

**ZONING ORDINANCE TEXT AMENDMENT (TA-21-03)
Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn
February 15, 2022 Board of Supervisors Meeting
SUPPLEMENTARY STAFF REPORT #2 – Department of Planning**

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to amend Section 5.2B (Residential Uses) and Section 5.2C (Business Uses) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). The purpose is to establish a new “short-term residential rental” use in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space Conservation (FOC) Districts, and to amend the use regulations for home occupation bed and breakfast uses and country inns.

The short-term residential rental use would include new regulations for the rental of one or more rooms within a single-family dwelling, minor dwelling, or tenant house; or the rental of an entire single-family dwelling, minor dwelling, or tenant house; by the owner to a maximum of one customer for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge. A customer may be one person or multiple people that are renting together under the same rental agreement. A maximum of two dwellings on a lot may be used for short-term residential rental activities, and maximum occupancy of each dwelling used would be subject to compliance with building code requirements and confirmation that onsite sewage disposal systems can support the proposed maximum occupancy. Additional proposed changes include but are not limited to:

- Increasing the maximum occupancy for home occupation bed and breakfast operations to five bedrooms and ten transient guests and residents of the lot during rental periods.
- Establishing the maximum occupancy period for a short-term residential rental, home occupation bed and breakfast, and country inn as fewer than 30 consecutive days.
- Amending the use regulations for home occupation bed and breakfast operations and country inns to require compliance with building code requirements and confirmation that onsite sewage disposal systems can support proposed maximum occupancies.

Requested Action:

Take action on the proposed text amendment.

Update:

At the January 18, 2022 Board of Supervisors meeting, Staff presented an alternate approach to the proposed short-term residential rental regulations in order to address concerns raised at the Board’s December 21, 2021 Public Hearing. This alternate approach (described in Supplementary Staff Report #1) would replace the maximum cap of ten persons per lot during rental periods with a new requirement that a maximum of two dwellings per lot may be used for short-term residential rental activities. This change would address situations in which a property owner has a significant number of residents who will reside on the property during rental

periods, thereby limiting or prohibiting a short-term residential rental activity if there is a maximum cap of ten persons per lot including transient renters and lot residents. At the recommendation of the County Attorney, the Board voted to defer action and to schedule and advertise a new Public Hearing reflecting the alternate text amendment approach for the February 15, 2022 meeting. Staff has revised the Public Hearing notice and advertised it in accordance with Code of Virginia requirements.

Staff offers two points of clarification, first in regards to the concept of “customer.” The proposed definition of short-term residential rental is modified to clarify that a “customer” may be one person or multiple people that are renting together under the same rental agreement. Language is also added to proposed use regulation #2 to clarify that a maximum of one customer is allowed per lot regardless of whether the operator proposes to use one or two dwellings for rental activities. Should an operator want to have more than one customer at a time, the appropriate use would be a home occupation bed and breakfast or a country inn. This concept of a “customer” is consistent with the current and long-standing practice of not requiring zoning approval for short-term residential rental activities with a maximum of one customer at a time, but requiring a home occupation bed and breakfast or country inn use approval if more than one customer at a time is proposed by the operator.

The second point of clarification is in regards to the number of allowable lodging uses that can be approved on a lot. Only one lodging use may be approved per lot – short-term residential rental, home occupation bed and breakfast, or country inn – and the scope of all proposed lodging activities on the lot would be used to determine which use would apply. For example, a property owner with four dwellings on a lot would not be able to obtain a short-term residential rental zoning permit to operate rentals in two of the dwellings and a second short-term residential rental zoning permit to operate rentals in the other two dwellings on the lot. In this case, rentals in four dwellings on a lot would require a country inn special use permit and site development plan approval. In another example, a property owner proposing a 15-room country inn could not also have a short-term residential rental use on the same lot as a means of exceeding the maximum occupancy of a country inn use.

No additional changes are proposed by Staff at this time. To assist the Board with the review, Staff has created a chart at the end of this report that compares the current and proposed regulations for short-term residential rental, home occupation bed and breakfast, and country inn uses.

Staff Recommendation:

Staff has no outstanding concerns with the adoption of the alternate text amendment approach.

History:

- January 8, 2021.** Placed on the Commission’s Business Meeting agenda for further discussion
- February 5, 2021.** Commission declined to schedule Public Hearing for a proposed text amendment and tabled further work until completion of the Zoning and Subdivision Ordinance Update Project.
- August 31, 2021.** Commission resumed discussion at the Work Session.
- September 3, 2021.** Commission continued discussion at the Business Meeting and directed Staff to prepare a revised text amendment for consideration in October.
- October 1, 2021.** Commission voted 10-0-1 (Kreider absent) to schedule Public Hearing for the Commission’s November 5 Business Meeting.
- November 5, 2021.** Commission voted 10-0-1 (Kruhm absent) to recommend adoption of the proposed text amendment including a recommendation to the Board to consider delaying the effective date of this text amendment for a period of six (6) months. The purpose is to provide a “grace period” for existing operators to work with Planning Department staff to comply with the proposed regulations.
- November 23, 2021.** Board of Supervisors voted unanimously to schedule Public Hearing for the December 21, 2021 meeting.
- December 21, 2021.** Board of Supervisors held a Public Hearing and voted unanimously (5-0) to defer action to the January 18, 2022 meeting.
- January 18, 2022.** Board of Supervisors voted unanimously (5-0) to defer action to the February 15, 2022 meeting and to schedule Public Hearing on the revised text amendment.
- February 15, 2022.** Placed on the Board of Supervisors February Regular Meeting agenda and advertised for Public Hearing.

