

# COUNTY OF YORK

## MEMORANDUM

**DATE:** February 7, 2024  
**TO:** York County Board of Supervisors  
**FROM:** Mark L. Bellamy, Jr., Interim County Administrator  
**SUBJECT:** Short-Term Rentals and Zoning Text Amendments



At the Board meeting on Tuesday, February 6, I was directed to provide the supporting background information concerning Short Term Rentals in preparation for the March 5 Work Session. The material attached includes the memorandums, staff recommendations, Planning Commission minutes, Board material, and proposed Ordinance 23-8 that was tabled at the Board's meeting on June 20, 2023. Additionally, staff will be mailing each of you the entire packet for your review.

If you have any questions or need any additional information, please feel free to contact me.

**Attachments:**

- Memorandum dated February 2, 2024
- Board material considered at the June 20, 2023 meeting
- Memorandum dated August 28, 2020
- Board material considered at the March 17, 2020 meeting
- Memorandum dated February 7, 2020

# COUNTY OF YORK

## MEMORANDUM

**DATE:** February 2, 2024

**TO:** York County Board of Supervisors

**FROM:** Mark L. Bellamy, Jr., Interim County Administrator 

**SUBJECT:** Revisit Short-Term Rentals (STRs) and related Zoning Text Amendments

During 2023, the Board instituted a freeze on hearing Short-Term Rentals (STRs) to consider some suggested changes to the Zoning Ordinance. At the work session on March 5, one of the items to be discussed will be Short-Term Rentals (STRs). We have attached the most recent two memos written on STRs along with the accompanying attachments. Presently, there are three cases waiting to be reviewed by the Board.

**Attachments:**

- Memorandum dated August 19, 2022
- Board material considered at the June 20, 2023 meeting

# COUNTY OF YORK

## MEMORANDUM

DATE: August 19, 2022

TO: York County Board of Supervisors

FROM: Neil A. Morgan, County Administrator 

SUBJECT: Zoning for Short-Term Rentals

### INTRODUCTION

At its July 19 meeting, the Board received comments on the subject of short-term rentals (STRs) from two County residents, Richard Howell and Dana deJager, both of whom reside in Queens Lake and has taken an active interest in issues surrounding STRs and have addressed the Board several times over the past few years in opposition to various tourist home applications. Mr. Howell supplemented his comments with a printed handout that he distributed to the Board members. In response to the information they provided, I would like to offer some clarification as well as provide an update on recent Planning Commission discussions relative to the Zoning Ordinance provisions for STRs.

### BACKGROUND

In his comments to the Board, Mr. Howell correctly stated that several years ago, the Board requested the staff to develop additional zoning guidelines for regulating short-term rentals. Unfortunately, his comments also gave the impression that staff never completed this assignment when, in fact, staff has spent time and effort developing a series of Zoning Ordinance text amendments pertaining to short-term rentals that were unanimously adopted by the Board in March 2020. That effort began with an August 2019 Planning Commission work session at which staff provided an issue paper that included a detailed analysis of the issue of short-term rentals (STRs) and how they are regulated in York County, including case studies of past applications and a review of possible policy options. Staff also provided a summary of zoning regulations for STRs utilized by some other Virginia localities. Following discussion, the Commissioners expressed a preference for keeping the flexibility that the use permit process provides while adding some criteria or considerations to provide guidance to the decision-makers evaluating proposals for short-term rentals.

Staff subsequently drafted a set of proposed Zoning Ordinance text amendments and presented them to the Commission at its February 12, 2020, meeting, and a public hearing was held at which eight people spoke. The citizens who spoke were generally supportive of the proposed amendments while expressing a desire for three additional changes: 1) requiring STR owners to live in the residence or in an adjacent residence; 2) requiring STR approvals to run with the applicant rather than with the land; and 3) prohibiting signage in connection with home occupations. In addition, one speaker recommended that neighborhoods be given the opportunity to essentially "opt out" of the allowance for

STRs through some sort of neighborhood survey or vote. Of these recommendations, the one that was given the most serious consideration by members of the Commission was the suggestion that the owner be required to live in the home or in an adjacent home. Under the draft amendments, the owner/proprietor would have to *either* reside in the home or in an adjacent premises *or* designate a responsible party who will be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place. Two Commissioners expressed an interest in establishing a residency requirement, while other members pointed out that with or without that the proposed mechanism for monitoring guest' behavior, the Board would still have the ability to deny any application where it felt such an arrangement would not adequately protect the surrounding neighborhood from the possibility of unruly guest behavior. Following discussion, the Commission voted 5:0 (with two members absent) to recommend that the Board adopt the amendments as written.

The Board considered the proposed amendments at its March 17, 2020, meeting – just as the seriousness of the COVID-19 pandemic was being widely recognized and businesses, churches, sporting events, and other activities across the country were being shut down. Consequently, although the meeting was open to the public, attendance consisted of just three Board members (with the other two participating electronically), a very limited number of staff, a rezoning applicant and his attorney, and a citizen who was present to speak on another matter. No one spoke at the public hearing; however, the Board did have the benefit of the Planning Commission minutes, which contained all the public comments made at the Commission meeting and were included in the agenda material. Following the public hearing, the Board voted 5:0 to approve the amendments as written.

Shortly after the amendments were adopted, the STR issue was reopened as a result of a Special Use Permit application for a one-bedroom tourist home in the Queens Lake subdivision. The application generated considerable opposition in the neighborhood, although the immediately adjacent neighbors were all in support of it. Though recommended for approval by the Planning Commission and staff, the application was ultimately denied by the Board on a 3:2 vote. In the aftermath of that application, the County was approached by a small group of Queens Lake residents, which included Mr. Howell and Ms. deJager, that subsequently met several times with me and Planning Division staff to discuss the possibility of adopting additional amendments to the ordinance to address citizens' concerns underlying their opposition to the Queens Lake tourist home application and to STRs in general. In these meetings, staff expressed a receptiveness to some of the proposals while expressing concerns that some of them would be impractical, overly restrictive, or unnecessary. At the third of these meetings, all parties agreed that a Planning Commission work session would be the appropriate venue for a discussion of the STR issue and the specific proposals put forth by the Queens Lake team.

That work session took place on July 27, 2021. Unlike most work sessions, which are open to the public but typically do not provide an opportunity for public comment, this one was designed to be more interactive in order to allow back-and-forth dialogue between the Queens Lake team and the Commission (and staff, as necessary) rather than limiting public participation to the traditional public comment opportunity with time limits and no opportunity for questions or follow-up. Several STR owners and others were

also in attendance and participated in the discussion. As a follow-up to that meeting, the Commission dedicated its August 11 meeting to an extensive discussion of the group's recommendations with the purpose of giving staff direction in drafting potential Zoning Ordinance amendments for the Commission's consideration. The recommendations that were discussed are listed below, along with the general consensus of the Commission on each.

**1. USE PERMIT EXPIRATION REQUIREMENTS**

- Should Special Use Permits for STRs run with the land or with the property owner? *The general consensus of the Commission was that STR use permits should run with the property owner, although one Commissioner felt they should run with the land just as all other use permits do.*

**2. RESIDENCY REQUIREMENTS**

- Should the STR owner/proprietor be required to be on the premises (or an adjacent premises) while rentals are taking place? *The general consensus of the Commission was that while it is preferable for the owner/operator to reside in the home or in an adjacent premises, it should be treated not as a requirement but as something the Commission and Board should consider when evaluating an application for a tourist home.*

**3. WHOLE HOUSE RENTALS**

- Should whole-house rentals be prohibited? *The consensus was that there should not be a ban on whole-house rentals.*

**4. STR DENSITY CAPS**

- Should there be some sort of numerical limit on the number or density of STRs in a given area (outside the Yorktown village)? Alternatively, should the presence of one or more existing STRs in proximity to a proposed STR site be added to the Zoning Ordinance as another factor to be taken into consideration with the goal of preserving the residential character of the neighborhood? *The general consensus of the Commission was that the County should not try to control STR density with a specific numerical standard and that the presence of other STRs in close proximity or in the same neighborhood or general area should be treated as a consideration, consistent with the goal of preserving the residential character of the neighborhood. Two Commissioners opined that there should be some kind of density limit.*

**5. NEIGHBORHOOD "OPT-OUTS"**

- Should neighborhoods be able to "opt out" of having any STRs by majority (or "super majority," however that is defined) vote of the residents? *The general consensus was that neighborhoods should not have the ability to opt out of having STRs, although one Commissioner disagreed.*

**6. RENTAL LIMITS**

- Should there be a limit on the number of rental nights per year, and if so,

what should that limit be? Also, should there be a limit on the number of rooms rented, and if so, what should that limit be? *The consensus of the Commission was that the Zoning Ordinance should not have a specific limit on the number of rooms. With regard to limiting the number of rental nights per year, the Commission tabled the issue, stating that they wanted input from the STR owners as to the impact that such a restriction would have on their businesses. Staff subsequently posed this question to all of the STR owners that were operating in the County at the time, four of whom responded. The Commission revisited this issue at its December 11 meeting and, based on the input from the STR owners, decided that imposing a blanket restriction on the number of rental nights per year would be an arbitrary restriction that would place an undue financial hardship on the proprietors. Two of the Commissioners, however, felt that there should be a limit, at least initially, that could be increased incrementally over time if the STR operates without any problems and in accordance with all County requirements. There was general agreement that the Board should have the ability to limit the number of rental nights in individual cases if the circumstances warrant it.*

#### **7. LIABILITY INSURANCE**

- Should STR operators be required to maintain liability insurance coverage and if so, what should the minimum coverage be? *The general consensus was that liability insurance coverage should not be required, with one Commissioner dissenting.*

#### **8. ZONING ENFORCEMENT – FEES, PENALTIES, RENEWAL, ETC.**

- *The consensus of the Commission was that zoning fees and penalties should remain as they are.*

#### **9. OTHER RECOMMENDATIONS**

- Should there be a requirement for prior residency on the property before a person can apply for a Special Use Permit for an STR? *The general consensus was that prior residency could be used as a consideration but that there should be no specific requirement. Two Commissioners felt there should be a requirement.*
- Should an applicant for an STR use permit have to have the agreement of the neighborhood in order for the proposal to go forward? *The general consensus of the Commission was that neighborhood support should not be required for an application to go forward since the public hearing process provides ample opportunity for neighbors to offer their opinions and those opinions are given serious consideration.*

Based on the views of the majority of Planning Commissioners as expressed at the August 11 meeting, staff drafted a set of possible amendments to the STR provisions of the Zoning Ordinance, and the Commission discussed them at its December 8, 2021, meeting. For the most part, the proposed amendments were relatively modest since most of the

Commissioners were not in favor of making major changes to the STR provisions. The most significant proposed change was to allow STR use permits to run with the property owner rather than with the property. Allowing STR approvals to run with the land has been the major bone of contention among STR opponents ever since 2015 when the Airbnb phenomenon began to take hold in the County. The proposed amendment would stipulate that all STR approvals automatically expire when the property is transferred to a new owner. Other recommended changes include a requirement that STR owners maintain a guest log book as well as additional language clarifying that onsite residency is preferred but not required as long as applicants can demonstrate that they have adequate provisions in place to monitor guest behavior. After discussion, the Commissioners indicated that the draft amendments adequately and accurately reflect the general – albeit not unanimous – consensus of the members.

### CONCLUSION

The Zoning Ordinance provisions for STRs are intended to preserve the quality of life in the County's residential neighborhoods while protecting the rights of private property owners to use their property as they see fit. I believe that for the most part, our current process achieves a reasonable balance between these two goals by allowing homeowners to operate short-term rentals only when the Board determines that doing so will not infringe on their neighbors' quality of life. It is worth noting that there have been no neighborhood complaints or compliance problems associated with any of the STRs that have been approved through the use permit or YVA process.

For many land uses, the Zoning Ordinance stipulates very detailed and specific performance standards. This is often necessary for uses that are permitted as a matter of right because the Board has no approval authority over such projects and no ability to apply conditions to mitigate adverse impacts. For STRs, however, this is not the case. Unlike many other Virginia localities, York County requires a Special Use Permit for STRs in *all* residential zoning districts. As described in Section 24.1-115 of the Zoning Ordinance, the use permit process is specifically intended to take site- and use-specific circumstances and other intangibles into consideration:

“Certain uses, because of their *unique characteristics* or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but may, *under the right set of circumstances and conditions* be acceptable in *certain specific locations*. These uses are permitted only through the issuance of a special use permit by the board after ensuring that the use can be appropriately accommodated *on the specific property*, will be in conformance with the comprehensive plan, can be constructed and operated in a manner which is compatible with the surrounding land uses and overall character of the community, and that the public interest and general welfare of the citizens of the county will be protected. No inherent right exists to receive a special use permit; such permits are a special privilege granted by the board *under a specific set of circumstances and conditions*, and *each application and situation is unique*. Consequently, mere compliance with the generally applicable re-

quirements may not be sufficient and additional measures, occasionally substantial, may be necessary to mitigate the impact of the proposed development. In other situations, no set of conditions would be sufficient to approve an application, even though the same request in another location would be approved.” (Emphases added)

STRs do not lend themselves to a “one size fits all” regulatory approach, which is why the County requires a case-by-case review. This ensures that affected neighbors will have an opportunity to express their views on any proposed STR and allows the Board and the Planning Commission to consider those views and to use their best judgment in evaluating each application on its particular merits. I believe that approach is preferable to adopting a highly prescriptive ordinance that does not allow for consideration of the unique aspects of each STR proposal.

Of course, no ordinance is perfect, and the Planning Commission will be recommending possible improvements to the County’s ordinance. I recommend that the Board allow that process to proceed to its conclusion and then, once the Commission has completed its work, held a public hearing on the draft amendments, and formally transmitted its recommendations to the Board for consideration, plan on holding a work session – which could possibly be a joint meeting with the Planning Commission – to have a thorough discussion of the regulation of STRs. In particular, I believe there are two key questions that need to be addressed in that discussion:

- Should the Zoning Ordinance require STR operators to live in the house or in an adjacent premises and be present while rentals are taking place? If not, should there be some specified maximum allowable distance between the tourist home and the owner’s residence?
- Should the Zoning Ordinance include some specified limit on the number, density, or proximity of STRs in a single neighborhood?

The Planning Commission has made it clear where it stands on these questions, but the Board has never specifically addressed them, and I believe they are the most critical issues raised by the Queens Lake team. Other STR policy options that the Board might want to consider would also be open for discussion.

Concerns have been raised about the sheer volume of tourist home applications and approvals in recent years. Ms. deJager stated to the Board that STR applications are increasing “exponentially,” and one of the slides distributed by Mr. Howell suggests a similar trend. While it is true that with the advent of the Airbnb phenomenon, the past several years – and especially 2022 – have seen a notable increase in the number of STR applications compared to previous years, the overall scale of STR activity in the County is still extremely small. Since 1995, there have been a total of 43 STR applications, 33 of them between 2017 and 2022. Twenty-nine of these have been approved (including 21 since 2017), and six have been denied. Another six were withdrawn by the applicants – in most cases after receiving a recommendation of denial from the Commission – and two have not yet been considered by the Commission. Of the 29 approved STRs, six either have

ceased operation or were never established, leaving a total of 23 STRs currently permitted to operate in the County. That is a very small number, particularly when one considers that they constitute only about one-eighth of one percent of the approximately 18,000 single-family detached homes in the County. (Since almost all STRs are in single-family detached homes, townhouses are not included in this analysis, even though two of the permitted STRs are located in townhouses in the Yorktown village.)

