

**Date:** April 1, 2022  
**To:** Planning and Zoning Commission Members  
**From:** Patrick R. Zenner, Development Services Manager  
**Re:** Short-term Rental Regulations – Action Summary & Moving Forward

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Following the Commission’s February 24, 2022 work session, staff was asked to prepare a summary of the Commission’s actions relating to the development of STR regulations. The following summary provides highlights of the actions or motions taken by the Planning Commission since September 2021 on this topic.

### Action Summary -

**September 9, 2021** - No motions or action taken; however, general discussion on data gathering /ordinance research and identifying 5-9 conditions that could be regulated. Work session discussion also provided overview of local STR conditions.

**November 4, 2021** - No motions or action taken; however, general discussion on local STR data and operators. Discussion on enforcement topics and the difference between local and investor-operated STRs as it related to their “scale”. Additional discussion on removal of affordable units from housing stock and potential options for regulating STR density (i.e. by block, neighborhood, or other method). Discussed effects of “off-the-books” STR rentals not using a platform such as AirBnB.

**November 18, 2021** – Clarification sought as to allowability of STR in “all” residential zoning districts – Commission determined that was dependent on use-specific standards. Discussion on the topic of one registration per citizen and tools for curtailing investor ownership taking over a neighborhood. Discussion of the term “ownership” as a distinguishing element and determining factor for allowance in residential districts. Review of comparable community regulations relating to “owner-occupancy” and STR allowance in residential districts with occupancy “caps”. Discussion of keeping local STR codes consistent with current occupancy limits based on zoning district. Consideration of using Building Code to regulate occupancy. Discussion of the “home-occupation” standards and how such framework could be applied to a Tier 1 type of STR. **Motion passed to pursue a two-type STR approach – owner occupied and non-owner.**

Discussion on how many STRs would be permitted within districts – consideration was given to possible use-specific standards regulating maximum number, density, caps per neighborhood/block. Occupancy restrictions were also discussed as possible regulation by zoning district. Bedrooms, Building Code or definition of “family” discussed as means to calculate STR occupancy limits were discussed. Other factors such as parking were discussed as possible factor for determining occupancy and it was noted that if the homeowner was present that factor would need to be calculated into STR occupancy as well. Consideration of having more stringent restrictions on non-owner occupied STR versus owner occupied were discussed.

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Discussion on long-term tenants being considered equal to an owner-occupant in terms of STR rental opportunities. Concerns expressed that the providing for such would possibly result in “gaming” the system and creating opportunities for a Tier 2 (investor) situation. Commissioners wanted to further define owner and owner-occupied. **Motion passed 6-3 to draft ordinance based on owner and non-owner/investors in all districts.** Staff directed to prepare definitions for owner, investor, primary tenant. Definition for “owner-occupied” may also be needed.

Commission further discussed how the topics of insurance, licensure, the certification process, registration tools, and enforcement would interact with the zoning regulations.

**January 6, 2022** - Discussion of Building Code relationship to STR regulatory standards. Concluded that if the Commission desired to recommend a particular “use group” for STRs to be regulated under in the Building Code such recommendations could be offered for Council’s consideration; otherwise, desiring to tie Building Codes to proposed zoning regulations was premature. Discussed the differences in focus on regulation between the Building Code and zoning regulations. **Commission requested staff prepare an STR tier utilizing maximum occupancy standards for “lodging house” in the Building Code (5-bedroom max and max. 10 total guests) for STRs.** Discussed adequacy of staff to enforce the proposed STR regulations.

Importance of defining “owner” was discussed as means of defining operational differences between Tiers of STR. Discussion of voting up or down the definitions provided. Identifying strategies for “grandfathering” or bringing existing STRs into compliance was also discussed.

**January 20, 2022** – Discussed three-section approach to preparing STR regulations. Section 1 addressed definitions. Section 2 addressed permitted zones and how the uses would be allowed (i.e. permitted, conditional, accessory, conditional accessory). Section 3 addressed possible use-specific standards.

There was additional discussion on the options of STR being classified as an “accessory use” or “guest accommodation”. STR as an accessory use would operate in a manner similar to home-based daycare and would maintain residential characteristics. STR as a guest accommodation would be more commercialized. **Commission approved motion to add STR as accessory use to R-1, R-2, R-MF, M-OF, M-N districts.** Commission request Building Department comments relating to requirement that owner would need to be present when dwelling unit was being used as an STR.

**February 10, 2022** - Gave overview of proposed Permitted Use Table incorporating STR per Commissioner discussion and prior actions. Discussed Building Department comments regarding requirement that owner be present when dwelling was being used as STR. Conclusion was that owner presence not necessary unless the dwelling was permitted as a “lodging home”. Discussed the definition of dwelling from IRC and noted it did not require an owner be present when such a dwelling was being rented, leased, let, or hired out. Discussed capping occupancy within STR as defined within Building Code (5 total bedroom, 10 total guests). Further discussed that use-specific standards not conflicting with the Building Code “lodging house” standards could be created for each class of STR (accessory or guest accommodation). **Approved motion (8-1, Burns voting no) to add STR as an “accessory use” in the proposed Permitted Use Table attached to**

**agenda.** It was noted that additional use-specific standards would be developed as part of the regulatory process.

**Motion passed unanimously to adopt the following definition of STR:**

A residential dwelling unit, portion of a dwelling unit, or a room within a dwelling unit rented by a transient guest for a period of less than thirty-one (31) days.

