



Clarke County Planning Commission

AGENDA – Policy & Transportation Committee Meeting

**Friday, March 6, 2020 – 9:30AM or immediately following Planning Commission
Business Meeting**

Berryville/Clarke County Government Center – Meeting Room A/B

- 1. Approval of Agenda**
- 2. Approval of Minutes – January 10, 2020 Meeting**
- 3. Continued Discussion, Regulation of Short-Term Residential Rentals**
- 4. Other Business**
- 5. Adjourn**

Clarke County

**PLANNING COMMISSION
POLICY & TRANSPORTATION COMMITTEE
MEETING MINUTES -- DRAFT
FRIDAY, JANUARY 10, 2020**



A meeting of the Planning Commission’s Policy & Transportation Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, January 10, 2020.

ATTENDANCE

Present: Robina Bouffault, Douglas Kruhm, Gwendolyn Malone

Absent: Scott Kreider

Staff/Others Present: Ryan Fincham (Senior Planner/Zoning Administrator); Frank Lee; George L. Ohrstrom, II

CALLED TO ORDER

Mr. Stidham called the meeting to order at 10:05AM.

APPROVAL OF AGENDA

The Committee approved the agenda by consensus as presented.

APPROVAL OF MINUTES

The Committee approved the September 3, 2019 meeting minutes as presented.

Yes: Bouffault (moved), Kruhm, Malone (seconded)

No: none

Absent: Kreider

Continued Discussion, Regulation of Short-Term Residential Rentals

Mr. Stidham stated that the Committee tabled discussion of short-term residential rentals at the September 3 meeting to allow Staff research two items. He said the first item is how the Virginia Department of Health (VDH) would participate in the review of short-term residential rental applications, and the second item is whether any regulations that may be adopted could be applied to existing short-term residential rentals that may have business licenses or other local government approvals.

Mr. Fincham provided an overview of his discussions with VDH staff and the review process that VDH would use in reviewing applications. He stated that VDH would do a “file review” upon the County’s request but would not conduct a field inspection of the rental property. He also said that

VDH will confirm, based on permit information on file for the property, that the capacity of the onsite sewage disposal system will support the proposed rental occupancy. Commissioner Ohrstrom asked whether a maximum cap of 10 persons in a rental would require a 5-bedroom drainfield and Mr. Fincham replied yes if the applicant applied for a 10-person occupancy. Commissioner Ohrstrom asked if we would require the occupancy to be stated rather than have a blanket 10-person occupancy. Mr. Fincham replied that the applicant would have to state the maximum occupancy on the application.

Mr. Fincham went on to state that if VDH cannot confirm that the existing sewage disposal system will support the proposed occupancy, he would have to deny the zoning permit application. He said the applicant would have two options – either lower the maximum occupancy to a level that can be confirmed by VDH or work with VDH through their processes to modify the system to support the proposed occupancy. He added that he expects in a lot of cases to hear back from VDH staff that there is no permit on file for the property as older homes are often used as short-term rentals. He noted that we want VDH staff to be the authority in determining whether the sewage disposal system will support the rental use.

Commissioner Ohrstrom asked if VDH would accept a report from a septic company on an existing system for which they have no permit on file. Mr. Fincham replied that we will likely be asking VDH whether the structure to be used for the short-term residential rental is served by an onsite sewage disposal system that meets the proposed occupancy. He added that it would be up to VDH staff to determine whether to accept a report from a septic company. Mr. Stidham said that early on we were struggling to create a regulatory process that has VDH as a participant. He added that because of the limitations on how VDH will participate, we will have to require VDH confirmation of septic system capacity in order to approve the zoning permit. If VDH confirmation cannot be obtained, then the applicant has to work through VDH's processes to get confirmation before they can reapply and gain zoning approval. Commissioner Ohrstrom said that this might be an onerous and costly process. Mr. Stidham replied that you may get push back from someone with an older system that is functioning properly and may have more capacity than needed but they have no paperwork to support it. He added that they would have to go through whatever process VDH requires in order to issue an occupancy approval. Commissioner Ohrstrom asked what process VDH would require. Mr. Fincham replied that VDH will require proof of an approved system that meets current regulations. Commissioner Lee added that the septic tank and distribution box will have to be uncovered and the length of the lines confirmed by the applicant's soil consultant. He added that the process would be onerous since older homes do not have systems that conform to current regulations and also do not have reserve areas. Commissioner Kruhm asked how grandfathering comes into play with VDH regulations and Commissioner Lee replied that there is no grandfathering. Mr. Stidham noted that VDH would consider a short-term rental to be a change of use to a commercial activity.

