



Planning and Zoning Board of Commission Minutes
Tuesday, December 12, 2017 | 4:00 PM
City Hall, 200 Rusk Street, Gainesville TX, Council Chambers

Chairperson Present:	Bill Williams
Commissioners Present:	Cal Koontz, Lynn Monden and Teresa McElreath
Commissioners Absent:	Phil Neelley and Nathan Dempsey
Staff Present:	Fire Marshal Jason Botcher, Julie Smith, Nathan Payeur and Claire Barnes
Visitors Present:	Mary Jo Dollar, Jeff Wilson, Trey Schalk, Scott Dougherty, and Lee Russell

Item 1 – Call to Order

Chair Williams called the meeting to order at 4:00 PM.

Item 2 – Consider approval of September 12, 2017, minutes.

Chair Williams asked for a motion to approve the minutes from the September 12, 2017, meeting. Commissioner McElreath moved to approve the minutes. Commissioner Monden seconded the motion. All present voted AYE, and the motion passed unanimously.

Item 3 – Hold a public hearing to receive comments regarding a proposed ordinance for the operation of Short-Term Rentals (also commonly referred to as Air Bed and Bath, Vacation Rental by Owner, Home Away, etc.). (SI7892120)

Chair Williams opened the public hearing at 4:02 PM.

Mr. Trey Schalk spoke first about his experiences as a Bed and Breakfast establishment owner. He explained the process he underwent in order to obtain a Special Use Permit, and he detailed the renovations that he did in order to meet the Fire Code requirements for a Certificate of Occupancy. He stated that his business has been successful and serviced many guests since he opened over a year ago. He has enjoyed seeing all the different people who have stayed at his business. Mr. Schalk next addressed the ordinances that have been discussed recently due to Mr. Jeff Wilson's business in terms of flexibility. He stated that there are two rules that he wishes to discuss, one of which he admits he has unknowingly broken, himself. The ordinance dictates that the business owner must not only own but also live in the residence. This means the owner must be in residence whenever there are guests occupying the house. Mr. Schalk



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admitted to breaking this rule when he has rented out the whole house. Mr. Schalk asked that there be some flexibility applied to this issue. He offered up the following proposal at the behest of CSD Smith:

In order to maintain accountability if there is a problem at the residence, the owner can be no more than 5 minutes, or a short amount of time away, from the house even if the owner is not staying on site while guests are there.

Mr. Schalk believes this rule would allow the guests more privacy and would allow more flexibility for the owner.

Commissioner McElreath asked if Mr. Schalk had any more suggestions.

Mr. Schalk discussed the use of AirBnB in Austin. He pointed out that Austin is a destination city and that tourists rent out rooms during events. Mr. Schalk stated that he felt Gainesville had done a good job of putting barriers in place for opening up this type of high-use STR. These barriers include requiring a CO which, in turn, requires that the residence be up to current Fire Code. For instance, Mr. Schalk spent \$7,000 in order to install fire control measures in his residence.

Mr. Schalk then addressed the second ordinance that he wanted the Commission to consider which relates to assemblies. Mr. Schalk stated that he receives many requests to host events such as small weddings and parties. However, these events are barred by current ordinances. He asked whether the ordinance might be amended to allow this type of use.

Commissioner Monden complimented Mr. Schalk on his business.

Next, Mr. Jeff Wilson of the Bed and Breakfast located at 205 Melody spoke. Mr. Wilson agreed with Mr. Schalk's statements. He stated that he lives six feet away from his business (in the house next door) and is very accountable. He stated that he takes his neighbors into account, and that he uses AirBnB to screen guests. He asserted that he has turned down guests in the past due to concerns about those guests and the fit in the neighborhood. He agreed with the CO requirements. However, he stressed that AirBnB makes it imperative that he maintain his property since negative reviews on the site could harm his business. He pointed out that his business has been written about in a published article. Because of this, Mr. Wilson stated, they are ambassadors for the City. He also emphasized that people do not like the old concept of Bed and Breakfasts.

Next, City Council Member Mary Jo Dollar spoke. Councilwoman Dollar acknowledged that final review of this matter would go before Council. Next, she addressed the events issue. She pointed out that many older Bed and Breakfasts in the City host events. She asked that this issue be revisited. Additionally, she spoke about how Gainesville is gaining more tourists due to the antique stores, restaurants, and farmer's market, to name a few of the attracting businesses. She admitted to not knowing much about AirBnBs, but she has had good AirBnB experiences and encouraged the conversation to continue.



