

April 30, 2021

**VIA E-MAIL TO
& 1st CLASS U.S. MAIL**

Anya Grahn
Senior Planner
Town of Chapel Hill
Planning Department/
Long Range Planning Div.
405 Martin Luther King, Jr. Blvd.
Chapel Hill, North Carolina 27514

Re: Town of Chapel Hill – Draft Short-Term Rental Ordinance

Dear Anya:

This letter is to follow up the telephone conversation I had with you and others in the Chapel Hill Planning Department and with Town Attorney Ann Anderson a week or two ago regarding the above-referenced matter. Please share this letter with the Planning Commission prior to Tuesday evening's meeting.

I am working with Eric Plow, the owner of seven (7) residential dwelling units known as "Chapel Hill Inn Town" located at 609 Hillsborough Street in Chapel Hill. Mr. Plow has actively participated in the Short Term Rentals Task Force process, so I am sure you are familiar with his property, operations, and concerns. Mr. Plow has peacefully, professionally and continuously operated his property as "short-term rental" units for nearly 20 years. The Town's draft ordinance to regulate short-term rentals, in its current form, will severely restrict, if not eliminate, his ability to continue to operate and manage his property in a way he has done, without any negative consequences to his neighbors, for nearly 20 years.

Mr. Plow's situation may be unique. He owns all 7 dwelling units in the multifamily dwelling (as defined in the Land Use Management Ordinance; "LUMO") on the Property, and since the time he acquired the Property in 2001 has continuously offered each of the units for short term rental residential use. The Property is zoned R-4, for residential use. There is no limitation in the LUMO on Mr. Plow's historic use of the Property for short-term residents, and Mr. Plow has never been cited by the Town of Chapel Hill for any violation of the LUMO with respect to

his use, though he has carried on that use openly. Mr. Plow has lawfully managed his property as short-term rental units for the entire time since 2001. According to LUMO Section 3.7 and Table 3.7-1, multi-family dwellings with up to seven (7) units are permitted as of right in the R-4 district. Each unit fully meets the definition of the term “dwelling unit” established in the LUMO. The Property is zoned for residential use, and has been used for residential purposes, consistent with the Town of Chapel Hill Land Use Management Ordinance. The short-term residential rental use of the Property was not prohibited by the Land Use Management Ordinance and, therefore, we contend that the use is a lawful, conforming use of the Property.

I also respectfully suggest that any attempt to regulate short-term rentals in Chapel Hill is premature and essentially amounts to “a solution looking for a problem.” That is certainly the case with respect to Mr. Plow’s property. The statistics available on the Town’s short-term rentals web page suggest that there are a limited number of properties being used as “short-term rentals”, and it is likely that the majority of these are hosted or unhosted rentals, with very few dedicated rentals. The data also seem to suggest that there have been relatively few incidents of real problems with properties that are used that way, and the one thing we are certain of is that there have been no problems whatsoever with Mr. Plow’s Property. Mr. Plow has always complied with the applicable regulations, and has paid room and occupancy taxes as and when due. His use is a model for how short-term rentals should be operated.

We are aware of case law in North Carolina, *Schroeder v. City of Wilmington*, in particular, a 2020 New Hanover County Superior Court case, which struck down the portion of a City of Wilmington short-term rental ordinance which required “registration” of short term rental units. Other than that, there seems to be little North Carolina, if any, precedent regarding regulations of short-term rental units.

All that being said, Mr. Plow does not object to some sort of registration and periodic inspection requirement, provided that such requirements apply to all rental units in the Town’s jurisdiction. Mr. Plow maintains that the length of stay in a rental unit has no bearing whatsoever on safety requirements, and therefore if safety is the concern, then the registration and inspection regulations should apply equally to all rental units. He would not object to some sort of cap of the number of units in a multi-dwelling building that could be used for short-term rental purposes (provided, of course, that it would not prohibit him from continuing to use all seven (7) in his building at 609 Hillsborough Street for short-term rental purposes, as he has used it that way for nearly 20 years).

We suggest that the proposed Use Matrix Table 3.7-1 in the draft “Ordinance Amending the Chapel Hill Land Use Management Ordinance Articles 3, 4, and 6 of Appendix A to Regulate Short-Term Rentals” be amended to “permit as a principal use” up to seven (7) dwellings in a multifamily dwelling located in the R-4 zoning district. You might also consider amending draft section 4.9.8(f) by adding the phrase “...provided that up to 7 units may be used as dedicated STR’s in any one building in the R-4 district,” or words to that effect. You could even qualify the right to have up to 7 STR units in a building in the R-4 district by limiting that right to those units being used as STR’s as of a certain date, such as the effective date of the ordinance, or even some earlier date such as January 1, 2021. We think that these simple edits to the draft ordinance you circulated during the past week would enable Mr. Plow to continue his use of his Property

consistent with the past 20 years of use and allow the Town to accomplish its purpose of establishing reasonable regulations for short-term rentals.

