

**CLARKE COUNTY PLANNING COMMISSION
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Clarke County Planning Commission

AGENDA – Business Meeting

Friday, June 5, 2020 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

1. **Resolution to Adopt Electronic Meeting Participation Procedures**
2. **Approval of Agenda**
3. **Welcome and Introduction of New Members**
4. **Approval of Minutes – March 6, 2020 Business Meeting**

Discussion Items

5. **Upcoming Commission and Standing Committee meetings; Standing Committee Vacancies**
6. **Short-Term Residential Rentals Text Amendment – Recommendation from Policy & Transportation Committee**
7. **Project Updates**
 - a. Zoning & Subdivision Ordinance Update Project
 - b. Plan Updates and Reviews -- Comprehensive Plan, Transportation Plan, and Economic Development Strategic Plan Reviews; Recreation Plan 5-Year Review Resolution

Board/Committee Reports

8. **Board of Supervisors (Matthew Bass)**
9. **Board of Septic & Well Appeals (George Ohrstrom, II)**
10. **Board of Zoning Appeals (Anne Caldwell)**
11. **Historic Preservation Commission (Doug Kruhm)**
12. **Conservation Easement Authority (George Ohrstrom, II)**
13. **Broadband Implementation Committee (Mary Daniel)**

Other Business

14. **Distribution of 2019 Planning Department Annual Report**

Adjourn



Clarke County Planning Department

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TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Resolution to Adopt Electronic Meeting Procedures

DATE: May 27, 2020

Enclosed for your consideration is a Resolution to Adopt Electronic Meeting Participation Procedures as a new Article 8 to the By-Laws of the Clarke County Planning Commission.

Code of Virginia §2.2-3708.2 allows for public bodies to allow their members to participate in meetings remotely – including voting on action items – provided that certain criteria are met:

- A quorum of the public body must be physically present at the meeting. In the Commission's case, a minimum of six members must be physically present.
- The member requesting electronic participation cannot attend due to (1) a temporary or permanent disability or other medical condition that prevents the member's physical attendance, or (2) a personal matter subject to the member identifying the personal matter with specificity. Electronic participation for the latter reason is limited to two meetings in a calendar year.
- Any member requesting electronic participation is required to notify the Chair of the reason for participating in a meeting remotely on or before the date of the meeting. It is the Chair's responsibility to determine whether the member's request complies with the electronic meeting requirements and to approve or deny the request accordingly.
- If a member is approved to participate electronically, the meeting minutes must show the reason for the member's remote participation and the location from which the member participated remotely. If a member is denied electronic participation, the reason for the denial shall also be included in the meeting minutes. Provisions shall be made to ensure that all members participating remotely may be heard by all persons at the designated meeting location.

The Code of Virginia also requires the public body to adopt a written policy for electronic meeting participation containing an approval process subject to the limitations of §2.2-3708.2. The Commission currently does not have a written policy for electronic meeting participation. Members can attend meetings electronically and participate in discussion but cannot make motions or vote on action items.

In order for Commissioners to participate remotely in the June 5 Business Meeting, the Commission must adopt the electronic meeting participation resolution and procedures as the first item of business. Only members who are physically present at the meeting will be able to vote on this resolution. If the resolution is adopted, any members participating electronically will be able to make motions and vote on the agenda's remaining action items. The procedures would also apply to all future meetings of the full Planning Commission and to meetings of the Commission's standing and special committee meetings.

Please let me know if you have any questions or concerns.

DRAFT

**CLARKE COUNTY PLANNING COMMISSION
RESOLUTION TO ADOPT ELECTRONIC MEETING PARTICIPATION
PROCEDURES**

WHEREAS, the Clarke County Planning Commission proposes to adopt written procedures, to be incorporated into the By-Laws of the Clarke County Planning Commission, allowing for and governing participation of its members by electronic communication means pursuant to Code of Virginia §2.2-3708.2, and

WHEREAS, the procedures shall include an approval process for such participation, subject to the express limitations of Code of Virginia §2.2-3708.2,

AND WHEREAS, the procedures once adopted shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

NOW THEREFORE, BE IT RESOLVED THAT the Clarke County Planning Commission does hereby adopt the Electronic Meeting Participation procedures included as Attachment A to this resolution, effective this 5th day of June, 2020

George L. Ohrstrom, II, Chair

Debbie Bean, Clerk

VOTES	AYE	NAY	ABSENT/ REMOTE PARTICIPANT
Ohrstrom (Chair)	_____	_____	_____
Buckley (Vice-Chair)	_____	_____	_____
Bass	_____	_____	_____
Caldwell	_____	_____	_____
Dunning	_____	_____	_____
Glover	_____	_____	_____
Hunt	_____	_____	_____
Kreider	_____	_____	_____
Kruhm	_____	_____	_____
Lee	_____	_____	_____
Malone	_____	_____	_____

DRAFT

ATTACHMENT A

Electronic Meeting Participation

(to be added as Article 8 to the By-Laws of the Clarke County Planning Commission)

1. Pursuant to Code of Virginia §2.2-3708.2, the following procedures are established for members of the Clarke County Planning Commission (the “Commission”) to participate electronically in Commission meetings, and in meetings of the Commission’s standing and special committees, from remote locations for reasons specified as follows:
 - A. Such member is unable to attend the meeting due to a temporary or permanent disability or other medical condition that prevents the member’s physical attendance.
 - B. Such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. Participation by a member pursuant to this subsection is limited each calendar year to two meetings.
2. Procedures for authorizing electronic participation in a meeting.
 - A. Electronic participation in a meeting shall only be permitted if a quorum of the Commission, or a quorum of the standing or special committee, is physically assembled at the designated meeting location.
 - B. Commission meetings. Any member requesting to participate electronically in a Commission meeting shall notify the Chair of the Commission of the reason for electronic participation as specified in Subsection 1 above, on or before the day of the meeting. The Chair of the Commission shall determine whether the request for electronic participation complies with the provisions of Subsection 1 above and shall either approve or disapprove the request.
 - C. Standing or special committee meetings. Any member requesting to participate electronically in a standing or special committee meeting shall notify the committee chair of the reason for electronic participation as specified in Subsection 1 above, on or before the day of the meeting. The committee chair shall determine whether the request for electronic participation complies with the provisions of Subsection 1 above and shall either approve or disapprove the request. In the event that the standing or special committee does not have a chair, the Chair of the Commission shall be notified of the request and shall determine whether to approve or disapprove the request.
 - D. If electronic participation is approved, the Clerk of the Commission shall record in the meeting minutes the remote location from which the member participated. The meeting minutes shall also indicate the reason for the member’s electronic participation as described in Subsection 1 above.

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- E. If electronic participation is disapproved, the reason for such disapproval shall be recorded in the minutes with specificity.
- F. For any electronic participation, arrangements shall be made to ensure that the voice of the member participating electronically may be heard by all persons in the designated meeting location.

Clarke County

**PLANNING COMMISSION
BUSINESS MEETING MINUTES - DRAFT
FRIDAY, MARCH 6, 2020**



A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, March 6, 2020.

Attendance

Present: Randy Buckley (Vice-Chair); Robina Bouffault; Anne Caldwell; Mary Daniel; Bob Glover; Scott Kreider; Frank Lee; and Gwendolyn Malone

Absent: Doug Kruhm and George L. Ohrstrom, II (Chair)

Staff Present: Brandon Stidham, Planning Director; Ryan Fincham, Senior Planner/Zoning Administrator; and Debbie Bean, Recording Secretary.

Others: Chris Boies (Clarke County Administrator); and Doug Lawrence (Board of Supervisors)

CALLED TO ORDER

Vice Chair Buckley called the meeting to order at 9:00 a.m.

Approval of Agenda

The Commission voted to approve the agenda as presented.

Yes: Bouffault (moved), Buckley Caldwell, Daniel, Glover, Kreider, Lee, Malone (seconded),

No: No one

Absent: Kruhm and Ohrstrom

Approval of Minutes

The Commission voted to approve the Planning Commission Work Session minutes of February 4, 2020.

Yes: Bouffault, Caldwell (moved), Daniel, Glover, Lee (seconded), and Malone

No: No one

Absent: Kruhm and Ohrstrom

Abstained: Buckley and Kreider

The Commission voted to approve the February 7, 2020 Planning Commission Business Meeting minutes with two corrections. One correction is on page 7 of 33, 2nd paragraph, 13th sentence, the word “landscaping” should be “no landscaping.” The second correction is on page 10 of 33 in the last paragraph, last sentence, the words “would this not” should be replaced with the words “this would.”

Yes: Bouffault (moved), Buckley Caldwell, Daniel, Glover, Lee, Malone (seconded)

No: No one

Absent: Kruhm and Ohrstrom

Abstained: Kreider

Public Hearing

SP-19-02, Clarke County Humane Foundation. Request approval of a Site Plan Amendment to add a 1,090 square foot addition to an existing animal shelter to accommodate six additional dog kennels and a 12' by 24' pavilion to the property in the Agricultural-Open Space-Conservation (AOC) District. The property is located at 225 Ramsburg Lane, reference Tax Map 13-A-13A, in the Russell Election District.

Mr. Fincham gave an update on this request. He said that the facility's sewer system is an extension of the Town of Berryville sewer system which is owned by the County and maintained by the County Maintenance Department. He stated that David Tyrell, Town of Berryville Director of Utilities, conducted a inspection of the existing pre-treatment tank serving the facility and determined that it is satisfactory for the proposed use. He said that the Town required the Applicant to add notes to the site plan stating that all waste will pass through the pre-treatment tank and that an annual reporting of the tank cleaning be sent to the Town. Joey Braithwaite, County Maintenance Director, indicated that the tank is serviced every September and a service report is sent to the Town. He said that the site plan has been revised with these notes and Staff's required revisions of notes. He stated that Staff received no comments from the Building Department or Emergency Services regarding this proposal. He said that Staff recommends approval of the Site Plan Amendment request. After discussion with Staff and the Commission, Chair Buckley opened the public hearing. There being no public comments, Vice-Chair Buckley called for a motion.

The Commission voted to approve this request as presented.

Yes: Bouffault (moved), Buckley Caldwell, Daniel (seconded), Glover, Kreider, Lee, Malone,

No: No one

Absent: Kruhm and Ohrstom

Board/Committee Reports

Board of Supervisors (Mary Daniel)

Commissioner Daniel stated that the Sheriff's Department and the Commonwealth Attorney have completed two jury trials for the murder that occurred on the mountain. She said a jury trial in Clarke County is a much bigger deal with the personnel, finance, and everything else. She said that they got their money's worth with security cameras and we had deputies' emptying trash because the maintenance people and cleaning people could not come and go as they normally do. She stated that it was a lot of work but they got it done and it was very impressive how they did it twice within the first two months of the year. She stated that for most of the Board of Supervisors it has been about the budget. She said that the School Board presented their budget to us. She stated if anyone would like a copy she has a spare and it is also available on line. She said that the Finance Committee members are David Weiss, Terri Catlett, and John Staelin. She said that they have done so much

work on the budget the last couple of months and she is very appreciative of the volume their work. She stated that the Board of Supervisors will have their work session on Monday and we will be trying to get to a final number.

Board of Septic Appeals (Ryan Fincham)

Mr. Fincham stated that in 1993 Locke’s Mill was approved for a Board of Septic & Well Appeals variance to locate a septic system in the flood plain. He said that it meets all state codes and the County requirements. He stated that he was contacted about a year ago that the variance specified the specific type of treatment and it was a sand filter system going to a LPD dispersal. He said that sand filters are old technology and Greenway Engineering and the current owner wanted to switch that to a fast aerobic unit. He stated that since the Board approved the 1993 variance, it needs to go back to the Board for the proposed system to be approved. He said that it originally came in and they were just asking for the system to be changed. He stated that he found in the 1993 record that the Health Department had notified the Applicant after the variance was granted that they also needed to get a variance for the well site that was proposed. He said that they did not pursue that at the time and it sort of laid dormant. He said that he notified Greenway Engineering and the Applicant and explained that an additional variance is needed. He said that before we advertise it, he told the Applicant to really make sure to ask for every variance that you could possibly need and then we will advertise. Commissioner Caldwell asked if they ever drilled a well. Mr. Fincham said that they proposed it to the Health Department. He stated that it looked like the property had changed hands and they never pursued it. He said it appears like Locke’s Mill is looking to be an educational type venue. He added that it will be a very periodic use.

Board of Zoning Appeals (Anne Caldwell)

Nothing to report.

Historic Preservation Commission (Brandon Stidham)

Mr. Stidham said there is a meeting scheduled for March 18th at 4:00 p.m.

Conservation Easement Authority (Randy Buckley)

Nothing to report.

Broadband Implementation Committee (Mary Daniel)

Commissioner Daniel stated that the Committee has not met recently. She also reported that legislation was passed stating that any electrical right of way is deemed to include broadband communications.

Discussion Items, Zoning and Subdivision Update Project

Mr. Stidham stated that we have four topics to discuss today and we will start with topic A which was continued from last month’s meeting, Accessory Apartment Use.

Accessory Apartment Use

Mr. Stidham stated that at the Business Meeting last month we talked about the proposed accessory apartment use and concerns that had been raised at the joint work sessions. He said that Staff had presented an alternative approach instead of having an accessory apartment as a free standing use we

would look to incorporate its regulations into the use for a single family dwelling. He stated that during our discussion last month there are still some concerns about the scale of it in relationship to the single family dwelling as well as whether this would facilitate it being rented out to either family members or non-family members or any other purpose. He said that the Commission directed Staff to go back and consider additional changes some of which included establishing a maximum floor area for this dwelling unit as well as prohibiting separate electrical metering for the unit. He stated that Staff has made some additional changes to address the concerns that were raised last month. He said that the biggest change would be the change in the terminology. He said instead of referring to it as an “accessory apartment,” the term “secondary dwelling” would be used. He said the reason for this change is to address concerns that the new rules would encourage these dwelling units to be used as rentals. He stated that “secondary dwelling” is a more generic term and emphasizes the fact the dwelling unit is subordinate to the primary single-family dwelling. He said that the term change would not prohibit rentals but it would help to lessen the potential perception that these dwelling units are intended for rental use. He stated that secondary dwellings would not be a listed use but instead would be part of the regulations for “single-family dwelling.” He said a secondary dwelling must be subordinate to and located within the footprint of a single-family dwelling provided that it is not physically separated from the balance of the single-family dwelling. He stated that “not physically separated” means that the secondary dwelling has internal access to the single-family dwelling via doorway, hallway, or other means of ingress/egress. He said that current rules state that an attached dwelling less than 600 square feet cannot be accessible internally to the balance of the house because they have to be separate units with their own separate means of ingress/egress.

He stated that the definition of secondary dwelling turns that around and we require you to have internal ingress/egress. He said that will help mitigate the possibility that a second unit will be rented out separately to non-family members. He stated that Staff proposes one modification to the definition of dwelling. He said the current definition is, “*A structure or portion thereof that is used for human habitation.*” The revised definition would read, “*A structure or portion thereof which contains at least one dwelling unit.*” He stated that we are going to jump over to the definition of dwelling unit at the top of page 22 of 33 which we will add a sentence to read, “*One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or for rental or lease on a periodic basis. A separate, independent housekeeping unit consists of one kitchen and at least one bathroom and one bedroom.*” He said that together with these changes to the definition of secondary dwelling, Staff hopes to clarify what collection of rooms within a house is this secondary dwelling and when is there a situation where you may just have a separate kitchen or bathroom.