Next, Mr. Scott Dougherty spoke. He shared his story with the Commission. He explained how he used resources like AirBnB when traveling. He mentioned that AirBnB was originally Air Bed and No Breakfast. The service was meant to be a couch-surfing, networking tool. However, it has grown beyond that. He stated that other services (other than AirBnB) were not as regulated as AirBnB. After having positive experiences with AirBnB, he and his wife decided to use the service to rent out their own home. However, they did not know the regulations and requirements. They discovered that the process was somewhat regulated by AirBnB, as this service allows the owner to accept or decline guests. He stated that initially he did not want people in the house, but his wife pointed out that they could use the additional income. They operated for less than a year during which they turned down more guests than they accepted. He stated that they only had 3 guests for the entire year. Eventually, they received a letter from CSD Smith telling them they needed to stop. CSD Smith clarified that this was due to the zoning regulations in Mr. Dougherty's area. Mr. Dougherty stated that he wants the area to be rezoned and for zoning to be reassessed by the Commission. He stated that while he was not initially a fan of AirBnB he did end up gaining a new friend (a guest who stayed with them), and he achieved a high ranking for his residence online. He stated that in doing research on the AirBnB matter, he found that people are scared that there will be parties that could cause damage to the neighborhood and the City. He said that few have had problems, and AirBnB brings publicity and money to the City. Mr. Dougherty mentioned that conflicts do occur, though, for instance, if an owner's child has an event out of town on the same night that the house will be occupied. Such a scenario argues for the flexibility Mr. Schalk suggested. He also agreed that there does need to be accountability.

Mr. Wilson stated that AirBnB collects hotel taxes. Mr. Schalk stated that he collects the tax himself as he uses a different website.

Chair Williams closed the public hearing at 4:20 PM.

Item 4 – Consider and make a recommendation to City Council for a proposed ordinance for the operation of Short-Term Rentals (also commonly referred to as Air Bed and Bath, Vacation Rental by Owner, Home Away, etc.). (S17892120)

Chair Williams read the item into the record. Chair Williams remarked that the comments heard in the Public Hearing were interesting.

CSD Julie Smith then presented staff comments. She first addressed the issue of older, grandfathered Bed and Breakfasts that do host group parties and the newer Bed and Breakfast venues that came in under the relatively recent zoning ordinance requiring such businesses to obtain a Special Use Permit (SUP). This ordinance was passed November 19, 2013, by the City Council. When the ordinance was under consideration by City Council, Short-Term Rentals (STRs) were not nearly as popular and were virtually non-existent in Gainesville. Consequently, the ordinance only addresses traditional bed and breakfasts where the owner of the property resides in the home and serves breakfast to guests. This ordinance also did not, among other things, allow any assemblies – parties, small weddings, book clubs, etc.

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Consequently, should the Commission wish to recommend allowing such events to City Council, an amendment to the ordinance would be necessary.

CSD Smith shared her research regarding STRs with the Commission. STRs are the fastest growing segment of the rental market. Consequently, many cities now regulate STRs to manage potential problems – parking, fire safety, neighborhood integrity, etc. She provided examples from across the country about various regulatory approaches to STRs.

Knoxville, Tennessee held public hearings over a six-month period that shed light on both sides of the issue. Neighborhood groups and associations were concerned their neighborhoods would become a row of rental homes for guests that turned every couple of days and that the sense of community generated over years between neighbors would be lost. In San Antonio, entire streets in historic districts were being purchased by investors for STRs. In Austin, 30% of the AirBnBs list more than one property under the same owner indicating investors are purchasing property strictly for STRs.

CSD Smith stressed that staff concerns are not elicited by the individuals attending the Commission hearing and currently operating bed and breakfasts. The concerns originate from the unknown factors posed by investors who buy property for STRs without a connection to or a concern for the Community and the impact that could have on neighborhoods and the community.