Commissioner Bouffault said that she has reviewed VDH permit status for all of the rentals on her spreadsheet and wondered how you are supposed to address this. She said that we currently do not have an effective means of enforcement and we need to have a procedure that will not alienate people as this is economic development. She asked how can we tackle this because it is going to take a huge amount of staff time to go through all of this information. She said she did not think that the rules need to be stringent for small operators with 2-3 guests in a garage apartment. She said rules should

address people on the mountain like the Moores who have made a significant commercial investment and advertise rentals for up to 16 people. She also noted that some operators who purchased properties for weekend rentals may not even be aware of septic system issues and regulations.

Mr. Stidham noted that one deficiency with VDH's "file review" process is that VDH staff will not be doing onsite inspections to confirm whether an existing system has been maintained or is functioning properly. He added that this could result in zoning approval for a short-term rental with a system that has already failed or is in the process of failing. He said that the process we are proposing is defensible because we are refusing to approve zoning until VDH approval can be confirmed, which is analogous to not approving the addition of a bedroom to an existing house until VDH approves the capacity of the septic system.

Regarding small versus large rental operators, Mr. Stidham said that 10 is a very good number for us to use in developing regulations because it tracks with building code requirements. He said that anyone who wants to have more than 10 occupants would be going to the Commission for a country inn special use permit and site plan review and would know that there will be significant costs. Commissioner Ohrstrom said that if he was going to do a short-term residential rental, he would want to go through this process to make sure the use is in compliance in case anything happened in the future. Mr. Stidham also noted that special use permit applicants will also have to deal with neighbor concerns. Commissioner Lee said that people looking to buy a property to do a short-term residential rental will want to do it as cheaply as possible. Mr. Fincham added that if you have an illegal occupancy of a structure, this issue would be addressed by the Building Department just as a septic system violation would be addressed by VDH. Mr. Stidham clarified that illegal occupancy enforcement is spearheaded by the Building Department but the Planning Department and VDH would also be involved to address zoning and septic violations. Commissioner Bouffault stated that some cases could be politically difficult to deal with and Mr. Fincham and Mr. Stidham said politics do not come into play when they investigate complaints.

Mr. Stidham reviewed his discussions with the County Attorney, noting that existing rental operators with business licenses would only be grandfathered from having to obtain a zoning permit and would have to comply with any regulations that are adopted. He added that operators with no business license or other County approval would have to get a zoning permit and comply with all new regulations. Commissioner Bouffault asked how you would deal with unpermitted operations like Blue Hill. Mr. Fincham said that he is acting on Blue Hill because he received a complaint about it. He added that the applicant is planning to apply for a special use permit to host small weddings. He also explained the process that he would follow if he received a complaint about an illegal occupancy of a structure. Commissioner Bouffault said that she filed a complaint about the "Tiny Bird House" months ago. Mr. Fincham replied that he forwarded that complaint to the Building Department and VDH and would try to determine its status. Commissioner Bouffault said that the only ones that she is really worried about are the ones that affect groundwater quality. Commissioner Ohrstrom asked if the County has enough staff to investigate all of these concerns and the Board of Supervisors will not want to hire staff just to inspect all of these operations. Commissioner Bouffault said that she has compiled all the information in her spreadsheet to help Staff with the enforcement efforts.