This definition would be applicable to any reference to STR regardless of it being shown as an “accessory use” or “guest accommodation”.

Additional discussion occurred regarding how to define “owner”. Consideration of proposed definitions A-F as shown in the staff’s December 30, 2021 report were reviewed. There was discussion of the regarding “tenant” as being included within the term “owner” as well as concerns expressed that the definitions did not narrowly enough address the issues of investor ownership. It was reiterated that the definition of “owner” would apply across all forms of STR (accessory or guest accommodations). The desire to further restrict based on the concept of “permanent resident” versus owner was also discussed as were options for use-specific standards to ensure investor ownership/operational impacts would be addressed.

**Motion made to adopt ‘Option A’ definition of “owner” (shown below) as described in the December 30, 2021 staff report. Motion failed to pass.**

Any person, agent, operator, entity, firm, or corporation having any legal or equitable interest in the property; or recorded in the official records of *Boone County* as holding an interest or title to the property; or otherwise having possession or control of the property *such as through a long-term rental contract*.

**February 24, 2022** - Discussed the need to define “permanent resident” and “primary residence” as it related to distinctions between STR Tiers (accessory or guest accommodation). Discussed absence from dwelling or total days rented as STR as being basis to draw distinction between STR levels and intensities. Noted absence from property would create a more difficult method of tracking for compliance.

**Motion approved unanimously to discuss a three-tier approach to regulations.** Tiers designations were discussed. Tier 3 related to investor owned/operated STR and viewed as commercial not residential in nature; therefore, the Tier was not viewed as appropriate in residential districts. There was comparison to Bed and Breakfast which was only allowed by CUP, but occupied by owner. **Motion passed unanimously to permit Tier 3 STR in M-OF as conditional and permitted in M-N, M-C, M-DT only.**

Additional discussion on the placement of Tier 2 STR occurred. Tier was noted as the one needing most regulation and may involve conditional use and permitted use designations. Tier 2 would involve the STR being operated out of “primary residence” not owned by an investor. Issue of defining “primary residence” arose and staff pointed back to the definitions offer previously noting Ann Arbor, MI had a possible solution. There was discussion if there really was a difference between a Tier 2 and 3 STR.

**Motion approved unanimously to require quarterly reports on the days dwelling unit was in STR rental for purposes of compliance with proposed STR Tiers.** As part of prior discussion, 30 day maximum established for accessory STRs, 120 day maximum for Tier 2 STRs, and more than 120 days Tier 3 STRs.

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**March 24, 2022** – Discussed the differences between Tier 2 and 3 STR focusing on the concept of the difference being that the dwelling would be someone’s primary residence and not just an investment property. Discussion on how to define “primary residence”. Recommendation offered to use FHA terminology, second home, or secondary occupancy. Consideration of the total days in rental as STR and the occupancy characteristics were discussed and noted as important distinctions between a possible condition use or permitted use within Tier 2. There was also discussion of the proposed use-specific standard permitting only 1 STR per entity as a controlling factor with respect to it being the operator’s primary or secondary dwelling.

There was discussion providing clarification that a Tier 1 STR would be allowed as an “accessory use” to any primary residential dwelling up to 30 days that was occupied as a primary residence. The accessory use was to accommodate “Mom and Pop” operators. A Tier 2 STR would fall into two categories based on the dwelling unit being either the operator’s primary residence or secondary residence. In either instance the dwelling could not be rented more than 120 days a year. If the dwelling were the operator’s primary residence it would be considered permitted and if it was their secondary residence it would be considered conditional. A Tier 3 STR was anything not meeting the characteristics of Tier 1 or 2.

**Motion approved unanimously to permit a Tier 2 STR in the R-1, R-2, and R-MF districts as conditional or permitted (as described above) and to permit a Tier 2 STR in the M-OF, M-N, M-C, and M-DT districts regardless of ownership characteristics (primary or secondary) but for no greater than 120 days.**

Discussion also included considerations for review of the proposed regulatory provisions by allied staff (i.e. Building, Neighborhood Services, Legal, Finance, and Convention) before meeting with the City Council. Staff noted that this was intended and that it may be necessary to make adjustment to the proposed provisions based on feedback received prior to scheduling the required public hearing.

### **Moving Forward –**

The above summary illustrates that the Commission’s actions have generally been consistent with the “Three Section” regulation development approach presented at the January 20, 2022 work session. Significant progress has been made toward establishing the regulatory structure that will govern STRs within the community should the regulations be adopted. The Commission has identified its preference for where and under what condition (i.e. permitted, conditional, accessory) an STR should be allowed within the community.

The next steps for the Commission are to identify unique use-specific standards and definitions that will provide the playing field upon which an STR must perform to be considered compliant and compatibility with its adjoining surroundings. Some of the necessary use-specific standards and definitions to adequately regulate STR have been identified throughout the process already undertaken; however, there are others that may need to be discussed in greater depth.

It is staff’s hope that over the next several work sessions that these additional provisions will be identified, discussed, and voted upon for inclusion in the proposed regulatory structure. As new topics are introduced, staff will investigate other peer communities for comparable standards or develop tailored standards to achieve desired results. Staff appreciates the Commission’s focus and looks forward to wrapping up this phase of the STR process soon.

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