He said in regards to the second kitchen issue, in most cases currently we would not allow you to have a second kitchen to be approved within your home. He stated that with this change we would clearly identify that one kitchen, one bathroom, and one bedroom constitutes a separate dwelling unit. He said that the addition of the terminology of “one bedroom” is important instead of “living space” which is the language you see in the current Ordinance. He said if someone has a rec room in their basement and maybe a half bathroom and they want to add a kitchen to it, under the current definitions since the rec room would be conditioned living space that would be considered a dwelling unit and Staff would not be able to approve the second kitchen. If they stated on the application forms that is a rec room and the plans for the addition of the kitchen do not have it listed as a bedroom, then Staff will coordinate with the Building Department and have that approved as a rec room with an

attached kitchen and not as a secondary dwelling or an additional bedroom in the basement. He stated that if you decide you want to add a kitchen off of your garage for canning or for some other purpose and it is not with the unit that also contains a bathroom and a bedroom that could be approved as a separate kitchen and not burden the applicant for the potential of it being considered a second dwelling unit. He stated that one of the changes we are talking about is if you have this dwelling unit located within the main dwelling it has to be within the footprint.

He said if you are going to propose one that is attached with a breezeway or it is in a garage that is attached by a breezeway that would not be approved because it is not located within the footprint of the single family dwelling unless the breezeway is enclosed with a common roof structure and walls so that would extend the footprint over and become a wing of the house. He said that the only way the dwelling could be approved with just a regular breezeway would be as a minor dwelling or a dwelling less than 600 square feet.

He stated that on the bottom of page 22 there are some new use regulations proposed. He said that we would limit a single family dwelling to having a maximum of one secondary dwelling regardless of the size of the structure or the size of the property. He stated that we would also prevent that second dwelling from being served by a separate electric meter and also from being assigned a separate address because it is considered part of the home and subordinate to the main home. He said that we are not currently proposing a maximum floor area. He stated one of the major policy issues was obviously the impact on septic systems and we have use regulations in here to accommodate that but the maximum floor area of this secondary dwelling would not impact the septic system. He said that the number of bedrooms obviously would and we are not including the maximum number of bedrooms that can be added to this because that will be driven by what VDH will approve the septic system to be modified to.

He stated that pages 23 and 24 list the modified text amendment language which Staff would use to incorporate this into the new format. He said that one other change Staff did for clarity purposes is on page 23. The use regulations for a single family dwelling requires the use of a dwelling unit right this and all the other types of accessory dwellings we have added similar language just to be clear when one requires a dwelling unit right and when one does not require a dwelling unit right. He said that a secondary dwelling would require a zoning permit so it would not be something that you can do by-right if you are proposing a secondary dwelling to be added to an existing home or to be constructed in conjunction with a new home construction you would have to have that separate zoning permit for the second dwelling.

Commissioner Caldwell asked how are we going to deal with the future of one of these primary dwelling, secondary dwelling places where somebody purchases the house and the real estate agent is not particularly upfront about the regulations and somebody buys it thinking that they could block off the door and add the electric to their rental bill and they will have a rental apartment for anybody who wants it. She asked how are we going to make certain that a potential buyer understands our regulations about this and what the restrictions are. Mr. Stidham stated that there is nothing that you can do to ensure that future buyers understand anything about the regulations. He said the one thing that we do have control over is better record keeping and better application forms. He stated this will require the owner that is responsible for this modification to clearly state what the purpose of that addition is and what their limitations are and if it is being coordinated with any certificate of

occupancy or final building department approval and then it would go into our Munis system. He said that it is not going to help when someone buys the property and they are going by what the real estate agent told them and they do not check with the County. He said that it will work with the people that do their due diligence and check the building permit record for this property and see what it is approved for and what they can or cannot do.

Commissioner Caldwell asked if Mr. Fincham will develop the record trail. Mr. Fincham stated he believes the reason this is important is we will actually have some documentation. He said that on a regular basis we receive phone calls from real estate agents and mostly appraisers that are appraising properties and there are no records. He said what has happened over the years is they have come in and get a building permit for internal renovations and they did not add a kitchen, they added everything but the stove. He said that stove comes later and there is no documentation and the appraiser will ask what do I do and I tell them that is your job, but now we will have documentation that says this is what it is supposed to be. He stated that we have a recordation process for the septic permits but he is not sure it works the way we thought it would. Mr. Stidham stated that if they do not look up their building permit then it is doubtful they will look up their chain of title. He said that our Munis system ties all this permit information with a record for the property itself so you can query and find everything for yourself on a lot by lot basis. He stated that Mr. Fincham always said the most important thing you can do on an application form is to ask the right questions. He said that we will have a zoning application for this particular thing that asks the right questions.

Commissioner Bouffault said that referring to Commissioner Caldwell's questions about how we are going to be able to control this. She said that later on we are going to have our Policy Committee meeting and we are going to look at the area Airbnb problem and I think you have the same questions being asked because people are buying homes and converting them into an Airbnb rental. She said that these are sometimes people out of county or living in the city and they do not know about septic and they are blissfully happy when they have a new Airbnb. She stated that at some point we are going to have to address the Policy Committee how we are going to enforce this. She said as we discussed earlier the current ordinance is very short on enforcement and you have to go directly to court. She said she thinks there needs to be something more welcoming where we can have an intermediate step that would apply to an Airbnb just as it would apply to anything else that we may have. She said that this County is coming under increasing pressure which we did not have 15 to 20 years ago. She stated that we are being surrounded by all these things and it is a beautiful county and unfortunately we cannot always count on the honesty of the realtors or the people buying the property. She said this was just a general comment and she does not know if anybody agrees with her but she is concerned with keeping the precious few that we have left. Vice-Chair Buckley asked is anyone else has any questions or comments.

Mr. Stidham asked if everyone is comfortable with this approach and everyone agreed. Commissioner Bouffault said that it appears to be complete as you have written it and if the enforcement is going to be key and Mr. Fincham is going to do some more specific application forms then yes it will be a much better paper trail and that is a good thing. Mr. Stidham said he will consider this as a consensus and this change will appear in the next draft of the zoning ordinance that you receive.

Mr. Stidham said that we will move on to Item B. He said that Commissioner Bouffault had requested that we add this to the agenda.

Service Businesses by Special Use in the AOC and FOC Districts- Onsite vs. Offsite

Mr. Stidham said this was an issue regarding limitations on service businesses in the AOC and FOC districts. He stated that the memo begins on page 25 of 33. He said that this was an issue that was discussed by the Ordinances Committee as policy issue P30 and he attached copies of the minutes from the Ordinance Committee meeting that was discussed as well as the staff report. He stated that the issue was at that point was whether the retail service business special use in the AOC and FOC districts should continue limiting services to service businesses only to those who conduct those businesses on-site. He said that was a modification that was made a number of years ago when they changed the wording of retail businesses as a special use. He said that the current definition reads, *“Buildings or land used for on-site sale of merchandise at retail or for the rendering of personnel services where such service is performed on-site.”* He stated that the philosophy behind limiting on-site services is that these businesses would provide a service to the people in the rural areas so they would not have to go all the way into town for those services. He said that those could be a hair salon, nail salon or some sort of personal service business that could be done with a special use permit in rural areas.

Mr. Stidham asked Commissioner Bouffault if she would like to bring up her example. She stated that she was wondering if it is not going to be AOC or FOC and there are many professional farmers that have big farms and do a lot of services for other agriculture areas in the county that are not necessarily considered a personal service like a hair salon for example they go and use their own equipment and come to my property she has personally benefited from this type of service. She said that they are not on their own land but they are on my land. She said they can either be spraying my field or they could be cutting and making hay for me. She said 1984 Vice-Chair Buckley’s father built the most beautiful riding ring you have ever seen for me. She said again this is on site and not on his land but it is on my land and he is doing an agricultural service. She said that this has been happening and for a long time all around us. She stated that by striking on-site would it not give more flexibility because it has been going on for a long time. She said she is trying to get the reason why you want to keep these two words on-site. Mr. Stidham said that this affects a certain type of business owner that you are referring to in your example. He said that if he had an agricultural operation and sprayed fields and cut hay but also did that for other people, this would be considered part of his agriculture operation. He stated if he does not have an agricultural operation but he is doing it out of his home, he could get a home occupation zoning permit to do that provided that he complied with the home occupation regulations. He said if he does not have an agricultural operation and his business is spraying fields or building fences and he wants to do it in the AOC or FOC District as his base of operations but will not be residing there, it would not necessarily fit under this retail and service business special use. He stated that depending on what he is doing, it may fit under the special trade contractor special use but it is hard to tell. He said that you may have some people that have a mix of different things that they do and some would fit under the special trade contractor and some will not. He stated that what we are talking about here is somebody that wants to open up a new business and not a home occupation and not associated with an agricultural operation and do that as a special use in the AOC or FOC District. Commissioner Bouffault stated she is actually talking about agricultural convergence because we are dealing with the AOC area and you are not separating out agricultural from non-agricultural on-site. She said that she is specifically talking

about agricultural operations which you do off-site side work or other agricultural folks in the county. Mr. Stidham said that if he has a farm and is doing that as side work, then he is covered.

Commissioner Bouffault stated that she is confused by on-site and off-site and which site is it. Mr. Stidham said it is based on the nature of what did we approve for the base of operations for and not where the services are being rendered. He said if he has a farm and is offering a farm service off-site, my off-site service is covered under the definition of agriculture. He stated if he does not have a farm but does have a home occupation and meets the regulations, then he can get a zoning permit for a home occupation and is covered. He stated that if he wants to build a new building under a special use permit and site plan and does not have an agricultural operation and is not living there, he may or may not be able to do it under this use or under the special use trade contractor as a special use. Commissioner Daniel stated that it is defined by the person doing the service and doing work as opposed to where the work is being done. Mr. Stidham said that we approve a wide variety and types of businesses that do off-site services as home occupations provided that what they are doing at their house which is their base of operations meets the home occupation regulations. Commissioner Bouffault said she understands, but she still thinks that it is confusing. She stated that she really does not know what the solution would be but I do think what we want is to always give the maximum flexibility to all the agricultural operations that we can because that is what is protecting us from excessive economic development. Mr. Stidham stated that in 2017 we added agriculture business uses for farm equipment sales service and farm supply sales businesses. He said if we had a use that came in that specifically proposed an agricultural service but they were not in operation themselves but would be suitable to go into the AOC or FOC Districts, we would look and see if we need another agricultural business special use. He said that we need to wait and see where it fits. Commissioner Bouffault agreed and thanked Mr. Stidham for explaining.

Mr. Stidham say that we will move on the Item C.

Landscaping Design Standards – Eastern Red Cedar

Mr. Stidham said this is the issue regarding the use of Eastern Red Cedar trees in required landscaping. He said if we specifically list this tree as we are proposing to do we are essentially saying it is an acceptable tree type to be used in a landscaping plan. He stated that it is not currently listed as a tree type and it is also not listed as a prohibited type. He said that currently we can use that but prefer that you use the listed types. He stated if we removed it from preferred types, people could still use them. He said if we do not want applicants using this tree, then we have to add it to the prohibited list and we are proposing to add Leyland cypress to that list in the ordinance. He stated that a compromise would be to take it out of the preferred list but not list it as a prohibited item. Commissioner Caldwell suggested that although those trees are invasive particularly in agricultural areas they are incredibly tough, they grow fast and they are evergreens. She said that they provide good bird coverage and food in the winter and in certain areas that may not be right next door to an agriculture operation but in other areas such as a gas station they might be a reasonable landscape tree because of their toughness and some of their other characteristics. She stated that she cannot think of another tree that is as tough as those in this County. Commissioner Lee stated that he agrees not to have it in the proposed, but have it available for them. Commissioner Bouffault that she agrees it would make a good compromise. Mr. Stidham asked if everyone agreed to have the compromise approach and everyone agreed to it.

Mr. Stidham said that we will move on to Item D.

Proposed Non-Residential Building Use – Agricultural and Forestal Buildings

Mr. Stidham stated that this item came up at the Planning Commission/Board of Supervisors joint Work Session on November 14, 2019. He said that a couple of concerns have been raised regarding this use. He said that the first concern was whether agricultural buildings such as barns included in this use and, if not, could the non-residential building use cause confusion. He stated that this is a new use proposed to be added that would allow you to have more flexibility in building a structure in an AOC or FOC zoned lot that does not have a single family dwelling on it currently. He said that right now you can do that but you are limited to 150 square feet. which does not always meet the needs of people that may have a river lot and want to have some sort of building to store kayaks or something. He stated that it would also apply to someone that maintains their property and wants to store tractors or property maintenance equipment and 150 square feet is rather limiting. He said that this would give them more flexibility up to 256 square feet or whatever the maximum or minimum floor area requirement is before a building permit is required per building code requirements. He stated that building codes change from time to time and it was originally 150 square feet and was raised to 256 square feet. He said that this change would match with the current building code requirements.

He said that the second concern was whether the definition of forestry include cutting of trees for property maintenance or personal use of firewood. He noted that there may be a loophole that would consider buildings for these activities to accessory structures to a forestry use instead of a non-residential building and therefore would not be subject to a maximum floor area limitation. He said if he wanted to build a building on his property in FOC and it is currently vacant and he is going to use it to cut firewood, it could be considered to be an agricultural building without a floor limitation and he would be able to build whatever he wanted. He stated that we are proposing to make some small modifications to address both of these concerns. He said the first one would create a new accessory use that we would call “agricultural building” and this would not change anything that currently is in practice in the Zoning Department. He said that it is described as a structure under roof that is an accessory to an agricultural use located on the same lot, or that is accessory to a forestry use located on the same lot that is subject to a pre-harvest plan as set forth in Section 6.2.7 (Pre-Harvest Plan) and is exempt from building permit requirements by the Clarke County Building Official. He stated that right now if you came in and wanted to build a barn on your property you would first talk to the Building Official and explain what the purpose of that building is. He said if it is purely for agriculture purposes and the Building Official agrees then he would send written notice to Mr. Fincham that this has an agricultural exemption per Building Department requirements. He said that it does not exempt you from getting a zoning permit and complying with setback requirements. He stated that Mr. Fincham would still require you to get a zoning permit. He said that this would establish as a use with a definition and will still require you to get a zoning permit but would not have any more regulations than we do not currently have for agriculture. He said that it would apply to any agricultural structure under roof, fenced-in areas and barns, sheds and that sort of thing. He stated that the modification to the definition for this use will address the question of forestry operations. He said that if someone comes in and says that he maintains 100 acres of trees in FOC land and he cuts trees for firewood and cuts down dead trees, then he is a forestry operation and he should be able to build a large building there. He said if you are not a forestry operation under the auspices of a pre-harvest plan which also requires you to be going through the Department of

Forestry for their permitting processes. He stated for the purposes of this determination you are not a forestry operation that can get an agricultural building permit. He said that you would be limited to the non-residential permit and capped at 256 square feet. He stated that he believes this resolves both of these concerns and adds clarity from the Planning Commission/Board of Supervisors Joint Work Session on November 14, 2019.

