

BRIDGER CANYON ZONING DISTRICT – SHORT TERM RENTALS (STR)

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The following sets out my current thinking on STR in the proposed updated zoning. This is based upon discussions at Zoning Advisory Committee members, conversations with several B & B owners (including Howlers Inn) and VBRO renters, discussions with many Canyon residents, and research on STRs in general. At this point I favor allowing STRs on strict conditions, but an overwhelming Canyon sentiment in a different direction could change my mind.

I'm submitting this in writing for distribution at the January 10 public meeting on this subject. I shall be out of town on that date but if you wish to discuss any of this please contact me at richardglyon@att.net or 406-551-0430.

Background. How to handle short-term rentals is the only remaining substantive issue to resolve before the Zoning Advisory Committee presents its proposed zoning revisions to the County for legal review and consideration by the Planning & Zoning Commission. BCPOA's fall survey on the subject of short-term rentals indicated that this issue is both contentious and of considerable interest to residents. The Advisory Committee determined to discuss this issue at a final pre-submission public meeting before deciding on a recommendation.

What is the problem?

a. STRs are not presently a pervasive phenomenon in Bridger Canyon. Based upon my periodic checking VRBO, MRBO, AirBnB throughout 2016, at most there are about a dozen properties listed at any one time. There tend to be more in summer than in winter. All except the AirBnB listing referred to in the next sentence were for the owner's entire property; I found no rental of a guest cabin or room in main home. I found only one AirBnB listing, of a separate guest house on a property in a subdivision. This was listed for a few weeks last summer, then discontinued. To my knowledge BCPOA has not received a complaint about an STR or related congestion, noise, or the like during my tenure as a director. [We did oppose, successfully, an unlicensed rental at the Drinking Horse Ranch.]

b. Bridger Canyon does not face the problems caused by STRs in urban and suburban areas, about which much has been written: changing characteristics of residential streets; noise, parking, trash, and greatly increased traffic; drastic reduction of longer-term rental stock. [This last item appears to be Bozeman's principal concern and the reason for suspending licenses for new rentals pending promulgation of regulations.] The recent literature on STRs explains the reasons for their proliferation and nearby owners' interest in the subject but otherwise is of marginal relevance to Bridger Canyon.

c. Bridger Canyon's issues are different: double density, and conflict with two principles that underlay the original zoning - limiting overnight accommodations to the Bridger Bowl Base Area, and strict limitations on business activity outside Base Area.

d. STRs are a fact of life and not likely to disappear anytime soon. Despite resistance from residents and governmental authorities to the point of legislation and court action, the trend appears to be toward increasing, not decreasing, the so-called sharing economy. This problem will not go away by itself.

e. I believe it's worth mentioning that at the Bozeman City Council meeting at which STRs were a subject of public comment (October 2016); none of the many speakers on either side of the question objected to City regulation.

As I see it our choice is outright prohibition (unless licensed as a B & B or Guest Ranch, or in the Base Area¹) or to allow STR subject to strict conditions, as discussed below. The former will drive the renting owners underground; the latter may invite increased STRs.

Specific issues

a. Definition of STR. Real estate standard is <30 days. We might consider a different definition – perhaps <7 days - if appropriate limitations (particularly limiting STRs to an entire property) are accepted.

b. If the prevailing opinion is to allow with restrictions, we must consider:

- size of property. STRs are far less noticeable on 40-acre properties but may impact traffic and noise on a smaller parcel.
- subdivision or standalone. Traffic, garbage, noise, and other disruption are more noticeable in a subdivision. Also a subdivision may prohibit or limit STRs and enforce violations through covenants. In theory covenant enforcement is preferable to zoning to address STRs in subdivisions – immediate neighbors are most affected and have the best perspective on adverse impact and what the neighborhood wants. There are difficulties in practice however. A scofflaw is a scofflaw and may treat (i e ignore) covenants as he does a zoning reg. Some subdivisions are not incorporated and thus toothless – not empowered to enforce covenants. HOAs can be dominated. Enforcement costs money.
- limit on #days/year or /month for a property. To avoid a de facto B & B.

¹ All these are permitted, with a CUP, in the current zoning reg and the proposed revision.