Although there has been an increase in tourist home applications in recent years, I would note that the majority of them do not generate significant controversy or opposition from neighboring residents, although some have proven to be highly contentious. Just as some County residents welcome or at least do not oppose STRs in their neighborhood, there are others who are opposed to STRs in residential neighborhoods under any circumstances. There is, however, one aspect of STRs on which the Board, Planning Commission, staff, and most citizens seem to agree: they should not be permitted in residential neighborhoods as a matter of right. Given that consensus, the Board should be prepared to accept that unless it wants to ban short-term rentals altogether, it will continue to have to grapple with tourist home applications and the emotions they sometimes trigger among citizens on both sides of the issue. No set of standards and restrictions we place on STRs will alter that fact.

Cross/3496

**MINUTES  
YORK COUNTY PLANNING COMMISSION**

Regular Meeting  
York Hall, 301 Main Street  
August 11, 2021

**MEMBERS**

Douglas Holroyd  
Glen D. Titus  
Mary P. Leedom  
Michael S. King  
Robert T. Criner  
Robert W. Peterman

**CALL TO ORDER**

Chair Titus called the meeting to order at 7:00 p.m. and stated that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. He explained that this responsibility is exercised through recommendations conveyed by resolutions or other official means, all of which are matters of public record. He stated that the Commission is comprised of seven citizen volunteers appointed by the Board, including one representative from each voting district and two at-large members.

**ROLL CALL**

The roll was called and all members were present. Staff members present were Timothy C. Cross, Deputy Director of Planning and Development Services; James Barnett, County Attorney; Amy Parker, Senior Planner; Earl W. Anderson, Senior Planner; Jeanne Sgroi, Management Analyst Intern, and Cathy Tartabini, Planning Assistant. Also in attendance was Susan D. Kassel, Director of Planning and Development Services.

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**NEW BUSINESS**

Chair Titus stated that the Commission would be discussing potential Zoning Ordinance amendments pertaining to short-term rentals. He stated that a group of Queens Lake residents had provided the Commission with a document outlining their proposed changes and that staff had prepared a list of discussion topics based on that document and on the discussion at the July 27 work session. He suggested that the Commission discuss each item in turn as outlined on the list of discussion topics and give staff some direction on each.

Chair Titus stated that the first discussion topic is whether Special Use Permits for STRs should run with the land or with the property owner.

Mr. King stated he is in favor of having use permits for STRs run with the property owner since the Commission makes its recommendations based largely on the information presented by the applicant and so if the property changes hands, the new owner should have to go through the same process.

Mr. Criner asked staff if there is a mechanism by which the County would be notified if the property is sold.

**Earl Anderson** responded that a change in property owners would come up as part of the County's annual inspection of all use permits.

**Ms. Leedom** asked if STR owner/operators could be required to notify the County if they sell the property, which she felt would give some layer of protection to the neighbors.

**Mr. Criner** responded that since there is already a trigger in place with the annual inspections, he is confident that sufficient protections are in place to ensure that a new owner would eventually get caught if they are running an STR without approval. He added that he agrees with Mr. King that the use permits should run with the owner.

**Mr. Cross** added that use permit resolutions are a matter of public record and are recorded at the courthouse, so any potential buyer should be aware that there is a condition tying the use permit to the property owner and all other conditions of approval. He added that there is a quarterly tax reporting requirement, so the Commissioner of the Revenue's Office would know if a report was received from somebody who was not registered as a short-term rental operator.

**Chair Titus** asked if the proposed change would also apply to bed-and-breakfast establishments (B&Bs).

**Mr. Cross** responded that the term "short-term rental" encompasses both tourist homes and B&Bs, so it would apply to B&Bs as well as tourist homes.

**Chair Titus** stated that he feels the use permits should run with the land, noting that use permits should not be approved on the basis of personalities. He said there are procedures in place to deal with those who violate material conditions, and he questioned whether the identity of the operator constitutes a material condition.

**Mr. King** responded that he understands Chair Titus's concerns but that he is concerned that there is no guarantee that a new owner might not operate an STR in the same manner as the original applicant, which he felt would place an additional burden on Zoning and Code Enforcement staff.

**Mr. Holroyd** commented that most use permits for STRs are approved when the neighbors are in agreement, which he said only happens when the property owner is a long-time resident whom the neighbors trust. He stated that a new owner would not have that same level of trust, so he believes the use permit should be tied to the owner.

**Chair Titus** responded that the same logic would seem to apply to home occupations. He asked why STRs should be treated differently.

**Mr. King** asked the County Attorney if the County can have different requirements for different types of use permits.

**Mr. Barnett** responded that there is nothing in the Code of Virginia that requires use permit conditions to be uniform for all use permits.

**Mr. Peterman** stated that he agrees that use permits for STRs should be tied to the owner and not the property.

**Chair Titus** summarized the discussion, stating that the consensus is that STR use permits should

run with the owner.

**Chair Titus** introduced the next topic, which was whether or not STR owners should be required to be on the premises – or in an adjacent premises – while rentals are taking place.

**Mr. King** expressed his opposition to such a requirement, stating that although he tends to look more favorably upon STRs that have on-site management, there are exceptions, such as the one that was approved on Goosley Road where the owners did not live on or near the premises. He said he does not want to make the standards overly restrictive and take away the flexibility to evaluate each case on its own merits.

**Mr. Criner** stated that in considering STR proposals, he gives a lot of weight to the fact that the owner lives in the home or next door but that he does not want to make it an absolute requirement since there can be extraordinary circumstances that can be considered on a case-by-case basis.

**Ms. Leedom** asked if such a requirement would apply to whole-house rentals or just room rentals, noting that it would be difficult to have the owner living in a whole-house rental.

**Mr. King** said that is a good point, stating with a whole-house rental, the owner cannot live in the house but could live next door.

**Mr. Peterman** responded that whether the owner lives next door or across the street or a block away, each case has to be considered individually. He stressed that the Commission's main concern is that the person operating the short-term rental must be responsible to the neighborhood and able to respond to any situation that arises.

**Mr. Holroyd** commented that having a physical presence in or near the home is the most effective way of monitoring the situation, more so than electronic surveillance. He stated that he feels the owner should remain in the local area, however that is defined.

**Mr. King** responded that the term "local" is subjective.

**Chair Titus** commented that this discussion is centered specifically on tourist homes since the Zoning Ordinance requires B&B owners to live on the premises or in an adjacent premises.

**Mr. King** stated that case-by-case review allows the Commission and the Board to decide whether or not the owner is in sufficient proximity to the STR and avoids the problem of having to define it in the Zoning Ordinance.

**Mr. Titus** stated that the general preference appears to be that on-site residency should be treated as a consideration rather than a requirement.

**Mr. Cross** responded that in fact, it is already included as a consideration in the Zoning Ordinance, which states that applicants must either be on the premises or in an adjacent premises or designate a responsible party who can respond promptly to any complaints or problems that arise. He mentioned the case of the Yorktown Cottages, where the owners lived in Marlbank when the application was approved but later moved to Dandy, which is much further away. He said it is impossible to anticipate and control for every scenario, but it is something to keep in mind when considering use permits for STRs.

**Chair Titus** asked if it would be fair to recommend that STR owners have some kind of electronic

surveillance mechanisms in place if they are not living on the property or nearby. He commented that designating a manager to monitor STR can put a tremendous burden on somebody designated to go to a trouble spot when they don't know how to handle the situation other than to call the Sheriff's Office.

**Mr. Cross** said that might be the way to address those situations, whether or not the owner is on-site.

**Mr. King** stated that the County needs to be careful not to dictate what kind of surveillance is used, and he added that requiring someone to be on the premises in all cases is simply not practical. As an example, he cited the STR approved on Goosley Road, which is a house by itself and not in a neighborhood.

**Chair Titus** stated that the challenge is in allowing STRs in residential areas while ensuring that they do not become investment properties. He said that in this case, no change to the code is needed since on-site residency is already included as a consideration.

**Mr. Cross** asked the Chair to clarify if the consensus is that the Commission does not want to require the owner to be on the premises or in an adjacent premises.

**Chair Titus** said that is correct, that the Commission wants to retain the flexibility because there are some places in the County where a stand-alone STR would be acceptable, especially if the owner/operators can be next door or a short distance away or have mechanisms that will allow real-time surveillance of the property.

**Mr. Holroyd** added that there was general agreement that the owner should be reasonably close.

**Mr. Criner** asked Mr. Barnett what the rules are regarding video surveillance on a rental house. He stated that his understanding is that it is not allowed.

**Mr. Barnett** responded that he would have to study this question. He stated that any activity on the exterior of the house is open and obvious to anyone and therefore might not raise a privacy issue. He stated that he would have to research the issue but that he was not aware of any prohibition on a property owner videotaping in his or her own home.

**Chair Titus** stated that the next question is whether or not whole-house rentals should be prohibited, which he felt was addressed in the previous discussion.

**Mr. Cross** responded that this issue was raised in staff's discussions with the citizens group, which felt that whole-house rentals should not be allowed.

**Mr. Anderson** stated that based on the Commission's consensus that the owners should not be required to be in the home while rentals or taking place, any proposed whole-house rentals would be reviewed on a case-by-case basis.

**Mr. King** stated that the Commission would follow the evaluation criteria discussed previously and that if the Commission is not satisfied that the owners are in close enough proximity, then it can recommend denial.

**Mr. Peterman** stated that he has no objection to whole-house rentals as long as there is adequate supervision of the property. He stated that a prohibition on whole-house rentals could be

problematic since an owner could claim that some part of the house is not going to be rented and therefore it is not a whole-house rental. He stated that he feels whole-house rentals should continue to be evaluated on a case-by-case basis.

Chair Titus agreed and said that the consensus is that a ban on whole-house rentals is not necessary.

Chair Titus introduced the next subject, which was whether or not there be some sort of numerical limit on the number or density of STRs in a given area.

Mr. Peterman stated that the problem with this proposal is that "community" and "neighborhood" are not defined terms. He said he was unable to find a definition in the County Code.

Mr. King said he had the same concern, stating that it would be difficult to define the boundaries of a neighborhood.

Mr. Cross responded that the citizens group referred specifically to "defined neighborhoods," which would be easy to define in the case of a subdivision but difficult to define in other cases. He stated that the staff did a lot of research into this issue and found that setting limits on the number of STRs in a given area is not commonly done in Virginia. In fact, he stated, staff was unable to find a single locality in the state that does it, although the City of Virginia Beach is considering capping the percentage of STRs in its two proposed STR overlay districts to roughly 10% of the homes. He said there are a number of localities in the western states, such as California and Oregon, that limit the density by limiting the distance between STRs. Mr. Cross cited a few examples, including one city that prohibits an STR within 300 feet of another STR on the same street, another city that limits the total number of STRs to 250 and prohibits them from being within 110 feet of another property, and another locality that limits the number of STRs to 3% of the homes in a given Census Tract.

Mr. King stated that he is reluctant to set arbitrary limits on STR density and that if there are too many STRs in a given neighborhood, the Commission will know about it. He stated that the staff does a good job at pointing out where the existing ones are and that the presence of an existing STR nearby would be a factor for the Commission to consider. He agreed with Mr. Peterman about the difficulty of defining a community, and he noted that homes can be in separate but adjacent subdivisions.

Chair Titus commented that his subdivision of Patriot Village is inter-connected with Tabb Lakes, York Meadows, The Greenlands, and Coventry all within a mile of each other, resulting in several individual neighborhoods that overlap. He said it would be possible to have two STRs adjacent to each other because they are in separate neighborhoods. Chair Titus added that Yorktown Village is fairly dense already.

Mr. Cross noted that if there were density caps, the Yorktown Village would likely be excluded since STRs are actually encouraged there by the Yorktown Master Plan.

Mr. Criner recommended that the existence of other STRs nearby be identified as a consideration and that the Commission not try to rewrite the rules.

Mr. Holroyd disagreed, stating that he feels there needs to be a minimum distance between STRs, which would effectively serve as a density cap.

**Ms. Leedom** added that a single STR can change the neighborhood in terms of added traffic, more people, and more strangers. She stated that she would like to see some sort of cap.

**Mr. King** responded that examples cited by staff of 110, 300, and 500 feet would not be much of a limit.

**Mr. Cross** commented that if the Commission wants to go in that direction, it can pick whatever minimum distance it feels is reasonable.

**Mr. King** noted that some neighborhoods are denser than others, which makes it difficult to come up with a uniform distance that would make sense in every area.

**Mr. Criner** stated that the presence of other STRs nearby should be treated as a factor for the Commission and Board to take into consideration when evaluating STR applications.

**Mr. Holroyd** disagreed, reiterating that he feels there should be a limit.

**Ms. Leedom** stressed that it will be important for the Commission to watch the numbers to make sure no neighborhood has an over-abundance of STRs.

**Chair Titus** summarized the discussion, stating that most of the members agree that it should be a consideration and that the County should not try to control STR density with a specific numerical standard.

**Chair Titus** stated that the next issue is whether or not neighborhoods should be able to essentially opt out of having any STRs by majority – or super-majority – vote of its residents. He addressed a question to **Mr. Cross** stating that he was under the impression that this would not be allowable.

**Mr. Cross** responded that there is language in the Code of Virginia stating that all zoning regulations must be uniform for uses throughout each particular zoning district such that, for example, if STRs are permitted with a use permit in one neighborhood that is zoned Rural Residential, the same would apply to all other neighborhoods that are zoned Rural Residential. He stated that the only way to get around that would be to create a different zoning district for each neighborhood, which he said would be problematic.

**Mr. Barnett** agreed with **Mr. Cross** and added that such a provision would have the appearance of divesting the Board of Supervisors, who are the elected officials, of the ability to control zoning. He said it was a novel idea but that the uniformity issue would be a problem. He said he would have a problem with allowing a group of people who are not elected officials to simply say by vote that they are going to control what the County can allow under its ordinances.

**Mr. Peterman** commented that once again, the problem of trying to define neighborhoods would be an issue.

**Chair Titus** stated that the mechanism for neighborhoods to disallow STRs is to regulate them through their homeowners' association (HOA) covenants. He noted that the Coventry HOA is, in fact, pursuing such a change, although he acknowledged that this is not an option in subdivisions that do not have an HOA.

**Mr. King** added that neighbors can also attend the public hearings to make their views known.

**Mr. Barnett** commented that pursuant to the Code of Virginia, any vote would have to be done without the assistance of the Electoral Board or the Registrar's office.

**Chair Titus** stated that the consensus appears to be that neighborhoods should not be able to opt out.

**Ms. Leedom** stated that she believes that neighborhoods should be able to opt out through their HOA or whatever association they have in place.

**Chair Titus** explained that if a neighborhood prohibits STRs in its covenants, that rule would supersede the County's ability to authorize an STR.

**Mr. King** asked about the definition of a super majority.

**Mr. Cross** responded that the central issue is the concept of opting out by vote and that if the Commission wants to allow this, the staff can come back with specific suggestions on how such a provision would be implemented.

**Mr. Holroyd** asked Mr. Cross how the City of Chesapeake handles this issue, noting that STRs are not allowed in certain areas.