Commissioner Caldwell asked if Mr. Fincham will develop an application form so that it can be traced in the Munis system. Mr. Stidham said that Mr. Fincham is going to have application forms for everything. Commissioner Caldwell said so that somebody does not convert this agricultural building into something else. Mr. Stidham stated that by tying this to the fact that the Building Official has determined based on what was presented to him this is an agricultural building and it is agriculturally exempt and that gets locked in with the zoning permit which goes into the Munis system. Commissioner Bouffault asked if Mr. Fincham will work with the building department because they would need to have a revised application format. Mr. Fincham stated that when he first started working here one of the issues he noticed was that someone would come to the counter and say I am building an agricultural building. He said that we had a form in our office that they signed and dated that said this is agriculturally exempt and they never spoke to the building department and we just issued the zoning permit. He stated that it smelled funny so he talked to Mr. Royston and he read the building code and he thought to himself that he is not exempting this, they are. He said he immediately established a procedure when someone says they want an agricultural building, he sends them to the Building Department and advises Mr. Royston to send him something in writing via email to make it easy because we do not have a proper form. He stated that Mr. Royston responds back to the applicant and sends a copy to him if they are exempt or if they need answers to further questions. He said that we loosely implemented this three or four years ago. He stated that he does not have an issue with an agriculture permit unless he receives an email from the Building Inspector stating that it has been exempted. He said that we will have a form from here on out and on the form they come to him first then take it to the Building Department and he does not issue it until the Building Department has signed off.

Commissioner Lee asked what would happen if someone puts in an application for a sewage disposal system along with this. Mr. Fincham said that he had one a few weeks ago on Swimley Road and there were no dwelling unit rights, Naomi Long inherited this piece from the family across from the Rutherford farm. He said that he asked her questions over and over and Mr. Royston did the same. He said that we have documentation in our files and in Mr. Royston's files that it is a very fancy horse barn. He said that it may look like a house and it does have some finished square footage in it for an office and it has a washer and dryer in it for horse blankets and it also has a bathroom in it. He said that it smells a little bit but we have all of the documentation and she went through the resistivity process, and the AOSE/PE process for the septic system so it is a horse barn with a bathroom, office and the ability to wash horses and horse blankets. He said that is not a residence and everything is documented as such. Commissioner Lee asked what if the property did have a dwelling unit right. Mr. Fincham said it would still be the same way and it would be documented as such and if they built a single family dwelling and used the dwelling unit right then there would be a house and a nice barn. Commissioner Lee said so people could do that initially and hold the use for later on for a single family dwelling. Mr. Fincham stated that for this particular property it had a dwelling unit right and they wanted to build the barn first and they want to live in the barn to save money for the house and that has happened for eons. He said if someone approaches him with that request he tells them it will

use the dwelling unit right, regardless of the size we will use the dwelling unit right for the barn-house. He stated that when they come back to get a zoning permit to build the big house we will confirm that it is either a minor dwelling or not a dwelling at all. He said that basically the dwelling unit right transfers and it has no dwelling unit right at all. He stated that what he does not allow is a less than 600 sq. ft. accessory dwelling that we will call minor dwellings on a vacant piece because there is nothing that it is an accessory to.

Mr. Stidham stated we have two examples now in the County of where documentation was actually done years ago and having its desired effect of putting people on notice with limited utilization. He said that the limit on accessory buildings as a free standing structure was added because of a house like structure that was built on Locke's Mill Road and is right in the stretch of road where all the little river houses are. He said that it looks just like a river house but he does not think they could get a septic system there. He stated that it was approved as an accessory building and the certificate of occupancy from 1993 clearly says it is not to be used as a dwelling. He said that we have had a number of people call over the years to see what can and cannot be done with it, but they are getting the message that it is not a dwelling.

He said that the other one is a very fancy horse barn that is currently for sale off of Rt. 50 on Morning Star Lane and that one has been listed for a year and the listing agents are clearly aware that it is not to be used as a single family dwelling. He stated that it looks like a very fancy house from the outside. He said that he thinks that the forms Mr. Fincham is going to create and integrating them with the Munis system will make it that much more effective in the future. Mr. Stidham asked if everybody is comfortable with the changes on this item and everybody agreed. He said that he has consensus on all of these and that is all the business items he has for today.

Vice Chair Buckley said if there is no further business he will call for a motion to adjourn.

On motion by Commissioner Lee and seconded by Commissioner Malone the meeting was adjourned at 9:55 a.m.

Randy Buckley, Vice-Chair

Debbie Bean, Recording Secretary



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TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Upcoming Commission and Standing Committee meetings; Standing Committee Vacancies

DATE: May 28, 2020

As the pandemic continues and social distancing guidelines and requirements remain in place, we will need to develop new approaches to meetings that balance conducting public business with ensuring that Commissioners, Staff, applicants, and the public are able to participate safely and effectively.

Conducting Meetings

As noted in my May 22 email, Staff has developed a meeting room structure that can accommodate all 11 Commissioners and a limited number of Staff, press, applicants and members of the public using both the Main Meeting Room and A/B Conference Room. We do not have plans to implement electronic meeting programs at this time (such as Zoom or GoToMeeting) but the Main Meeting Room is equipped with multiple lines for teleconference access. This structure, along with implementing electronic meeting rules, will enable the Commission to conduct required monthly business at the Friday Business Meetings.

There are currently no plans to stream video of Commission meetings on the County Youtube channel as the Board of Supervisors has been doing for their recent meetings. However, if we have applications filed that require public hearing, we will likely consider streaming those meetings to provide alternative access for the public.

Staff will be wearing masks at meetings and will be taking steps to ensure that meeting tables are sanitized and that hand sanitizer and/or wipes are available for Commissioners. Commissioners are encouraged but not required to wear masks. If you are in need of a mask for the meeting, please let me know and I can provide you with one.

Since the Tuesday Work Sessions involve reviewing Business Meeting items and “workshop” topics/projects and no formal actions are taken, it may be more accommodating at this time to cancel upcoming Work Sessions in order to limit full Commission meetings to one per month. The Commission’s 4-person standing committees could meet more frequently to discuss “workshop” topics/projects, and these items can also be discussed by the full Commission at the Business Meeting (as we will be doing at the June 5 meeting). With the standing committees composed of four members plus the Chair as ex-officio member, social distancing can be more easily accommodated in the meeting room. Staff would propose holding committee meetings in

the Main Meeting Room using the four spaced positions at the dais. Staff, the Chair, and a small number of attendees would be seated at tables below or in audience chairs.

Should Commissioners have questions or concerns about agenda items prior to the Business Meeting, Staff is always available to review them in person, via phone, or via email.

Staff recommends cancelling Tuesday, July 7 Work Session. The Friday, July 10 Business Meeting would be held as scheduled. With no Commission meetings scheduled for August, we will assess the landscape at the end of the summer to determine whether to make any changes to the September meeting schedule.

Standing Committee Vacancies and Upcoming Meetings

Also enclosed for your consideration is an updated list of 2020 Committee Appointments which lists the following vacant seats:

- Policy & Transportation Committee – 1 seat
- Plans Review Committee – 1 seat
- Comprehensive Plan Committee – 2 seats

We will need to fill these vacant seats as soon as possible in order to conduct Committee meetings over the next few months. A discussion item is included on the June 5 agenda to address the vacancies. Appointments are made by the Chair so please contact Chair Ohrstrom if you are interested in a vacancy or would like to move to a different Committee. Staff anticipates a need for the following Committee meetings in the near future and will schedule the meetings once Committee vacancies are filled:

- Plans Review Committee – Meeting in late June to review a site plan amendment/certificate of appropriateness application (anticipated to be filed by the June 5 filing deadline).
- Comprehensive Plan Committee – Meeting in mid to late June to discuss 5-year review resolution for the Recreation Plan and potential approaches to conducting the 5-year review of the Comprehensive Plan.
- Ordinances Committee – Meeting in late June or July to discuss additional policy issues with the revised Zoning Ordinance.
- Policy & Transportation Committee – No meeting currently proposed unless additional work on the short-term residential rentals issue is requested by the full Commission.

Please let me know if you have any questions or concerns in advance of the June 5 meeting.

**CLARKE COUNTY PLANNING COMMISSION
2020 COMMITTEE APPOINTMENTS (updated 5/21/2020)**

Permanent Committee Descriptions

- **Policy and Transportation.** Charged with focused study of general planning-related policy issues and matters affecting the County’s transportation network.
- **Plans Review.** Charged with review and comment on the following:
 - Site plan applications for Commission review (including those filed in conjunction with rezoning and special use permit applications)
 - Major subdivisions
 - Other administrative site plan, minor subdivision, or other land development applications on which Staff requests input from the Committee.
- **Comprehensive Plan.** Charged with initial management of the five-year review process for the Comprehensive Plan and implementing component plans.
- **Ordinances.** This Committee was created initially to serve as the steering committee for the project to review and update the Zoning and Subdivision Ordinances. Following completion of the project, the Ordinances Committee could also be charged with work on future proposed text amendments.

2020 Permanent Committees

Policy & Transportation	Scott Kreider	Douglas Kruhm	Gwendolyn Malone	VACANT
Plans Review	Anne Caldwell	Scott Kreider	Frank Lee	VACANT
Comprehensive Plan	Bob Glover	Douglas Kruhm	VACANT	VACANT
Ordinances	Randy Buckley	Anne Caldwell	Frank Lee	Gwendolyn Malone

Special Subcommittees and Appointments – 2020 Members

Board of Zoning Appeals (BZA)	Anne Caldwell
Berryville Area Development Authority (BADA)	George L. Ohrstrom, II
Historic Preservation Commission (HPC) – Liaison	Douglas Kruhm
Board of Supervisors (BOS) – Liaison	Matthew Bass
Board of Supervisors (BOS) – Alternate	Doug Lawrence
Conservation Easement Authority (CCEA)	George L. Ohrstrom, II

Board of Septic and Well Appeals (Planning Commission Chair and Vice-Chair)	George L. Ohrstrom, II Randy Buckley (alternate)
Agricultural & Forestal District (AFD) Advisory Committee – Liaison	Randy Buckley
Broadband Implementation Committee	Douglas Kruhm VACANT

NOTE: The Commission Chair is ex-officio member of all committees, but will chair no committee.



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TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Short-Term Residential Rentals Text Amendment – Recommendation from Policy & Transportation Committee

DATE: May 13, 2020

Enclosed for your review is a proposed Zoning Ordinance text amendment regarding short-term residential rentals as recommended for consideration by the Policy & Transportation Committee. This item was originally scheduled for discussion at the Planning Commission's March 31, 2020 Work Session which was cancelled. It will be placed on the agenda for discussion at the next scheduled Commission meeting.

This proposed text amendment was developed by the Committee and Planning Staff over a series of four meetings (copies of meeting minutes are enclosed for reference). The topic was originally discussed at the July 9, 2019 Commission Work Session at which Commissioners agreed by consensus to have the Committee study the issue and determine whether to develop a text amendment.

Short-term residential rentals are not currently defined or regulated in the Zoning Ordinance. Staff historically has considered a short-term residential rental to be the rental of a portion of a dwelling (one or more rooms), or the rental of an entire dwelling, to a single paying customer for less than 30 days. A single paying customer can be one person or a group of people that are renting together. If a property owner is operating a short-term residential rental within these parameters, then no zoning approval is required because the activity is not regulated by the Zoning Ordinance. If a property owner is renting to two or more separate paying customers at a time, then the activity is regulated by the Zoning Ordinance as a bed-and-breakfast home occupation, country inn, or hotel/motel depending upon how it is being operated.

Concerns were raised regarding the absence of regulations for short-term residential rentals including their apparent proliferation in the County via websites such as AirBNB and the potential adverse impacts they may have on onsite sewage disposal systems and groundwater quality.

Proposed Text Amendment

To summarize, the proposed text amendment (see full text included with this report) accomplishes the following:

- Adds “short-term residential rental” to the use regulations for the current “single-family dwelling” use including a definition for the new term. This would establish short-term residential rentals as an activity conducted within a single-family dwelling or an accessory dwelling (e.g., tenant house) rather than as a new standalone use. It would also establish that the current unregulated activity will now be regulated and require zoning approval.
- Includes language that short-term residential rentals may only be conducted as a bed and breakfast home occupation or as a country inn. The regulations for these two current uses would be modified to allow short-term residential rentals for a maximum of 10 occupants as a bed and breakfast home occupation (owner-occupied rentals), and for more than 10 occupants and/or non-owner occupied rentals as a country inn special use.
- Additional regulatory language is included to address approval of onsite sewage disposal usage along with modifications to the definitions of bed and breakfast and country inn. Changes to the use regulations for country inn that are being proposed in the Zoning Ordinance but are not directly related to short-term residential rentals update are also included.

The Committee identified and discussed the following issues in developing the recommended text amendment:

1. How to determine a maximum occupancy for new short-term residential rental regulations.
2. Whether to create different uses or regulations for rentals that are owner-occupied and for those that are non-owner-occupied. Also, whether a new use and use regulations should be established for short-term residential rentals or whether a current use or uses should be modified to include the new regulations.
3. For short-term residential rentals operating in dwellings with onsite sewage disposal systems, how to ensure that the system is approved for the operator’s stated level of occupancy and the occupancy of the dwelling.
4. Given the number of existing short-term residential rentals operating in the County, should new regulations be applied retroactively to existing rentals or only to new rentals proposed after the regulations are adopted? If the rules are applied retroactively, should Staff be directed to enforce the new rules proactively and if so, how would a proactive enforcement program be designed?

Each issue is described in greater detail below.

Maximum Occupancy Requirements

As previously noted, short-term residential rental activities are not currently regulated by the Zoning Ordinance so long as a portion of a dwelling (one or more rooms) or an entire dwelling is being rented to a single paying customer. A single paying customer can be one person or a

group of people provided that they are renting the dwelling together, and there is no limit on the total number of people that can be in a customer group. If a dwelling is being rented to two or more customers or customer groups at the same time, then zoning approval is required as a bed and breakfast, country inn, or hotel/motel depending on the nature of the rental activity.

In researching other localities, most short-term residential rental regulations are based on the total number of occupants in the dwelling at one time rather than the number of paying customers (or customer groups) at one time. Additionally, some localities establish a maximum of 10 occupants as a threshold separating one level of regulation from another – such as by-right allowance for up to 10 occupants and requirement of a special use or conditional use permit for more than 10 occupants. The threshold of 10 occupants coincides with Virginia Uniform Statewide Building Code Requirements for lodging activities in a dwelling – lodging for more than 10 occupants at a time can require compliance with a different building code use group and more stringent code requirements.

The Committee and Planning Staff agreed that regulating a maximum number of occupants is a more effective approach than the number of paying customers or customer groups at one time. This approach ensures that a definitive number of people occupying the rental at any one time – both customers and resident occupants – is established. This is very important in determining the available capacity of onsite sewage disposal systems serving the dwelling. Based on the examples from other localities and the building code regulations, the Committee also supported establishing a maximum of 10 customers and resident occupants as the dividing line between the new use regulations recommended in the text amendment.

Owner-occupied vs. Non-owner-occupied Rentals; New Use vs. Modifying Current Uses

The Committee discussed whether different regulations should be created for short-term residential rentals that are occupied by the property owner or business operator at all times during the rental period and for rentals in which the owner or operator is not residing on the property while it is being rented. Some jurisdictions establish more stringent regulations for non-owner-occupied rentals because the business owner is not present to police potential adverse impacts to neighboring properties. These impacts can include noise, unsupervised events, illegal parking, and violations of maximum occupancy requirements. More stringent regulations often come in the form of requiring a special use or conditional use permit for non-owner-occupied rentals as opposed to a by-right administrative permit process for owner-occupied rentals.