Mr. Stidham said that there are two policy recommendations that the Committee would have to forward to the full Commission and Board along with a recommended text amendment. He said the first policy issue is whether to apply any new regulations retroactively and noted that this is not something we have typically done in the past with new text amendments. He said if you decide to apply the new rules retroactively, the second policy issue is whether you deviate from complaint-basis enforcement and proactively enforce the new rules. He noted that if you choose proactive enforcement, you could kick it off with a soft approach of informing existing operators of the new rules in an attempt to get voluntary compliance. He added that some operators will comply but an equal number will ignore the rules or will call Board members to complain. He also said that after following the soft approach, a policy decision will need to be made on whether to take the hard approach by proactively taking noncompliant operators through the enforcement process. Commissioner Bouffault briefly explained how the City of Winchester his handling zoning enforcement issues, noting the monetary penalties that they can apply to violators. Commissioner Ohrstrom asked if the Winchester police enforce these rules and Mr. Stidham replied no. Mr. Stidham added that he did not know whether zoning enforcement is done in parallel with property maintenance enforcement. Commissioner Bouffault said that you do not want to have to issue monetary penalties but having them can be a deterrent to violating the rules. Mr. Stidham said that we currently have the ability to pursue a fine instead of a court order to correct a zoning violation. Commissioner Bouffault provided additional information on how Winchester applies monetary penalties. Mr. Stidham replied that he thinks you may have to add the fines to the Zoning Ordinance similar to a fee schedule but he is not certain. He also said that a zoning violation under State code can be considered a misdemeanor. Commissioner Lee said you need to take a carrot-and-stick approach by doing whatever you can to help them come into compliance before you take stronger measures. Commissioner Kruhm agreed with Commissioner Lee adding that it is a public relations matter and the Supervisors are going to have to be fully on board. Commissioner Bouffault said that one county she researched has a brochure that explains all of the rules for rentals in an effective manner. Commissioner Ohrstrom said he would think that insurance companies would be all over these issues with the associated liabilities. Commissioner Bouffault gave an example of the rates charged by one AirBNB as being lower than other County lodgings and said that this is another way that the playing field needs to be leveled. Commissioner Kruhm said that he likes the brochure approach but that it should say, "If you are thinking about or have already started a rental, these are the rules that you must follow."

Mr. Stidham stated that when someone contacts Staff about a notice of violation that we have issued to them, usually their first question is who filed the complaint. He noted that if we go to proactive enforcement, Staff will essentially be the complainants that are initiating the zoning investigation. Commissioner Bouffault said that she has no problems with filing complaints and added that Staff needs to be in the background. She added that she thinks complaint-basis enforcement is the way to go. Mr. Fincham noted that in the case of Blue Hill, we received an investigated a complaint and noted a violation for holding weddings on site but no violation for the short-term rental use because we do not regulate that activity. Commissioner Ohrstrom said we cannot act on a short-term rental complaint because we do not have regulations. Mr. Fincham noted that we can act on a short-term rental in an unpermitted structure as an illegal occupancy violation. He also emphasized the type of evidence that Staff needs to have in order to issue a notice of violation. Mr. Stidham added that we can cite a short-term rental for providing meals if they do not have approval to be a bed-and-breakfast

or a country inn. Commissioner Bouffault reiterated that she is concerned with groundwater contamination. Mr. Fincham replied that if the complaint is that someone is residing in a structure with no approved sewage that would go to VDH. Commissioner Bouffault asked what VDH would do in the case of short-term rental operating as a country inn with six people. Mr. Fincham replied that this would not have anything to do with VDH unless there is evidence of a failing system such as sewage on the ground. He added that they would make a site inspection in that case to investigate the violation. He also said that VDH does not treat occupancy as a violation without some evidence of a failing system or other violation such as a straight pipe dumping sewage into a creek. Commissioner Bouffault asked about properties without VDH permits and Mr. Fincham replied that there are many properties in the County with residents living on them and there are no VDH permits. Mr. Fincham added that not having a permit is not necessarily a violation but that sewage on the ground is. Commissioner Ohrstrom asked if it is a violation to live in a house without a certificate of occupancy and Mr. Fincham replied no. Commissioner Bouffault said that it is a problem that AirBNBs are becoming more and more difficult to identify. Mr. Fincham said that he suggests she file complaints with the applicable department that is responsible for addressing them, such as an illegal occupancy complaint with the Building and Planning Departments and VDH. He said that if the complaint is a straight pipe in the river, the complaint should go to VDH. He also noted that the Planning Department acts on all complaints that we receive. Commissioner Lee reiterated that VDH will not act on a complaint about an unpermitted septic system unless there is evidence of a failing system.