**Mr. Cross** responded that Chesapeake regulates it through zoning. He explained that the city only allows B&Bs and tourist homes as a conditional use in its Agricultural zoning district and in its Historic and Cultural Preservation overlay district. He reiterated that the only way to prevent STRs in a given area would be by zoning.

**Chair Titus** asked the Commissioners if they wanted to address this issue through zoning, and the consensus was in the negative.

**Chair Titus** introduced the next topic, which was whether or not there should be limits on the number of rentals per year for an approved STR and whether there should be a limit on the number of rooms available for rent.

**Mr. King** asked for clarification regarding a limit on the number of rentals.

**Mr. Cross** responded that at the July 27 work session, the citizens group had suggested that STRs be limited to a maximum of 90 days of the year. He noted that other localities in Virginia have similar provisions, with the number of rentals ranging from 60 to 104 days, while others have no limit at all. He explained that the rationale for the citizens [KS1] group recommendation of a 90-day limit is that it would ensure that the commercial aspect of the home is ancillary to the principal use, which is residential.

**Mr. King** asked if the County received any feedback from existing STR owners of STRs as to whether a three-month limit on rentals is a business model that works.

**Mr. Cross** responded that it clearly would not work for the approved STR on Goosley Road since it is basically a commercial venture and the owners do not live in the house and that it would probably be problematic for the Yorktown Cottages as well. He recalled that there was some negative feedback from the STR owners in the audience when the topic was discussed at the work session but stated that the Planning Division has not received any formal feedback.

**Mr. Criner** asked if there have been any complaints or problems.

**Mr. Cross** responded that there have been no problems or complaints about any of the legally approved STRs.

**Mr. Holroyd** stated that he feels there should be a limit to prevent people from buying up homes in their neighborhoods for investment purposes. He stated that he feels this is the best way to limit the number of STRs in our neighborhoods.

**Mr. King** responded that he would like to hear from the STR owners and find out if an arbitrary 90-day limit would put them out of business, and he added that the tourist season in this area is longer than 90 days.

**Mr. Criner** stated, based on his experience as the owner of a beach house, that the rental season is four months.

**Mr. Cross** commented that 90 days just happens to be the number that was suggested by the citizens group. He said that if the Commission feels a limit makes sense it can pick whatever number seems appropriate. He agreed that the tourist season exceeds 90 days, noting the season schedule for Busch Gardens, William & Mary's graduation in May, and the fact that a lot of tourists visit Williamsburg at Christmastime.

**Mr. Criner** stated that he is not opposed to a limit but that he does not know what the number should be.

**Mr. King** said he feels the same way and would like to hear more input from the STR numbers.

**Mr. Peterman** stated that while he understands the concern, he is generally opposed to placing a limit on the number of rentals. He agreed that it would be good to hear from the current STR owners and get some feedback before moving forward on this question.

**Mr. King** suggested that this issue be tabled until the Commission can receive input from the STR owners.

**Chair Titus** agreed that there would have to be a rational basis for any such limitation.

**Mr. Cross** noted that the Commission has said it does not want to require the owners to live in the home or in an adjacent premises, which raises the question of what a non-resident STR owner is supposed to do with the house for the rest of the year if there is a limit on the number of rental nights.

**Chair Titus** responded that in that situation, the limitation would probably force the STR to close.

Following discussion, **Chair Titus** stated that the matter would be tabled pending the receipt of additional information.

**Mr. Cross** stated that the Commission also needs to address the question of whether or not to limit the number of rooms that can be rented in a home that is not a whole-house rental.

**Mr. Criner** stated that if whole-house rentals are allowed, he does not see the point in limiting

the number of rooms rented.

**Chair Titus** stated that the Commission appears to agree.

**Chair Titus** raised the next discussion topic, which was whether or not STR operators should be required to maintain liability insurance. He recollected that the amount of coverage recommended was \$1 million.

**Mr. Cross** said that was the number that was suggested by the citizens group. He stated the only localities he could find in Virginia that have an insurance requirement are the City of Williamsburg, which has a very restrictive ordinance and requires \$500,000 of coverage, and the City of Virginia Beach, which requires a million dollars in coverage. He added that insurance requirements are more common outside Virginia, especially in the western states, where the minimum coverage is typically half a million dollars.

**Mr. Criner** asked who the coverage would be protecting.

**Mr. Cross** responded that he had the same question, noting that it would protect the guests and the property owner but that he is not sure how it would protect the neighborhood. He stated the concern was raised specifically by Queens Lake residents who were concerned that the Community Association could be liable if an STR guest were to get hurt on the community playground or on one of the common areas or other community facilities.

**Mr. Criner** responded that liability insurance would not cover those areas anyway and would only cover care for the person who owns the house and the people who are renting the house, which he said is a private agreement between the owner and renter.

**Mr. Cross** agreed.

**Mr. King** recalled that at the work session, one of the STR owners mentioned that one or more of the online platforms allow people to pay for extra insurance.

**Mr. Cross** stated that the owner of the Yorktown Cottages had mentioned something along those lines but that the Commission should not focus on the policies of Airbnb, VRBO, and other online platforms. He noted that the County has tourist homes that have their own websites for making reservations and do not advertise on those other platforms.

**Chair Titus** said he could not understand why an owner or business operator would not have liability insurance.

**Mr. King** said he had the same question and also wondered what it would cost to have \$500,000 or \$1 million of liability insurance.

**Mr. Criner** responded that it is not tremendously expensive but questioned why the County should be dictating this since it has no effect on the rest of the neighborhood or the County.

**Mr. Cross** responded it can be argued that it would benefit public safety by ensuring that a renter who is injured will be covered.

**Mr. Criner** responded that he would encourage owners to purchase insurance but felt the County should not be dictating it to them.

**Chair Titus** commented that it seems that by requiring insurance, the County would be getting very involved in dictating to the owners specifically how to run their business.

**Mr. Holroyd** responded that since it is a business, there are certain things he feels the County should insist on certain elements, such as fire and safety requirements throughout the building. He felt that liability insurance should be required.

**Chair Titus** responded that the County has no insurance requirements for other businesses, such as gas stations.

**Mr. King** stated that he feels requiring liability insurance would be overreach and agreed with **Mr. Criner** that it would have no effect on the community. He stated that it is up to the owner whether or not to purchase insurance and that it should not be dictated to them by the County.

**Mr. Peterman** commented that he believe the reason that the citizens group wanted this requirement was to add another hurdle to make it more expensive to operate an STR, thereby discouraging STR owners from using the home as an investment property. He stated that any responsible homeowner would want to have liability insurance to protect themselves whether it is dictated to them by the County or not.

**Chair Titus** stated the consensus of the Commission that is that liability insurance should be encouraged but not required.

**Mr. Holroyd** said in that case it would be a guideline and not a mandate.

**Mr. King** added that the Commission can always ask the applicants if they have liability insurance and consider that when evaluating a proposed STR.

**Chair Titus** stated that the next topic on the list has to do with zoning enforcement fees, penalties, and renewal requirements for STRs. He recalled that the citizens group had recommended that application fees be increased to cover the total staff costs associated with zoning enforcement for STRs.

**Mr. King** asked what the current application fee is for a Special Use Permit.

**Mr. Cross** responded that effective July 1<sup>st</sup>, the use permit application fees were raised to \$560 except for home occupations and accessory apartments, for which the fee is \$500. He stated that the standard use permit fee was \$450 for a number of years and that it did not even cover the advertising costs. He stated that years ago, staff had recommended to the Board consider raising the fees to at least come closer to paying for the advertising but that the Board was not interested in that.

**Mr. King** asked what the average cost is today for advertising an application.

**Mr. Cross** responded that staff had compiled that information to show the Board how the fees were falling short of the advertising costs and that since then, the Daily Press ad rates have risen considerably while the application fees stayed the same, at least until July 1 of this year.

**Mr. King** asked how raising the fees would protect the community.

**Mr. Cross** responded that the citizens group's concern is not the cost of advertising but rather

the cost of increased staffing resources needed to implement its recommendations for additional zoning enforcement, which the group felt should be borne by the STR owners and not the taxpayers. He said the group also recommends increased penalties for violators.

**Mr. Holroyd** asked what the penalty is for an illegal operator.

**Mr. Cross** responded that there are civil fines spelled out in the code. He explained that the owner would first receive a Notice of Violation and then be taken to court if the violation is not addressed and that there has to be legal action before any fines are paid.

**Mr. Barnett** explained that if there is a financial penalty to be imposed, it is imposed by the court. He stated that the County has in the past taken illegal STRs to court and gotten injunctions against them but that he didn't recall if any monetary penalties were handed down. He stated that for a first offense the courts tend not to weigh heavily unless there has been a record of willful violation such as someone who has simply ignored violation notices and attempts by the County to bring them into compliance.

**Mr. King** asked if the County charges applicants for use permit inspections for other uses.

**Mr. Cross** responded that other than the two exceptions previously noted, home occupations and accessory apartments, the use permit fee is the same for all uses, except that there is an additional acreage fee for sites that are larger than five acres.

**Mr. King** commented that charging a fee to cover the cost of sending zoning inspectors out every so often to visit each site would effectively kill the STRs because the cost would be outrageous.

**Chair Titus** commented that it raises the issue of what is the role of government and what costs should be absorbed by the government as part of its normal operations.

**Mr. Criner** noted that these facilities are being taxed and are entitled to a certain level of service for their tax money.

**Chair Titus** agreed, adding that the government should not be in the business of making a profit.

**Mr. King** stated he is not against raising the application fee but that it could never be high enough to cover all the costs.

**Mr. Cross** clarified that the citizens group's recommendations were not limited to the application fees but to other fees as well, such as a \$250 annual use permit renewal fee. He stated that there are a lot of localities in Virginia that charge an annual STR registration fee in the range of \$150 to \$200 but that in those localities, STRs are typically permitted administratively without having go through a public hearing process.

**Mr. Holroyd** stated that it sounds like the fees are basically set by the Board of Supervisors and the penalties are set by the court, so there is nothing for the Commission to discuss.

**Chair Titus** summarized the discussion, stating that the consensus is for zoning fees to stay as they are. He asked if the Commissioners have any additional items they want to bring up.

**Mr. Holroyd** introduced two additional items that he wanted to discuss, the first of which is a requirement for prior residency on the property before a person can apply for a Special Use Permit

for an STR, and the second of which is the issue of neighborhood agreement or disagreement and how much that should weigh into whether a Special Use Permit goes forward.

**Chair Titus** recollected that the citizens group had recommended a residency requirement of two years.

**Mr. Holroyd** stated that he felt it was a legitimate request to prevent people from buying property and immediately flipping it for rental purposes. He said this would control the spread of STRs and prevent the problem of people buying and flipping properties into rental properties, as in Virginia Beach.

**Mr. King** replied he is not opposed to some sort of minimum residency requirement so that people have to live there for at least a certain period of time to have a connection to the neighborhood.

**Chair Titus** countered that there is nothing to prevent people from buying homes and immediately flipping them for long-term rental purposes. He questioned why the County should care as long as the residential character of the property is maintained.

**Ms. Leedom** stated that she felt there should be a residency requirement for STRs. She reiterated her belief that a single STR changes the character of the neighborhood.

**Mr. King** stated that he feels long-term rentals are different from short-term rentals because the long-term renters become part of the neighborhood.

**Chair Titus** stated that with a residency requirement, a person could buy a property, live six blocks away, and never be around their neighbors and yet would have to wait two years before applying for a use permit to operate an STR even though that person was never part of the neighborhood. He stated that many neighborhoods are not close-knit and in many cases people do not know their neighbors.

**Mr. Cross** brought up the example of the STR on Gossley Road, which the owners purchased with the intent of offering it as an STR. He said that with a residency requirement, they would just have to hold the property for two years before they could do anything with it.

**Ms. Leedom** responded that since there are no neighbors near the property, that case could have been treated differently.

**Mr. Cross** responded that if there is a two-year mandatory waiting period, then the Commission and Board would have no latitude to consider extenuating circumstances.

**Chair Titus** stated that he would not be against allowing STRs as a matter of right, subject to certain requirements.

**Ms. Leedom** replied that York County is not a tourist community like Nags Head where four out of five houses are rentals.

**Mr. King** replied that people who live in Yorktown would not agree that the County is not a tourist community.

**Mr. Cross** commented that there are more than twenty thousand homes in the County, only eleven of which are being operated as STRs, which is a very small proportion. He said that outside of the

Yorktown Village, they are generally scattered all over the County, although there is a small cluster of properties in Queens Lake that were unsuccessfully proposed for STRs.

**Mr. King** stated that if the consensus of the Commission is that there should be no waiting period, he would go along with it.

**Mr. Criner** stated that he would like to use prior residency as a guideline that the Commission can take into consideration, but he added that there are certain circumstances where it would be justifiable to allow a new owner to operate an STR. For example, he stated, there could be a property owner whose spouse dies shortly after purchasing the property and might need to rent rooms for income. He said he would rather err on the side of giving people more rights than taking them away.

**Chair Titus** expressed his agreement with Mr. Criner.

**Mr. Holroyd** stated that the neighbors also have rights and that he would rather side with the neighbors.

**Mr. Peterman** responded that the Commission takes the neighbors' interests into consideration. He said that neighborhood opposition carries a tremendous amount of weight, and that the history has been that when the neighbors have strong concerns that a proposed STR would change the character of the neighborhood, the application is not approved.

**Mr. King** stated that the process is for everyone and that there are multiple opportunities for all residents to participate. He stated that all citizens' rights are well represented under the current process.

**Mr. Cross** commented that Mr. Peterman is correct in saying that in every case of an STR being approved, the one common denominator was that there was no significant opposition, and in every case of one that has been denied or withdrawn, there was significant neighborhood opposition. He stated that none of the traditional planning considerations such as lot size and density have entered into the decisions to approve or deny.

**Mr. Holroyd** raised the question of whether or not an STR applicant should have to have the agreement of the neighborhood in order for the proposal to go forward or if the Commission is only considering opposition.

**Chair Titus** responded that the Commission hears from neighbors who are in support as well as those who are opposed and that sometimes the neighbors are evenly divided.

**Mr. Peterman** recalled an application where all the surrounding neighbors expressed support and that everything else about the application was satisfactory but that the key factor was that his neighbors supported it.

**Mr. Cross** commented that when prospective STR operators approach the Planning Division about applying for a use permit, staff strongly encourages them to talk to the neighbors and the HOA, if there is one, or in a subdivision like Queens Lake, the community association. He added that there have been cases where people have included with their applications signed letters of support from their neighbors.

**Mr. King** stated that he feels the totality of citizen input is taken into consideration under the current process.

**Mr. Holroyd** responded that he feels strong neighborhood support should be a guideline for evaluating STR application.

**Mr. King** replied that it already is used as a guideline that he and the other members take into consideration. He said he does not want to force an STR on a neighborhood that is strongly opposed to it.

**Mr. Cross** clarified that neighborhood support or opposition comes out of the public hearing process and is not something that would be embedded in the Zoning Ordinance. He explained that staff serves as technical advisors to the Commission and the Board, so citizen input does not enter into the staff's recommendations but that it does legitimately enter into the Commission's recommendations and the ultimate decisions of the Board.