We know that in some existing neighborhoods, particularly where the homes are detached, single family dwellings, the homeowners' association has authority to enforce covenants prohibiting short-term rentals. In fact, it is commonplace these days for covenants in new residential developments to have such restrictions. We suggest to the Town that it might be appropriate to leave the short-term rental regulation and enforcement power in the hands of the association where one exists. If the Town desires to regulate short-term rentals in newly developed neighborhoods moving forward, then require restrictions on short-term rentals in those neighborhoods consistent with the Town's short-term rental regulations once they are adopted.

We understand that hotel owners and operators in Chapel Hill object to short-term rentals, which compete with them for business. The "misinformation campaign" organized by the "Short Term Rental Regulations Improvement Committee" which sent out postcards claiming that the Town Council had directed the Planning Department to "change your neighborhood's zoning rules so that investors from other cities can buy multiple houses on your street and run them like hotels on the short term rental market" was a scare tactic and an attempt to create a false narrative. This Committee urged residents to "say no to investor-owned homes (operated as hotels) everywhere." This Committee is doing its best to create an issue which simply does not exist, as borne out by the Town's own statistics thus far.

While there may be some legitimate reasons to regulate short term rentals in detached, single-family residential neighborhoods, those reasons simply do not apply to Mr. Plow's situation. Moreover, in many neighborhoods, the restrictive covenants can, and may already, prohibit the short-term rental use and provide a vehicle by which homeowners associations can regulate the short-term rental uses in their own neighborhoods if the property owners in the neighborhood object to them. There simply is no need for the Town of Chapel Hill to adopt any across the board zoning regulations to restrict short-term rental uses in the R-4 district, such as Mr. Plow's at the Chapel Hill Inn Town apartments.

We will continue to monitor the Town's progress, and sincerely hope that the Town will consider Mr. Plow's unique situation and, should the Town adopt any short-term rental regulations, find a way to accommodate Mr. Plow's continued operation of the Chapel Hill Inn Town Property.

Thank you.

Sincerely,

THE BROUGH LAW FIRM, PLLC



Robert E. Hornik, Jr.

REHjr:las

Anya Grahn

From: Judy Johnson
Sent: Friday, May 7, 2021 8:09 AM
To: Anya Grahn
Subject: FW: Proposed Ordinance on STRs in Chapel Hill

From: Joe Valentine <joevalentine@gmail.com>
Sent: Thursday, May 6, 2021 3:39 PM
To: Planning Department <planning@townofchapelhill.org>
Subject: Re: Proposed Ordinance on STRs in Chapel Hill

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A dedicated short-term rental is defined in the draft ordinance as the rental of a residential dwelling unit(s) on a property that is not used as a primary residence and is rented in its entirety to one party of guests at a time for a fee for fewer than thirty (30) consecutive days.

There are some homeowners who own two homes. While one is the primary home, the other is a second home. The owners stay in both homes for certain periods of time each year, but spend more time residing in their primary home. It is possible that a home which may be their primary home in one year, may be their second home in a different year and vice-versa.

The current definition has some ambiguity in terms of how such homes should be treated. Would a second home that the owner uses occasionally or several times a year be treated as a dedicated STR if rented in its entirety to one party of guests at a time for a fee for fewer than thirty (30) consecutive days? What if the homeowner converts their second home to their primary home?

These second homes are not solely used for rentals and are often or sometimes occupied by the primary occupant. However, the homeowner may use them as STRs while he or she is not residing there, so as to meet the cost of mortgage and expenses. So these are not really dedicated for the purpose of STRs and the definition ought to be clear enough to avoid ambiguity in the case of second homes owned by a homeowner that is used for his or her own living as well as STRs. These homes ought not to be classified as dedicated STRs.

Best regards,
Joe Valentine
Phone: [\(919\) 923 4280](tel:9199234280)

On Thu, May 6, 2021 at 9:50 AM Joe Valentine <joevalentine@gmail.com> wrote:

Dear Sir/Madam,

I would like to register my strong objection to the Town Council's proposed ordinance which seeks to ban STRs in residential zones.