Commissioner Kruhm said that we need to move this along and provide a recommendation to the Commission. Mr. Stidham noted that the Commission could develop a text amendment, hold public hearings, and forward it to the Board via the review process. He also said alternatively the Commission could send the concept to the Board informally to get their feedback. Commissioner Kruhm said that since there are a lot of different people involved in this issue, we should send it to the Board as an informational item before scheduling public hearings and said we could also schedule a joint work session on the topic. Mr. Stidham said that we have the workings of a text amendment and said that we still need to discuss the questions in the Staff memo. Commissioner Bouffault asked if the Committee could agree that rentals for 2-3 people over a garage in a structure with a VDH permit should only require a business license. Mr. Stidham asked what the limit is for a bed-and-breakfast and Mr. Fincham replied 3 bedrooms and 5 guests. Commissioner Bouffault said that country inns are six rooms or more. She added that we are covered with regulations for country inns, bed-and-breakfasts, and hotels but are lacking for short-term rentals. Mr. Fincham said that the draft rules would address them because all they need to do is satisfy VDH, and Mr. Stidham added that the only time there is a problem is if they do not have VDH permit information. Mr. Stidham cautioned against establishing a minimum number of guest because if you exempt 1-2 guests, applicants will claim that number to avoid the more stringent regulatory process.

Commissioner Ohrstrom left the meeting.

Commissioner Bouffault said that there are far too many short-term rentals being started and that it will eventually settle down. She added that it would be nice to have something coherent in place so that legitimate operators will know what they are supposed to be doing. Mr. Stidham suggested that the Committee work through the policy questions in the meeting memo to help move the discussion along.

Mr. Stidham reviewed the first question regarding whether separate uses should be established for short-term rentals that are owner-occupied and for those that are not owner-occupied. He asked whether we want to create separate uses even if we are capping the maximum occupancy at 10. Commissioner Bouffault said yes and Mr. Stidham replied that if we create separate uses, what separate use regulations would we also create to distinguish them. Commissioner Bouffault replied that a non-owner-occupied rental is a commercial activity. Mr. Fincham asked how to verify whether a rental is owner or non-owner-occupied and added that Staff would go with what the applicant states on the zoning permit application. He also said that as with occupancy numbers, it is likely that applicants will say that the rental is owner-occupied to take advantage of less stringent regulations. He noted that if a complaint is filed that the owner is not occupying the rental, it will be very difficult for Staff to prove otherwise with the limits on how we are allowed to investigate. Commissioner Bouffault said that there are examples of rental advertisements that say the entire house is available and that the owners live elsewhere. Mr. Stidham said that the advertisement would have to explicitly state that the owners live elsewhere in order for it to be used as evidence. Mr. Fincham also noted that some operators live in the house but rent it out when they are traveling, adding that he would consider this to be an owner-occupied rental. Commissioner Bouffault added that some operators list calendars showing when they will not be onsite and the property is available for rental.

Mr. Stidham said that Commissioner Bouffault believes a non-owner occupied rental is a commercial activity and she replied yes. Mr. Stidham asked Commissioner Bouffault that if a non-owner-occupied rental should be allowed by-right or by special use permit, and she replied that it should be a special use. Mr. Stidham then said you could create a special use for non-owner-occupied short-term residential rentals but it would be really difficult to prove owner occupancy. He added that we will need to know what the metric is in determining owner occupancy for applicants that split time between the rental and another residence, or who may only be onsite when rentals are occurring. He also asked if it is owner-occupied if the owner is staying somewhere else on the property or if a caretaker or relative is onsite during rentals. Commissioner Bouffault said that if the owner is living somewhere on the property, then it should just be a business license approval. She also said that if you have up to five guests, it is a bed-and-breakfast and only a business license should be required so long as the septic system is compliant. Mr. Fincham replied that she is addressing two issues – the number of allowable guests and whether or not the use is owner-occupied. He asked Commissioner Bouffault if a non-owner-occupied rental with less than five guests should require a special use permit, and she replied that non-owner-occupied rentals are automatically commercial. Mr. Fincham asked even if it is only one guest at a time and she replied yes.