**Chair Titus** asked **Mr. Cross** if staff has the guidance it needs from the Commission to move forward.

**Mr. Cross** said it does and that there are also a number other, less significant, recommendations put forth by the citizens group that have not been discussed, such as requiring STRs to be regulated as hotels. He said he did not include the issue of signs in the discussion topics because that issue has been settled by the U.S. Supreme Court, which has greatly reduced localities' latitude in regulating signs.

**Ms. Leedom** asked **Mr. Cross** about applicants' obligations to notify their neighbors when they apply for a Special Use Permit.

**Mr. Cross** responded that notification of the neighbors is done by the County and not the applicant. He explained that staff sends letters to all immediately adjacent property owners, including those across the street, as required by the Code of Virginia. He stated that the County advertises the public hearings for both the Commission and the Board twice in the Daily Press, which is also a state code requirement. In addition, **Mr. Cross** stated, the staff posts a sign on every property that is the subject of an application so that residents and property owners in the general area can be aware that an application has been submitted. He added that the application materials and public notices are also posted on the County's website, and that for sites that are in a neighborhood that has an HOA or a duly constituted community association, notification letters are sent to the association.

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**MINUTES  
YORK COUNTY PLANNING COMMISSION**

Regular Meeting  
York Hall, 301 Main Street  
December 8, 2021

**MEMBERS**

Douglas Holroyd  
Glen D. Titus  
Mary P. Leedom  
Michael S. King  
Robert T. Criner  
Robert W. Peterman  
Joseph P. Smith

**CALL TO ORDER**

**Chair Titus** called the meeting to order at 7:00 p.m. and stated that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. He explained that this responsibility is exercised through recommendations conveyed by resolutions or other official means, all of which are matters of public record. He stated that the Commission is comprised of seven citizen volunteers appointed by the Board, including one representative from each voting district and two at-large members.

**ROLL CALL**

The roll was called and all Commissioners were present with the exception of Mr. Smith. Staff members present were Timothy C. Cross, Deputy Director of Planning and Development Services; Richard E. Hill, Jr., Deputy County Attorney; Amy Parker, Senior Planner; Earl W. Anderson, Senior Planner; Jeanne Sgroi, Management Analyst Intern, and Cathy Tartabini, Planning Assistant. Also in attendance was Susan D. Kassel, Director of Planning and Development Services.

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**OLD BUSINESS**

**Chair Titus** opened the discussion of STR regulations. He stated that the staff had prepared a set of draft Zoning Ordinance excerpts and is looking for feedback from the Commission.

**Mr. Cross** stated that there was extensive discussion at the Commission's August 11 meeting about ten specific proposals related to STR regulations. He stated that based on the consensus of the Commission – or the majority of the Commission – on each item, staff prepared the draft amendments for the Commission to review. He stated that the most significant change is to allow STR use permits to run with the property owner rather than with the property. He stated that staff has been doing this as a matter of policy for months through use permit conditions but is recommending that it be added to the code as a general requirement. He said other suggested changes include a requirement that STR owners maintain a guest log book as well as additional language clarifying that onsite residency is preferred but not required as long as applicants can demonstrate that they have adequate provisions in place to monitor guest behavior.

**Mr. Cross** stated that most of the ten proposals that were discussed at the August meeting are not reflected in the draft language because the majority of Commissioners were not in favor of them.

He stated that the one that remains undecided is whether or not to impose a limit on the number of rental nights per year. Mr. Cross stated that in response to a request from the Commission, staff contacted the eleven existing STR owner/operators in the County to get their feedback and that there were four responses, all of which were included in the agenda materials. He said this is an issue the Commission will need to discuss and reach closure on so staff can move forward with any actual Zoning Ordinance text amendments.

Chair Titus stated that the Commission needs to decide what the maximum number of rental nights per year should be, leave it to the Board of Supervisors to decide on a case-by-case basis, or not have a maximum limit. He said he would rather set the limit at 365 days than have the Board set a limit for each individual case. He said any other number would be arbitrary and capricious and would have no justification.

Mr. Peterman referred to the feedback from the current STR owners who stated that such a restriction would cause a hardship that could require them to cease operation. He said there would need to be a good reason for any limit because it could put people out of business. He said there are enough regulations and procedures in place to deal with any complaints that arise and that he did not see a need for a limit.

Chair Titus responded that there are localities that do limit the number of rental nights and yet the STRs are able to stay in business somehow.

Mr. King agreed with Chair Titus's comment that to impose a limit on the number of rental nights would be arbitrary. He said there are some cases where the Commission might feel no limit is necessary and others where a limit might make sense. Mr. King said he would like to leave it as it is where each case is decided on its own merits. He stated that an alternative would be to give the Board of Supervisors the option of restricting the number of rental days per calendar year. He said he opposes a blanket restriction on the number of rental days. With regard to the other proposed amendments, Mr. King said he thought the staff did a good job of incorporating the Commission's comments. He noted that the major change is to tie STR use permits to the property owner rather than the land.

Chair Titus suggested that the limit could be set at 365 days unless the Board decides to change it in a particular case.

Mr. Criner said he agrees with that approach.

Mr. Holroyd stated that he believes there needs to be a tier system with guidelines that have to be met before an applicant moves up to the next tier. He advocated a probationary period, as was done in Mr. Moberley's case, in which applicants have to demonstrate that they are responsible business owners who follow the rules and pay the taxes. He stated that under such a system, STRs could be limited to 90 days in the first year and then be allowed to increase to 180 days in the second year if they are in compliance with all the regulations and conditions, and ultimately to 365 days by year four. He stated that a limit of 104 days, as some communities have, would be a good starting point because that would establish that they can screen candidates, control renters' behavior, and ensure that neighbors are in support of it.

Chair Titus asked if applicants would have to come back to the Board periodically for approval.

**Mr. Holroyd** said that is for staff to decide, and he noted that that is what happened in Mr. Moberley's case. He stated that instead of starting with a 365-day limit, applicants should earn the right to be unlimited by proving that they are meeting the County's expectations.

**Mr. Criner** responded that he is glad there were no such restrictions in place to force him to earn the right to make money when he started his home-based business.

**Mr. Holroyd** responded that an STR is not the same as a business in that it involves a homeowner deciding to utilize spare space in the home to rent out to tourists.

**Ms. Leedom** agreed with Mr. Holroyd that there should be some limit initially and that 365 days is too many. She stated that STRs should be monitored and the applicants should have to come back to the Commission periodically and demonstrate that they are in compliance and that the neighbors are happy.

**Chair Titus** asked Ms. Leedom what makes a short-term rental different from the multitude of other home-based businesses that the County has approved.

**Ms. Leedom** responded that with home-based businesses, the owner is on the premises and able to monitor it and that is not necessarily the case with STRs.

**Mr. Cross** commented that there are provisions in place to revoke use permits when there are problems. He said that years ago, the County had a system similar to what Mr. Holroyd is proposing. He stated that home occupations with non-resident employees were required to come back to the Board every two years and either go through the process again or submit letters from all the neighbors saying they had no objection to the continuation of the business. He said that over time it came to be a pointless exercise that was burdensome to the business owners, some of whom complained. He said that ultimately the Board of Supervisors took that provision out of the ordinance because it was not serving any purpose.

**Mr. Criner**, said that as a business owner who was in that position, he was grateful to the County for removing that provision.

**Richard Hill**, Deputy County Attorney, pointed out in response to the comment that was made earlier regarding sex offenders that the sex offender registry is public and searchable. He stated that STR owners can search the registry to make sure prospective renters are not on it. In addition, he stated that the County Attorney's office would have concerns about requiring STR owners to make their guest logs available to staff on demand. He stated such provision would pose serious Constitutional problems in light of existing Supreme Court precedent. He asked the Commission to take that into consideration.

**Mr. Cross** explained that this provision was included in the draft amendments because a lot of other localities have the same requirement and it seemed reasonable to staff. He added that Mr. Hill had conveyed his comments to staff earlier but they were not received until after the agenda package was sent to the Commission, which is why the language was included as is in the draft document.

**Mr. King** recommended removing the language based on the advice of the Deputy County Attorney. There was no objection.

**Mr. King** commented that there is a process that gives the Planning Commission the opportunity to impose additional restrictions on an STR if it believes there is a need. He added that as was pointed out by Mr. Cross, the County has mechanisms in place to deal with any STR that is being operated in an inappropriate manner. Mr. King stated that regardless of what might be the rule in some other locality, to establish some numerical limit on the number of rental nights would be arbitrary and have no rational basis. He said the Commission should base its recommendations on the unique facts of each case and the comments from the neighbors and not on some arbitrary number.

**Mr. Hill** stated that he and Mr. Cross talked about requiring STR owners to keep a guest log but not requiring that it be available on demand to County staff. He said that would ensure that the information is available in the event that suspicion developed that would justify issuance of a search warrant, so he felt that was a possibility.

**Mr. Cross** said the language can be changed to require a guest log but not require that it be made available on demand to County staff.

**Mr. King** said that is a great idea so that if there is a crime or a complaint, the guest information can be provided with a search warrant.

**Chair Titus** stated with regard to the number of rental days, it could be left unlimited while giving the Board the authority to reduce it in approving a use permit.

**Mr. King** responded that he was not opposed to having language that would say that the number of calendar days could be limited based on the circumstances of the application. He said this would make it clear to the applicants that they are not guaranteed to have up to 365 rental days and there could be factors that dictate a limit on the number of rental days.

**Mr. Cross** commented that such a provision would give the Board of Supervisors some leeway, when there are controversial applications, to adopt a compromise position where the applicants are willing to limit the number of rentals per year. In addition, he stated that at its August 11 meeting, the majority of the Commission did not want to prohibit whole-house rentals but as a practical matter, that is what a limit of 60, 90, or 100 rental nights would do in most cases.

**Chair Titus** summarized the discussion, stating that the proposed amendments should not include a numerical limit but should include language to allow the Board to establish one in any particular case if it deems it necessary.

**Mr. Holroyd** commented that a person could rent his or her home for 90 days or more, which would not be considered a short-term rental, and if they were in a first-year probationary period, restricting the STR use to 100 days would not prevent them from renting out their house for the rest of the year as long as the rental is for at least 90 days.

**Chair Titus** asked Mr. Cross if the Commission has given staff the guidance it needs in order to proceed.

**Mr. Cross** responded that it appears to be the desire of the Commission to make two modifications regarding the guest log and the number of rental nights and sponsor the rest of the amendments as written.

**Mr. Holroyd** expressed his disagreement with language in the staff report that states that the consensus of the Commissioners was that the zoning fees and penalties should remain as they are. He said his recollection is that the Commission said that fines are set by the courts and fees are set by the Board of Supervisors and that the Planning Commission has no voice on it, not that the Commission agreed that they should stay the same.

**Mr. Cross** responded that the Commission agreed not to make any changes and the statement to which Mr. Holroyd was referring reflected his own opinion.

**Mr. King** responded that the bottom line is that the Commission is not recommending any changes.

**Mr. Holroyd** said that is true but that he disagreed with the wording in the memo.

**Chair Titus** stated that in his opinion, the proposed amendments represent guidelines for STRs, and he asked Ms. Leedom and Mr. Holroyd if they agree, since he has heard them say there are no guidelines.

**Mr. Holroyd** responded that once these recommendations are adopted by the Board of Supervisors, there will be guidelines in place.

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# COUNTY OF YORK

## MEMORANDUM

**DATE:** June 7, 2023 (BOS Mtg. 6/20/23)  
**TO:** York County Board of Supervisors  
**FROM:** Neil A. Morgan, County Administrator   
**SUBJECT:** Draft Zoning Ordinance Text Amendments - Short-Term Rental Homes

### ISSUE

At its December 14, 2022, meeting, the Planning Commission voted to forward Application No. ZT-194-22 to the Board with a recommendation of approval. This application, initiated by the Commission in accordance with Section 24.1-113(a)(2)b of the Zoning Ordinance, is to amend the Zoning Ordinance provisions applicable to short-term rentals (STRs). The proposed amendments are shown in the attached ordinance in strikethrough/underline format. Most of the proposed changes are relatively modest because most of the Commissioners have indicated that they are not in favor of making major changes. The most significant change is to require tourist home use permits and YVA approvals to run with the property owner rather than with the property. Allowing STR approvals to run with the land has been the major bone of contention among STR opponents ever since 2015 when the Airbnb phenomenon began to take hold in the County. The proposed amendment would stipulate that all STR approvals automatically expire when the property is transferred to a new owner.

Other recommended changes include the following:

- Require STR owners maintain a guest log book.
- Clarify that onsite residency is preferred but not required if the applicants can adequately demonstrate to the Commission and the Board that they have satisfactory provisions in place to monitor guest behavior.
- Specifically authorize the Commission and the Board to consider the presence of other legally operating short-term rental homes within the same general area when evaluating STR applications.
- Add language stating that there is no set limit on the number of rental nights a year but specifying that the Board can establish such a limit if it deems it necessary when approving an application for an STR.
- Add language stating that exterior cooking appliances used by guests must have a fuel source of either propane or natural gas and that the use of charcoal is prohibited. This stipulation from the Department of Fire and Life Safety has become a standard condition for tourist home approvals, so it would make sense to add this to the performance standards.

- Remove language requiring the owner of a bed-and-breakfast to be the on-site operator/provider. This is based on the Commission's feeling that as long as there is a manager either on the premises or in an adjacent premises, it should not matter if he or she is the owner. For example, the Hornsby House Inn bed-and-breakfast in Yorktown was approved before this requirement was in place and has operated without incident since 2011 with an on-site manager who was not the owner.

### CONSIDERATIONS/CONCLUSIONS

1. Over the years, the Planning Commission has spent a considerable amount of time and effort grappling with the issue of STRs. Indeed, this is the second set of STR text amendments initiated by the Commission and forwarded to the Board for consideration. The first group of amendments, which were unanimously adopted by the Board on March 17, 2020, were developed in response to Board members' requests for additional guidelines to assist them in evaluating STR proposals. The current set of proposed amendments was initiated not by the Board but by the Commission, which conducted a work session in July 2021 to meet and have dialogue with a group of citizens advocating various changes to the County's STR regulations. Several STR owners and others were also in attendance and participated in the discussion. As a follow-up to that work session, the Commission dedicated its August 11 meeting and a good portion of its December 8 meeting to extensive discussions of the group's recommendations. The proposed amendments now before the Board represent the culmination of that effort. They reflect the general – albeit not unanimous – consensus of the members of the Planning Commission.
2. Although most of the suggestions made by the citizens group ultimately were not accepted by the Commission, each was given full and serious consideration. The recommendations that were discussed are listed below, along with the general consensus of the Commission on each.
  - Expiration Requirements. Probably the most frequently cited concern that citizens have raised about STRs is that Special Use Permits and YVA (Yorktown Village Activity) approvals for STRs run with the land and not with the property owner. The general consensus of the Commission was that STR approvals should run with the property owner, although one Commissioner felt they should run with the land just as all other land use approvals do. In all recent tourist home applications, staff has included a condition of approval stipulating that the approval will become null and void at such time as the property changes hands to a new owner. Since this has become standard procedure, I agree with the Commission that it makes sense to make this a general requirement for all STRs, and such a requirement is included in the proposed amendments.
  - Residency Requirements. Another major concern that typically arises with regard to STR applications and STRs in general is that without any on-site monitoring of guests' behavior, STRs could be used for loud parties, crime, safety, and a general uneasiness about living among strangers who are only staying for a short time and

might not have the best interests of the neighborhood – or the neighbors – at heart. To address this concern, the Zoning Ordinance currently requires that the owner/proprietor of a tourist home either reside in the home or in an adjacent premises *or* designate a responsible party (who may be the owner) who must be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place. The Planning Commission had extensive discussion on whether or not this provision should be revised to eliminate the opportunity to designate a “responsible party” and to require the owner to live on the premises or in an adjacent premises. While there was general agreement that the most effective way to monitor guests’ behavior is to have the owner physically present in the home, it was also noted that for every rule, there are exceptions, such as the tourist home on Goosley Road that is surrounded by National Park Service property and has no adjacent neighbors, or the tourist home on Penniman Road where the owner’s mother lived next door and was able to keep an eye on the home while rentals were taking place. In the end, the general consensus of the Commission was that while it is preferable for the owner/operator to reside in the home or in an adjacent premises, it should be treated not as a requirement but as something the Commission and Board should consider when evaluating an application for a tourist home. The Commission has recommended modifying the language slightly to clarify that on-premises residency is preferred.

