

**CLARKE COUNTY PLANNING COMMISSION  
TABLE OF CONTENTS  
October 2, 2020 Policy & Transportation Committee Meeting Packet**

<b><u>Item #</u></b>	<b><u>Description</u></b>	<b><u>Pages</u></b>
<b>1</b>	<b>Meeting Agenda</b>	1
<b>2</b>	<b>Approval of Minutes – March 6, 2020 Meeting</b>	2-6
<b>3</b>	<b>Discussion, Short-Term Residential Rentals Text Amendment</b>	7-21
	-- Staff Memo	7-9
	-- Occupancy Scenarios – Alternate Text Amendment Approach	10
	-- Draft Short-Term Residential Rental Text Amendment – Alternate Approach	11-15
	-- Draft Short-Term Residential Rental Text Amendment -- Original Draft Recommended by Committee to Full Commission	16-20
	-- Occupancy Scenarios, Owner-Occupied vs. Non-Owner-Occupied Issue	21



## **Clarke County Planning Commission**

**AGENDA – Policy & Transportation Committee Meeting**

**Friday, October 2, 2020 – 9:30AM or immediately following Planning  
Commission Business Meeting**

**Berryville/Clarke County Government Center – Main Meeting Room**

- 1. Approval of Agenda**
- 2. Approval of Minutes – March 6, 2020 Meeting**
- 3. Discussion, Short-Term Residential Rentals Draft Text Amendment**
- 4. Other Business**
- 5. Adjourn**

# 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



## Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

[www.clarkecounty.gov](http://www.clarkecounty.gov)

**TO: Policy & Transportation Committee members**

**FROM: Brandon Stidham, Planning Director**

**RE: Discussion, Short-Term Residential Rentals Draft Text Amendment**

**DATE: September 23, 2020**

Enclosed for review and discussion is an alternate approach to a text amendment for the regulation of short-term residential rentals.

### **Proposed Text Amendment**

Based on the discussions at recent Planning Commission and Board of Supervisors meetings, Staff has developed a simplified approach that prioritizes verifying compliance with onsite sewage disposal system regulations and de-emphasizes whether or not the short-term residential rental operation is owner-occupied. The approach also reflects comments that the proposed regulations should not be burdensome for small-scale rentals of 1-2 bedrooms. Unlike the original draft text amendment approach of imposing more stringent regulations on non-owner-occupied rentals and occupancies of more than ten total persons, the alternate approach focuses on the number of bedrooms with a maximum occupancy of each bedroom at two persons. This correlates to the Virginia Department of Health's (VDH) metric for determining onsite sewage disposal system capacity.

To summarize the alternate approach:

- Occupancies of 1-2 bedrooms with a maximum of 4 guests – Allowed by-right with approval of a zoning permit for a “short-term residential rental.” As a condition of zoning permit approval, written confirmation from VDH that the onsite sewage disposal system can handle the proposed maximum occupancy (guests and permanent residents of the single-family dwelling) would be required. The owner or operator of a short-term residential rental would not be required to reside in the dwelling being rented or to be present onsite when a rental is occurring.
- Occupancies of 3 bedrooms with a maximum of 6 guests – Allowed by-right with approval of a zoning permit for a “bed-and-breakfast home occupation.” The current Zoning Ordinance limits bed-and-breakfast operations to 3 bedrooms and 5 guests, and the original text amendment proposed increasing this capacity to maximum of 5 bedrooms and 10 guests. The alternate approach would leave the maximum number of bedrooms at 3 but would increase the maximum number of guests to 6 – matching VDH's metric for persons per bedroom. As with the original proposed text amendment, VDH confirmation of septic system capacity would be required and would include



permanent residents of the single-family dwelling. The owner or operator of the bed-and-breakfast would have to reside in the dwelling, or in an accessory dwelling on the same lot, as their primary residence and be present onsite when a rental is occurring in order to comply with home occupation regulations.

- All other occupancies – Any proposed occupancy that cannot meet the requirements for a short-term residential rental zoning permit or a bed-and-breakfast home occupation would require approval of a special use permit and site plan for a country inn. These proposed occupancies would include:
  - Rentals of more than three bedrooms.
  - Rentals of three bedrooms in which the owner or operator does not reside on the property.
  - Rentals of more than six guests regardless of number of bedrooms advertised. This would apply to rentals in which the operator intends to allow more than two persons per bedroom or sleeping accommodations in other rooms (such as a living room with pull-out couch).