My home in Chapel Hill was my primary residence for over 11 years until I moved to Washington D.C. and then to Florida for study and employment reasons. I continue to maintain my home in Chapel Hill as a second residence and visit as well as stay there several times each year. To maintain the home and pay the mortgage, I listed it as an STR on Airbnb and VRBO.

Over 50 families have stayed at my STR in Chapel Hill over the past over 4 years. These families visited Chapel Hill for various reasons including for:

- i. medical treatment of a loved one at UNC
- ii. attending marriages, engagements, family reunions, graduations
- iii. visiting friends in the area
- iv. attending corporate events

Most of these families or groups do not wish to stay in hotels but prefer the comfort, space and amenities of a home. Further, they are able to cook their own food and save money. We have excellent ratings on Airbnb and VRBO and there has been zero complaints from any neighbors in the past 4 years. We insist on strict rules and do not permit any parties or other nuisance.

We have also been paying all applicable taxes and fees to the local government as well as the STR operators. In our STR, we provide employment to four people - a cleaner, a landscaper, a handyman, and a pond maintenance company. The families who stay in our STR spend money on local purchases and help other small businesses in the area.

The proposal to ban STRs is a draconian solution in search of a problem that does not exist, at least in our community. One can understand the need for regulation in the interest of health, safety and overall welfare of the community. However, STRs meet a genuine need of the traveling public and there is a segment that wishes to travel and stay in private homes, not in hotel rooms.

During the time of the Corona pandemic, there is a greater need for families or small groups of people to socially distance themselves from others and private homes facilitate this much better by providing secure and private spaces than hotels cannot. Forcing STRs to close and driving everyone towards hotel accommodation tends to place people at greater risk of exposure to others in a hotel environment. This is an unwise step which is against the interest of public health safety. It also infringes on the right to travel and stay anywhere within the country.

Banning existing STRs in residential zones would amount to a regulatory taking by the government for which just compensation needs to be paid to the owners. A better option would be to grandfather in existing STRs and regulate them to ensure the health, safety and welfare of the traveling public.

What we need is common sense regulation, not excessive over regulation. I would request the Town Council to review the draft ordinance keeping in view the above critical objections and considerations.

Please confirm receipt.

Best regards,
Joe Valentine
Phone: [\(919\) 923 4280](tel:9199234280)

Anya Grahn

From: Jeffrey Fisher <jeff@uniqueplacesllc.com>
Sent: Tuesday, May 4, 2021 5:12 PM
To: Anya Grahn
Subject: Airbnb

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Anya,

I understand you are taking comments on the potential regulation of Airbnb usage in Chapel Hill. I own several properties in Chapel Hill, and a farm in Orange Co. that will likely end up in Chapel Hill at some point in the future. I am also an attorney.

I'm writing to say PLEASE stop trying to regulate Airbnb. On farms, it is one of the few ways we can actually subsidize an already impossible situation of trying to make a farm work in a real estate market that keeps climbing (and real estate taxes that in turn climb).

In town, between COVID restrictions that have hurt entrepreneurs, having an additional municipal restriction on my ability to make ends meet, when Airbnb has been a tool that has enabled us to pay our mortgage, just could not be a worse policy. Please STOP trying to regulate people's ability to cover their mortgage by sharing the one thing they partially own. STOP trying to kill the sharing economy, PLEASE.

If renting a property causes nuisances to neighbors, there are plenty of ways for neighbors to start a cause of action to stop that. Current NC law puts the burden on the landowner to ensure Airbnb renters do not negatively affect their neighbors. And, Neighbors already have the tools they need to file an action to stop nuisance behaviors. Chapel Hill should not add an additional layer of government that gives the Town more rationale to raise taxes to cover additional administrative staff.

Respectfully,

Jeff Fisher
Owner of the Honeysuckle Tea House
Owner of several properties in Chapel Hill.
Attorney at the Forrest Firm

Anya Grahn

From: BJ Warshaw <benjarwar@gmail.com>
Sent: Thursday, May 13, 2021 2:31 PM
To: Anya Grahn
Subject: STR email RE Planning Commission for Town Council

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Hello Anya,

I've updated what I wrote to the Planning Commission a bit to make it more direct to Council. Please feel free to forward the below.

Thanks much,
BJ

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Hello Mayor Hemminger and Town Council,

I attended the Planning Commission meeting on Tuesday, May 4th, and was heartened by their decision to unanimously vote the STR Draft Ordinance as inconsistent with Town Planning, as well as rejecting the Draft for adoption in its present state.