Mr. Stidham suggested raising the occupancy threshold for bed-and-breakfasts to 10 people and require the owner to be in the house or on the property, and also suggested lowering the threshold for country inn to 5 occupants. He added that these changes would not require a new use to be created for short-term residential rentals as these two existing uses would address the owner occupancy issue. Mr. Fincham said that in this scenario, non-owner-occupied rentals with less than 5 guests would not be regulated and Mr. Stidham replied yes. Commissioner Bouffault said that you still have to worry about septic issues. Mr. Stidham said that we would not be regulating septic in this scenario and asked if we need to worry about a 4 person occupancy if the owner is not onsite. Commissioner Kruhm said that it is a problem if the rental has a straight pipe. Mr. Fincham said that if you are a landlord renting your property, no one is reviewing your septic system. Commissioner Bouffault said

she thinks the two categories need to be owner-occupied on the property and purely commercial when they are living somewhere else. She added that she has been able to trace where some rental operators reside by researching the land records, and Mr. Fincham noted that Staff does not want to get involved in this type of research. She reiterated that we need to create regulations that will not cause everyone to complain but will level the playing field for everyone. She also suggested holding another Committee meeting before the next Commission meeting.

Mr. Stidham recapped his previous suggestion of raising the threshold for bed-and-breakfasts to 10 occupants by right which would be your owner-occupied short-term residential rental. He added that it would have to be owner-occupied because it is a home occupation and noted that we could include our draft approach to septic system regulation. Mr. Fincham said that he has not received any bed-and-breakfast applications but has been prepared to send any such applications to VDH for review because they have to issue a bed-and-breakfast permit. Mr. Stidham said that our current regulations for country inn addresses occupancy in terms of the number of rooms and not the number of people. He added that we could expand the definition of country inn to include a non-owner-occupied short-term residential rental but would recommend not placing a minimum occupancy number on it. He said that if an applicant purchases a house specifically for short-term rentals and will not be living in it, even if they only propose one room rental or one occupant at a time, we would still call it a country inn and require a special use permit and site plan review. He said this approach would be supported by Commissioner Bouffault's position that non-owner-occupied rentals are commercial ventures. Commissioner Bouffault reiterated that owner occupancy needs to be addressed separately and added that she still thinks that 1-2 people staying in a garage apartment only needs to have a business license. Mr. Stidham replied that under his proposal, even the small occupancies would require a special use permit if the owner is not living on the property. Commissioner Bouffault said that it would be fine by her but she did not know how Staff would be able to handle enforcement. Mr. Stidham said you would be taking a strict approach of saying that any non-owner-occupied rental is a commercial venture and therefore requires a country inn special use permit. He gave an example of the owner of a large horse farm who rents out the main house as a long-term rental and does not live on the property – if the owner wants to rent a barn apartment on the same property as a one-room short-term rental, it would be a country inn special use. He asked members if they were comfortable with this approach. Commissioner Bouffault said that it sounds extreme and Commissioner Lee said that you would be cutting them way back. Mr. Stidham replied that if adopted, the small rentals will likely go underground and we would have to deal with them through enforcement.

Regarding the second question on the memo, Mr. Stidham said that he thinks this discussion has answered the question about the proposed definitions and that a definition for “transient renter unit” will not be needed. He added that he will draft a revised text amendment that amends the home occupation/bed-and breakfast use and the country inn use for the Committee's review. He also said he thinks that the third question has also been addressed through the discussion. Regarding the fourth question, he said that country inns are not allowed in the Rural Residential (RR) District so the only way a short-term residential rental could be operated in the RR District is as a bed-and-breakfast home occupation. Commissioner Bouffault said that there are only a few of them now and Mr. Stidham noted that the septic system regulation will be self-limiting on small lots. Mr. Stidham said that regarding the last question, he will just proceed with developing the revised text amendment

based on today's discussion. Commissioner Bouffault said that she will get a copy of the brochure that she referenced earlier in the meeting.

Members agreed to schedule the next meeting for Friday, February 7 following the Commission's Business Meeting.

Commissioner Malone asked if we are saying bed-and breakfasts are home occupations. Mr. Stidham replied yes and said that this is the only way you can have a bed-and-breakfast and by definition it must be owner-occupied. He added that we would also increase the occupancy number to a maximum of 10. He also said that any non-owner-occupied short-term residential rental would be a country inn and any bed-and-breakfast with more than 10 guests would also be a country inn. Mr. Fincham asked if we are sticking with owner-occupied rather than live on property. Mr. Stidham said that we would use the same metric that we use for home occupations. Mr. Fincham said that he is aware of a bed-and-breakfast situation in which the occupancy may have been compliant when the permit was originally issued but it involves multiple lots on a farm and the owner lives on another lot now. He added that VDH allows a bed-and-breakfast to have up to 18 occupants and does not require the owner to live on the property but there must be an onsite caretaker at all times. Mr. Stidham said that another issue the Committee may want to discuss is the distance that the owner's residence is from the rental and whether it matters if it is located on an adjacent lot.