For your reference, Staff has also included copies of the original proposed text amendment and the owner-occupied vs. non-owner-occupied chart.

### **Enforcement Model**

Regarding enforcement models to consider in the event that a text amendment is adopted, Staff noted that there may be some support for the “Business License” enforcement model. To recap this approach (from July Planning Commission memo):

- The approach would apply standard application of the proposed regulations and complaint-basis enforcement instead of retroactive application and proactive enforcement. The approach would rely on the rental operator’s business license status to determine whether they are “grandfathered” from having to comply with the new regulations.
- The Commissioner of the Revenue’s office requires a business license if you are making money from a short-term residential rental operation. Any existing rental operator with a valid business license when the regulations are adopted would be “grandfathered” from the new regulations. Any existing rental operator without a valid business license would be given a grace period of 6 months from the adoption date of the regulations to obtain a business license and be “grandfathered” from the new regulations. The regulations and business license requirement would be publicized to notify operators.
- Existing rental operators who come in for business licenses during the grace period would be reviewed by the Zoning Administrator who would note on the application form that the rental operation is nonconforming as of the application date and that they must not discontinue the operation for two or more years in order to preserve this nonconforming status. This would accomplish the following:

- Rental operators would register their name and business location in the process of getting a business license. This would enable Planning Staff to maintain a list of all nonconforming rental operations and track their status. If a rental operation fails to maintain a business license thereafter for two or more years, Planning Staff can notify the operator that they have lost their nonconforming status.
- Rental operators can also be asked to provide their maximum occupancy – this information can be forwarded to the Building Department or Virginia Department of Health (VDH) for their information and potential enforcement action.
- Any operator who chooses not to get a business license within the specified time frame would lose the opportunity to have a nonconforming status. Staff would not proactively initiate an enforcement action but could act if a formal complaint is filed.
- Planning Staff would include any existing rental operations with business licenses in the list and track them along with operators who obtain business licenses during the grace period.

**PROS:**

- A customer-friendly approach using an incentive in the form of a grace period to get operators to obtain business licenses.

**CONS:**

- Relies on another department’s regulatory process (the business license) as a metric for compliance determination – not a preferred approach.
- Passive approach to enforcement – must have a complaint in order to investigate potential violation.
- Not an effective method of enforcement if the new regulations are applied retroactively.

**Next Steps**

Staff recommends that the Committee discuss the alternate approach and provide direction on whether to advance it as a formal recommendation to the full Commission in November (with or without modifications), or to defer action and continue discussion in a meeting to be scheduled. If you have questions in advance of the meeting, please do not hesitate to contact me.

**OCCUPANCY SCENARIOS – ALTERNATE TEXT AMENDMENT APPROACH**

The alternate text amendment approach focuses on the occupancy of the single-family dwelling rather than whether the dwelling is owner-occupied or non-owner-occupied. In this approach, occupancy is based on the maximum number of bedrooms in use with the maximum number of transient guests and permanent residents limited to two persons per bedroom (consistent with Virginia Department of Health requirements for onsite sewage disposal systems). Owner-occupancy is a secondary focus for rentals of more than two bedrooms – owner-occupied rentals up to three bedrooms and six persons can be as a bed-and-breakfast home occupation while non-owner-occupied rentals require approval of a country inn special use permit and site development plan.

<b>Occupancy</b>	<b>Short-Term Residential Rental (Zoning Permit)</b>	<b>Bed and Breakfast Home Occupation (Zoning Permit)</b>	<b>Country Inn (Special Use Permit and Site Plan)</b>
1. Rental of <u>one</u> bedroom to maximum of <u>two</u> guests. Owner/operator may or may not live on the property and may or may not be present during rental periods. <sup>1</sup>	<b>X</b>		
2. Rental of <u>two</u> bedrooms to a maximum of <u>four</u> guests. Owner/operator does not live on the property and may or may not be present during rental periods.	<b>X</b>		
3. Rental of <u>three</u> bedrooms to a maximum of <u>six</u> guests. Owner/operator lives on the property and is present during rental periods.		<b>X</b>	
4. Rental of <u>three</u> bedrooms to a maximum of <u>six</u> guests. Owner/operator does not live on the property and is not present during rental periods.			<b>X</b>
5. Rental of <u>more than three</u> bedrooms and/or to <u>more than six</u> guests, regardless of number of bedrooms or owner/operator residency.			<b>X</b>