There can be differing degrees of non-owner-occupancy:

- **The owner/operator resides in the dwelling but rents it out when they are travelling (and therefore are not onsite).** This is a common scenario for rentals advertised on websites such as AirBNB and Craigslist.
- **The owner/operator resides in a dwelling but uses a different dwelling located on an adjacent or nearby lot as the short-term residential rental.** In this case, the owner/operator's residence may be in close proximity to the short-term residential rental but they are not physically occupying the rental structure or residing on the property

during the rental period.

- **The owner/operator resides in the rental structure but may or may not be residing there while the rental is taking place.** This scenario involves an owner/operator who is not able to verify on a zoning application that they will be residing on the property during all rentals. This could be because the owner/operator intends to rent the dwelling while travelling (as in the first example), owns a second dwelling on another lot and intends to stay there during rentals, or will have a caretaker or employee stay on the property during rental periods.
- **The owner/operator resides elsewhere, does not reside in the rental structure, but is present on the property during all rentals.** In this example, the owner/operator's primary use of the rental structure is to generate income as a short-term residential rental and the structure is not otherwise being used as a single-family residence.

The Committee noted an important distinction in the last example above. If an owner or operator of a short-term residential rental uses their primary residence as the rental structure and occupies it during rental periods, the activity is a residential accessory activity. However, if an owner or operator conducts rentals in a dwelling that is not their residence or a structure that is accessory to their residence, the activity is a commercial activity to which more stringent regulations should apply. Given that short-term residential rentals are operated in County zoning districts which allow single-family dwellings (AOC, FOC, and RR Districts), it is the Committee's position that more stringent regulations should be applied to non-owner-occupied rentals.

Establishing the Committee's position on this issue helped determine how to incorporate the short-term residential rental activity into the Zoning Ordinance as an allowable use. After initially considering creating a new "short-term residential rental" use that would be added to the Zoning Ordinance, the Committee accepted Staff's alternative approach to modify two existing uses – "bed and breakfast home occupation" and "country inn" – to include short-term residential rental activities within their use regulations.

Bed and breakfast home occupations are reviewed and approved by the Zoning Administrator as a by-right residential accessory use. The use regulations state that the use "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 owner/operator does not reside either 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.

In the event that the short-term residential rental activity does not qualify to be considered as a bed and breakfast home occupation ("owner-occupied"), the rental activity would be considered a "country inn" use ("non-owner-occupied") under the proposed regulations. This would require approval of a special use permit and a site development plan by the Board of Supervisors with review and recommendation by the Planning Commission.

Below is a chart depicting various owner occupied vs. non-owner-occupied scenarios and the applicable use under the proposed text amendment:

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

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.

Regarding maximum occupancy limitations, the Committee determined that a maximum of 10 customers and resident occupants of the rental structure should be the threshold before more stringent regulations are applied. The current regulations for bed and breakfast home occupations allow a maximum of five transient guests with no limitation on the number of resident occupants. The proposed text amendment would change this threshold to a maximum of five guest rooms and a maximum of 10 persons including “transient guests and permanent residents of the dwelling.” The current regulations for “country inn” establish a maximum of 15 guest rooms but there is no limitation on the total number of transient guests. The proposed text amendment would retain the maximum of 15 guest rooms with new language that the occupancy

is subject to compliance with Virginia Department of Health (VDH) requirements for onsite sewage disposal systems.

To summarize:

- Owner-occupied short-term residential rentals with a maximum of 10 transient guests and resident occupants during the rental period may be approved by-right as a bed and breakfast home occupation.
- Owner-occupied short-term residential rentals with more than five guestrooms and/or more than 10 transient guests and resident occupants during the rental period may only be approved with a special use permit and site development plan for a country inn.
- Non-owner-occupied short-term residential rentals – **regardless of the total number of transient guests and resident occupants** – may only be approved with a special use permit and site development plan for a country inn.

Compliance with Onsite Sewage Disposal System Regulations

The Committee identified one critical policy issue – ensuring that the onsite sewage disposal system is approved by the Virginia Department of Health (VDH) for the short-term residential rental’s intended occupancy. Many short-term residential rental uses are operated in existing dwellings with septic systems designed to accommodate the number of bedrooms in the dwelling. Older dwellings may have septic systems approved many years ago under outdated regulations and even older dwellings may have systems that pre-date onsite sewage disposal system regulation. In order to ensure that an existing septic system can handle the sewage volume of a short-term residential rental use and the property owner’s residential occupancy, any new regulatory process must include VDH review and approval of the onsite sewage disposal system.

The Committee initially discussed requiring short-term residential rental operators to provide a copy of a valid VDH permit for the onsite sewage disposal system or other written approval from VDH as a condition of zoning approval. Planning Staff would then request VDH to verify that the proposed short-term residential rental use could be operated under that VDH permit or written approval. After consulting with VDH Staff, it was noted that VDH as a matter of policy will not evaluate onsite sewage disposal systems because short-term residential rentals are considered to be a commercial activity. In order to obtain an “approval” from VDH, an applicant would be required to hire an authorized on-site soil evaluator (AOSE) to evaluate the system in order to determine its capacity and operating condition. This could result in a significant cost to the applicant.

Following additional discussions with VDH at the Committee’s request, VDH Staff stated that they would be willing to provide “File Reviews” for applications as a County-initiated request for comments. This process would be similar to the process currently used to obtain VDH comments on site plan applications. Planning Staff would submit completed zoning permit application forms along with a comment request letter and any other pertinent information to VDH. VDH then would review the materials on file for the subject property and provide

comments based on the file contents, application, and supporting materials. VDH would not make site visits in conjunction with a “File Review” request so their comments would be based on the written materials on file and documents provided by the applicant. Additionally, VDH would not issue a written “approval” of the proposed use – their comment letter would confirm whether or not the existing onsite sewage disposal system will meet the capacity of the maximum proposed occupancy.

The “File Review” process would likely be sufficient to confirm the validity of more recent VDH permits and their compliance with current regulations. VDH would review the current permit on file and compare it with the maximum occupancy that the applicant lists on the application form. If VDH comments that the existing system has the capacity to support the stated use, then no further action or expense is required by the applicant. If VDH cannot confirm that the capacity for the proposed occupancy is compliant, then zoning approval could not be granted. The applicant then would have two options:

- Re-file the zoning application with a lower proposed occupancy that conforms to the existing system’s capacity and can be approved by VDH.
- Work directly with VDH through their application processes to make changes, modify, or expand the existing system to support the proposed maximum occupancy. This would require the applicant to incur costs of designing and installing the necessary system modifications according to current State and County septic system regulations. Once the modifications have been installed and approved by VDH, the applicant can re-file the zoning permit application.

The language below is proposed in the text amendment to address this requirement as well as to require an onsite sewage disposal system to be maintained for the life of the short-term residential rental use:

Bed and breakfast home occupation:

- 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. The maximum occupancy of a bed and breakfast 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 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 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.*

Country inn:

- 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.*

Additional Changes in Proposed Text Amendment

The following is a list of additional proposed changes. Some changes are directly related to the implementation of short-term residential rental regulations. Other changes included, specifically to the uses, are being proposed in the Zoning Ordinance update project and were added in for continuity purposes.

- 3-C-2-i – Dwellings, Single-Family.
 - Added a section for short-term residential rental activities indicating that the activity may be conducted either in a single-family dwelling or an accessory dwelling as a bed and breakfast home occupation or as a country inn.
 - Noted that no short-term residential rental activity may be conducted without zoning approval for the applicable use. The following definition for “short-term residential rental” is also included in this section:

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.

- 3-C-2-n-6 – Bed and breakfast regulations.
 - Clarified that guestrooms may be located in accessory structures located on the same lot subject to compliance with Building Code requirements and VDH regulations. Such accessory structures would have to qualify either as a tenant house or a dwelling of less than 600 square feet to be used for guestrooms.
 - Clarified that a bed and breakfast home occupation is not subject to the maximum allowable area for home occupation uses set forth in 3-C-2-n-5.

- Article 9, Definition of “bed and breakfast.” Added language that lodging is limited to a period of fewer than 30 consecutive days.

- Article 9, Definition of “country inn.” Added language that lodging is limited to a period of fewer than 30 consecutive days. Changed reference of the use as an “establishment” to a “business.” Deleted outdated language referencing country inn as including tourist home, guest ranch, guest farm, or other similar use as these terms are not defined in the Ordinance.

- 3-C-2-g – Country inn.
 - Added language that the sale of meals or prepared food is permitted as an accessory use to a country inn and that approvals or permits by applicable State agencies shall be obtained and remain active for the lifespan of the activity.
 - Added language that assembly activities for compensation are permitted as an accessory use subject to a maximum occupancy of 149 or as approved by the Building Department, whichever is less.
 - Replaced current language stating that a country inn may only be allowed as an accessory use to a single-family detached dwelling and that guestrooms may only be located in or attached to such a dwelling. New language states that a country inn requires the use of a dwelling unit right (DUR). Additionally if the country inn is developed in a structure other than a 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 will be required to be submitted with the special use permit application.
 - Deleted provision that “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.”

Application and Enforcement of Proposed Regulations

The Committee also discussed whether, if adopted, the proposed regulations could be applied to short-term residential rentals that are currently operating in the County.

In recent years, some rental operators have obtained business licenses for their short-term residential rental activities. In those cases, Planning Staff has written on the zoning approval portion of the business license application that no zoning approval is required for the use. If the proposed short-term residential rental regulations are adopted, the question was raised as to whether the new regulations could be applied to existing operators with business licenses.

Staff discussed this issue with the County Attorney. Any rental operator with a valid County business license stating that no zoning approval was required would be required to comply with the new use regulations for short-term residential rentals. Such operators would be “grandfathered” from having to obtain a zoning permit for their use so long as the previously-approved business license is kept in good standing and has not lapsed for two or more years. Enforcement of the new regulations on existing operations would be on a complaint basis as with other potential zoning violations. Staff notes that rental operators who did not obtain a business license for their use, or who do not have a written determination from the zoning administrator that the use does not require zoning approval, would have to comply with all new regulations including applicable permitting requirements.

If the text amendment is ultimately adopted and a policy decision is made to apply the regulations retroactively to existing short-term residential rentals, it will require a significant amount of staff time and resources to implement. In most cases with the adoption of a new text amendment, new regulations are applied to all new proposed uses moving forward from the effective date of the regulations. All existing uses would be considered nonconforming; any existing uses that do not have a nonconforming status (e.g., owner/operator never obtained zoning approval) would be addressed on a complaint basis.

If new short-term residential rental regulations were applied to all existing rental operations, a policy decision would have to be made regarding whether to enforce the new regulations on a complaint basis as with all other potential violations or to direct Planning Staff to apply proactive enforcement, which is not our current policy. If proactive enforcement is the policy decision, Planning Staff would have to develop an outreach program to inform all known operators of the new regulations with the goal of encouraging voluntary compliance and cooperation. Any operators who choose not to comply with the new regulations would be considered in violation of them and would be issued a notice of violation. This would likely require significant additional staff time and resources to gather enough evidence to issue a violation notice and to process each violation, potentially with legal assistance needed.

Staff recommends that the Commission provide a recommendation on these two policy questions that would ultimately be decided by the Board of Supervisors:

1. If the proposed text amendment is adopted, should the regulations be applied retroactively to existing short-term residential rental operations that do not otherwise have valid zoning approval?
2. If the regulations are applied retroactively, should Planning Staff enforce them on a complaint basis or implement a proactive enforcement program?

Amendment to the Current Zoning Ordinance vs. Amendment to the Revised Zoning Ordinance

Another policy issue for the Commission's discussion is whether the proposed regulations should be processed as an amendment of the current Zoning Ordinance or whether it should be included in the Zoning Ordinance Update Project that is in process. As you may recall, the Commission and Board of Supervisors agreed to limit consideration of amendments to the current Zoning Ordinance while the Ordinance Update Project is underway. According to the policy, an amendment of the current Zoning Ordinance should only be considered if:

- It is initiated either by the Planning Commission or the Board of Supervisors, or an application for text amendment is accepted by the Commission or Board for consideration, and
- The text amendment addresses either a critical procedural concern or an issue that impacts a County infrastructure project or economic development efforts.

The Commission should discuss whether the proposed text amendment is consistent with this policy in determining whether it can be processed as an amendment of the current Ordinance. There are factors that may make processing it as an amendment of the current Ordinance preferable over including it in the Ordinance Update Project. If there are significant public comments or concerns about the text amendment, processing it as a current Ordinance amendment would allow it to be considered as a standalone issue. If the text amendment is folded into the Ordinance Update Project, comments and concerns with it could impact consideration of the entire revised Zoning Ordinance.

One of the reasons for implementing the text amendment policy as it relates to the Ordinance Update Project was to avoid potential delays or confusion by amending the current Ordinance while we are attempting to update it in its entirety. Recent delays in completing final reviews of the draft Zoning and Subdivision Ordinance do present an opportunity to consider a current Ordinance text amendment without further impacting the Project timeline. Additionally, if adopted in its current format, the proposed text amendment could be folded into the revised Zoning Ordinance with minimal adverse impact.

For your consideration, the proposed text amendment is formatted as an amendment of the current Zoning Ordinance. Staff recommends the Commission discuss this issue and provide direction on how to process the text amendment if it will be considered. If the Commission decides to move forward with the proposed text amendment, the Commission should also consider whether to provide it to the Board of Supervisors informally before scheduling a Public Hearing. This would give the Commission an opportunity to gauge the Board's interest in the text amendment and to answer any questions they may have.

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

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

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.*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

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*.

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. The maximum occupancy of a bed and breakfast 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 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 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.***

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

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.

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*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

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.~~
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).*

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RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

- 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.*

Clarke County



**PLANNING COMMISSION
POLICY & TRANSPORTATION COMMITTEE
MEETING MINUTES
MONDAY, JULY 29, 2019**

A meeting of the Planning Commission's Policy & Transportation Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Monday, July 29, 2019.

ATTENDANCE

Present: Robina Bouffault, Scott Kreider, Gwendolyn Malone

Absent: Douglas Kruhm

Staff/Others Present: Frank Lee; Ryan Fincham (Senior Planner/Zoning Administrator)

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 October 17, 2018 meeting minutes as presented.

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

No: none

Absent: Kruhm

Discussion, Regulation of Short-Term Rentals

Ms. Bouffault stated that a voluntary collections agreement has been signed between the Clarke County Commissioner of the Revenue and AirBNB, noting that it addresses creation of a registry and the collection of transient occupancy taxes. She said the problem is that our current Ordinance does not regulate short-term rentals of less than 30 days. She said that she does not envision this being a major change and she does not think we can do anything with special event permits as this is a different issue to be addressed. She noted that the City of Waynesboro has adopted the most straightforward and simple regulations including adding "homestay" to their list of definitions. She said that "short-term residential rental" needs to be well-defined in the definition of "homestay," and she reviewed the other terms included in the Waynesboro ordinance. She noted Waynesboro's short-term rental registry regulations, adding that the County Administrator has concerns with creating such a registry. She stated that having a registry would provide the opportunity to ensure that short-

term rental operators have obtained the proper building and health permits for their use. Mr. Kreider noted that the Goochland County example provided by Ms. Bouffault requires the operator's occupancy to be consistent with the occupancy stated on the septic system permit, adding that this regulation should be considered.

