhoods, she had a hard time in this proposed ordinance.

Ms. Hudson felt that the internet companies are just leveraging our residential communities into hotel-like situation and they are sharing none of the burden in maintaining, policing and regulating. She felt the best we can do is try to regulate these activities. Regarding short term rentals, she felt they change the character of the neighborhood and take our housing stock away.

Vice-Chair Shriner was concerned that some people who have extra space in their home are currently renting it out, but are not aware that they need to obtain a permit. She did not agree with eliminating the 500 foot separation requirement. She felt we should also limit the number of guests per room and also that some type of parking requirement should be retained.

Mr. Glines explained that City staff will notify the owner that they are out of compliance with the ordinance. The City will then give them a reasonable amount of time to come into compliance.

Chairman Goldstein liked the annual inspection, that it comply with all building codes, payment of all applicable taxes, liability insurance for the homestay uses. He did have a concern about the elimination of the 500-foot separation requirement.

In response to Ms. Carter, Mr. Glines said that wording amendment has not been reviewed by the Affordable Housing Task Force. They did, however, support the expansion of the accessory dwelling units.

In response to Ms. Carter, Mr. Glines said that Planning staff has reviewed controversial ordinance amendments after approximately 12-15 months after adoption, and if problems exist, they are brought back for changes.

In response to Ms. Hudson, Mr. Glines said that there is a UDO provision that basically says within one mile of the Central Business District if you are developing residential, you don't have to do any off-street parking. Part of that is because those areas are so close to downtown.

Mr. Koon found it difficult to believe that adopting this compromise will solve the problems associated with short term rentals. While he believed that a lot of thought has gone into this topic, it's obvious by this conversation that more discussion should occur. Therefore, he suggested tabling the ordinance.

Ms. Hudson felt that the amendment should include a limitation of the number of guests per day to a homestay. She didn't feel comfortable with assigning what that limit would be but to allow staff to investigate that for inclusion prior to City Council consideration.

Chairman Goldstein suggested the wording amendment be approved subject to staff investigating a limitation on the number of guests per day to a homestay, or a maximum number of vehicles on the street.

Chairman Goldstein moved to approve the revised wording amendment modifying Homestay standards, and find that the request is reasonable, is in the public interest, and is consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) by expanding an existing economic opportunity to more residents of Asheville, (2) by developing zoning standards that regulate activities that promote harmony and compatibility with the surrounding neighborhoods, and (3) by supporting the tourism industry through the supply of alternative lodging arrangements, with the provision that staff recommend to Council a maximum number of overnight guests at any one time. This motion was seconded by Ms. Hudson.

After a brief discussion, Ms. Hudson asked for a friendly amendment to the ordinance to keep the parking requirement as is currently written in the Unified Development Ordinance. Chairman Goldstein accepted that friendly amendment.

Ms. Carter asked that if this is approved by City Council, she recommended it be revisited in 12-15 months.

Said amended motion made by Councilman Goldstein and seconded by Ms. Carter carried on a 4-2 vote, with Ms. Carter and Mr. Koon voting "no."

At 6:15 p.m., Chairman Goldstein announced a short recess.

(2) Proposed amendment to the text of the City's Unified Development Ordinance to consider an amendment to Unified Development Ordinance Section 7-18-2(b). This

amendment relates to the civil penalties for violations of the City's ordinances relating to the use of residential structures for a Lodging Use.

Assistant City Attorney Catherine Hofmann said that this is the consideration of an amendment to the Unified Development Ordinance ("UDO"), which increases the civil penalties for violations of UDO provisions which relate to certain Lodging Uses, i.e., the use of a residential structure for a Lodging Use.

A. Summary of City's authority to access civil penalties for violations of its ordinances.

The General Assembly grants the City the authority to enforce its ordinances, including zoning ordinances, by assessing fines and civil penalties for ordinance violations. To assess a civil penalty, an ordinance must specifically authorize the assessment of civil penalties for a violation of that ordinance. The ordinance may also provide that each day's continued violation is a separate and distinct violation and that any civil penalty assessed may be recovered by the City in the nature of a debt.

The General Assembly does not determine the amount of the civil penalties assessed for violations of the City's ordinances, but instead, defers to the City to decide what amount is appropriate. The City has the discretion to determine what amount is reasonable to deter violations, encourage compliance and enforce its ordinances.

B. Asheville's ordinances relating to the use of a residential structure for a Lodging Use.

The UDO addresses and regulates certain "Lodging Uses," including but not limited to "Lodging Facilities" and "Homestays."

The UDO defines "dwelling unit" as follows:

> one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping. In no case shall a dwelling unit be rented or leased for intervals of less than one month.