CSD Smith suggested that to address these concerns, the “where” and “how” issues must be worked out. In terms of “where,” currently Bed and Breakfasts are only permitted in Single Family-2 zoning. (Mr. Dougherty’s home is located in multi-family which prevents him from operating a Bed and Breakfast under our current ordinance.) Consequently, it may be a good time to reconsider where these STRs would be appropriate and under what conditions. For instance, the Loft Overlay District along California and Grand may present an excellent opportunity for STRs - there would be plenty of parking and limited impact on neighborhoods, if any. Staff does believe the SUP process is still the appropriate mechanism through zoning to manage STRs on a case-by-case basis. That would allow the Commission to recommend and City Council to place restrictions on property should any adjacency issues arise such as noise or parking. SUPs were also tied to the owner and not the property and subject to revocation.

The “how” issue could be addressed by implementing two tiers of Bed and Breakfast regulations – owner-occupied and not owner-occupied. The not owner-occupied would encompass the investors who do not live in Gainesville, but who are purchasing property with the intent to rent it. However, this would also snag the scenario suggested by Mr. Schalk whereby the owner of the property would be required to live within five minutes of the home.

Chair Williams stated that this could be based on the Cooke County Appraisal District. Whoever is listed as the owner according to CCAD would be required to live no more than a 5 minute drive from the residence.

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Because staff believes these two not-owner-occupied scenarios would function quite differently, staff would not necessarily recommend combining them. Austin uses a three-tiered system to address this challenge. In an effort to simplify a complicated regulatory matter, staff would suggest combining owner-occupied with not-owner-occupieds that live less than a certain distance (one mile, for instance; distance is easier to regulate than time) from the STR and not owner-occupieds that live further away to keep it to a two-tier system.

CSD Smith also mentioned that AirBnB does not pay the taxes to the City; the owner of the property does. Our ordinance requires tax assessment and collection whether a bed and breakfast is owner-occupied. This would also be the case if it were to operate as an STR. Staff is confident tax collection will not be an issue.

CSD Smith then mentioned that while Mr. Wilson is right with regards to the existence of a vetting process through AirBnB, the process is not without faults. For instance, San Francisco and other cities have reported hosts who had felony backgrounds. AirBnB claimed that the hosts were vetted, but, clearly that vetting process was not sufficient. CSD Smith stated that the challenge in expanding regulations to permit STRs, especially if owners are out of town or out of state or country, is the potential reduced accountability versus owner-occupied businesses. AirBnB also has been accused and is battling lawsuits for discrimination. CSD Smith pointed out that another service, Noir AirBnB was begun due to discrimination of African Americans by AirBnB hosts. The perception that STRs are racist can be transferred to the cities that regulate (or do not regulate) them.

Mr. Dougherty asked CSD Smith to clarify if the discrimination happened against customers.

CSD Smith confirmed that the discrimination was reported as occurring against customers.

Additionally, the Gainesville Community has been vocal on the lack of public venues. Some properties, like Mr. Schalk's, lend themselves to small weddings and the like. If these properties are zoned for mixed use or commercial, parking and neighborhood adjacency issues would not be as problematic as they could be in a single-family 2 zoning district. That would address some of the concerns with assemblies.

Commissioner McElreath mentioned that she had researched STRs, too. She pointed out that in the case of Knoxville, there are 300 STRs and only 5 complaints. She remarked that there is always a chance of something wrong occurring despite vetting measures. She asserted that this matter must be worked on further and that all the options should be examined. She stated that she does not want those whose livelihoods depend on Bed and Breakfasts to have said livelihood taken away. In addition, she mentioned that in Austin they limit the amount of STRs in certain geographic areas.

Chair Williams interjected to provide historical information and context. He stated that back when bed and breakfasts were first considered, the issue focused on the historical homes in town. At the time, there was only one citizen wanting



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to operate a Bed and Breakfast in a neighborhood, not 9-15, and they decided to confine bed and breakfasts to the one area.

Chair Williams admitted that he did not know everything about the issue. When AirBnb was first mentioned, he had assumed that it was owner-occupied and that this would prove to be a controlling factor. He mentioned that he saw that many people were purchasing houses, and so the City needed to be careful if investors are purchasing houses for STRs. For instance, he mentioned that if too many STRs operated in one area, parking would be a big concern, especially for access for emergency vehicles. He asked rhetorically how many can the City have, and how can the City limit them?

CSD Smith mentioned that Gainesville did not have many operating currently – about 5 or 6. However, she pointed out the many smaller streets that already narrow in the evenings when people park on them can cause difficulties. Presumably, a street with 3-4 STRs would increase this parking even more. Under the current ordinance, all bed and breakfast owners must be able to park their guests on-site and not in the street. The parking may become a challenge if assemblies are allowed depending where (which zoning district) the STRS are located.