Mr. Stidham asked how to deal with older homes that never had septic permits issued or for which the Health Department no longer has a permit on file. He added what would be the cost to that person to obtain a permit and would the Health Department issue a permit based on existing conditions. Ms. Bouffault noted that Blue Hill Farm on Bishop Meade Road is operating an AirBNB without a building permit and the Health Department could not find a septic system permit. She said they have constructed a large building for get-togethers and a cottage next to the main house, adding that there is no information for the new buildings in the land records and no building or septic system permits for them. She said it is obvious that they have done illegal construction which is a problem whether or not they are operating an AirBNB. She noted that the operators are advertising that they can accommodate up to 21 people in the main house and cottage, and she added that she does not believe their septic system is anywhere close to being able to handle 21 people.

Mr. Stidham said that since there are only 3 Committee members present, Mr. Lee could speak to this topic even though he is a non-member. Mr. Lee said that he likes Goochland's requirement that the occupancy not exceed the allowable occupancy on the septic system permit. He said that if you do not have a septic system permit for your property, you can request the Health Department to come out and try to determine what kind of system you have. He added that for unpermitted systems, you should require a determination of what the existing system is and its capacity. He also said that unpermitted systems should be required to establish a 100% drainfield reserve area because older systems are usually smaller, not maintained, and more subject to failure. Mr. Stidham asked whether the Health Department would issue a permit for a 100% reserve area and Mr. Lee replied yes. Mr. Fincham added that everything would go to the private sector as the Health Department will not get involved with AirBNBs. Ms. Bouffault asked if the County's code enforcement officer receives a complaint about an AirBNB operating outside of the septic system's approved capacity, does he turn the complaint over to the Health Department. Mr. Fincham replied that Staff has not received any complaints of this nature. He said that if such a complaint were received, the code enforcement officer would refer it to the Health Department and then close the complaint. Mr. Fincham added that the Health Department will only investigate the complaint if there is evidence of a drainfield failure. Ms. Bouffault asked for confirmation that they will only investigate if there is a failure and how they would know there is a failure. Mr. Lee responded yes and that evidence would be sewage on the ground or sewage backing up into the house. Ms. Bouffault cited an example of an AirBNB near the river and asked how they would determine a failure if the sewage is running directly into the river. Mr. Lee replied that there would still need to be a complaint. Ms. Bouffault asked if it had to be a septic system complaint or could it be any complaint and Mr. Lee replied that it has to be a septic system complaint. Mr. Fincham added that Staff investigates the exact complaint that is made and does not attempt to expand the scope of the complaint. Mr. Stidham said the scope can expand if one department sees a violation and refers it to the department with enforcement authority.

Mr. Kreider asked whether it would be a violation for advertising a higher capacity than allowed by the septic system permit, which would not require an inspection. Mr. Stidham replied that if you

required a zoning permit which had a prerequisite for review of the septic system permit, the zoning administrator would not be able to sign off on the zoning permit if the stated capacity exceeded the maximum capacity on the septic system permit. The applicant would have to modify the septic system and get a new approval from the Health Department or reduce the capacity on the zoning permit application. He then asked how much will an applicant be required to go through to get a new septic system permit if they do not currently have one or if one is not existing on file. Mr. Fincham added that the Zoning Ordinance still has a provision dealing with occupancy in single-family dwellings that we lost a court case over in the past and no longer enforce. Mr. Stidham asked if the Health Department will not sign off on or issue a permit to certify an existing system, will we accept a report from a licensed soil consultant. Mr. Fincham replied that approval has to come from the Health Department.

Ms. Bouffault said that another good part of the Waynesboro ordinance is that they require homestays to have fire extinguishers. She added that based on the maximum numbers of guests advertised, some AirBNBs in the County are automatically considered to be country inns. Mr. Stidham replied that this is not the case if multiple guests are part of a single customer group. He added that we do not currently regulate rentals to a single customer renting a single room or an entire house, and that a customer can be one person or one paying group. He noted that if a property owner is renting more than one room in a house to more than one customer or customer group, it would fall under the requirements for a bed-and-breakfast or a country inn. Ms. Bouffault reiterated that once a short-term rental registry is established by the Board of Supervisors, we can use the registry as a basis for requiring proof of compliance with building code and Health Department requirements. She said that a lot of these businesses are operating under the radar and we need a way to make sure that they are legitimized and on the same footing as the other County lodging businesses.

Mr. Stidham asked Ms. Bouffault if she looked at the County's existing transient occupancy tax section and whether it is missing all of the items that Waynesboro has in their ordinance and she replied yes. Mr. Stidham noted that Waynesboro has two components to their ordinance – a section dealing with transient occupancy taxation and the short-term rental registry and a section dealing with zoning regulations. He added that the Commission would only be dealing with the second part of the Waynesboro ordinance and that the Board would have to adopt the first part as a change to the County Code. Mr. Stidham said that new uses would need to be created and asked the Committee if in creating new zoning regulations, do the members want to differentiate between owner-occupied and non-owner-occupied rentals. Mr. Kreider said yes because the owner is on the property and can monitor the rental activity. Mr. Stidham said that if you create separate uses using this distinction, you would also need to create different use regulations to address the different impacts. Ms. Bouffault said that you could consider a rental to be owner-occupied if they are living on the same property but in a different residence where there are multiple residences on the property. Mr. Stidham said it is not difficult to determine whether a use is a home occupation or not – the difficulty is in coming up with different use regulations to account for owner versus non-owner-occupied rentals. Ms. Bouffault said that non-owner-occupied AirBNBs are commercial operations in residential areas and that ones with large occupancies should be re-categorized as country inns. Mr. Stidham noted that the country inn use was originally created for L'Auberge Provençale. Ms. Bouffault said that she understands what Staff is saying about the country inn use but we should be going by septic system capacity to determine maximum allowable occupancy. She added that if the

rental is non-owner-occupied, then it should be considered a country inn. Mr. Stidham replied that country inns require special use permits and the members said at the beginning of the meeting that we did not want to require special use permits for AirBNBs. Members and Staff then briefly discussed specific AirBNB listings in the County and whether they are owner-occupied.

Mr. Stidham said that if you want to create separate regulations based on owner occupancy, the regulations should have something to do with the owner not being present on the property. He said if you cannot come up with separate regulations, then we keep the two uses separate and have one as a home occupation and the other as a regular permitted use. The next step would be to come up with use regulations that would apply to both uses. He added that both uses would be approved by zoning permit. Ms. Bouffault asked Mr. Stidham if he was proposing this because Staff does not want to require a special use permit and he replied yes because the Committee members indicated they did not want to require special use permits. Mr. Stidham added that even if you required a special use permit, you would still have to come up with use regulations. Ms. Bouffault suggested requiring a special use permit for short-term rentals with large numbers of occupants. Mr. Stidham cautioned the members that if they want to create a special use permit, they should also have in their minds what would be the grounds for turning down an application. He added that if the concern is septic system capacity, then you do not need to create a special use permit to address the concern. Ms. Bouffault said that the Building Official told her that certain fire code and occupancy requirements are required on rentals with 10 or more occupants. She suggested requiring a special use permit for non-owner-occupied rentals with 10 or more occupants. Mr. Stidham noted that Goochland County caps the maximum occupancy at 10 regardless of whether it is by-right or a special use. He suggested capping the maximum occupancy for AirBNBs at 10 and requiring a country inn special use permit for occupancy over 10 people, noting that the special use permit would enable the owner to rent multiple rooms to multiple customers. He added that if you are renting to a group that is more than 10 people, it could be a family reunion, a corporate retreat, or other group activity that will likely bring impacts that you would not have with a smaller rental including special events. He said that 10 is a good number to address a lot of the impacts for this use. He also said the biggest challenge is how to deal with owners of older homes with septic systems lacking approved permits and not meeting current regulations. Mr. Kreider asked whether the homeowner can hire a private contractor to assess the system. Mr. Lee replied yes and how it relates to current regulations, noting that most older systems will not relate to current regulations. Mr. Stidham asked Mr. Lee what the cost to the applicant would be if we require a 100% reserve area to be established. Mr. Lee replied that it would likely be cost-prohibitive. Ms. Bouffault said that the owners of L'Auberge Provençale has to spend a significant amount of money to upgrade their septic system so requiring the same of other transient occupancy owners would put everyone on a level playing field. Mr. Kreider said that requiring septic systems to be upgraded would likely put a lot of them out of business. Mr. Stidham said that he likes the idea of the Goochland approach to septic systems but there are a lot of unanswered questions when dealing with older, nonconforming and unpermitted systems.

Ms. Bouffault said that she is far more concerned with fire code compliance. Mr. Stidham replied that if you cap occupancy at 10, occupancies over 10 would have to get a special use permit and site plan approved for a country inn and would be reviewed by the Building Department. He said that for occupancies of 10 or less, the building code classification is a single-family residence. Ms. Bouffault said she thought the use change occurs at 10 so it would have to be occupancy up to 9, and Mr.

Stidham replied that he would confirm this with the Building Official. Mr. Lee asked if the use would require a business license and Ms. Bouffault replied yes. Ms. Bouffault then reviewed AirBNBs from her list and noted information including which are owner-occupied and how many guests they are advertising.

Mr. Kreider said to summarize we would require short-term rentals for 9 occupants or less to get a business license and provide proof of septic system compliance. He asked if we are going to require 100% reserve if they have a valid septic system permit. Mr. Lee replied that in retrospect, they should not be required to provide 100% reserve if they have a valid permit. Mr. Stidham asked would we accept a stamped report from an AOSE if they do not have a valid permit. Mr. Lee replied that the report will likely have a lot of conditions and may not provide the assurances we need. Mr. Stidham asked what we should do if we are not going to allow an AOSE report. Mr. Kreider replied that we should require a 100% reserve area or deny the application. Ms. Bouffault said that if you want to build a house today, you need an approved septic system and a 100% reserve area. Mr. Lee said that if there is no permit at all for the system, then you should have to establish a 100% reserve area. He added that if the current system fails, they have an approved location for a new system that will likely cost \$25,000 or more which will knock a lot of people out. Mr. Fincham noted that you can use the language from the farm brewery use which requires a septic system permit issued for that use which is a new use on the property. He added that regulations should not be adopted that require the zoning administrator to interpret a septic system report – this should be the Health Department’s responsibility. Ms. Bouffault said that the wording here is perfect. Mr. Lee added that if you do not have a current permit from the Health Department, then you cannot operate the use. Regarding fire code issues, Mr. Fincham noted that the County does not enforce the property maintenance code as cities and larger jurisdictions do which allows for onsite inspections. He added that he does not know what level of involvement the building official will have if the use is not being reviewed as a special use permit. He cautioned that any requirements for fire suppression and fire safety that the Committee wants to add would be enforced by the Building Department so the building official should be consulted first. Ms. Bouffault said that if you cap the occupancy at 9, you do not need to check for fire and building code compliance but you still verify the septic system. At 10 or greater, everything would be checked as a special use permit for a country inn.

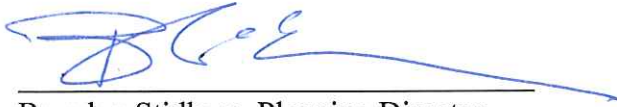
Mr. Stidham said that if there are a significant number of these businesses with occupancies of 10 or more, we may be looking at a parade of special use permit applications coming in to legitimize them. He said the Committee should be looking at what grounds they would use to deny such applications. Ms. Bouffault said that she did not think there would be a large number of special use permit applications at all.

Mr. Stidham summarized the Committee’s recommendations so far. He said that we would use the definitions from the Waynesboro zoning ordinance text amendment. He said there would be two uses created that are by-right requiring a zoning permit. One would be the home occupation use which requires the owner to reside on the property as their primary residence but not to stay on the property while the guests are there and allowing them to stay in a separate dwelling on the property. Mr. Fincham asked what separates this from a bed-and-breakfast home occupation. Mr. Stidham said that this is the AirBNB occupancy of one customer or one customer group. He continued by stating that the use would be for a maximum of 9 occupants and an approved Health Department permit showing

an allowable occupancy that matches the stated occupancy for the business would be required. He said absent a valid Health Department permit they would have to provide some other approval which would be a 100% reserve drainfield area approval. Mr. Lee said the Health Department will not issue a certification letter for a 100% reserve drainfield area to an existing system that does not have a valid permit. Ms. Bouffault said they will only issue a certification letter for a new permitted septic system. Mr. Stidham said that this could be a problem because we would be requiring all owners without valid septic permits to install new compliant systems, and he asked what would be the chances of this regulation being approved in a text amendment. Ms. Bouffault replied that the only people who would not want to comply are those who are flying under the radar anyway. Mr. Kreider asked Mr. Stidham why the regulation would not be approved and he replied that it might be opposed. Ms. Bouffault asked why it would be opposed and Mr. Stidham replied that you would be imposing the requirement on all operators who do not have a valid septic system permit. Mr. Lee added that it would probably be 50% of the current AirBNBs. Mr. Stidham suggested looking at the list of AirBNBs provided by Ms. Bouffault and identify all of the ones that would likely come in to get a zoning permit and are unlikely to have a valid septic system permit due to the age of their home. Ms. Bouffault said there are not that many. Mr. Stidham asked how far back septic systems go at the Health Department. Mr. Lee replied that they go back to the 1940s and 1950s but occupancy was not always listed on these older permits. Mr. Stidham asked the members if an applicant has a permit from the 1950s with no listed occupancy but states they will honor the maximum of 9 occupants, would they be comfortable with this. Mr. Lee said that the old permits will either have an occupancy or a maximum system volume. He noted that you can sometimes relate the old volumes to current capacities but not in all cases. Mr. Stidham said that Staff does not want to be in a position where we are asked to translate old permit information into a current day occupancy. He also said what is Staff supposed to do with an old permit that only lists a volume, and Mr. Lee and Mr. Fincham added that many older permits only list a volume and do not list an occupancy. Mr. Kreider said that the applicant would have to hire a consultant to convert the volume to an occupancy. Ms. Bouffault said that the Health Department would have to make this determination. Mr. Stidham replied that the old volumes do not always translate into current regulation occupancy requirements. Mr. Fincham said that we may need to talk to the Health Department about their "Safe, Adequate and Proper" and "Courtesy Review" processes and whether it would work for what we want to accomplish with our text amendment. Mr. Stidham said that the text amendment language could require "a valid septic system permit or other written approval by VDH." Mr. Lee said that staffing limitations at VDH could be a problem in getting the information from VDH in a timely fashion.

Mr. Kreider suggested having Staff develop a draft text amendment to be reviewed at an upcoming meeting. Ms. Bouffault said that she is pushing to have this resolved from a zoning standpoint prior to the County Administrator's retirement at the end of the year so he can assist with coordinating issuance of formal letters to transient rental operators by the Commissioner of the Revenue. Mr. Stidham suggested scheduling the next meeting immediately following the Commission's September 3 briefing meeting and the members agreed. He said that he will develop a working draft of a text amendment that may have options regarding the septic system regulations depending on what we find out from VDH. He also said the Committee needs to provide justification why the current Zoning Ordinance needs to be amended in accordance with the Ordinance Update Project Policies that were agreed to by the Commission and Board.

The meeting was adjourned by consensus at 11:16AM.



Brandon Stidham, Planning Director

Clarke County



**PLANNING COMMISSION
POLICY & TRANSPORTATION COMMITTEE
MEETING MINUTES
TUESDAY, SEPTEMBER 3, 2019**

A meeting of the Planning Commission's Policy & Transportation Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Tuesday, September 3, 2019.

ATTENDANCE

Present: Robina Bouffault, Scott Kreider, Douglas Kruhm

Absent: Gwendolyn Malone

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 4:10PM.