Ordinance Amendment Text – ALTERNATE (2-dwelling cap)
 (Changes shown in red font with strikethroughs where necessary. New proposed text is shown in red italicized font. Newly-revised language is highlighted in yellow):

To Section 5.2B – Residential Uses:

SHORT-TERM RESIDENTIAL RENTAL	
<i>Permitted Use</i>	<i>AOC, FOC</i>
<i>Accessory Use</i>	<i>AOC, FOC</i>
<i>Special Use</i>	<i>None</i>

Definition:

*The rental of **one or more rooms within** a single-family dwelling, minor dwelling, or tenant house; or the rental of an entire single-family dwelling, minor dwelling, or tenant house; by the owner to **a maximum of one customer** for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge. **A customer may be one person or multiple people that are renting together under the same rental agreement.***

Use Regulations:

A short-term residential rental may be conducted in a single-family dwelling, minor dwelling, or tenant house subject to the following requirements:

- 1. A short-term residential rental may be occupied as a permitted use or as an accessory use to a single-family dwelling. The property owner is not required to reside on the lot during rental periods.*
- 2. **A short-term residential rental use may be conducted in a maximum of two (2) dwellings located on the same lot so long as each dwelling used is in full compliance with the zoning permit requirements listed in Subsection 3. A maximum of one customer per lot is allowed during rental periods regardless of the number of dwellings proposed for use.** Minor dwellings or tenant houses used for short-term residential rental uses shall be fully conforming to all Zoning Ordinance requirements at the time of zoning permit issuance. No short-term residential rental uses shall be permitted in structures other than a single-family dwelling, minor dwelling, or tenant house.*
- 3. A zoning permit is required per Section 6.2.1. Issuance of a zoning permit is subject to the following requirements:*
 - a. **Maximum occupancy.** **The maximum occupancy of a single-family dwelling, minor dwelling, or tenant house used for short-term residential rental activities shall not exceed the following:***
 - (1) The maximum occupancy for the structure as allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH).*

- (2) *The maximum occupancy for the structure as permitted by the Virginia Uniform Statewide Building Code.*

Occupancy of a dwelling shall include transient renters and any residents who may remain present in the dwelling during rental periods.

b. Compliance with onsite sewage disposal system requirements.

- (1) *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 onsite sewage disposal system can support the proposed maximum occupancy of the short-term residential rental shall be a prerequisite to issuance of a zoning permit.*
- (2) *In the event that an onsite sewage disposal system cannot support the proposed maximum occupancy of the short-term residential rental, the system shall be upgraded to current Virginia Department of Health (VDH) regulations including provision of a 100% reserve area before a zoning permit may be issued.*
- (3) *An onsite sewage disposal 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 shall 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.*

c. Compliance with building code requirements. All applications for short-term residential rental uses shall be reviewed by the Clarke County Building Department to determine whether a change of use or other building code compliance measures are required. Written confirmation from the Building Department that the structure to be used for the short-term residential rental use conforms to building code requirements shall be a prerequisite to issuance of a zoning permit.

d. Issuance of a business license by the Clarke County Commissioner of the Revenue shall be a prerequisite to issuance of a zoning permit. The business license shall also be maintained in good standing throughout the life of the use as a condition of zoning permit approval.

4. Prohibited activities include:

- *Provision of meals to transient renters*
- *Commercial public assembly activities such as special events, live music, weddings, meetings, conferences, and reunions*

- *Other gatherings of persons that are not transient renters or residents of the single-family dwelling, minor dwelling, or tenant house being used for short-term residential rental activities*

Required Review Processes:

A Zoning Permit is required per Section 6.2.1.

HOME OCCUPATION	
Permitted Use	None
Accessory Use	AOC, FOC, RR
Special Use	None

Definition:

A for-profit or non-profit business or activity conducted in a dwelling unit (or an accessory structure to a dwelling) as a secondary use.