Commissioner McElreath mentioned that this was a growing concern.

Commissioner Koontz stated that his first encounter with an AirBnB was a trailer. He then asked CSD Smith whether Code Enforcement controlled that practice.

CSD Smith confirmed that people could not rent trailers in the City Limits. She also had read where there were trailer villages along the coast rented as AirBnBs. These types of arrangements generally occur in destination cities – Austin, Galveston, San Antonio. All three have a growing STR sector now. Though Gainesville does not experience the same tourism pressure, the zoo draws about 84,000 folks a year to the City. The proximity of the casino is also a driving factor for STR investment.

Commissioner Monden remarked that this issue was “way above [her] head.” She asked if they could table the discussion and schedule another workshop in January to further explore the options and gain a better grasp of the issue. She mentioned that she does not have preconceived notion about this topic, but wants to make a well-informed and thought-out recommendation to City Council.

CSD Smith mentioned that this meeting’s goal was to provide an overview of the issues and get the conversation started. Staff recognizes the complexity of the issue and could provide additional information for the Commission at the January meeting.

Commissioner Monden asked Mr. Wilson if he lives right next door to his Bed and Breakfast.

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Mr. Wilson confirmed that he lives next door and does not permit parties. Mr. Wilson mentioned that he is concerned about his neighbors, and that he does not want his house to be a party venue due to noise concerns.

Chair Williams remarked that people who buy into single family neighborhoods want a single family neighborhood. He mentioned that he worries about the neighborhoods changing to STRs with strangers in and out every few days. He wants to protect the citizens who bought homes who believed they would be in a single family neighborhood. For instance, in town he sees homes with several cars parked on the lawn. He feels that Code Compliance needs to monitor this issue more. Chair Williams also expressed worry about assemblies in homes located in neighborhoods especially if they happened often. He reiterated his concern about parking in the case of assemblies due to the congestion in the street. He also brought up the lack of sidewalks as a further safety issue.

Mr. Russell mentioned that he only has tenets at his house on weekends, and they typically park in the driveway. He believed that this is less of a parking issue because a homeowner can have a party anyway.

CSD Smith explained that if the owner of an STR receives compensation for a party, the establishment is then providing an assembly and must meet the fire safety and building standards requirements just like any other commercial business. The compensation is what makes the difference between a homeowner hosting a party for guests at no charge and renting a venue for a party. The latter is a commercial transaction.

Fire Marshal Jason Botcher discussed the fire safety components of the issue. He discussed the various fire safety measures that current Bed and Breakfasts must display for their COs. For instance, they must have fire alarms and emergency exit signs. The occupancy is based on square footage of the home/venue. There are rules that apply to second story residences as well. FM Botcher also confirmed that under the current Bed and Breakfast Ordinance and City Fire Code, assemblies require fire sprinkler systems.

Commissioner McElreath mentioned that she had been to an event at a Bed and Breakfast but did not go upstairs.

Mr. Russell stated that there could be an option for SUP holders to install a sprinkler in order to have an assembly.

CSD Smith added that Bed and Breakfasts are issued a Certificate of Occupancy which shows that they are considered safe for events if a fire were to occur. These COs cannot be issued unless the structure passes both fire and building inspections.

CSD Smith remarked that policy development and related regulation is tricky; there was no point in passing a rule that could not be enforced. She pointed out that simpler rules are easier to enforce. However, simple does not mean general, and good rules are clear and specific.

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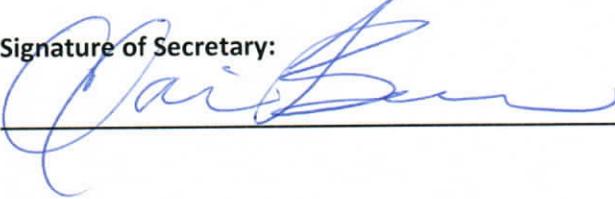


Commissioner McElreath moved to table the matter to provide staff an opportunity to further research options for the Commission to discuss at its January meeting. Commissioner Koontz seconded. All present voted AYE, and the motion passed unanimously.

ITEM 5 – ADJOURN

The meeting adjourned at 5:06 PM.

Signature of Chairman:  Date 01-09-18

Signature of Secretary:  Date 01-09-18