APPROVAL OF AGENDA

The Committee approved the agenda by consensus as presented.

APPROVAL OF MINUTES

The Committee approved the July 29, 2019 meeting minutes as presented.

Yes: Bouffault (seconded), Kreider (moved)
No: none
Absent: Malone
Abstained: Kruhm

Continued Discussion, Regulation of Short-Term Rentals

Mr. Stidham began by reviewing the draft text amendment for "short-term residential rentals," and noted discussion questions on page 10 of 12 in the meeting packet. He also referenced a draft application form that Staff prepared in developing the draft text amendment. He said that he contacted the Goochland County zoning administrator with questions about their short-term rental regulations and learned that Goochland does not regulate the number of individual paying customers in a short-term rental facility. He added that they allow a maximum of 10 customers at a time but all 10 could be individually-paying customers.

Mr. Stidham noted that the draft text amendment requires an applicant to provide a valid Virginia Department of Health (VDH) permit for the onsite sewage disposal system or other written approval from VDH as a condition of approval. Commissioner Lee said that he recently spoke with VDH staff and was told by the supervisor Jim Davis that VDH will not evaluate onsite sewage disposal systems because short-term rentals are a commercial activity. He added that this would mean that any required evaluations would have to be done by an authorized on-site soil evaluator (AOSE). Mr. Stidham asked if this includes both "Safe, Adequate, and Proper" reviews and courtesy reviews, and Commissioner Lee replied yes. Commissioner Ohrstrom asked about these two reviews and Mr. Fincham explained them. Mr. Fincham added that he would not have a problem interpreting the validity of a recently-issued septic system permit but any permits that require interpretation need to be reviewed by VDH. Mr. Lee noted that if there is no information on an existing system, an AOSE will have to determine all aspects of the system including how it will operate in the future. Mr. Stidham noted that while Mr. Fincham has a background in VDH regulations, there is no guarantee that future staff members will have that same expertise. He added that we should be sending all applicants to VDH for review but if VDH will not review short-term rentals, then maybe septic system review should be taken out of the draft text amendment especially if the maximum number of occupants will be capped at 10. Commissioner Kreider asked if we could require applicants to provide a copy of a working septic system review by an AOSE. Mr. Stidham replied that you would still have to have VDH staff review this information.

Commissioner Bouffault distributed an updated version of her AirBNB spreadsheet for the Committee to review. She noted that she has all of the septic system information on the existing AirBNBs and noted the ones that are out of compliance with the VDH permit based on the number of guests that they are advertising. Commissioner Kreider asked if we could require proof that the existing septic system is compatible with the applicant's number of guests. Mr. Stidham provided the example of an applicant with a 25-year old septic system permit containing an occupancy number and stating that the maximum occupancy will not exceed the number on the permit. He said the 25-year old permit may be valid but not compatible with current VDH regulations. He added that Staff feels strongly that if we are going to regulate septic systems with short-term rentals, then they all should be reviewed by VDH staff. Commissioner Lee said that Planning Staff should discuss this situation with VDH to see if they would be willing to change their policy.

Mr. Stidham noted that Staff has not discussed this text amendment with the County Attorney to determine whether it can be enforced retroactively on existing short-term residential rentals if adopted. He said he thinks you can because the County currently does not regulate short-term rentals and we would not be replacing regulations with new ones, potentially creating a grandfathering situation. Mr. Fincham noted that Warren County did not apply their regulations retroactively when they adopted them. Mr. Stidham added that a current short-term residential rental operator who got a business license may be able to argue that they are grandfathered. Commissioner Kruhm asked about existing short-term residential rentals and whether they would not have to comply with fire code and VDH regulations. Commissioner Ohrstrom replied that if a use is nonconforming it does not mean they are grandfathered from having to comply with other regulations besides zoning. Commissioner Kreider said that we definitely need a legal opinion on this issue.

Mr. Stidham noted that he confirmed with the Building Official that building code use group requirements change with 11 occupants so creating a zoning cap at 10 occupants will be consistent with building code requirements. Commissioner Ohrstrom asked if the occupants have to be unrelated occupants and Mr. Stidham replied that it is 10 occupants regardless of relation.

Commissioner Ohrstrom left the meeting.

Regarding establishing regulations for owner-occupied versus non-owner-occupied short term residential rentals, Commissioner Bouffault said that she thought that the City of Waynesboro's homestay regulations were oriented to owner-occupied rentals, giving you a different category from non-owner-occupied rentals. Mr. Stidham replied that we can create separate uses based on whether the short-term residential rental is or is not owner-occupied but they would be identical unless separate regulations were adopted that would apply to one but not to the other. Commissioner Bouffault said that a true bed-and-breakfast for two guests should only require a business license but the larger operations offering rentals for 16-18 guests when the septic system is only approved for 10 occupants are in a totally different category and not a bed-and-breakfast. She said that these should be country inns or hotels and we have existing ordinances for them. Mr. Stidham replied that it is not a country inn if you have a group of people staying together as one paying customer group. Commissioner Bouffault said you cannot treat renter groups as units as one customer is not the same as 10 customers paying together. Mr. Stidham replied that if you change this interpretation, then the text amendment is not going to be a quick fix. He asked whether the Committee wants to take the Goochland approach and not regulate the number of individual paying customers to a maximum of 10. Commissioner Bouffault gave an example of a property owner renting two residential units to two separate customers at a time. Mr. Fincham replied that this would not be a short-term rental and would be currently regulated as a bed-and-breakfast. Mr. Stidham said that before AirBNB started, property owners would ask whether they could rent their barn apartments on a short-term basis to people that were in between residences and Staff's response was that the County does not regulate short-term rentals. He added that once you start renting to two or more customers, zoning regulations apply. He said that under the draft text amendment, any rentals with occupants that exceed a maximum of 10 would be required to get a country inn special use permit or reduce to a maximum of 10. He then repeated his original question of whether owner and non-owner-occupied rentals should be treated as separate uses with separate regulations. Commissioner Kreider said no. Commissioner Bouffault said that an owner-occupied short-term rental would be a bed-and-breakfast. Mr. Stidham replied that you can serve meals at a bed-and-breakfast but not in conjunction with the draft short-term residential rental use. Mr. Fincham added that if you want to be an innkeeper, then you are operating a bed-and-breakfast and are subject to VDH review. Mr. Stidham also said that current bed-and-breakfast uses are home occupations and the owner is required to live onsite.

Commissioner Bouffault said that her primary focus is to enable the Commissioner of the Revenue to send out a letter to AirBNB operators basing herself on the ordinance. She said right now we do not have an ordinance and we have signed a voluntary collections agreement with AirBNB. Mr. Stidham said that the Commissioner of the Revenue can send a letter out tomorrow because that office operates separately from zoning. Commissioner Bouffault said that regarding the transient occupancy tax you do not have an ordinance that references transients and defines short-term rentals. Mr. Stidham noted the Waynesboro transient occupancy tax ordinance and said that these ordinances

would be part of the County Code adopted by the Board of Supervisors and would have nothing to do with the Zoning Ordinance or Planning Department. He said that creating zoning regulations adds an additional layer of rules that are related to the taxation regulations but are not required.

Commissioner Bouffault said that if the Commissioner of the Revenue creates a short-term rental registry, that department will have to ask questions of applicants such as whether they have valid permits. Mr. Stidham replied that the Commissioner of the Revenue is not required to ask these questions and would only do so if we added zoning regulations as an additional layer of rules. He added that this would be similar to the current arrangement of having all business license applications reviewed for zoning compliance prior to issuance by the Commissioner's office. He also said that the Commissioner is under no obligation to do this and could issue business licenses without any zoning review, noting that there are some counties with Commissioners of the Revenue who choose to issue business licenses completely independent from the zoning office. Commissioner Kreider said that first off we need to find out if the text amendment can be enforced retroactively if it is adopted. Mr. Stidham replied that he will have the County Attorney review this question and added that anything that would need to go in the taxation section of the County Code is a completely separate issue from zoning regulations. Commissioner Bouffault said that you still need a definition for short-term residential rental and Mr. Stidham replied that this can be added to the taxation section of the County Code. Commissioner Bouffault replied that it cannot be in the taxation section if it is not in the Zoning Ordinance and Mr. Stidham disagreed. He said that if you had a zoning layer it would be nice to have it coordinated with the taxation layer but right now, we do not have zoning regulations for short-term rentals. He added that the Commissioner can tax short-term rentals today and it would have nothing to do with zoning.

Commissioner Kreider said that in regards to Staff's question #4, short-term residential rentals should not be allowed in the Rural Residential (RR) District. Mr. Stidham said that this is a big reason why Warren County requires a special use permit because of the hundreds of small residential lots on the mountain that they have. He added that he would make this change to the draft text amendment.

Commissioner Bouffault said that she is concerned with the text amendment restricting rentals to one unit at a time. Mr. Stidham replied that this is consistent with Staff's current interpretation.

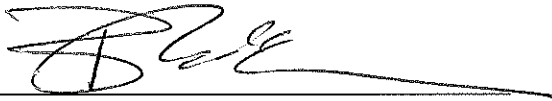
Commissioner Bouffault said that if the Commissioner of the Revenue is going to require people to come in to get business licenses, there are going to be a lot of complaints when they are told that the Zoning Ordinance limits them to one customer unit at a time. Mr. Stidham replied that the Commissioner will only care if the owner has a business license and is paying transient occupancy tax, and she will not care whether they are in compliance with any outside regulations.

Commissioner Kreider said that you do not want to have multiple groups in these rentals, and Mr. Stidham added that if you want to rent to two groups then you need a special use permit for a country inn. Commissioner Bouffault said that some of the current AirBNBs would be country inns. Mr. Stidham replied that if operators want flexibility to have more than 10 occupants or to rent to multiple groups, then we would hand them an application for a country inn special use permit. He added that this also costs thousands of dollars to develop a site plan and pay application fees. Commissioner Bouffault said that everyone needs to be on a level playing field and we are discriminating against the businesses that have already paid thousands of dollars to be in compliance. Commissioner Kreider replied that if we adopted regulations, they would be on a level playing field. Mr. Stidham said that there have not been any complaints about the home occupation use for a bed-and-breakfast, which

can be approved administratively for \$130 and not require a site plan. Commissioner Bouffault said that this needs to be changed as it is not a home occupation.

Commissioner Kreider reiterated that we need to find out from the County Attorney how this text amendment can be applied to existing short-term residential rentals. Mr. Stidham said that when Staff has an opportunity, we will discuss the review of septic systems with VDH staff. He said he will also talk to the County Attorney returns on September 23. He said to Commissioner Bouffault that she can continue to work with the Commissioner of the Revenue on any changes that may need to be made to the taxation code. He also said that once he has all of that information, he will schedule the next meeting which may not be until the first part of October.

The meeting was adjourned by consensus at 4:40PM.



Brandon Stidham, Planning Director

Clarke County



**PLANNING COMMISSION
POLICY & TRANSPORTATION COMMITTEE
MEETING MINUTES
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 is 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.

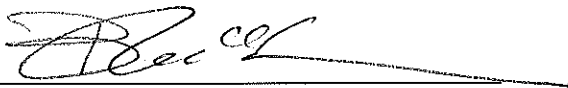
Members agreed to schedule the next meeting for Friday, February 7 following the Commission's Business Meeting.

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

Clarke County



**PLANNING COMMISSION
POLICY & TRANSPORTATION COMMITTEE
MEETING MINUTES -- DRAFT
FRIDAY, MARCH 6, 2020**

A meeting of the Planning Commission’s Policy & Transportation Committee was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, March 6, 2020.

ATTENDANCE

Present: Robina Bouffault, Scott Kreider, Gwendolyn Malone

Absent: Douglas Kruhm

Staff/Others Present: Ryan Fincham (Senior Planner/Zoning Administrator); Frank Lee

CALLED TO ORDER

Mr. Stidham called the meeting to order at 10:02AM.

APPROVAL OF AGENDA

The Committee approved the agenda by consensus as presented.

APPROVAL OF MINUTES

The Committee approved the January 10, 2020 meeting minutes as presented.

Yes: Bouffault (moved), Malone (seconded)

No: none

Absent: Kreider

Abstained: Kruhm

Continued Discussion, Regulation of Short-Term Residential Rentals

Mr. Stidham recapped the Committee’s previous discussions of how to integrate the Virginia Department of Health’s (VDH) review of onsite sewage disposal systems into this proposed process. He said that instead of trying to create a new process, applicants will be sent to VDH to work through their processes to ensure that the onsite sewage disposal system can support the proposed usage. He noted that this could produce a hardship for owners of older homes with systems that were never permitted or for which permit information is not on file. He added that the goal is to have VDH provide something in writing indicating that they have reviewed and approved the proposed usage for the applicant’s system.

Mr. Stidham said that the revised approach proposed by Staff focuses on whether the short-term residential rental will be owner-occupied or non-owner-occupied. He said that if the rental will be non-owner-occupied to any degree, then it is essentially a commercial operation and not a residential operation. He said that instead of establishing a new use for short-term residential rentals, the approach modifies the use regulations for the home occupation bed-and-breakfast permitted use and the country inn special use. He noted that the first step in this approach is to add “short-term residential rental” to the use regulations for single-family dwellings to establish that such activities will now require zoning approval. He said the second step would be to modify the bed-and-breakfast home occupation regulations to address rentals in an owner-occupied situation. He noted that the current maximum occupancy of five transient guests would be changed to a maximum of 10 occupants, which are the total number of people that will be in the home at any one time during a rental activity. He added that the final step would be to modify the country inn regulations to address rentals in a non-owner-occupied situation. He said that for consistency purposes, the current maximum continuous occupancy regulation of 14 days would be amended to a period of fewer than 30 consecutive days. He noted that this would be the use if the rental activity is being done as a business and not in conjunction with the applicant’s home. He also said that the maximum occupancy would remain at 15 guest rooms and that would be based on approved onsite sewage disposal system capacity.

Mr. Stidham noted at the end of the meeting packet is a chart listing different occupancy scenarios and whether they could be approved as a bed-and-breakfast home occupation or a country inn special use. He said that the chart presumes an “AirBNB-type” situation with a maximum occupancy of 10 with VDH approval of the septic system. He noted in the first three scenarios that a bed-and-breakfast approval can be granted if the owner lives on the property in the rental structure or on a different structure on the same lot, but a country inn special use permit is required if the owner lives on an adjacent or nearby lot. He stated that a home occupation approval can only be granted if the business operator lives on the property and is there while operating it. He also noted that in these first three scenarios, distance does not matter. He said that if you had two adjacent lots in the Retreat, you cannot have the owner living on a separate lot from the rental because that would not qualify as a home occupation even if the owner’s residence is only 50 feet away from the rental. He also said that you can have an owner with a 100 acre property renting a tenant house on the same property 1000 feet away and this would still constitute a home occupation.