- **Whole-House Rentals.** The concerns that have been expressed about whole-house rentals are similar to the previously discussed concern about requiring the owner to be in the house while rentals are taking place in order to avoid problems with parties, noise, and trash and to maintain the residential character of the neighborhoods. The general consensus of the Planning Commission was that there should not be an absolute ban on whole-house rentals since there can be situations where the owner lives next door or across the street and would be able to monitor guests’ behavior from their homes. In fact, the Board has approved three whole-house rental STRs that were located next door to the owner’s residence; and a fourth where the owner’s mother lives next door.
- **STR Density Caps.** One suggestion that has been made is that the County should set some sort of limit on the number or density of STRs in a given area. The intent of such a provision would be to preserve the character of the County’s residential neighborhoods and keep them from being dominated by tourist homes, which are a quasi-commercial use. This strategy is not commonly employed in Virginia; in fact, staff has been unable to find a single locality in the state that has such a provision, although there are a number of localities in the western states that limit the density by limiting the distance between STRs. One city in California, for example, prohibits an STR within 300 feet of another STR on the same street, while another limits the total number of STRs in the city to 250 and prohibits them from being within 110 feet of another property. Other examples include Austin, Texas, where the number of permitted STRs is limited to three percent of the homes in a given Census Tract, and Santa Fe, New Mexico, where permits will not be issued for more than two STRs directly adjoining each other on a residentially zoned street.

The opinion of most of the Planning Commissioners was that in many cases it would be difficult to define the boundaries of the “neighborhood” and that the County should not try to control STR density with a specific numerical standard, which would be inherently arbitrary. The general consensus was that the presence of other STRs in close proximity or in the same neighborhood or general area should be treated as a consideration when reviewing STR proposals, consistent with the goal of preserving the residential character of the neighborhood. Two Commissioners held the opposite opinion and felt that there should be some kind of density limit.

- **Neighborhood “Opt-outs.”** One idea that has been advanced is that “defined neighborhoods” should be allowed to essentially “opt out” of having any STRs by a 60% “super majority” vote of the residents. This concept raises the age-old question of majority rule vs. minority rights, and staff is not aware of any locality that has such a provision. More importantly, Section 15.2-2282 of the Code of Virginia states that all zoning regulations must be uniform for uses throughout each zoning district. For example, if STRs are permitted with a Special Use Permit in one neighborhood that is zoned Rural Residential (RR), then they must be allowed with a use permit in other RR-zoned neighborhoods as well. During the Planning Commission’s deliberations over this idea, the (now former) County Attorney expressed concern that such a provision would have the appearance of divesting the Board of Supervisors, who are the elected officials, of the ability to control zoning, and that he would have a problem with allowing a group of people who are not elected officials to simply say by vote that they are going to control what the County can allow under its ordinances. It was also noted that the public hearing process already gives affected residents the opportunity to make their views known with regard to a proposed STR, and the Board and Commission have consistently given considerable weight to neighborhood input in evaluating these applications. After discussion, the general consensus of the Planning Commissioners was that neighborhoods should not have the ability to opt out of having STRs, although one Commissioner felt they should have this ability.
- **Rental Limits.** Another suggestion was to limit the number of rental nights to ninety (90) per year and also limit the number of rooms offered for rent in order to ensure that the principal use of the home continues to be residential. There are a number of localities that set such limits on STRs. Fairfax County, for example, limits STR rentals to 60 days per year and a maximum of six adult guests per stay, while the City of Williamsburg limits them to 104 days per year and a maximum of one room with two adults. The consensus of the Commission was that the Zoning Ordinance should not have a specific limit on the number of rooms or occupants. With regard to limiting the number of rental nights per year, the Commission decided that imposing a blanket restriction would be arbitrary and would place an undue financial hardship on the proprietors. Two of the Commissioners, however, recommended that there should be a limit, at least initially, that could be increased incrementally over time if the STR operates without any problems and in accordance with all County requirements. There was general agreement that the

Board should have the ability to limit the number of rental nights in individual cases if the circumstances warrant it, and language is included in the proposed ordinance language that would give the Board this authority.

- **Liability Insurance.** Another recommendation would require STR operators to maintain liability insurance coverage in the amount of \$1 million. According to staff's research, such requirements are not common in Virginia localities and are more common in other states, with a typical minimum coverage of \$500,000. While the Planning Commissioners felt that it would be wise for anyone operating an STR to carry insurance for their own protection and that of their guests, it is not something the County should mandate, especially since it would do nothing to protect the surrounding neighborhood. One Commissioner, however, felt that there should be an insurance requirement.
- **Zoning Enforcement – Fees, Penalties, Renewal, Etc.** The citizens group recommended a variety of special zoning enforcement requirements for STRs above and beyond those that apply to other Special Use Permits. These include a higher application fee for STRs, periodic permit renewal requirements (with a "maintenance fee" of \$250), additional financial and other penalties for non-compliance, and others. The justification for the additional fees and fines was to offset the cost of additional County resources dedicated to zoning enforcement for STRs. During the Planning Commission's discussion of these ideas, it was noted that civil penalties for zoning violations are set not by the County but by the courts in accordance with the limits set forth in the Code of Virginia. Another concern that was expressed is that zoning enforcement costs are absorbed by the County and that STR owners pay transient occupancy taxes in addition to their property taxes and are entitled to a certain level of service from the County. Ultimately, the Commission decided not to recommend any changes to zoning fees or penalties for STRs, although it did agree with one suggestion, which is to require STR operators to maintain a guest log, and this has been included in the proposed amendments.
- **Other Recommendations.**

Two additional recommendations were 1) that anybody wishing to apply for a Special Use Permit to operate an STR should first have to live in the house for a minimum of two years, and 2) that a property owner submitting an application for an STR should have to have the support of the neighborhood before applying to operate an STR. The intent of the prior residency requirement is to deter people from buying homes and then "flipping" them for rental purposes. The general consensus of the Commission was that prior residency could be used as a consideration when evaluating STR proposals but that there should be no specific requirement. However, two Commissioners did feel there should be such a requirement.

On the question of neighborhood support, the general consensus of the Commission was that demonstrations of neighborhood support should not be a prerequisite for an application to go forward since the public hearing process

provides ample opportunity for neighbors to offer their opinions and those opinions are given serious consideration by both the Board and the Commission.

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission considered the proposed amendments at its December 14, 2022, meeting and, subsequent to conducting a public hearing at which eight citizens spoke, voted 4:2 (Mr. Holroyd and Ms. Leedom dissenting; Mr. King absent) to recommend approval. (For details, please see the attached minute's excerpts.)

### **COUNTY ADMINISTRATOR RECOMMENDATION**

Since its first work session on the topic of short-term rentals in August 2019, the Planning Commission has dedicated many, many hours to this issue and has received considerable input from County citizens with a variety of perspectives on this issue. The end result is a series of proposed Zoning Ordinance text amendments that, for the most part, are relatively modest. This approach reflects the Commission's feeling that very detailed and specific performance standards, which are often necessary for by-right uses over which the Commission and Board have no approval authority and no ability to apply conditions, are generally not needed for STRs since York County, unlike many other Virginia localities, requires a Special Use Permit for STRs in all residential zoning districts. While I recognize that there are some citizens who feel strongly that the County needs tighter standards and restrictions for short-term rentals, I tend to agree with the Commission that STRs do not lend themselves to a "one size fits all" regulatory approach. This is why the County requires a case-by-case review through the Special Use Permit (or, in the case of STRs in Yorktown, YVA) process, thereby ensuring that affected neighbors will have an opportunity to express their views on any proposed STR and allowing the Board and the Commission to consider those views and use their best judgment in evaluating each application on its particular merits. I believe that approach is preferable to adopting a highly prescriptive ordinance that does not allow for consideration of the unique aspects of each STR proposal.

Therefore, based on the considerations and conclusions as noted, I recommend that the Board approve the proposed amendments through the adoption of proposed Ordinance No. 23-8.

Cross/3496

Attachments:

- Planning Commission work session minutes, July 27, 2021
- Planning Commission minutes excerpts, August 11, 2021
- Planning Commission minutes excerpts, December 8, 2021
- Planning Commission minutes excerpts, December 14, 2022
- Proposed Ordinance No. 23-8

**MINUTES**  
**YORK COUNTY PLANNING COMMISSION**  
Work Session  
Tabb Library, 100 Long Green Blvd, Yorktown, VA 23693  
July 27, 2021

**MEMBERS**  
Douglas Holroyd  
Glen D. Titus  
Mary P. Leedom  
Michael S. King  
Robert T. Criner  
Robert W. Peterman

**CALL TO ORDER**

Chair Titus called the meeting to order at 7:00 p.m.

**ROLL CALL**

The roll was called and all members were present. Staff members present were Timothy C. Cross, Deputy Director of Planning and Development Services; Richard E. Hill, Jr., Deputy County Attorney; Susan D. Kassel, Director of Planning and Development Services, Amy Parker, Senior Planner; Earl W. Anderson, Senior Planner; Jeanne Sgroi, Management Analyst Intern, and Cathy Tartabini, Planning Assistant. Richard Howell, Dana deJager, Richard Toth, and Dianne Howell were also in attendance.

**OPENING REMARKS**

Chair Titus explained that the purpose of the work session was to discuss the regulation of short term rentals (STRs) in York County. He offered his perspective on the issue, stating that the County needs to balance homeowners' property rights with the right of neighbors to enjoy their residential quality of life. He explained the format of the meeting, stating that the goal is to have an open discussion of the issue and that there would be no time limits on speakers. He then turned the floor over to Dana deJager.

**PRESENTATION/DISCUSSION**

Dana deJager introduced herself, stating that she is a member of a group of around 250 Queens Lake residents dedicated to preserving the fabric of the neighborhood. She said the group has grown over the years in response to each successive STR proposal in the subdivision, and that based on their discussions with most of the homeowners in Queens Lake, 80% would like to see changes to the Zoning Ordinance. Specific concerns cited by Ms. deJager included a lack of uniform standards for STRs, which she said creates uncertainty about what can be allowed, and the potential commercialization of residential neighborhoods, particularly with "whole house" rentals where the owner/proprietor is not on the premises. Other concerns, she said, include safety, noise, traffic, and crime. She stated that she would like to know the Commissioners' thoughts regarding STR goals and the needs of the community.

Chair Titus asked if there is any STR that would be acceptable to their group.

Ms. deJager responded that an acceptable STR would be one that has limits and is not financially viable as a stand-alone business but rather is operated as an ancillary use to the principal use of the home as a residence. She said residents are concerned that investors might purchase homes in Queens Lake strictly for commercial use.

Chair Titus responded that he could only recall a few cases of STRs that have been approved in the County where the owners were not required to live on the premises, one of which was in a fairly isolated area. Mr. Cross stated that the property he was referring to is on Goosley Road and has no neighbors adjacent to the property. He also mentioned one located on Tom Thomas Road in the Skimino area and the Yorktown Cottages on Ballard Street in the Yorktown village.

Mr. Peterman stated that he felt the approval process has not been accurately characterized. He explained that specific limits for each STR are spelled out in the conditions of approval of the Special Use Permit and that the use cannot be expanded without going through an approval process. Dr. Toth stated that after a year an STR owner can apply for a use permit to allow weddings, and he asserted that STRs can be expanded simply by memorandum.

Dr. Toth introduced himself as a member of the team and stated that the single most important investment most people make is their home and that many of them look at zoning laws before purchasing a home. He stated that he strongly disagrees that promotion of free enterprise should be a goal of the County's zoning provisions relating to STRs, as stated in the staff's briefing memo, while he agrees with the other two goals named — preserving the quality of life in residential areas and protecting private property rights. Dr. Toth stated that overtly commercial activities should not be allowed in residential areas and that he is looking forward to working with the Commission to develop rules to protect existing neighborhoods such as Queens Lake.

Mr. Howell introduced himself as a member of the team and stated that the community's major concerns are preservation of community character and safety; enforcement of zoning codes; and placing the burden of paying for enhanced enforcement on the owners rather than the taxpayers. Mr. Howell mentioned that other localities in Virginia and around the country are dealing with the same issues. He stated that in previous meetings, staff had indicated that excluding STRs in individual neighborhoods is not possible but that he believes Chesapeake does it and that Virginia Beach is considering something similar. Mr. Howell stated that the group's recommendations are intended to work in tandem with one another and were developed after researching other localities' ordinances across Virginia and the country.

Chair Titus responded that zoning laws need to be uniform across the County and that the best way to prohibit STRs in a neighborhood is through the homeowners' association (HOA), although he understood that in Queens Lake that is not possible. Dr. Toth said he didn't understand why applicants cannot be required to obtain permission from the neighborhood.

Mr. Holroyd stated that the Commission must follow state law, adding that it is difficult to change HOA covenants and bylaws. He said in most cases a two-thirds or three-quarters vote is needed.

Mr. Howell also stated that he feels short-term rentals and long-term rentals should be treated differently. He said long-term renters become part of the community.

Dianne Howell introduced herself and described her role in the group as the primary researcher of the code and the history of STRs in the County. She stated her research included reviewing the various STR applications that have been submitted in the County and reviewing Planning

Commission and Board of supervisors meetings. She felt the neighborhood canvas was important and demonstrated that most Queens Lake residents oppose STRs in their neighborhood. She stated that residents want more clarity as to the maximum scope of STR operations. Chair Titus stated that the more restrictive the rules are, the less flexibility there is to consider the unique circumstances of each application. Ms. deJager stated that the team wants narrowly defined limits and not broad regulations.

**Mr. King** commented that if Chesapeake is indeed regulating neighborhoods differently, it might not be doing so lawfully. He cautioned that if prescriptive regulations are adopted, an applicant who meets all the requirements but gets denied could question the fairness of the process. He said that doing so would weaken the role of the public and the Commission's flexibility in considering neighborhood input. Mr. Howell responded that he understands and agrees that there needs to be flexibility and that every application is different based on the location of property. Dr. Toth agreed that the Planning Commission needs to have latitude in evaluating applications but added that there still need to be rules.

