

CURRENT CODE ISSUES WITH SHORT TERM RENTALS

8 July 2011

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We begin with the City's Land Development Code (LDC) definition of residential uses:

“Residential uses include the occupancy of living accommodations on a nontransient basis. Residential uses exclude institutional living arrangements providing 24-hour skilled nursing or medical care and those providing forced residence, including mental hospitals and prisons.”

Below this definition come residential use classification descriptions, amongst which are:

“Bed and breakfast residential use is the use of a residential structure to provide rooms for temporary lodging for overnight guests on a paying basis.”

“Group residential use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.”

“Mobile home residential use is the use of a site for occupancy of mobile homes on a weekly or longer basis. This use includes mobile home parks and mobile home subdivisions.”

[NOTE: These residential uses are not allowed in all residential zoning districts. Small-scale Bed and Breakfast operations are a permitted use in most residential zoning districts. Group residential use is allowed in multi-family residential zoning districts, not single-family residential zoning districts. The mobile home residential use is only permitted in the Mobile Home Residential zoning district.]

These use classifications carve out exceptions to the prohibition against the use of residential property on a transient basis.

The use of residential property for short-term rentals (STRs), because such a use would by common sense definition be transitory in nature and not specifically carved out through classification definition, would appear to be a residential use in contradiction to the LDC.

The question was placed to the City as to whether STRs were in actuality disguised hotels or motels, a commercial land use not allowed in residential zoning districts.

On appeal, the Board of Adjustment (BoA), on 13 June 2011, determined that in answer to the above question, an administrative decision by the City of Austin Staff that “ **(a) rented residential structure, even one which is rented for a short period of time**, is not classified as a Hotel/Motel land use under the existing City Land Use Code **and is still considered as a single family residential use**”, is an incorrect interpretation of the Code. The BoA went on to define transient basis, in relation to the definition of allowable residential uses, as a residential

rental of less than 10 days. In other words, the rental of residential property for a period of less than 10 consecutive days, while not a Hotel/Motel commercial use, would appear to be a residential use not allowed under the LDC because it is a transient use.

The question then becomes how to treat these occupancies of living accommodations on a transient basis.

First, the definition of permissible residential use should remain. “Residential uses include the occupancy of living accommodations on a nontransient basis.” Under that definition, there then needs to be carved out an exception for Short Term Rental (STR).

There are two basic types of STRs:

- 1) Homesteaded or primary residence property in single-family zoning districts that are rented out for short periods of times (a transient basis) on an occasional basis. Rentals under this definition would be limited to a set number of days of short term rentals per year and the property would have to be registered with the City.
- 2) Residential property in single-family residential zoning districts rented out on a transient basis and not exempted above.

It is under the second classification that pure commercial business models appear, and that leads to a threshold question. **Should these commercial business ventures, currently outside the permitted uses under the Land Development Code (LDC), be allowed in single-family residential zoning districts?** Whether commercial STRs are permissible in multi-family zoning districts, where Group Homes are allowed, or in commercial zoning districts, is another discussion.

[NOTE: These commercial STRs are not allowed in single-family zoning districts in cities as disparate as Rollingwood, Texas, Portland, Oregon and Paris, France. The commonality being that all three municipalities determined that this commercial use was not compatible with single-family residential use.]

Compatibility aside, one of the strongest arguments against allowing commercial STRs in single-family zoning districts is that the use removes residential housing stock from the City. **Transient residential use precludes long-term residential use.** It would seem to be contra to established and promoted inner-City density goals to allow residential housing stock to be converted into transient use. This loss of housing stock will also have a tangential but very real effect on our local schools, especially inner City elementary and middle schools where enrollments have weakened. Families with children do not live in STRs.

Another concern that needs addressing is the **infringement on individual property rights in residential neighborhood.** People have invested substantial treasure and long-term commitment into their single-family residential properties, and the placement of essentially a commercial use property in close proximity will result in a recognized loss of value. To maintain stable inner

City neighborhoods, there should be a protected expectation that single-family residential use will occur next to like single-family residential use.

If these commercial residential uses are going to be allowed in single-family residential zoning districts, then there is the question of whether this use is a permitted use or a conditional use requiring a public hearing before a land commission. Regardless of how the use is established, because they are undeniably a commercial use, these types of STRs must be closely regulated.

Currently the Codes & Ordinances Subcommittee of the Planning Commission is working on regulation guidelines that bring commercial STRs into closer alignment with a similar commercial use, Bed & Breakfasts (B&Bs). Three areas of neighborhood concern are:

- 1) There must be separation between the commercial STRs and other commercial STRs as well as existing B&Bs. Right now B&Bs can be no closer than 1,000 feet, and that should be the minimum separation distance for STRs.
- 2) There needs to be general requirements that track what is required of B&Bs such as a person (entity) may only own one STR facility and that the owner of the facility must also own the underlying realty. As in the case of B&Bs, the use of an STR residential use facility as a rented site for a gathering, including a wedding, must be a conditional use, and exceptions to this rule depend upon a conditional use permit being issued. There are adequate B&B regulations on these conditional uses and STRs should be treated no differently.
- 3) Properties that are currently being used as commercial STRs in single-family residential zoning districts are proposed by the Subcommittee to be grandfathered for separation and residential use purposes if the property can be shown to have been paying their Hotel Occupancy Tax (HOT) obligation to the City for one year back from the enactment of the regulatory ordinance. If this grandfathering look back is implemented, it should only apply to those properties proving compliance with the HOT from the beginning of their operations, not “catch up” compliance. In addition, the grandfathered STR use should not be transferable either in location or original ownership.

These are high hurdles for these properties to clear, but it cannot be emphasized enough that currently these commercial STRs are operating in contradiction to the residential uses allowed under the LDC.

Commercial STRs in single-family residential neighborhoods are a very real presence in the City of Austin. Current estimates place their number at just under 500 units, the overwhelming majority of which are concentrated in inner City neighborhoods. This is a phenomena that needs to be addressed, and now is the time to do it.