Mr. Stidham said that he will provide a revised text amendment and some scenarios in a table format to help with the discussion.

Commissioner Kruhm asked what the occupancy threshold is for a structure to have a sprinkler system. Mr. Fincham said that he will have to check with the Building Department. Mr. Stidham noted that in both the bed-and-breakfast and country inn scenarios, they still have to be accessory to a single-family dwelling and a residential occupancy. He added that the building code use group changes when you exceed 10 occupants.

The meeting was adjourned by consensus at 11:27AM.

Brandon Stidham, Planning Director



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TO: Policy & Transportation Committee members

FROM: Brandon Stidham, Planning Director

**RE: February 7 Policy Committee Meeting,
Revised Draft Text Amendment – Short-Term Residential Rentals**

DATE: January 29, 2020

Enclosed for review and discussion is a revised draft text amendment for the regulation of short-term residential rentals.

At the January 10, Policy Committee meeting, members indicated that any proposed short-term residential rental regulations should take into consideration whether the use is owner-occupied or non-owner-occupied. To address this concern, Staff has developed an alternative approach to the previous draft text amendment. Instead of creating a new short-term residential rental use, the alternative approach accomplishes the following:

- Adds short-term residential rental regulations to the use regulations for “single-family dwelling.” These regulations would define “short-term residential rentals” and establish that such rental activities require zoning approval either as a bed and breakfast home occupation or as a country inn depending upon occupancy and how the rental would be operated. Regulations would also include rentals in accessory dwellings on the same lot.
- **Owner-occupied rentals** – Modifies the current bed and breakfast home occupation use by increasing the current maximum of five guests to a maximum of 10 occupants including permanent residents. This modified use would be by-right and approved by zoning permit so long as the applicant complies with the home occupation regulations. All home occupations are required to be operated by residents of the dwelling -- this would ensure that the short-term residential rental is conducted either by the property owner or by a resident of the home with the property owner’s permission.
- **Non-owner-occupied rentals** – Modifies the current country inn use to include non-owner-occupied short-term residential rentals and for rentals in excess of 10 occupants. Also modified is the current maximum “14 days of continuous occupancy” for country inns – the definition of country inn would allow for a continuous occupancy period of fewer than 30 consecutive days for consistency with the short-term residential rental activity. This modified use would require a special use permit and site development plan approval.

In addition to the new language referenced above, Staff has added the onsite sewage disposal language from the previous draft text amendment to both bed and breakfast home occupation and country inn use regulations. Staff has also added new language and edits from the current draft of the revised Zoning Ordinance for these uses.

Immediately following the text amendment language is a chart showing several different short-term residential rental occupancy scenarios (owner occupied vs. non-owner-occupied) and whether each can be approved as a bed and breakfast home occupation by-right or a country inn special use. As noted, the occupancy scenarios are based on an “AirBNB”-type operation with a maximum of 10 occupants and Virginia Department of Health (VDH) approval of the onsite sewage disposal system.

Staff recommends that the Committee review and discuss the text amendment and occupancy scenarios. Since this approach was designed to reflect the Committee’s concern with whether the short-term residential is owner-occupied, Staff recommends the Committee discuss this specific issue further if you find that this approach is too stringent.

If you have questions in advance of the meeting, please do not hesitate to contact me.

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
2/7/2020 POLICY & TRANSPORTATION COMMITTEE MEETING

STEP 1 – Add “short-term residential rental” to the use regulations for single-family dwellings to establish that such activities will now require zoning approval.

3-C-2-i – Dwellings, Single-Family

- 1.** The number of persons, who are permanent full-time residents occupying a single-family dwelling served by an on-site sewage disposal system with a Virginia Department of Health Permit, shall not exceed two for the number of bedrooms allowed by that permit.
 - a 1.** If it is found that a property is not in compliance with this requirement, then the owner of the property shall apply for a permit with the Health Department, to expand the current disposal system for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling.
 - b 2.** If the Health Department denies the expansion, the owner of the property shall apply for variance from Board of Septic and Well Appeals for a system designed for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling and install such a system if approved. Such a variance can only be requested for owner occupied property.