Use Regulations for Specific Types of Home Occupations

1. Bed and breakfast. *A bed and breakfast is a home occupation where lodging, or lodging and meals, is offered for a period of fewer than 30 consecutive days in exchange for a charge subject to the following regulations:*
 - a. *A home occupation bed and breakfast may be conducted in the single-family dwelling and in any minor dwelling or tenant house located on the same lot so long as each structure used is in full compliance with these use regulations. Minor dwellings or tenant houses used for home occupation bed and breakfast uses shall be fully conforming to all Zoning Ordinance requirements at the time of zoning permit issuance. No bed and breakfast use shall be permitted in structures other than a single-family dwelling, minor dwelling, or tenant house.*
 - b. *As a home occupation use, the permit holder shall occupy the lot at all times during bed and breakfast rental periods.*
 - c. *The maximum occupancy of the single-family dwelling and any accessory dwellings on a lot housing a bed and breakfast shall not exceed a total of five bedrooms and ten persons during the rental period including transient guests and residents of the lot. The maximum occupancy of each single-family dwelling and any accessory dwelling housing a bed and breakfast use shall be further limited by:*
 - (1) *The maximum occupancy for the structure as allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH).*

- (2) *The maximum occupancy for the structure as permitted by the Virginia Uniform Statewide Building Code.*

~~A bed and breakfast is a home occupation where lodging or lodging and meals are provided for compensation for up to five (5) transient guests.~~

- ~~b. A bed and breakfast may use a maximum of three guestrooms for the conduct of the home occupation, regardless of the floor area of the dwelling unit. Guestrooms may be located in accessory structures located on the same lot subject to compliance with Building Code requirements and Virginia Department of Health regulations.~~

d. Compliance with onsite sewage disposal system requirements.

- (1) *An application for a bed and breakfast use 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 occupancy of the bed and breakfast use shall be a prerequisite to issuance of a zoning permit.*

- (2) *In the event that an onsite sewage disposal system cannot support the proposed maximum occupancy of the bed and breakfast use, the system shall be upgraded to current Virginia Department of Health (VDH) regulations including provision of a 100% reserve area before a home occupation zoning permit may be issued.*

- (3) *An onsite sewage disposal 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 shall 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.*

- e. Compliance with building code requirements. All applications for bed and breakfast uses shall be reviewed by the Clarke County Building Department to determine whether a change of use or other building code compliance measures are required. Written confirmation from the Building Department that the structure to be used for the bed and breakfast use conforms to building code requirements shall be a prerequisite to issuance of a home occupation zoning permit.*

- f. Issuance of a business license by the Clarke County Commissioner of the Revenue shall be a prerequisite to issuance of a home occupation zoning permit. The business license shall also be maintained in good standing throughout the life of the use as a condition of zoning permit approval.*

- ge.* As an accessory use to a bed and breakfast, breakfast meal service may be provided only for overnight guests.
- he.* A bed and breakfast is not required to comply with [General Use Regulation 4](#) regarding maximum allowable area within a dwelling or accessory structure for home occupation use.

To Section 5.2C – Business Uses:

COUNTRY INN	
Permitted Use	CN
Accessory Use	None
Special Use	AOC, FOC

Definition:

A business offering for compensation to the public guestrooms for transitory lodging or sleeping accommodations for a period *of fewer than 30 consecutive days* ~~not to exceed 14 consecutive days~~. As accessory uses to a country inn, meal service and/or permanent place(s) of public assembly may be provided.

Use Regulations:

1. **Maximum occupancy and use of onsite sewage disposal system.**
 - a.* A maximum of 15 guest rooms for transitory lodging or sleeping accommodations shall be permitted ***subject to compliance with Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable. The maximum occupancy 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 or structures, the maximum occupancy of all 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. 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.
3. 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 lesser.
4. 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.
5. 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 7.2.5 \(Parking Regulations\)](#).
6. 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.
- ~~7. The use shall comply with all applicable State and local permitting requirements including the Virginia Department of Health's (VDH) regulations for private wells and onsite septic systems. All permits shall remain in good standing throughout the lifespan of the use.~~
78. 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.
89. Special events shall comply with [Chapter 57 of the Code of Clarke County](#).

COMPARISON OF CURRENT VS. PROPOSED REGULATIONS

Current Regulations			
Use	Use Category & Zoning District	Maximum Occupancy	Permit Required
Short-term residential rental	Not regulated	One customer ¹ per lot	None – Use is not regulated
Home occupation bed and breakfast	Residential; AOC, FOC, RR	Three guestrooms and five transient guests	Home occupation zoning permit ²
Country inn	Business; AOC, FOC, CN	15 guestrooms	Special use permit and site development plan

Proposed Regulations			
Use	Use Category	Maximum Occupancy	Permit Required
Short-term residential rental	Residential; AOC, FOC	Maximum of two dwellings per lot with occupancy subject to compliance with building code requirements and capacity of onsite sewage disposal system; one customer ¹ per lot per rental period	Short-term residential rental zoning permit ²
Home occupation bed and breakfast	Residential; AOC, FOC, RR	Five bedrooms and ten occupants including guests and residents; occupancy is subject to compliance with building code requirements and capacity of onsite sewage disposal system	Home occupation zoning permit ²
Country inn	Business	15 guestrooms; occupancy subject to compliance with building code requirements and capacity of onsite sewage disposal system	Special use permit and site development plan ³

¹ A customer may be one person or multiple people that are renting together under the same rental agreement.

² The zoning fee for a home occupation zoning permit is \$100. The proposed fee for a short-term residential rental zoning permit would also be \$100.

³ The fee for a country inn in the AOC and FOC Districts is \$825 for the special use permit and \$2,500 + \$250 per required parking space for the site development plan review.