Mr. Stidham noted that the fourth scenario may be quirky, involving an operator living on the property in the rental structure but who rents the structure out when traveling and is not on site during the rental activity. He said that this would not qualify as a home occupation because the actual business is not operating while the owner is onsite, so these applicants would have to get a country inn special use permit. He noted that a scenario in which a property owner rents their house to one couple at a time when they are traveling would not have many impacts but would still require a special use permit because of the emphasis on owner vs. non-owner-occupied rentals as a policy issue. He added that small rentals like this one would likely go underground and not get permits but the big ones would be self-evident because of advertising. Commissioner Bouffault said that the big operators have invested a lot of money in their rentals and improvements so there would be an incentive for them to regularize themselves and we need to make it easy for them to do so. She added that the only big hang up is septic. Mr. Stidham that AirBNB started as a home share concept and a

way to allow people to make money while they are not at home, but owners in these situations would have to get a country inn special use permit under this approach. Commissioner Malone asked how the proposed rules would affect home swapping in which property owners on vacation trade houses as short-term rentals. Mr. Stidham replied that this is the home share example. He also reiterated that a bed-and-breakfast rental must follow the home occupation regulations and you cannot qualify as a home occupation if you are not in the home while the business is being conducted. Commissioner Bouffault asked whether you can have home swapping without money exchanging hands and Mr. Stidham replied that there would be no problem with this, and Commissioner Malone added that it would not fall under these regulations. Mr. Stidham added that if no money is changing hands, then it is not a business. Mr. Fincham also added that bed-and-breakfast and country inn regulations use the term “for compensation.”

Regarding septic systems, Commissioner Lee said many older houses have permits that are many years old and asked if those permits would be honored under this approach. Mr. Stidham replied that we are going to require applicants to work directly with VDH and have VDH make this determination. Commissioner Lee replied that VDH will likely say that if it met the requirements at the time the permit was issued, then the permit is still valid. Mr. Stidham added that Mr. Fincham will just need to get something in writing from VDH that the permit is acceptable for the use. Commissioner Bouffault said that she remains concerned with operators who advertise occupancies well above the permitted occupancy of their system permit. Mr. Stidham replied that applicants will have to state the maximum occupancy on their application form under this proposed process. He added that the draft application form that the Committee reviewed previously contains a disclaimer stating that the applicant understands that if you advertise occupancies greater than allowed by the permit, this could be grounds for permit revocation. Mr. Fincham noted that requiring a 100% reserve area with this process was discussed previously but is not included in the currently proposed language. Commissioner Lee said that applicants probably should not be required to meet current VDH requirements if VDH says that their current permit is still valid. Mr. Fincham said that if the existing system cannot support the proposed occupancy, then the applicant must make all modifications to the system as required by VDH before zoning approval can be granted. Commissioner Lee said that older permits that did not require a reserve area will probably still be honored by VDH. Mr. Stidham added that VDH may look at a country inn special use permit application differently because it is a business. Mr. Fincham noted that this would also be a change of use and added that the septic ordinance would require a 100% reserve area to be provided if there is a change of use. He also noted that currently he sends zoning approvals for bed-and-breakfast operations to VDH and the Building Department to make them aware of the new use. Mr. Fincham asked if a bed-and-breakfast would be a change of use and Mr. Stidham replied that it would be an additional use, then agreed with Commissioner Bouffault’s comment that it would be an accessory use. Mr. Fincham noted that an accessory use would not necessarily require a 100% reserve area but a country inn special use would require a 100% reserve area. Mr. Stidham stated that the revised Zoning Ordinance will require all government approvals as a condition of zoning approval which would allow Mr. Fincham to require VDH approval before issuing a bed-and-breakfast home occupation zoning permit approval. Commissioner Lee said there would be a problem with an older house like Blue Hill that has no permit because VDH would provide no comments on the system in absence of a permit. He added that VDH will not require any modifications unless the existing system is failing. Mr. Fincham said that the proposed language will require written approval from

VDH that the existing system will support the proposed occupancy. Commissioner Lee said that VDH will require the applicant to hire a private sector consultant to evaluate whether the system meets the requirements. Mr. Fincham added that VDH will require the system to meet current standards in order for them to state in writing that the system will support the proposed occupancy. He also said that if an applicant has no permit, VDH will require them to get a permit. Mr. Stidham said that if septic system compliance is the number one policy issue with these regulations, then what comes out of this may be that these older homes with no permits will get VDH permits and meet current system requirements. Commissioner Lee said that there is no guarantee that all properties will be able to get permits. Mr. Fincham said that whether these regulations will be enforced retroactively is a policy issue and reiterated that applicants have been told that the current policy is that we do not regulate short-term residential rentals. Mr. Stidham added that this goes back to our general policy questions of whether we want to apply the rules retroactively because we have the option to do so per the County Attorney and, if so, do we want to enforce differently than complaint-basis enforcement. Commissioners Bouffault and Kreider said that the regulations will have to be imposed retroactively.

Mr. Stidham completed reviewing the remaining scenarios noted on the chart. He said that in the fifth scenario in which the owner splits time residing on the property and elsewhere but is onsite at all times when renters are present, this is a home occupation bed-and-breakfast and Staff will not attempt to prove where the applicant has their primary residence. He noted that all four of the remaining scenarios require a country inn special use permit because none meet the requirements for a home occupation. He also noted that in the eighth scenario, this could be permitted as a home occupation if the caretaker or family member residing in the rental is the holder of the home occupation zoning permit and otherwise meets all home occupation regulations.

Mr. Stidham asked the members if they are comfortable with placing this on the Commission's April work session agenda and the members replied yes. Commissioner Bouffault said that she wanted to touch on the enforcement element and distributed a brochure and information from Greene County. She said this is a really good example of how to educate potential operators of the rules for short-term residential rentals in a non-threatening manner. Commissioner Bouffault said that the Greene County Planning Commission is the entity sending out the information and it is presented in a user-friendly manner. She then asked how the Building Department deals with enforcement and complaints. Mr. Stidham replied that he did not want to speak for the Building Department and suggested contacting them directly with the questions. Commissioner Bouffault said that she would talk with the Building Official about her questions. She also asked about Planning Department enforcement actions and how we can modify the requirement that violations are taken to court. Mr. Stidham replied that as a matter of practice we want to achieve compliance rather than issue punishment. He said that if a property owner responds to a notice of violation or inquiry and works with Staff in good faith, then we will work with them to achieve compliance without pursuing court action. Commissioner Bouffault said that we need to give short-term residential rental operators an incentive to comply with the regulations. Mr. Stidham replied that it is a good idea if we are going to apply new rules retroactively to do the soft sell and give operators one year to come into compliance. Commissioner Bouffault said that this is a good idea. Mr. Stidham added that we can send out a brochure like the example Commissioner Bouffault provided instead of sending out violation letter, but can do so one year later for the operators who chose not to contact us. Commissioner Bouffault asked if everyone

agrees with the one year and the members agreed. Mr. Stidham said that you are going to have to do the soft sell if you want compliance, otherwise you will have operators going underground or complaining about the rules at Board of Supervisors meetings.

Mr. Stidham said that for the April meeting, he will bring forward the Staff memo in a format as the Committee's recommendation. He asked the members if they wanted to take a vote on it or is there a consensus, and the members agreed that there is a consensus. Mr. Stidham added that he will attach some of the earlier information such as the sample application forms. He will also talk about the general policy issues of retroactive application and how to handle enforcement. He said one question for the Commission will be whether to do this as an amendment to the current Zoning Ordinance or fold it into the revised Zoning Ordinance. He added that it is currently written as an amendment to the current Ordinance, and that it might be best to do as an amendment to the current Ordinance since the Ordinance Update Project is at a standstill. Commissioner Bouffault asked if we could move forward with the revised Zoning Ordinance and update the Subdivision Ordinance later. Mr. Stidham responded that the County Attorney will still need to review the revised Zoning Ordinance before adoption. He added that he does not recommend separating the Ordinances because they are so interrelated including with the new shared Definitions article. Mr. Stidham noted that if the Commission is comfortable with the text amendment, then they could add it to the Business Meeting agenda to schedule public hearing. He also said that the Commission may want to send this to the Board of Supervisors informally before scheduling public hearing to gauge their level of interest.

The meeting was adjourned by consensus at 10:33AM.

Brandon Stidham, Planning Director

BED AND BREAKFAST ZONING PERMIT APPLICATION

- A bed and breakfast zoning permit is required for a home occupation where lodging or lodging and meals are provided for compensation to transient guests for a period of fewer than 30 consecutive days.
- The permit holder shall occupy the property at all times during rental activities either in the main residence or in an accessory dwelling located on the same lot.
- The maximum occupancy of a bed and breakfast shall not exceed **ten (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.**
- In the event that the proposed activity does not meet the requirements for a bed and breakfast home occupation, the rental activity may be allowed through approval of a special use permit and site development plan for a “country inn” use.

Applicant Information

Applicant’s Name: _____

Address of Proposed Bed and Breakfast: _____

_____ Tax Map #: _____

Phone: _____ Email: _____

- Check one: I am the property owner _____ I am a resident _____

* Note – If you are not the property owner, the property owner must also sign this application.

- The property containing the bed and breakfast is my primary residence. YES____ NO____
- I will occupy the property at all times while it is being rented. YES____ NO____

Occupancy Information

- Maximum number of occupants (including renters and residents – not to exceed 10 and must be equal to or less than the approved capacity of the onsite sewage disposal system): _____
- Virginia Department of Health (VDH) approval attached? YES____ NO____

NOTE – Applications for bed and breakfast home occupations that are 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 short-term residential rental shall be a prerequisite to issuance of this zoning permit.

If you do not have a copy of an onsite sewage disposal system permit for your property, please contact the Virginia Department of Health (VDH) prior to filing this zoning permit application form.



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Zoning & Subdivision Ordinance Update Project – Revised Work Plan for Project Completion

DATE: May 28, 2020

Enclosed for your review is a revised work plan to complete the remaining steps in the Zoning & Subdivision Ordinance Update Project.

The revised Work Plan is an update from the previous version generated in Summer 2019 and accounts for the following completed tasks:

- Presentation of the draft Ordinances and Definitions Article to the Ordinances Committee for final approval and recommendation to the full Planning Commission.
- Presentation of the draft Ordinances and Definitions Article to the Planning Commission and Board of Supervisors in a series of four joint workshops in Fall 2019.
- Comments, corrections, and edits generated from the joint workshops and follow-up meetings with the Commission have been incorporated into updated versions of the draft Ordinances and Definitions Article. Tables tracking the changes between the two versions of the Zoning Ordinance and Definitions Article have been compiled for reference.

You will note that the Work Plan does not contain a specific timeline for completion of remaining tasks. The Subdivision Ordinance remains under cover-to-cover legal review by the County Attorney and has not been presented in a complete draft to the full Commission or Board of Supervisors. Earlier drafts of the Zoning Ordinance and Definitions Article were reviewed by the County Attorney for specific legal questions but neither have received a cover-to-cover review. The project cannot move towards completion until the legal review has been completed and a completion time has not yet been determined.

Given the complexity and time-consuming nature of a legal review, the Commission may want to discuss whether a cover-to-cover legal review of the Zoning Ordinance and Definitions Article is necessary. This would require reliance on Staff's accuracy in assembling the drafts and in identifying the key legal issues that have been reviewed by the County Attorney to date. Once legal review of all documents is resolved, Staff anticipates completion of Steps 5 and 6 including adoption of the Ordinances and Definitions Article to take a minimum of six months.

Staff recommends that the Commission discuss the merits of the revised Work Plan at the June 5 meeting. Acceptance of the Work Plan can be by consensus. Please let me know if you have any questions or concerns in advance of the June 5 meeting.

**ZONING AND SUBDIVISION ORDINANCE UPDATE PROJECT
REVISED WORK PLAN FOR PROJECT COMPLETION
(Staff Draft – 5/28/2020)**

COMPLETED:

STEP 1 – Adopt work plan, project policies, and timeline

STEP 2 – Discuss and provide formal direction on policy and technical issues

STEP 3 – Approve framework for draft Ordinances

STEP 4 – Present draft Zoning Ordinance, Subdivision Ordinance, Definitions Article, and Guidance Manual to Ordinances Committee for final approval

TO BE COMPLETED:

STEP 5 – Presentation of Initial Draft Ordinances for Planning Commission and Board of Supervisors Review

Summary

Planning Staff presented drafts of the revised Zoning Ordinance (Article I) and Definitions Article (Article III), and conceptually presented revisions to the Subdivision Ordinance (Article II), to the Planning Commission and Board of Supervisors over a series of four joint workshops in late 2019. The revised Subdivision Ordinance draft remains under legal review and was not presented to the Board and Commission at the joint workshops.

The final action item for Step 5 is for the Commission to accept the drafts of the revised Zoning Ordinance, Subdivision Ordinance, and Definitions Article for final consideration, Public Hearings, and adoption.

Status of Drafts

- **Zoning Ordinance Article I -- VERSION 5:**
 - Version 4 was reviewed by the Commission and Board at the joint workshops.
 - Version 5 has been initially compiled by Staff to include Commission and Board comments and Staff edits. A table listing the changes from Version 4 to Version 5 has also been assembled.
 - **TO DO** – Commission review of any remaining policy and technical issues identified by Staff.
 - **TO DO** – Determine how final legal review will be conducted.
 - **TO DO** – Incorporate remaining edits to complete Version 5.
 - **TO DO** – Present Version 5 to the Commission for acceptance.

- Subdivision Ordinance Article II – **VERSION 3:**
 - The full Commission has not reviewed a draft of the Subdivision Ordinance. Copies of Version 2 (for legal review) were provided to the Ordinances Committee.
 - Version 3 has been initially compiled by Staff to include comments received from the joint workshops. No table of changes was generated since the Commission has not reviewed any drafts. A copy of Version 3 was provided to the County Attorney via email on May 5.
 - **TO DO** – County Attorney to complete cover-to-cover legal review.
 - **TO DO** – Incorporate legal edits to complete Version 3.
 - **TO DO** – Present Version 3 to the Commission for acceptance.

- Definitions Article III – **VERSION 5:**
 - Version 4 was reviewed by the Commission and Board at the joint workshops.
 - Version 5 has been compiled by Staff to include Commission and Board comments and Staff edits. A table listing the changes from Version 4 to Version 5 has also been assembled.
 - **TO DO** – Determine if County Attorney has any further legal concerns with Article III.
 - **TO DO** – Incorporate any remaining edits to complete Version 5.
 - **TO DO** – Present Version 5 to the Commission for acceptance.

Timeframe for Completion

Completion times for legal review of the Ordinances is not currently known. Once legal review is complete, it will take 3-4 days of Staff time to incorporate changes, finalize the drafts, and produce hard copies for the Commission’s review.

Given the time that has lapsed since the joint workshops and with the addition of new Commissioners, Staff anticipates that at least two Commission meetings will be required to complete review of the final drafts (minimum of two months). Formal action by the Commission will need to be taken at a scheduled Business Meeting to accept the drafts for final consideration, Public Hearing, and adoption.

Guidance Manual

Staff continues to work on the initial draft of the Guidance Manual – the companion document to the Ordinances that presents regulations, processes, and other important information in a customer-friendly format for citizens, business owners, and design professionals.

The current layout of the Guidance Manual consists of the following sections:

- General Information (DRAFT COMPLETE) – How to Use the Guidance Manual; Zoning Ordinance, Subdivision Ordinance, and Related Ordinances; FAQs on Sliding-Scale Zoning, the Clarke County Comprehensive Plan, conservation easements, and Karst; Relationships to Towns; and List of Key Agencies and Departments

- Information for Residents (DRAFT COMPLETE) – Permit Applications Generally; FAQs on small residential construction projects, subdividing new lots, adjusting property lines, additional dwellings on a lot, remedies, filing zoning complaints, and County’s relation to deed restrictions and neighborhood covenants
- Information for Businesses (INCOMPLETE) – FAQs on approvals needed to operate a business, running a home based business, rules for transient lodging, and rules for commercial breeding and boarding kennels
- Agricultural Information (INCOMPLETE) – What is Agriculture; Constructing agricultural buildings; Regulations for agribusinesses; Land application of biosolids
- Special Events (INCOMPLETE) – Regulations for holding special events and special events as a business
- Information for Design Professionals (INCOMPLETE) – Current versions of the Ordinances; Filing Deadlines; Pre-Application Meetings; Required Components of a Complete Application; Fees; Timelines for Review Processes; Annexation Area Applications; Application Checklists
- Appendices (INCOMPLETE) – Current Application Forms; Fee Schedule; Setback Tables

Since the Guidance Manual is not part of the Ordinances, it is not required to be adopted by the Commission and Board of Supervisors separately or in conjunction with the Ordinances. Staff hopes to have a complete initial draft for the Commission’s review in conjunction with Step 6 below at the latest.