- 2. *Short-term residential rental.***
 - a.** *A short-term residential rental is the rental of a room within or a portion of a single-family dwelling or accessory dwelling, or the rental of an entire single-family dwelling or accessory dwelling, by the owner of the dwelling to one or more transient renters for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge. Accessory dwellings include tenant houses and dwellings of less than 600 square feet of heated area on properties of six acres or more.*
 - b.** *A short-term residential rental may be conducted in a single-family dwelling or an accessory dwelling as a bed and breakfast home occupation or as a country inn. No short-term residential rental shall be conducted without prior zoning approval for a bed and breakfast home occupation or country inn, as applicable.*

STEP 2 – Modify bed and breakfast home occupation use regulations to regulate short-term residential rentals of up to 10 occupants in an owner or permit-holder occupied situation.

To Article 9 Definitions:

Bed and Breakfast -- A home occupation where lodging or lodging and meals are provided for compensation ~~for up to~~ **five** transient guests *for a period of fewer than 30 consecutive days.*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
2/7/2020 POLICY & TRANSPORTATION COMMITTEE MEETING

3-C-2-n-6 – Bed and breakfast regulations.

A. Maximum occupancy.

- 1. The maximum occupancy of a bed and breakfast shall not exceed 10 persons during the rental period including transient guests and permanent residents of the dwelling, and in no case shall exceed the maximum occupancy allowed by the onsite sewage disposal system permit.***
- 2. A bed and breakfast may use a maximum of ~~three~~ five guestrooms for the conduct of the home occupation, ~~regardless of the floor area of the dwelling unit and subject to Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable.~~ Guestrooms may be located in accessory structures located on the same lot subject to compliance with Building Code requirements and VDH regulations.***

B. Use of onsite sewage disposal system.

- 1. The applicant shall state the maximum occupancy of the bed and breakfast, including transient guests and permanent residents of the dwelling, on the home occupation zoning permit application. If the onsite sewage disposal system serving the bed and breakfast is shared with another structure, the maximum occupancy of both structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.***
- 2. An application for a bed and breakfast home occupation that is served by an onsite sewage disposal system shall be reviewed by the Virginia Department of Health (VDH) in conjunction with the zoning permit application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the bed and breakfast shall be a prerequisite to issuance of a home occupation zoning permit.***
- 3. If a bed and breakfast is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by VDH, the zoning administrator may issue a notice of violation to cease the bed and breakfast use until the system is repaired or replaced and is approved in writing by VDH.***
- 4. A bed and breakfast shall not be subject to the maximum allowable area for home occupation uses set forth in Section 3-C-2-n-5.***

- C. As an accessory use to a bed and breakfast, breakfast meal service may be provided only for overnight guests.***

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
2/7/2020 POLICY & TRANSPORTATION COMMITTEE MEETING

STEP 3 – Modify country inn use regulations to regulate short-term residential rentals that do not meet the requirements of a bed and breakfast home occupation (non-owner or non-permit holder occupied situation and/or more than 10 occupants)

To Article 9 Definitions:

Country Inn -- ~~An establishment~~ *A business* offering for compensation to the public guestrooms for transitory lodging or sleeping accommodations *for a period of fewer than 30 consecutive days*. As accessory uses to a country inn, meal service and/or permanent place(s) of public assembly may be provided. ~~The term Country Inn includes Tourist Home, Guest Ranch, Guest Farm, or other similar use.~~

3-C-2-g – Country Inn

1. ~~An establishment offering, for compensation to the public, not more than~~ *A country inn may use a maximum of 15 guest rooms for transitory lodging or sleeping accommodations ~~of not more than 14 days of continuous occupancy, subject to Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable.~~*
2. *Maximum occupancy and use of onsite sewage disposal system.*
 - a. *The applicant shall state the maximum occupancy of the country inn on the special use permit and site development plan applications. The maximum occupancy of a country inn shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). If the onsite sewage disposal system serving the country inn is shared with another structure, the maximum occupancy of both structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.*
 - b. *An application for a country inn that is served by an onsite sewage disposal system shall be reviewed by VDH in conjunction with the site development plan application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the country inn shall be a prerequisite to approval of a site development plan.*
 - c. *If a country inn is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by the Virginia Department of Health (VDH), the zoning administrator may issue a notice of violation to cease the country inn use until the system is repaired or replaced and is approved in writing by VDH.*
- ~~2. As accessory uses to a Country Inn, meal service and/or permanent places(s) of public assembly may be provided. The total maximum capacity of areas used for meal service and/or permanent places of public assembly shall be 149 people and as regulated by the Virginia Department of Health.~~