**Christie Van Cleave**, 1304 Dandy Loop, stated that she and her husband own and operate the Yorktown Cottages on Ballard Street in Yorktown. She said she understood some of the concerns about STRs because she had similar concerns about a proposed B&B in her neighborhood of Dandy that she felt would harm the rural feel of community. She said her application was closely scrutinized when she went through the application process, so she put a lot of effort into preparing her application materials to improve her chances of approval. She also mentioned that Yorktown Cottages is a business and pays sales tax. She added that when Yorktown Cottages expanded, she had to go through the application process again. Ms. Van Cleave stated that she has reviewed many of the use permit applications that come before the Planning Commission and feels that some have a lack of detail. She added that she hopes existing approved STRs will be grandfathered from any changes to the Zoning Ordinance.

**Mr. Holroyd** asked for input from the team regarding whole-house rentals versus individual room rentals. Mr. Howell responded the team thinks whole-house rentals should not be allowed and that the owner should have to reside on-site. He said that it has been shown that STRs that run well have the owner on-site.

**Ryan Moberley**, 113 Edale Avenue, stated that he operates a short-term rental out of his home in Nelson Park, not far from Queens Lake. He stated that he is in the home while rentals are taking place and that he is very careful about who stays in his home. He stated that he is glad that STRs are reviewed on a case by-case basis, adding that in his case all of his neighbors supported his application. Mr. Moberley stated that there have been no complaints about his tourist home and that it is the rentals that are operated illegally that cause problems.

**Mr. King** stated that as part of the approval process, the Planning Commission has to make judgement call with the intent of causing no harm to citizens. He stated that applicants have two opportunities to present their case, first before the Planning Commission and then the Board of Supervisors. He also told Mr. Moberley that his STR would be grandfathered.

**Ms. Van Cleave** discussed the benefits of long-term versus short-term renters, noting that long-term renters can be great but can also be difficult to remove if there is a problem. She stated that although she doesn't live on the premises, she does make sure to meet her guests upon arrival.

**Chair Titus** commented that there are high-tech electronic monitoring systems that can enable the

owner to monitor the house even when he or she is not on the premises.

**Michelle White** stated that she is the owner of an approved tourist home on Goosley Road. She said she and her husband do not live on the premises and mostly rent to families who do not want to stay in a hotel either because they are looking for a different type of lodging experience or because they have special needs, such as allergies. She stated that she likes the fact that applications are reviewed on a case-by-case basis, noting that in her case, there are no neighbors adjoining the property. Ms. White stated that the use permit process allowed the Commission and Board to take her unique circumstances into consideration. She stated that she carefully screens her guests, adding that the Airbnb platform requires renters to be at least 25 years old. Chair Titus commented that Ms. White's case is a good example of the value of the case-by-case approval process, noting that her property is almost entirely surrounded by National Park Service property, which helped to mitigate concerns about the fact that the owners do not live on premises. He said in that particular case, it seemed like a reasonable location for an STR with off-premises management.

**Mr. King** stated that he feels strongly that the property owner should live on the premises and that use permits for STRs should run with the property owner and not the land. He stated that if a property is sold, the new owner should have to go through the same approval process. Regarding the idea of limiting the number or density of STRs in a given area, he said he would prefer to make that an evaluation criterion rather than imposing a numerical limit. With regard to requiring the owner to be on the premises, Mr. Criner commented that if someone owns property, they have just as much incentive as someone who lives on the premises to make sure that renters don't cause any problems. He agreed that there is technology to help monitor the property, but that doesn't mean the owner will necessarily use it. Ms. Howell responded that she felt a house becomes a commercial use if the owner does not reside in it. Mr. Criner responded that community character cannot always be protected even when property is used for residential purposes. He cited the case of his father's house, which was not properly maintained by the new owners after it was sold.

**Ms. deJager** stated that the primary use of a home in a residential neighborhood should be residential. She stated that if it becomes a commercial property, neighbors have concerns about noise and people coming and going at all hours of the night. Mr. Criner asked the STR owners in the audience if the character of their neighborhoods had changed since they began operating. They responded that there has been no change.

**Dr. Toth** stated that the Sandbridge area of Virginia Beach began as a residential area but changed over time and cannot turn back. He stated that Queens Lake is ten minutes from the Colonial Williamsburg Visitors Center and that they do not want it to become the Sandbridge of York County.

**Mr. Howell** stated that he wanted to talk about specific changes that the team would like to see in the zoning provisions for STRs, which include a requirement for the owner to live on the premises, a ban on whole-house rentals, maximum STR density limits in any given neighborhood, and the ability for neighborhoods to prohibit STRs by a vote of the residents.

**Stephen Orlando**, 102 Hemlock Court, stated that safety is a concern for him and that he would like to see a requirement for background checks. He stated that he understands that a STR is currently operating in his neighborhood and that all the neighbors in the cul-de-sac are opposed to it. He added that he had seen a van run a STOP sign and that same van was parked and unloaded in front of the property late in the evening. Mr. Criner responded that such problems are not unique to STRs and that many homeowners have teenagers and generate noise late in the evening with

cars coming and going. He stated that residential uses can be much more intrusive than STRs. Ms. deJager countered that the difference is that an STR is making a profit. Mr. Criner and Mr. Cross asked why that should make a difference. Ms. deJager responded that short-term renters come and go and do not have the best interests of the neighborhood in mind.

**Ms. Van Cleave** stated a well-run STR can add value to the neighborhood in addition to bringing revenue to the County. She added that she feels families want privacy and do not want to vacation at a place where the owner is required to stay on the property. She stated that the Yorktown Cottages cater to families with children and that she has had no problems with any of her renters. Chair Titus asked Ms. Van Cleave if she felt the location of the rental property makes a difference. He stated that Yorktown Cottages is in Yorktown and Queens Lake is ten minutes from Williamsburg. Christy Van Cleave responded that she didn't know but that she has found that visitors to Williamsburg have discovered Yorktown during their vacation.

**Mr. King** stated that in many cases, such as Dare, it would be difficult to define the boundaries of the neighborhood. He also stated that when the owner does not live on the property, the Commission takes many factors into consideration, such as owner's proposed measures for monitoring property and how they are going to meet the renters, and that the Yorktown Cottages exceeded all requirements and was approved. Dr. Toth stated that there should be limits or guidelines for those areas that are defined neighborhoods.

**Ms. Howell** stated that there have been several STR applications in Queens Lake, which is ten minutes from Williamsburg. She asked how many is enough and how many applications will be approved before the STR revenues start to fall. Ms. Howell stated that three STRs were approved after they were found to be operating illegally and that she didn't understand why they were eventually approved with no penalty for operating illegally. Ms. Van Cleave responded that often owners are unaware of the zoning requirements, which she said was the case when the Yorktown Cottages applied for approval. She said she had to slow down and take time to get through the application process.

**Ryan Moberley** commented that anyone can become a renter on Airbnb and other online platforms and continue to reserve bookings. He also stated that these sites should be monitored. Ms. Howell stated that she feels that platforms should not list a property unless there is notarized documentation that the owner has gone through the proper channels for approval.

**Dr. Toth** wanted to discuss the requirement for the owners to live on the property. He said if that is not feasible, exceptions should be based on the size and location of the home. Chair Titus responded that there might a home monitoring system required of the property owner. Dr. Toth asked who would respond to the alarm, and Chair Titus responded that the property owner would be notified that the number of people exceeds the allowed number of occupants. Mr. Holroyd noted that home monitoring systems register all devices including smartphones, laptops, tablets, etc. and would notify the owner that there are more people in the home when actually there might be the correct number of occupants. Mr. Cross stated that the Zoning Ordinance requires STR applicants to submit a plan detailing how the owner would handle complaints and monitoring. He added that contrary to what had been stated, not all zoning enforcement is complaint-driven. He explained that County zoning staff reviews all active use permits once a year.

Returning to the specific recommendations, **Mr. Howell** stated that the team would like to limit rentals to a maximum of 90 days per year, and **Ms. deJager** added that they would also like to limit the number of rooms. They stated that these limits would discourage people from simply

operating homes for commercial purposes. Mr. Howell stated also that they would like all STRs to be reviewed for compliance every two or three years.

**Susan Kassel, Director of Planning and Development Services**, responded that every property with an active Special Use Permit is inspected every year and that if the use is not in compliance with the conditions of approval, the owners would be cited and taken to court.

**Mr. Howell** stated that the team does not feel STRs should be allowed to be expanded after one year. Mr. Cross asked Mr. Howell what he was referring to. Mr. Howell and Dr. Toth stated that after a year of operation, the owner of a legally approved STR can apply for another use permit to operate the site as a venue for weddings and receptions. Mr. Cross responded that while they can apply, that does not mean such a use permit would be approved, and he added that it is extremely unlikely that any property in Queens Lake would be approved to host weddings.

**Ms. Van Cleave** stated that the annual review of approved STRs ensures that the owner is running the business properly. She asked if there have been any cases of problems with a legally approved STRs. Mr. Cross responded there are currently eleven approved, legal tourist homes and B&Bs operating in the County and that there have been no complaints or zoning violations associated with any of them. He also stated that the ones that have problems are the ones that were operating illegally. Mr. Cross asked Dr. Toth what he meant when he said that some STRs have been allowed to expand simply by memorandum. Dr. Toth responded that an approved STR owner was allowed to add a room for rent by a memo to the Board of Supervisors. Mr. Cross said that is not correct, explaining that in the case he was referring to, where an approved B&B owner was permitted to convert a bedroom into a guest room, the expansion had to be approved by the Board of Supervisors. He said an approved STR cannot be expanded without Board approval.

**Ms. Leedom** asked what would be an acceptable number of percentage of STRs allowed in a neighborhood. Dr. Toth discussed a suggestion to set a threshold of STRs per neighborhood and address what makes sense as guidance for number of STRs. He stated this could be no more than two STRs within 500 feet, for example. Mr. King responded that any numerical limit on the number of STRs would be arbitrary. He spoke about traffic and parking, noting that many travelers do not have a vehicle and rely on Uber or Lyft instead. Dr. Toth stated that traffic is a concern in Queens Lake because of the rated capacity of the dam separating Queens Lake from Queens Creek, which is owned by the Community Association.

**Mr. King** commented that last year there was a proposed tourist home in Queens Lake where the applicant did everything right and addressed every concern and yet she was still denied. He said some people are simply opposed to STRs. Dr. Toth responded that residents are concerned that if one STR is allowed in the neighborhood, it will open the door for more, which could change the character of the neighborhood.

**Dr. Toth** expressed opposition to allowing signs in connection with STRs. Mr. Cross responded that because of a Supreme Court ruling, the County cannot regulate signs based on their content and that if the County allows yard sale, political, or other signs in residential districts, it must also allow identification signs for STRs. He added that signage has never been an issue since most STR applicants have not wanted signs placed in the yard.

**Mr. Howell** commented that homeowners want to protect their investment and that the biggest issue is how many STRs will be allowed in the neighborhood.

**Dr. Toth** recommended that STR owners be required to show proof of liability insurance coverage, and he recommended a minimum coverage of \$1 million. Mr. Criner asked Dr. Toth if he would also require all homeowners to carry the same amount of coverage. Dr. Toth responded that he would recommend that only if the property used as a business. Chair Titus commented that he contacted his homeowner's insurance company and asked if he would need additional insurance coverage if he were to rent out 40% of his home and live on the property. He said the insurance company responded that no additional coverage would be needed.

**Dr. Toth** discussed health and safety concerns, stating that he feels STRs should be subject to the same regulations as hotels. He noted that in the recent past, hotel rooms in Williamsburg were required to be quarantined for 24 to 48 hours following check-out. Mr. King noted that there are various performance standards in the Zoning Ordinance relative to fire extinguishers, smoke alarms, and emergency evacuation procedures. Mr. Moberley stated that for his tourist home, the County required a fire exit plan and annual property inspections to ensure property meets fire code which includes requirements of fire extinguishers.

**Mr. King** thanked the team and the citizens who spoke during the meeting, adding that he needs some time to digest all the information provided tonight.

**Mr. Howell** briefly summarized the remaining recommendations pertaining to code enforcement, use permit renewals, and application fees.

**Mr. Criner** stated that he wanted to hear the staff's reaction to the proposals presented by the team.

**Mr. Cross** responded that the staff's position is spelled out in the briefing memo, which specifies which of the group's recommendations – i.e., tying STR use permits to the property owner, requiring the owner to be on the premises or in an adjacent premises, mandatory liability insurance, and requiring the owner to maintain a guest log – staff feels are worthy of consideration. He noted an earlier comment that zoning provisions for STRs should not be changed in a way that harms existing residents, but he noted that the changes adopted last year actually made the rules stricter. He agreed with Mr. Criner's earlier statement to the effect that lawful, unregulated residential uses can be just as intrusive in a residential setting as an STR and that the County can only do so much to preserve community character. Mr. Cross stated that although a few changes might be in order, as stated in the staff memo, the staff feels the current ordinance works, as evidenced by the fact that there have been no problems or complaints about the STRs that are running legally. Lastly, he reiterated that STRs cannot be expanded without going through an approval process.

**Mr. Howell** thanked the Commission for giving them the opportunity to present their ideas and that he felt the discussion had been productive. He said he and the team would welcome the opportunity for further discussion of some of the specific details of their suggestions.

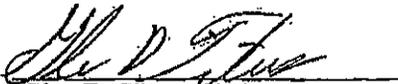
**Mr. Holroyd** asked Mr. Howell how long he feels a resident should be required to own their home before they can apply for a use permit to establish an STR. Mr. Howell responded that the team suggests a two-year waiting period.

**Chair Titus** thanked the citizens, including those in the audience, for participating in this meeting. He assured the STR owners that they are grandfathered and he encouraged them to stay involved in this process.

**ADJOURN**

There being no further business to discuss, the meeting was adjourned at 9:15 PM.

**SUBMITTED:**   
Catherine G. Tartabini  
Planning Commission Secretary

**APPROVED:**   
Glen D. Titus, Chair

**DATE:** August 11, 2021

**MINUTES  
YORK COUNTY PLANNING COMMISSION**

Regular Meeting  
York Hall, 301 Main Street  
August 11, 2021

**MEMBERS**

Douglas Holroyd  
Glen D. Titus  
Mary P. Leedom  
Michael S. King  
Robert T. Criner  
Robert W. Peterman

**CALL TO ORDER**

Chair Titus called the meeting to order at 7:00 p.m. and stated that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. He explained that this responsibility is exercised through recommendations conveyed by resolutions or other official means, all of which are matters of public record. He stated that the Commission is comprised of seven citizen volunteers appointed by the Board, including one representative from each voting district and two at-large members.

**ROLL CALL**

The roll was called and all members were present. Staff members present were Timothy C. Cross, Deputy Director of Planning and Development Services; James Barnett, County Attorney; Amy Parker, Senior Planner; Earl W. Anderson, Senior Planner; Jeanne Sgroi, Management Analyst Intern, and Cathy Tartabini, Planning Assistant. Also in attendance was Susan D. Kassel, Director of Planning and Development Services.

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**NEW BUSINESS**

Chair Titus stated that the Commission would be discussing potential Zoning Ordinance amendments pertaining to short-term rentals. He stated that a group of Queens Lake residents had provided the Commission with a document outlining their proposed changes and that staff had prepared a list of discussion topics based on that document and on the discussion at the July 27 work session. He suggested that the Commission discuss each item in turn as outlined on the list of discussion topics and give staff some direction on each.