When the STR Task Force initially kicked off, I raised multiple questions at the Task Force and to the Town Council around the process. I was especially concerned, like Stephen Whitlow, about whether or not the Town was acting in a data-driven and objective manner, or merely responding to pressure from the hotel industry and/or unquantified fears around STRs from certain members of the community. I fear it's mostly the latter.

As I stated at the Planning Commission meeting, I'm absolutely in favor of updating the Town's outdated ordinances to create a path for compliance for responsible STR hosts, including licensing and sensible safety restrictions. But, repeatedly, Town Staff has included regulations that reach beyond what is currently necessary, seeking to discriminate STRs from other rentals in an unfair way.

Michael Everheart in particular acknowledged my suggestions for alterations to the ordinance, which I feel will make it a lot easier for STR hosts to run our businesses, with no appreciable negative impact to neighborhood safety. I hope that the Town Council, when further reviewing this Draft, will continue to note that STRs aren't really much different from other properties, that there are already existing laws on the books, including noise ordinances, that serve to mitigate any disturbances. And I hope that Staff will further simplify the ordinance, emphasizing the licensing process to STRs, continuing to gather data before passing unnecessary regulation. I fear that as is, the Draft is filled with solutions seeking problems.

Please see my more specific concerns with the current Draft below.

Thanks for your attention,
BJ Warshaw

Operational Requirements 6.27.2.c

Requires the Designated Responsible Party be onsite within 2 hours, 24/7, in an emergency.

- This rule will be extremely prohibitive to hosts, who often have multiple jobs and responsibilities, may need to travel or even simply run errands, or tend to their own emergencies.
- The vast majority of hosts will be attentive to our properties and guests needs. Requiring us to be "on site" in an emergency won't practically do much that we aren't already doing, but *will* subject us to a regulation that could result in license revocation through no fault of our own.
- We already maintain direct contact with our guests, and emergency/first responders/911 will be best equipped to immediately be on site in case of emergency, as with all rental/commercial/residential properties.
- That said, I agree that appointing a Designated Responsible Party is important for communication between hosts, the Town, first responders, and neighbors. Therefore, I suggest removing the "on site within 2 hours" requirement.
- Instead consider stipulating that the DRP must *respond* within a set period of time, with phone/email being acceptable response methods.
- I'd further prefer the window of response be much longer, in the range of 12-24 hours, to accommodate hosts' other vocations, potential for own emergencies, travel affordances, etc.
- I'd also suggest a process/affordance for temporarily updating the DRP when hosts need to travel, tend to their own emergencies/jobs, etc.

Enforcement 6.27.4.c

STR permit shall be revoked if a property receives three (3) separate violations

- Rather than three-strikes-you're-out, I think license revocation should be handled on a case-by-case basis, with input from hosts, and with oversight by whichever Town entity is responsible for enforcement of these regulations. This will help to avoid revenge/fraudulent complaints aimed at hosts by angry neighbors who have biased fears/aversions towards STRs.
- At minimum, adjust the language to say "may be subject to revocation after adjudication" rather than "shall be revoked".
- But preferably please include an appeal process to ensure hosts have the ability to counter complaints before losing their licenses.

Operational Requirements 6.27.2.a

Prohibits rental of a primary residence and ADU simultaneously

- This has never come up during any STR Task Force meeting, and it seems to be overly concerned about the number of STR guests.
- There's already a guest capacity limit (originally 2 per bedroom + 4, now reduced in this draft to 2 per bedroom + 2). How hosts divide this amongst available space in their homes/ADUs should be up to them.
- Other regulations, though, such as capping dedicated STRs, already do the bulk of preventing properties operating like hotels. In the case of "simultaneous" rental contracts, homeowners would merely be capitalizing on their available space.
- An alternative would be applying licenses to each building on a property, rather than a property as a whole. This would allow the Town to independently monitor a homeowner renting out a room in their primary residence with one license, and their ADU with another.

Operational Requirements 6.27.2.e

Instructions for trash collection shall be posted prominently

- This seems sensible on paper, but is nonsensical from the perspective of how we hosts actually run our STRs. We can't maintain a good business without taking out the trash. So what purpose does this serve?
- Many hosts, myself included, take care of trash disposal for guests. So we **can't** actually follow this regulation to the letter.
- Posting this information detracts from our home aesthetics.
- And it could be much easily conveyed through the AirBnB platform's and house rules rather than posting it physically anyway.