STEP 6 – Public Outreach, Formal Public Hearings, and Adoption

Summary

Step 6 will begin concurrently with the Commission’s acceptance of the final draft Ordinances and Definitions Article. In determining when to schedule a formal Public Hearing, the Commission will also need to decide whether to conduct additional public outreach measures such as informal workshops prior to conducting the Public Hearing. Once the Public Hearing is conducted, the Commission will need to take formal action in the form of a recommendation to the Board of Supervisors on the draft Ordinances and Definitions Article.

After the Commission has acted on their formal recommendation, the draft Ordinances and Definitions Article will be forwarded to the Board of Supervisors for final consideration. The process will be repeated at the Board level to schedule a formal Public Hearing, determine whether to hold additional public outreach measures, conduct the Public Hearing, and take formal action on the draft Ordinances and Definitions Article. Formal action by the Board would be one of the following: (1) to adopt the Ordinances and Definitions Article, (2) defer action for additional work by Staff, (3) defer action for additional work and remand to the Planning

Commission, or (4) deny adoption of the Ordinances and Definitions Article. Staff strongly recommends against adopting either Ordinance or the Definitions Article individually – all three Articles were developed as a unit and are not designed to work in conjunction with the current Ordinances.

Staff recommends the Commission and Board schedule their formal Public Hearing process over two months instead of the typical one month timeframe. This extended timeline can be used in the following ways:

- Schedule Public Hearing two months in advance instead of one month and hold an informal public information meeting (or meetings) during this time period.
- Schedule Public Hearing one month in advance. Hold the Public Hearing but defer any action until the next monthly meeting.
- Schedule Public Hearing one month in advance. Hold informal public information meeting (or meetings) on the same afternoon/evening (or a few days prior to) as the Public Hearing. Defer any action until next monthly meeting.

Timeframe for Completion

With a two month Public Hearing process at the Commission and Board levels and absent any additional deferrals, Step 6 should take a minimum of 4-5 months depending on meeting schedules and workloads. Example:

- Month 0 – Commission schedules Public Hearing for Month 1 and action in Month 2.
- Month 1 – Commission holds Public Hearing.
- Month 2 – Commission recommends adoption to the Board of Supervisors.
- Month 3 – Board of Supervisors schedules Public Hearing for Month 4 and action in Month 5. Depending on meeting dates, this action could occur at the Board's meeting in Month 2.
- Month 4 – Board holds Public Hearing.
- Month 5 – Board takes action to adopt the Ordinances and Definitions Article.

STEP 7 – Wrap-Up Activities

Following Board adoption of the Ordinances and Definitions Article, Staff will incorporate any changes made by the Board in conjunction with their adoption and will create the final adopted versions of the Zoning Ordinance (Article I), Subdivision Ordinance (Article II), and Definitions (Article III). Any changes made by the Board to the final adopted versions will be communicated to the Planning Commission at their next scheduled meeting.

Electronic copies of all three Articles will be finalized and made available within one week of the adoption date. Hard copies will be sent out for printing with a small number of copies printed in-house for immediate usage.

Staff will finalize the Guidance Manual and make it available to the public within 30 days of the adoption date of the Ordinances and Definitions. The Guidance Manual does not have to be formally adopted by the Commission or the Board.

Copies of all pertinent meeting minutes, public drafts, tracking spreadsheets, and other important information will be archived by Staff within 60 days of the adoption date.



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TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: Plan Updates and Reviews – Comprehensive Plan, Transportation Plan, and Economic Development Strategic Plan Reviews; Recreation Plan 5-Year Review Resolution

DATE: May 28, 2020

Item #7b on the June 5 Business Meeting agenda is a discussion of pending updates and reviews of the Comprehensive Plan and specific component plans.

As noted in the Commission's 2020 Project Priorities (see enclosed), there are several updates and reviews scheduled to commence or be completed this calendar year. Reviews of the Comprehensive Plan and Transportation Plan were initiated by the Commission on January 4, 2019 and resolutions were adopted containing initial scopes of work for these reviews (see enclosed). The Commission also initiated the review of the Economic Development Strategic Plan on October 4, 2019 by resolution (also enclosed).

For the benefit of new Commissioners, Code of Virginia §15.2-2230 requires that at least once every five years, a locality's planning commission shall review the comprehensive plan "to determine whether it is advisable to amend the plan." Language was included in the Comprehensive Plan and all component plans that have been recently updated to ensure that these plans are reviewed for potential updates on a five-year schedule. As you will note from the enclosed Comprehensive Plan/Component Plan Review Schedule, we are in compliance with this State Code requirement for the Comprehensive Plan, Transportation Plan, and Economic Development Strategic Plan.

For calendar year 2020, the Commission will need to adopt a similar five-year review resolution for the Recreation Component Plan which was adopted on August 18, 2015. Staff is currently preparing a recommendation on the Recreation Plan's status and recommends that the Comprehensive Plan Committee meet in mid-June to discuss the content of a five-year review resolution. If acceptable, the Committee can forward the resolution to the full Commission for review and adoption at the July 10 Business Meeting.

Regarding the review order for the pending plan updates, the Commission would first review and propose changes to the Comprehensive Plan before working on the component plans. The Comprehensive Plan serves as the County's general plan and includes goals, objectives, and strategies that inform the updates of the component plans. Once the Commission has developed proposed changes to the Comprehensive Plan, the Commission will hold a formal public hearing

to consider the revised Comprehensive Plan and recommend its adoption to the Board of Supervisors. The Board would then schedule their own formal public hearing and take action to adopt the revised Comprehensive Plan. Once the revised Comprehensive Plan is adopted, work can begin to revise the individual component plans in their order of five-year review resolution adoption. Public hearing processes are also required for updates to component plans.

The timeline for beginning the review of Plan documents is contingent upon completion of the Ordinance Update Project – this has resulted in unexpected delays to the start of these review projects. The Code of Virginia does not mandate a timeframe to complete a plan review. It is important to ensure that plan update projects are conducted in a timely manner and further delays will contribute to a backlog of these projects. In addition to working on the Recreation Plan five-year review resolution, Staff also proposes discussing initial work plans and strategies to move forward on the plan update projects with the Comprehensive Plan Committee in mid-June.

Staff is not looking for any specific action items or direction on this topic but welcomes discussion and questions. If you have any questions or concerns in advance of the June 5 meeting, please do not hesitate to contact me.

2020 PROJECT PRIORITIES – PLANNING COMMISSION
(adopted January 10, 2020)

The list is intended to aid the Commission and Staff to ensure that work on critical projects is prioritized and completed in a timely fashion. Project start dates and priorities may be affected by the Commission’s zoning case load (e.g., special use permit applications, rezoning, site plans, subdivisions), text amendments, or other special projects requested by the Board of Supervisors.

1. Comprehensive Review and Update of the Zoning and Subdivision Ordinances

UNDERWAY – remaining items to complete include:

- Conduct initial review of draft Subdivision Ordinance (following completion of legal review) and provide direction to Staff on additional edits.
- Provide direction to Staff on additional edits to draft Zoning Ordinance and Definitions Article.
- Agree on final drafts of Zoning Ordinance, Subdivision Ordinance, and Definitions Article.
- Schedule and conduct formal public hearing and outreach initiatives, provide formal recommendation on draft Ordinances and Definitions Article to Board of Supervisors.

2. Five-Year Review and Update of Comprehensive Plan

INCOMPLETE – Resolution was adopted by the Planning Commission on January 4, 2019 to initiate review of the Plan. Staff to develop work plan with work to begin in 2020 pending completion of the initial draft Zoning and Subdivision Ordinances.

3. Five-Year Review and Update of Transportation Plan

INCOMPLETE – Resolution was adopted by the Planning Commission on January 4, 2019 to initiate review of the Plan. Staff to develop work plan with work to begin in 2020 pending completion of the revised Comprehensive Plan.

4. Five-Year Review of Economic Development Strategic Plan

INCOMPLETE – Resolution was adopted by the Planning Commission on October 4, 2019 to initiate review of the Plan. Staff to develop work plan with work to begin pending completion of the revised Comprehensive Plan.

5. Five-Year Review of Recreation Component Plan

INCOMPLETE – Need to adopt a five-year review resolution by August 18, 2020. Assign task to Comprehensive Plan Committee in Spring 2020.

**RESOLUTION TO INITIATE REVIEW
OF THE 2013 CLARKE COUNTY COMPREHENSIVE PLAN**

WHEREAS, the 2013 Clarke County Comprehensive Plan was adopted on March 18, 2014, and

WHEREAS, Code of Virginia §15.2-2230 requires that at least once every five years, a locality's planning commission shall review the comprehensive plan "to determine whether it is advisable to amend the plan,"

AND WHEREAS, March 18, 2019 will mark the five-year anniversary of the Plan's adoption date.

NOW THEREFORE, BE IT RESOLVED that the Clarke County Planning Commission has determined that it is necessary to conduct a review of the 2013 Comprehensive Plan, including but not limited to the following issues:

1. Evaluate the current Goals, Objectives, and Strategies for relevance and consistency with recent Implementing Component Plan updates. Consider adding or revising language to address any new County priorities such as broadband internet access for residents and businesses.
2. Update demographics and statistical information that have changed since 2013 and for which new data is currently available.
3. Determine whether to incorporate data or other information from the Cost of Community Services Study.
4. Update Implementing Component Plan descriptions in Chapter III to reflect recent updates of these Plans.
5. Evaluate whether to conduct a comprehensive review and update of the Mountain Land Plan and, if so, develop objectives and strategies that will inform the update process.
6. Determine whether to retain reference to the Capital Improvement Plan as an Implementing Component Plan and make changes to the applicable objectives and strategies as necessary.

BE IT FURTHER RESOLVED that the Commission intends to commence this review in 2019 as permitted by its work program and delegates the responsibility for the review to the Comprehensive Plan Committee and Planning Department Staff.

Adopted this 4th day of January, 2019.


George L. Ohrstrom, II, Chair

**RESOLUTION TO INITIATE REVIEW
OF THE 2013 CLARKE COUNTY TRANSPORTATION PLAN**

WHEREAS, the 2013 Clarke County Transportation Plan was adopted on March 18, 2014, and

WHEREAS, Code of Virginia §15.2-2230 requires that at least once every five years, a locality's planning commission shall review the comprehensive plan "to determine whether it is advisable to amend the plan," and

WHEREAS, the Transportation Plan is an implementing component plan of the 2013 Clarke County Comprehensive Plan,

AND WHEREAS, March 18, 2019 will mark the five-year anniversary of the Transportation Plan's adoption date.

NOW THEREFORE, BE IT RESOLVED that the Clarke County Planning Commission has determined that it is necessary to conduct a review of the 2013 Transportation Plan, including but not limited to the following issues:

1. Integrate new transportation funding programs adopted or modified since 2014, including the Commonwealth of Virginia's "Smart Scale" program, into the Transportation Plan.
2. Evaluate each priority improvement project to determine whether the project remains relevant and would address current County needs, along with the likelihood of being funded through State and/or Federal programs such as "Smart Scale."
3. Evaluate whether to include new priority projects including the Town of Berryville's proposed southeastern collector road that may involve the extension of Jack Enders Boulevard to U.S. 340.
4. Determine whether to integrate recommendations from the 2014 Town of Berryville-Clarke County Bicycle and Pedestrian Plan into the Transportation Plan.
5. Determine whether to request the Virginia Department of Transportation to conduct new transportation studies, such as a crossover study of the County's four-lane divided primary highways, to aid in developing future project and funding priorities.
6. Coordinate any proposed changes to Comprehensive Plan Objective 12 (Transportation) with any revised recommendations in the Transportation Plan.

BE IT FURTHER RESOLVED that the Commission intends to commence this review in 2019 as permitted by its work program and delegates the responsibility for the review to the Policy & Transportation Committee and Planning Department Staff.

Adopted this 4th day of January, 2019.



George L. Ohrstrom, II, Chair



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RESOLUTION TO INITIATE REVIEW OF THE CLARKE COUNTY ECONOMIC DEVELOPMENT STRATEGIC PLAN

WHEREAS, the Clarke County Economic Development Strategic Plan was adopted on October 21, 2014, and

WHEREAS, Code of Virginia §15.2-2230 requires that at least once every five years, a locality's planning commission shall review the comprehensive plan "to determine whether it is advisable to amend the plan," and

WHEREAS, the Economic Development Strategic Plan is an implementing component plan of the 2013 Clarke County Comprehensive Plan, and

WHEREAS, October 21, 2019 will mark the five-year anniversary of the Economic Development Strategic Plan's adoption date,

AND WHEREAS, on May 15, 2019, the following two documents were provided by the Director of Economic Development and Tourism containing work product from the Economic Development Advisory Committee (EDAC) and the Industrial Development Authority (IDA) on the current Economic Development Strategic Plan:

- EDAC, IDA Priorities for 2019 Economic Development Strategic Plan
- Priorities/Recommendations Selected from Plan Adopted by the Board of Supervisors on October 21, 2014 by the EDAC, IDA, and Director of Economic Development and Tourism.

NOW THEREFORE, BE IT RESOLVED that the Clarke County Planning Commission, in response to work product produced by the EDAC, IDA, and Director of Economic Development and Tourism, has determined that it is necessary to conduct a review and update of the Economic Development Strategic Plan.

BE IT FURTHER RESOLVED that the Planning Commission shall, in conjunction with the upcoming review of the 2013 Comprehensive Plan, evaluate and update the Comprehensive Plan's Economic Development Objective #10.

Adopted this 4th day of October, 2019.

George L. Ohrstrom, II, Chair

Updated November 20, 2019

COMPREHENSIVE PLAN/COMPONENT PLAN REVIEW SCHEDULE

Plan	Last Adoption Date	Next Review Deadline	Begin 5-Year Review Evaluation By
Comprehensive Plan	March 18, 2014	5-year review initiated 1/4/2019	n/a
Transportation Plan	March 18, 2014	5-year review initiated 1/4/2019	n/a
Economic Development Strategic Plan	October 21, 2014	5-year review initiated 10/4/2019	n/a
Recreation Component Plan	August 18, 2015	August 18, 2020	Early 2020
Berryville Area Plan	May 10/17, 2016	May 2021	Late 2020
Double Tollgate Area Plan	December 20, 2016	December 20, 2021	Mid 2021
Waterloo Area Plan	December 20, 2016	December 20, 2021	Mid 2021
Agricultural Land Plan	February 21, 2017	February 21, 2022	Mid 2021
Historic Resources Plan	June 19, 2018	June 19, 2023	Early 2023
Water Resources Plan	September 25, 2018	September 25, 2023	Early 2023
Mountain Land Plan	June 21, 2005	Not scheduled	Not scheduled
Village Component Plan – NEW	Not started	Not started	Not started