- limit STR to entire property or allow separate room/guest house rentals. This I consider the most serious issue and the one most likely to impact density.
 - Allowing individual room rentals will authorize unfair competition with licensed properties [B & B, Guest Ranch, Base Area]. Licensed properties must meet state and county standards for handicapped access, fire code compliance, road width, commercial septic standards, and the like. Listing websites such as AirBnB and VRBO disclaim responsibility for legal compliance, including collection of lodging taxes, and many listing property owners ignore them. It is unfair to duly licensed properties – those that have complied with the zoning reg – to allow competition from comparable rentals that don't bear the compliance costs.
 - If separate room rentals are allowed, do we require an owner or owner's rep (innkeeper) to be in residence. The zoning reg (as proposed) requires this for a licensed B & B or Guest Ranch; again it's unfair to saddle licensed properties with a requirement and cost that unlicensed renters ignore. More generally, many complaints about STRs in Bozeman and elsewhere relate to properties owned by absentees – from buying a property expressly to use for STRs to turning a blind eye to damage and disruption to simply not being around and thus not caring what happens so long as the rent is paid.
- procedure for approval. B & B, Guest Ranch license, CUP, hybrid, and if so, what standards. This is particularly important if separate room rentals are allowed.

3. Pros and cons

a. Outright prohibition except in licensed B & Bs, Guest Ranches, Base Area

+ Consistent with current prohibition and limit on commercial activity

+ Preserves density

+ Avoids the slippery slope. This is a legal term that embodies the old adage of give someone an inch and he'll take a mile. If STRs are today allowed on a limited basis, over time any restrictions may be loosened bit by bit. This is a special problem if licenses become easy to get.

- Incentive for a black market. In my opinion the most serious problem, and an unavoidable one. Though limited, we have a black market now. A black market is impossible to regulate. It is more difficult even to identify troublemakers, as STR websites do not disclose addresses or owners. As noted the website owners disclaim

any responsibility for compliance with local laws, saying that such is an obligation of the property owner.

- Serious enforcement issues. Any restriction will not be self-enforcing and as noted a black market can't be regulated. Whatever we decide for the zoning, Gallatin County will not allocate additional resources for enforcement. BCPOA isn't suited for the role of, and ought not to be, the zoning police. Individual complaints do not provide evenhanded enforcement and can be based on personal animus [the Browns built their accessory dwelling in my viewshed] or personal preference [the Smiths are good folks and have been here for forty years. They can't afford their mortgage without the extra income. But the Browns are newcomers].

- Possible resistance from P & Z. Outright prohibition may not sit well with certain commissioners' libertarian bent, and might be seen as bucking a popular trend (or at least a fact of life).

- Playing ostrich by pretending the only way to solve the problem is to keep the status quo. Bridger Canyon residents should consider whether it may be better to identify and regulate, facing the fact that times are changing.

b. Limited allowance.

- + Identifies STR locations.

- + With proper limitations, should simplify enforcement. It's easier to convince P & Z that a non-compliant renter could have but didn't bother to get the necessary permission than that an owner with occasional STRs and minimal impact deserves censure. The unfair competition argument will help here.

- + With proper limitations, minimal impact on density.

- + I believe it'll be easier to convince the P & Z to adopt than strict prohibition.

- + Addresses now an issue likely to become more prevalent in the future, rather than waiting until it becomes more serious and imposition of regulation has a greater impact on residents. It will be easier to get reasonable regulation now than later.

- Might invite increased STRs if licenses become easy to get. Though this has some surface logic I have always considered it of doubtful veracity in fact. A prospective AirBnB renter may think twice if he must register with the state and county, fill out a form, pay a filing fee, collect and remit taxes, and be identified to his neighbors as an STR operator. And if such a person won't be deterred by these regulatory hurdles, he's not likely to mind going underground. Of course we won't know until any regulation is adopted.

The attached draft, which the Advisory Committee has considered but not adopted, takes the approach of regulation rather than prohibition. Restrictions include:

1. No individual room rentals. Must be entire property.
2. No STRs on smaller lots [minimum to be determined] or in PUDs/subdivisions
3. No rentals (STR or otherwise) of Accessory Dwelling separately from principal Dwelling Unit.
4. Monthly or annual limitations on aggregate STRs at any property.
5. CUP and public hearing required. CUP for a fixed term (not indefinite) and personal to the owner (do not run with the land). Subject to revocation if conditions not met.
6. Owner responsible for compliance with all laws and for tenant misconduct.