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3. *The sale of meals or prepared food, which may include beverages and confections, is permitted as an accessory use to a country inn. Approvals or permits by applicable State agencies shall be obtained and remain active for the lifespan of this activity.*
4. *Assembly activities for compensation are permitted as an accessory use. The maximum number of building occupants during an assembly activity shall not exceed 149, or the maximum occupancy of the facility as approved by the Building Department, whichever is less.*
5. One bathroom shall be provided per each bedroom in structures less than 50 years old or one bathroom shall be provided per each two bedrooms in structures 50 years or older.
6. Any need for parking shall be met off the street and other than in a required front yard, and shall conform in all other ways with the provisions of Section 4-J of this Ordinance;
7. No equipment, process, or vehicles which create unreasonable noise, vibration, glare, fumes or odors which are detectable to the normal sense off the premises shall be permitted;
- ~~6. The structure satisfies all applicable requirements of the Commonwealth of Virginia and the local Health Official;~~
- ~~7. All applicants for a country inn in an AOC zoning district shall accept the fact that adjoining agricultural land, due to fertilizing, manure spreading, lime spreading, feedlots, and other farming methods may produce offensive odors.~~
- ~~8. In the AOC or FOC Zoning Districts, a country inn shall be allowed only as an accessory use to a Single Family Detached Dwelling. Guestrooms shall be located in or attached to such a dwelling. For parcels larger than 20 acres, the Single Family Detached Dwelling may be the principal dwelling on the property and/or a tenant house. The defined accessory uses of meal service and/or permanent place(s) of public assembly shall be located in or attached to such a Single Family Dwelling.~~
- ~~9. Events, as defined by Clarke County Code Chapter 57, shall obtain all necessary approvals.~~
8. *Regulations for country inns in the AOC and FOC Districts:*
 - a. *A country inn shall require the use of a dwelling unit right (DUR).*
 - b. *If a country inn is developed in a structure other than an existing single-family dwelling, the structure shall be designed to resemble a single-family dwelling and constructed to enable the structure to be converted to a single-family dwelling if the country inn use is discontinued. Architectural renderings and construction plans for the proposed structure shall be submitted for review with the special use permit application.*
9. *Special events shall comply with Chapter 57 of the Code of Clarke County.*

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Occupancy Scenarios – Owner-Occupied vs. Non-Owner-Occupied Issue

In order for a short-term residential rental to qualify as a bed and breakfast home occupation, it “must be conducted by the residents of the dwelling” (3-C-2-n-1) which can be the property owner or a tenant or other resident with the property owner’s permission. If the operator does not reside in the rental structure or on the same lot in a different dwelling, then the use cannot be permitted as a bed and breakfast home occupation and can only be approved as a country inn. The sample occupancy scenarios below presume an “AirBNB”-type operation with a maximum of 10 occupants and VDH approval of the onsite sewage disposal system.

Occupancy	Bed and Breakfast	Country Inn
1. Operator lives on the property in the rental structure	X	
2. Operator lives on the property in a different structure	X	
3. Operator lives on an adjacent or nearby lot		X
4. Operator lives on the property in the rental structure, rents the structure out when traveling (and is not on site)		X
5. Operator has a residence elsewhere but splits time residing on the property part of the year and always when renters are present	X	
6. Operator has primary residence elsewhere, claims to split time residing on the property part of the year but not always when renters are present		X
7. Operator has primary residence elsewhere, rarely or never stays onsite		X
8. Operator has primary residence elsewhere, caretaker or relative lives on the property full-time with renters present ¹		X
9. Operator has primary residence elsewhere but is onsite at all times when renters are present		X

¹ This scenario could be permitted as a bed and breakfast home occupation if the caretaker or relative is the holder of the home occupation permit and resides on the property as described in scenarios 1, 2 or 5.