<sup>1</sup> – Can also be permitted as a bed-and-breakfast home occupation if owner/operator lives on the property

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT  
ALTERNATE APPROACH (10/2/2020 POLICY COMMITTEE)

**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 accessory dwelling subject to the following requirements:***

**(1) *The maximum occupancy shall not exceed two bedrooms and four persons during the rental period including transient guests and permanent residents of the single-family dwelling. In no case shall the maximum occupancy exceed the maximum occupancy allowed by the onsite sewage disposal system permit for the single family dwelling. The property owner is not required to reside in the single-family dwelling during rental periods or to maintain the single-family dwelling as their primary residence.***

**(2) *An application for a short-term residential rental 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***

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT  
ALTERNATE APPROACH (10/2/2020 POLICY COMMITTEE)

*onsite sewage disposal system can support the proposed maximum capacity of the short-term residential rental shall be a prerequisite to issuance of a home occupation zoning permit.*

*(3) If a short-term residential rental 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 short-term residential rental use until the system is repaired or replaced and is approved in writing by VDH.*

*(4) For occupancies greater than those described in subsection (1) above, a short-term residential rental may only be operated as a bed and breakfast home occupation or as a country inn.*

**STEP 2 – Modify bed and breakfast home occupation use regulations to regulate short-term residential rentals of up to six occupants in an owner or permit-holder occupied situation, including onsite sewage disposal permit requirements.**

**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 three bedrooms and six persons during the rental period including transient guests and permanent residents of the dwelling. In no case shall the maximum occupancy exceed the maximum occupancy allowed by the onsite sewage disposal system permit for the single-family dwelling.*

*2. A bed and breakfast may use a maximum of three ~~guestrooms~~ bedrooms for the conduct of the home occupation, ~~regardless of the floor area of the dwelling unit~~ subject to Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable. Bedrooms 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*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT  
ALTERNATE APPROACH (10/2/2020 POLICY COMMITTEE)

*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.*
  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.**

**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.~~

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT  
ALTERNATE APPROACH (10/2/2020 POLICY COMMITTEE)

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

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT  
ALTERNATE APPROACH (10/2/2020 POLICY COMMITTEE)

- ~~6. The structure satisfies all applicable requirements of the Commonwealth of Virginia and the local Health Official;~~
- ~~7. All applicants for a country inn in an AOC zoning district shall accept the fact that adjoining agricultural land, due to fertilizing, manure spreading, lime spreading, feedlots, and other farming methods may produce offensive odors.~~
- ~~8. In the AOC or FOC Zoning Districts, a country inn shall be allowed only as an accessory use to a Single Family Detached Dwelling. Guestrooms shall be located in or attached to such a dwelling. For parcels larger than 20 acres, the Single Family Detached Dwelling may be the principal dwelling on the property and/or a tenant house. The defined accessory uses of meal service and/or permanent place(s) of public assembly shall be located in or attached to such a Single Family Dwelling.~~
- ~~9. Events, as defined by Clarke County Code Chapter 57, shall obtain all necessary approvals.~~
8. ***Regulations for country inns in the AOC and FOC Districts:***
  - a. ***A country inn shall require the use of a dwelling unit right (DUR).***
  - b. ***If a country inn is developed in a structure other than an existing single-family dwelling, the structure shall be designed to resemble a single-family dwelling and constructed to enable the structure to be converted to a single-family dwelling if the country inn use is discontinued. Architectural renderings and construction plans for the proposed structure shall be submitted for review with the special use permit application.***
9. ***Special events shall comply with Chapter 57 of the Code of Clarke County.***



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).*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT  
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.*

**OCCUPANCY SCENARIOS**  
**OWNER-OCCUPIED VS. NON-OWNER-OCCUPIED ISSUE**

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

<b>Occupancy</b>	<b>Bed and Breakfast</b>	<b>Country Inn</b>
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 <sup>1</sup>		X
9. Operator has primary residence elsewhere but is onsite at all times when renters are present		X

<sup>1</sup> 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.