A "dwelling unit" rented or leased for less than one month does not fall within the definition above, therefore, is considered a "Lodging Facility" under the UDO. Pursuant to UDO Section 7-2-5, a "Homestay," is a resident occupied dwelling, in which rooms are rented to guests for overnight lodging.

Currently, if a person violates the ordinances set forth above he or she is subjected to a penalty in the amount of $100.00 per day, for each day the violation continues. This penalty, however, has proved to be an ineffective method to enforce these ordinances and to deter violations. Specifically, due to the proliferation of internet lodging websites, such as Air B&B and Vacation Rental by Owner, dwelling units illegally used as Lodging Facilities and Homestays, often provide the owners with rates far in excess of the $100.00 per day fine. City enforcement staff reports that violators are willing to pay the fine because the illegal lodging uses still provide sufficient profit to justify the violation. As a result, the current penalty has not proved to be a deterrent. Increasing the daily penalty to $500.00 per day would not allow violators to benefit (or will at least decrease the benefit) from disregarding the requirements of the UDO.

By deterring violations and promoting enforcement, the proposed amendment will further the Comprehensive Plan and other adopted plans, because it will preserve residential neighborhoods, ensure neighborhood compatibility, and protect against non-residential encroachment.

For the reasons set forth above, staff recommends increasing the civil penalty for violations relating to the use of residential structures for a Lodging Use; including: 1) the renting or leasing of a dwelling unit for less than one month; and 2) the use of property as a Homestay, to $500.00 per day. Given the nature of the offense and the City's goal to deter violations of these ordinances, a $500.00 per day fine is reasonable.

Pros:

- Complies with the City's authority under N.C. Gen. Stat. § 160A-175 to assess civil penalties for violations of the City's ordinances.
- Proposed fine is more reasonably related to the nature of the offense.
- Allows more effective enforcement of the City's ordinances.
- More efficiently deters violations.

Con: None noted.

Staff recommends approval of the text amendment to the UDO which revises Article XVIII, Section 7-18-2(b) to increase the fine for violations of the City's ordinances regulating and restricting the use of a residential structure for certain Lodging Uses.

Ms. Hofmann responded to Mr. Edmonds when about the notice of violation process and how someone would need to come into compliance after being issued with the notice. Assistant City Attorney Jannice Ashley also noted that the violator has 10 days within which to make it a legal homestay by submitting an application.

In response to Vice-Chair Shriner, Ms. Hofmann explained that City Council wanted to see an increased enforcement amount. She said that she benchmarked with other North Carolina cities and at least two of them had a penalty of $500 per day.

Chairman Goldstein opened the public hearing at 6:28 p.m.

The following individuals felt that $500 per day was too high for a penalty:

Mr. Tom Gallo
Ms. Susan Devitt

The following individuals supported the $500 per day penalty:

Mr. Stuart Alford
Mr. Alan Escovitz
Ms. Brandee Boggs

Three individuals posted questions related to penalties being received.

Chairman Goldstein closed the public hearing at 6:41 p.m.

During discussion, Ms. Hofmann and Interim Planning Director Alan Glines responded to various questions/comments from the Commission and the public, some being, but are not limited to: will tenants be evicted if a notice of violation is not complied with; will the ordinance take effect immediately after Council adoption or will there be a grace period for educational purposes and for the City to hire the enforcement officer dedicated to this type enforcement; and is it the City's position that the City can regulate short term rentals as a zoning issue.

Ms. Hudson stressed that the idea of a penalty is a deterrent and if the owner does not want to have to pay the penalty, then they need to comply with the ordinance.

Mr. Glines said that this wording amendment will be considered by City Council on August 25, 2015. Staff is developing an informational hand-out that will provide interested individuals an overview of what is/what is not allowed, an overview of the permitting and inspection process, and answers to Frequently Asked Questions. Development of the application and inspection materials should occur mid-August with pro-active enforcement beginning September 1, 2015.

Chairman Goldstein moved to approve the text amendment to the UDO which revises Article XVIII, Section 7-18-2(b) and find that the amendment is reasonable, in the public interest and is consistent with the Comprehensive Plan and other adopted plans because the amendment: a) will more efficiently deter UDO violations and improve enforcement; b) will preserve residential uses in residential areas of the City; and c) will ensure neighborhood compatibility and non-residential encroachments. This motion was seconded by Ms. Carter and carried unanimously on a 6-0 vote.

Other Business

Chairman Goldstein announced the next meeting on July 16, 2015, at 4:00 p.m. in the First Floor Conference Room in the City Hall Building.

Adjournment

At 6:52 p.m., Mr. Edmonds moved to adjourn the meeting. This motion was seconded by Mr. Koon and carried unanimously on a 6-0 vote.