

# Clarke County

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**PLANNING COMMISSION  
POLICY & TRANSPORTATION COMMITTEE  
MEETING MINUTES  
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.



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Brandon Stidham, Planning Director