Chair Titus stated that the first discussion topic is whether Special Use Permits for STRs should run with the land or with the property owner.

Mr. King stated he is in favor of having use permits for STRs run with the property owner since the Commission makes its recommendations based largely on the information presented by the applicant and so if the property changes hands, the new owner should have to go through the same process.

Mr. Criner asked staff if there is a mechanism by which the County would be notified if the property is sold.

**Earl Anderson** responded that a change in property owners would come up as part of the County's annual inspection of all use permits.

**Ms. Leedom** asked if STR owner/operators could be required to notify the County if they sell the property, which she felt would give some layer of protection to the neighbors.

**Mr. Criner** responded that since there is already a trigger in place with the annual inspections, he is confident that sufficient protections are in place to ensure that a new owner would eventually get caught if they are running an STR without approval. He added that he agrees with Mr. King that the use permits should run with the owner.

**Mr. Cross** added that use permit resolutions are a matter of public record and are recorded at the courthouse, so any potential buyer should be aware that there is a condition tying the use permit to the property owner and all other conditions of approval. He added that there is a quarterly tax reporting requirement, so the Commissioner of the Revenue's Office would know if a report was received from somebody who was not registered as a short-term rental operator.

**Chair Titus** asked if the proposed change would also apply to bed-and-breakfast establishments (B&Bs).

**Mr. Cross** responded that the term "short-term rental" encompasses both tourist homes and B&Bs, so it would apply to B&Bs as well as tourist homes.

**Chair Titus** stated that he feels the use permits should run with the land, noting that use permits should not be approved on the basis of personalities. He said there are procedures in place to deal with those who violate material conditions, and he questioned whether the identity of the operator constitutes a material condition.

**Mr. King** responded that he understands Chair Titus's concerns but that he is concerned that there is no guarantee that a new owner might not operate an STR in the same manner as the original applicant, which he felt would place an additional burden on Zoning and Code Enforcement staff.

**Mr. Holroyd** commented that most use permits for STRs are approved when the neighbors are in agreement, which he said only happens when the property owner is a long-time resident whom the neighbors trust. He stated that a new owner would not have that same level of trust, so he believes the use permit should be tied to the owner.

**Chair Titus** responded that the same logic would seem to apply to home occupations. He asked why STRs should be treated differently.

**Mr. King** asked the County Attorney if the County can have different requirements for different types of use permits.

**Mr. Barnett** responded that there is nothing in the Code of Virginia that requires use permit conditions to be uniform for all use permits.

**Mr. Peterman** stated that he agrees that use permits for STRs should be tied to the owner and not the property.

**Chair Titus** summarized the discussion, stating that the consensus is that STR use permits should

run with the owner.

**Chair Titus** introduced the next topic, which was whether or not STR owners should be required to be on the premises – or in an adjacent premises – while rentals are taking place.

**Mr. King** expressed his opposition to such a requirement, stating that although he tends to look more favorably upon STRs that have on-site management, there are exceptions, such as the one that was approved on Goosley Road where the owners did not live on or near the premises. He said he does not want to make the standards overly restrictive and take away the flexibility to evaluate each case on its own merits.

**Mr. Criner** stated that in considering STR proposals, he gives a lot of weight to the fact that the owner lives in the home or next door but that he does not want to make it an absolute requirement since there can be extraordinary circumstances that can be considered on a case-by-case basis.

**Ms. Leedom** asked if such a requirement would apply to whole-house rentals or just room rentals, noting that it would be difficult to have the owner living in a whole-house rental.

**Mr. King** said that is a good point, stating with a whole-house rental, the owner cannot live in the house but could live next door.

**Mr. Peterman** responded that whether the owner lives next door or across the street or a block away, each case has to be considered individually. He stressed that the Commission's main concern is that the person operating the short-term rental must be responsible to the neighborhood and able to respond to any situation that arises.

**Mr. Holroyd** commented that having a physical presence in or near the home is the most effective way of monitoring the situation, more so than electronic surveillance. He stated that he feels the owner should remain in the local area, however that is defined.

**Mr. King** responded that the term "local" is subjective.

**Chair Titus** commented that this discussion is centered specifically on tourist homes since the Zoning Ordinance requires B&B owners to live on the premises or in an adjacent premises.

**Mr. King** stated that case-by-case review allows the Commission and the Board to decide whether or not the owner is in sufficient proximity to the STR and avoids the problem of having to define it in the Zoning Ordinance.

**Mr. Titus** stated that the general preference appears to be that on-site residency should be treated as a consideration rather than a requirement.

**Mr. Cross** responded that in fact, it is already included as a consideration in the Zoning Ordinance, which states that applicants must either be on the premises or in an adjacent premises or designate a responsible party who can respond promptly to any complaints or problems that arise. He mentioned the case of the Yorktown Cottages, where the owners lived in Marlbank when the application was approved but later moved to Dandy, which is much further away. He said it is impossible to anticipate and control for every scenario, but it is something to keep in mind when considering use permits for STRs.

**Chair Titus** asked if it would be fair to recommend that STR owners have some kind of electronic

surveillance mechanisms in place if they are not living on the property or nearby. He commented that designating a manager to monitor STR can put a tremendous burden on somebody designated to go to a trouble spot when they don't know how to handle the situation other than to call the Sheriff's Office.

**Mr. Cross** said that might be the way to address those situations, whether or not the owner is on-site.

**Mr. King** stated that the County needs to be careful not to dictate what kind of surveillance is used, and he added that requiring someone to be on the premises in all cases is simply not practical. As an example, he cited the STR approved on Goosley Road, which is a house by itself and not in a neighborhood.

**Chair Titus** stated that the challenge is in allowing STRs in residential areas while ensuring that they do not become investment properties. He said that in this case, no change to the code is needed since on-site residency is already included as a consideration.

**Mr. Cross** asked the Chair to clarify if the consensus is that the Commission does not want to require the owner to be on the premises or in an adjacent premises.

**Chair Titus** said that is correct, that the Commission wants to retain the flexibility because there are some places in the County where a stand-alone STR would be acceptable, especially if the owner/operators can be next door or a short distance away or have mechanisms that will allow real-time surveillance of the property.

**Mr. Holroyd** added that there was general agreement that the owner should be reasonably close.

**Mr. Criner** asked **Mr. Barnett** what the rules are regarding video surveillance on a rental house. He stated that his understanding is that it is not allowed.

**Mr. Barnett** responded that he would have to study this question. He stated that any activity on the exterior of the house is open and obvious to anyone and therefore might not raise a privacy issue. He stated that he would have to research the issue but that he was not aware of any prohibition on a property owner videotaping in his or her own home.

**Chair Titus** stated that the next question is whether or not whole-house rentals should be prohibited, which he felt was addressed in the previous discussion.

**Mr. Cross** responded that this issue was raised in staff's discussions with the citizens group, which felt that whole-house rentals should not be allowed.

**Mr. Anderson** stated that based on the Commission's consensus that the owners should not be required to be in the home while rentals or taking place, any proposed whole-house rentals would be reviewed on a case-by-case basis.

**Mr. King** stated that the Commission would follow the evaluation criteria discussed previously and that if the Commission is not satisfied that the owners are in close enough proximity, then it can recommend denial.

**Mr. Peterman** stated that he has no objection to whole-house rentals as long as there is adequate supervision of the property. He stated that a prohibition on whole-house rentals could be

problematic since an owner could claim that some part of the house is not going to be rented and therefore it is not a whole-house rental. He stated that he feels whole-house rentals should continue to be evaluated on a case-by-case basis.

**Chair Titus** agreed and said that the consensus is that a ban on whole-house rentals is not necessary.

**Chair Titus** introduced the next subject, which was whether or not there be some sort of numerical limit on the number or density of STRs in a given area.

**Mr. Peterman** stated that the problem with this proposal is that "community" and "neighborhood" are not defined terms. He said he was unable to find a definition in the County Code.

**Mr. King** said he had the same concern, stating that it would be difficult to define the boundaries of a neighborhood.

**Mr. Cross** responded that the citizens group referred specifically to "defined neighborhoods," which would be easy to define in the case of a subdivision but difficult to define in other cases. He stated that the staff did a lot of research into this issue and found that setting limits on the number of STRs in a given area is not commonly done in Virginia. In fact, he stated, staff was unable to find a single locality in the state that does it, although the City of Virginia Beach is considering capping the percentage of STRs in its two proposed STR overlay districts to roughly 10% of the homes. He said there are a number of localities in the western states, such as California and Oregon, that limit the density by limiting the distance between STRs. Mr. Cross cited a few examples, including one city that prohibits an STR within 300 feet of another STR on the same street, another city that limits the total number of STRs to 250 and prohibits them from being within 110 feet of another property, and another locality that limits the number of STRs to 3% of the homes in a given Census Tract.

**Mr. King** stated that he is reluctant to set arbitrary limits on STR density and that if there are too many STRs in a given neighborhood, the Commission will know about it. He stated that the staff does a good job at pointing out where the existing ones are and that the presence of an existing STR nearby would be a factor for the Commission to consider. He agreed with Mr. Peterman about the difficulty of defining a community, and he noted that homes can be in separate but adjacent subdivisions.

**Chair Titus** commented that his subdivision of Patriot Village is inter-connected with Tabb Lakes, York Meadows, The Greenlands, and Coventry all within a mile of each other, resulting in several individual neighborhoods that overlap. He said it would be possible to have two STRs adjacent to each other because they are in separate neighborhoods. Chair Titus added that Yorktown Village is fairly dense already.

**Mr. Cross** noted that if there were density caps, the Yorktown Village would likely be excluded since STRs are actually encouraged there by the Yorktown Master Plan.

**Mr. Criner** recommended that the existence of other STRs nearby be identified as a consideration and that the Commission not try to rewrite the rules.

**Mr. Holroyd** disagreed, stating that he feels there needs to be a minimum distance between STRs, which would effectively serve as a density cap.

**Ms. Leedom** added that a single STR can change the neighborhood in terms of added traffic, more people, and more strangers. She stated that she would like to see some sort of cap.

**Mr. King** responded that examples cited by staff of 110, 300, and 500 feet would not be much of a limit.

**Mr. Cross** commented that if the Commission wants to go in that direction, it can pick whatever minimum distance it feels is reasonable.

**Mr. King** noted that some neighborhoods are denser than others, which makes it difficult to come up with a uniform distance that would make sense in every area.

**Mr. Criner** stated that the presence of other STRs nearby should be treated as a factor for the Commission and Board to take into consideration when evaluating STR applications.

**Mr. Holroyd** disagreed, reiterating that he feels there should be a limit.

**Ms. Leedom** stressed that it will be important for the Commission to watch the numbers to make sure no neighborhood has an over-abundance of STRs.

**Chair Titus** summarized the discussion, stating that most of the members agree that it should be a consideration and that the County should not try to control STR density with a specific numerical standard.

**Chair Titus** stated that the next issue is whether or not neighborhoods should be able to essentially opt out of having any STRs by majority – or super-majority – vote of its residents. He addressed a question to **Mr. Cross** stating that he was under the impression that this would not be allowable.

**Mr. Cross** responded that there is language in the Code of Virginia stating that all zoning regulations must be uniform for uses throughout each particular zoning district such that, for example, if STRs are permitted with a use permit in one neighborhood that is zoned Rural Residential, the same would apply to all other neighborhoods that are zoned Rural Residential. He stated that the only way to get around that would be to create a different zoning district for each neighborhood, which he said would be problematic.

**Mr. Barnett** agreed with **Mr. Cross** and added that such a provision would have the appearance of divesting the Board of Supervisors, who are the elected officials, of the ability to control zoning. He said it was a novel idea but that the uniformity issue would be a problem. He said he would have a problem with allowing a group of people who are not elected officials to simply say by vote that they are going to control what the County can allow under its ordinances.

**Mr. Peterman** commented that once again, the problem of trying to define neighborhoods would be an issue.

**Chair Titus** stated that the mechanism for neighborhoods to disallow STRs is to regulate them through their homeowners' association (HOA) covenants. He noted that the Coventry HOA is, in fact, pursuing such a change, although he acknowledged that this is not an option in subdivisions that do not have an HOA.

**Mr. King** added that neighbors can also attend the public hearings to make their views known.

**Mr. Barnett** commented that pursuant to the Code of Virginia, any vote would have to be done without the assistance of the Electoral Board or the Registrar's office.

**Chair Titus** stated that the consensus appears to be that neighborhoods should not be able to opt out.

**Ms. Leedom** stated that she believes that neighborhoods should be able to opt out through their HOA or whatever association they have in place.

**Chair Titus** explained that if a neighborhood prohibits STRs in its covenants, that rule would supersede the County's ability to authorize an STR.

**Mr. King** asked about the definition of a super majority.

**Mr. Cross** responded that the central issue is the concept of opting out by vote and that if the Commission wants to allow this, the staff can come back with specific suggestions on how such a provision would be implemented.

**Mr. Holroyd** asked **Mr. Cross** how the City of Chesapeake handles this issue, noting that STRs are not allowed in certain areas.

**Mr. Cross** responded that Chesapeake regulates it through zoning. He explained that the city only allows B&Bs and tourist homes as a conditional use in its Agricultural zoning district and in its Historic and Cultural Preservation overlay district. He reiterated that the only way to prevent STRs in a given area would be by zoning.

**Chair Titus** asked the Commissioners if they wanted to address this issue through zoning, and the consensus was in the negative.

**Chair Titus** introduced the next topic, which was whether or not there should be limits on the number of rentals per year for an approved STR and whether there should be a limit on the number of rooms available for rent.

**Mr. King** asked for clarification regarding a limit on the number of rentals.

**Mr. Cross** responded that at the July 27 work session, the citizens group had suggested that STRs be limited to a maximum of 90 days of the year. He noted that other localities in Virginia have similar provisions, with the number of rentals ranging from 60 to 104 days, while others have no limit at all. He explained that the rationale for the citizens [KS1] group recommendation of a 90-day limit is that it would ensure that the commercial aspect of the home is ancillary to the principal use, which is residential.

**Mr. King** asked if the County received any feedback from existing STR owners of STRs as to whether a three-month limit on rentals is a business model that works.

**Mr. Cross** responded that it clearly would not work for the approved STR on Goosley Road since it is basically a commercial venture and the owners do not live in the house and that it would probably be problematic for the Yorktown Cottages as well. He recalled that there was some negative feedback from the STR owners in the audience when the topic was discussed at the work session but stated that the Planning Division has not received any formal feedback.

Mr. Criner asked if there have been any complaints or problems.

Mr. Cross responded that there have been no problems or complaints about any of the legally approved STRs.

Mr. Holroyd stated that he feels there should be a limit to prevent people from buying up homes in their neighborhoods for investment purposes. He stated that he feels this is the best way to limit the number of STRs in our neighborhoods.

Mr. King responded that he would like to hear from the STR owners and find out if an arbitrary 90-day limit would put them out of business, and he added that the tourist season in this area is longer than 90 days.

Mr. Criner stated, based on his experience as the owner of a beach house, that the rental season is four months.

Mr. Cross commented that 90 days just happens to be the number that was suggested by the citizens group. He said that if the Commission feels a limit makes sense it can pick whatever number seems appropriate. He agreed that the tourist season exceeds 90 days, noting the season schedule for Busch Gardens, William & Mary's graduation in May, and the fact that a lot of tourists visit Williamsburg at Christmastime.

Mr. Criner stated that he is not opposed to a limit but that he does not know what the number should be.

Mr. King said he feels the same way and would like to hear more input from the STR numbers.

Mr. Peterman stated that while he understands the concern, he is generally opposed to placing a limit on the number of rentals. He agreed that it would be good to hear from the current STR owners and get some feedback before moving forward on this question.

Mr. King suggested that this issue be tabled until the Commission can receive input from the STR owners.

Chair Titus agreed that there would have to be a rational basis for any such limitation.

Mr. Cross noted that the Commission has said it does not want to require the owners to live in the home or in an adjacent premises, which raises the question of what a non-resident STR owner is supposed to do with the house for the rest of the year if there is a limit on the number of rental nights.

Chair Titus responded that in that situation, the limitation would probably force the STR to close.

Following discussion, Chair Titus stated that the matter would be tabled pending the receipt of additional information.

Mr. Cross stated that the Commission also needs to address the question of whether or not to limit the number of rooms that can be rented in a home that is not a whole-house rental.

Mr. Criner stated that if whole-house rentals are allowed, he does not see the point in limiting

the number of rooms rented.

**Chair Titus** stated that the Commission appears to agree.

**Chair Titus** raised the next discussion topic, which was whether or not STR operators should be required to maintain liability insurance. He recollected that the amount of coverage recommended was \$1 million.

**Mr. Cross** said that was the number that was suggested by the citizens group. He stated the only localities he could find in Virginia that have an insurance requirement are the City of Williamsburg, which has a very restrictive ordinance and requires \$500,000 of coverage, and the City of Virginia Beach, which requires a million dollars in coverage. He added that insurance requirements are more common outside Virginia, especially in the western states, where the minimum coverage is typically half a million dollars.

**Mr. Criner** asked who the coverage would be protecting.

**Mr. Cross** responded that he had the same question, noting that it would protect the guests and the property owner but that he is not sure how it would protect the neighborhood. He stated the concern was raised specifically by Queens Lake residents who were concerned that the Community Association could be liable if an STR guest were to get hurt on the community playground or on one of the common areas or other community facilities.

**Mr. Criner** responded that liability insurance would not cover those areas anyway and would only cover care for the person who owns the house and the people who are renting the house, which he said is a private agreement between the owner and renter.

**Mr. Cross** agreed.

**Mr. King** recalled that at the work session, one of the STR owners mentioned that one or more of the online platforms allow people to pay for extra insurance.

**Mr. Cross** stated that the owner of the Yorktown Cottages had mentioned something along those lines but that the Commission should not focus on the policies of Airbnb, VRBO, and other online platforms. He noted that the County has tourist homes that have their own websites for making reservations and do not advertise on those other platforms.

**Chair Titus** said he could not understand why an owner or business operator would not have liability insurance.

**Mr. King** said he had the same question and also wondered what it would cost to have \$500,000 or \$1 million of liability insurance.

**Mr. Criner** responded that it is not tremendously expensive but questioned why the County should be dictating this since it has no effect on the rest of the neighborhood or the County.

**Mr. Cross** responded it can be argued that it would benefit public safety by ensuring that a renter who is injured will be covered.

**Mr. Criner** responded that he would encourage owners to purchase insurance but felt the County should not be dictating it to them.

**Chair Titus** commented that it seems that by requiring insurance, the County would be getting very involved in dictating to the owners specifically how to run their business.

**Mr. Holroyd** responded that since it is a business, there are certain things he feels the County should insist on certain elements, such as fire and safety requirements throughout the building. He felt that liability insurance should be required.

**Chair Titus** responded that the County has no insurance requirements for other businesses, such as gas stations.

**Mr. King** stated that he feels requiring liability insurance would be overreach and agreed with Mr. Criner that it would have no effect on the community. He stated that it is up to the owner whether or not to purchase insurance and that it should not be dictated to them by the County.

**Mr. Peterman** commented that he believe the reason that the citizens group wanted this requirement was to add another hurdle to make it more expensive to operate an STR, thereby discouraging STR owners from using the home as an investment property He stated that any responsible homeowner would want to have liability insurance to protect themselves whether it is dictated to them by the County or not.

**Chair Titus** stated the consensus of the Commission that is that liability insurance should be encouraged but not required.

**Mr. Holroyd** said in that case it would be a guideline and not a mandate.

**Mr. King** added that the Commission can always ask the applicants if they have liability insurance and consider that when evaluating a proposed STR.

**Chair Titus** stated that the next topic on the list has to do with zoning enforcement fees, penalties, and renewal requirements for STRs. He recalled that the citizens group had recommended that application fees be increased to cover the total staff costs associated with zoning enforcement for STRs.

**Mr. King** asked what the current application fee is for a Special Use Permit.

**Mr. Cross** responded that effective July 1<sup>st</sup>, the use permit application fees were raised to \$560 except for home occupations and accessory apartments, for which the fee is \$500. He stated that the standard use permit fee was \$450 for a number of years and that it did not even cover the advertising costs. He stated that years ago, staff had recommended to the Board consider raising the fees to at least come closer to paying for the advertising but that the Board was not interested in that.

**Mr. King** asked what the average cost is today for advertising an application.

**Mr. Cross** responded that staff had compiled that information to show the Board how the fees were falling short of the advertising costs and that since then, the Daily Press ad rates have risen considerably while the application fees stayed the same, at least until July 1 of this year.

**Mr. King** asked how raising the fees would protect the community.

**Mr. Cross** responded that the citizens group's concern is not the cost of advertising but rather

the cost of increased staffing resources needed to implement its recommendations for additional zoning enforcement, which the group felt should be borne by the STR owners and not the taxpayers. He said the group also recommends increased penalties for violators.

**Mr. Holroyd** asked what the penalty is for an illegal operator.

**Mr. Cross** responded that there are civil fines spelled out in the code. He explained that the owner would first receive a Notice of Violation and then be taken to court if the violation is not addressed and that there has to be legal action before any fines are paid.

**Mr. Barnett** explained that if there is a financial penalty to be imposed, it is imposed by the court. He stated that the County has in the past taken illegal STRs to court and gotten injunctions against them but that he didn't recall if any monetary penalties were handed down. He stated that for a first offense the courts tend not to weigh heavily unless there has been a record of willful violation such as someone who has simply ignored violation notices and attempts by the County to bring them into compliance.

**Mr. King** asked if the County charges applicants for use permit inspections for other uses.

**Mr. Cross** responded that other than the two exceptions previously noted, home occupations and accessory apartments, the use permit fee is the same for all uses, except that there is an additional acreage fee for sites that are larger than five acres.

**Mr. King** commented that charging a fee to cover the cost of sending zoning inspectors out every so often to visit each site would effectively kill the STRs because the cost would be outrageous.

**Chair Titus** commented that it raises the issue of what is the role of government and what costs should be absorbed by the government as part of its normal operations.

**Mr. Criner** noted that these facilities are being taxed and are entitled to a certain level of service for their tax money.

**Chair Titus** agreed, adding that the government should not be in the business of making a profit.

**Mr. King** stated he is not against raising the application fee but that it could never be high enough to cover all the costs.

**Mr. Cross** clarified that the citizens group's recommendations were not limited to the application fees but to other fees as well, such as a \$250 annual use permit renewal fee. He stated that there are a lot of localities in Virginia that charge an annual STR registration fee in the range of \$150 to \$200 but that in those localities, STRs are typically permitted administratively without having to go through a public hearing process.

**Mr. Holroyd** stated that it sounds like the fees are basically set by the Board of Supervisors and the penalties are set by the court, so there is nothing for the Commission to discuss.

**Chair Titus** summarized the discussion, stating that the consensus is for zoning fees to stay as they are. He asked if the Commissioners have any additional items they want to bring up.

**Mr. Holroyd** introduced two additional items that he wanted to discuss, the first of which is a requirement for prior residency on the property before a person can apply for a Special Use Permit

for an STR, and the second of which is the issue of neighborhood agreement or disagreement and how much that should weigh into whether a Special Use Permit goes forward.

**Chair Titus** recollected that the citizens group had recommended a residency requirement of two years.

**Mr. Holroyd** stated that he felt it was a legitimate request to prevent people from buying property and immediately flipping it for rental purposes. He said this would control the spread of STRs and prevent the problem of people buying and flipping properties into rental properties, as in Virginia Beach.

**Mr. King** replied he is not opposed to some sort of minimum residency requirement so that people have to live there for at least a certain period of time to have a connection to the neighborhood.

**Chair Titus** countered that there is nothing to prevent people from buying homes and immediately flipping them for long-term rental purposes. He questioned why the County should care as long as the residential character of the property is maintained.

**Ms. Leedom** stated that she felt there should be a residency requirement for STRs. She reiterated her belief that a single STR changes the character of the neighborhood.

**Mr. King** stated that he feels long-term rentals are different from short-term rentals because the long-term renters become part of the neighborhood.

**Chair Titus** stated that with a residency requirement, a person could buy a property, live six blocks away, and never be around their neighbors and yet would have to wait two years before applying for a use permit to operate an STR even though that person was never part of the neighborhood. He stated that many neighborhoods are not close-knit and in many cases people do not know their neighbors.

**Mr. Cross** brought up the example of the STR on Goosley Road, which the owners purchased with the intent of offering it as an STR. He said that with a residency requirement, they would just have to hold the property for two years before they could do anything with it.

**Ms. Leedom** responded that since there are no neighbors near the property, that case could have been treated differently.

**Mr. Cross** responded that if there is a two-year mandatory waiting period, then the Commission and Board would have no latitude to consider extenuating circumstances.

**Chair Titus** stated that he would not be against allowing STRs as a matter of right, subject to certain requirements.

**Ms. Leedom** replied that York County is not a tourist community like Nags Head where four out of five houses are rentals.

**Mr. King** replied that people who live in Yorktown would not agree that the County is not a tourist community.

**Mr. Cross** commented that there are more than twenty thousand homes in the County, only eleven of which are being operated as STRs, which is a very small proportion. He said that outside of the

Yorktown Village, they are generally scattered all over the County, although there is a small cluster of properties in Queens Lake that were unsuccessfully proposed for STRs.

**Mr. King** stated that if the consensus of the Commission is that there should be no waiting period, he would go along with it.

**Mr. Criner** stated that he would like to use prior residency as a guideline that the Commission can take into consideration, but he added that there are certain circumstances where it would be justifiable to allow a new owner to operate an STR. For example, he stated, there could be a property owner whose spouse dies shortly after purchasing the property and might need to rent rooms for income. He said he would rather err on the side of giving people more rights than taking them away.

**Chair Titus** expressed his agreement with Mr. Criner.

**Mr. Holroyd** stated that the neighbors also have rights and that he would rather side with the neighbors.

**Mr. Peterman** responded that the Commission takes the neighbors' interests into consideration. He said that neighborhood opposition carries a tremendous amount of weight, and that the history has been that when the neighbors have strong concerns that a proposed STR would change the character of the neighborhood, the application is not approved.

**Mr. King** stated that the process is for everyone and that there are multiple opportunities for all residents to participate. He stated that all citizens' rights are well represented under the current process.

**Mr. Cross** commented that Mr. Peterman is correct in saying that in every case of an STR being approved, the one common denominator was that there was no significant opposition, and in every case of one that has been denied or withdrawn, there was significant neighborhood opposition. He stated that none of the traditional planning considerations such as lot size and density have entered into the decisions to approve or deny.

**Mr. Holroyd** raised the question of whether or not an STR applicant should have to have the agreement of the neighborhood in order for the proposal to go forward or if the Commission is only considering opposition.

**Chair Titus** responded that the Commission hears from neighbors who are in support as well as those who are opposed and that sometimes the neighbors are evenly divided.

**Mr. Peterman** recalled an application where all the surrounding neighbors expressed support and that everything else about the application was satisfactory but that the key factor was that his neighbors supported it.

**Mr. Cross** commented that when prospective STR operators approach the Planning Division about applying for a use permit, staff strongly encourages them to talk to the neighbors and the HOA, if there is one, or in a subdivision like Queens Lake, the community association. He added that there have been cases where people have included with their applications signed letters of support from their neighbors.

**Mr. King** stated that he feels the totality of citizen input is taken into consideration under the current process.

**Mr. Holroyd** responded that he feels strong neighborhood support should be a guideline for evaluating STR application.

**Mr. King** replied that it already is used as a guideline that he and the other members take into consideration. He said he does not want to force an STR on a neighborhood that is strongly opposed to it.

**Mr. Cross** clarified that neighborhood support or opposition comes out of the public hearing process and is not something that would be embedded in the Zoning Ordinance. He explained that staff serves as technical advisors to the Commission and the Board, so citizen input does not enter into the staff's recommendations but that it does legitimately enter into the Commission's recommendations and the ultimate decisions of the Board.

**Chair Titus** asked **Mr. Cross** if staff has the guidance it needs from the Commission to move forward.

**Mr. Cross** said it does and that there are also a number other, less significant, recommendations put forth by the citizens group that have not been discussed, such as requiring STRs to be regulated as hotels. He said he did not include the issue of signs in the discussion topics because that issue has been settled by the U.S. Supreme Court, which has greatly reduced localities' latitude in regulating signs.

**Ms. Leedom** asked **Mr. Cross** about applicants' obligations to notify their neighbors when they apply for a Special Use Permit.

**Mr. Cross** responded that notification of the neighbors is done by the County and not the applicant. He explained that staff sends letters to all immediately adjacent property owners, including those across the street, as required by the Code of Virginia. He stated that the County advertises the public hearings for both the Commission and the Board twice in the Daily Press, which is also a state code requirement. In addition, **Mr. Cross** stated, the staff posts a sign on every property that is the subject of an application so that residents and property owners in the general area can be aware that an application has been submitted. He added that the application materials and public notices are also posted on the County's website, and that for sites that are in a neighborhood that has an HOA or a duly constituted community association, notification letters are sent to the association.

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**MINUTES**  
**YORK COUNTY PLANNING COMMISSION**  
Regular Meeting  
York Hall, 301 Main Street  
December 8, 2021

**MEMBERS**  
Douglas Holroyd  
Glen D. Titus  
Mary P. Leedom  
Michael S. King  
Robert T. Criner  
Robert W. Peterman  
Joseph P. Smith

**CALL TO ORDER**

Chair Titus called the meeting to order at 7:00 p.m. and stated that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. He explained that this responsibility is exercised through recommendations conveyed by resolutions or other official means, all of which are matters of public record. He stated that the Commission is comprised of seven citizen volunteers appointed by the Board, including one representative from each voting district and two at-large members.

**ROLL CALL**

The roll was called and all Commissioners were present with the exception of Mr. Smith. Staff members present were Timothy C. Cross, Deputy Director of Planning and Development Services; Richard E. Hill, Jr., Deputy County Attorney; Amy Parker, Senior Planner; Earl W. Anderson, Senior Planner; Jeanne Sgroi, Management Analyst Intern, and Cathy Tartabini, Planning Assistant. Also in attendance was Susan D. Kassel, Director of Planning and Development Services.

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**OLD BUSINESS**

Chair Titus opened the discussion of STR regulations. He stated that the staff had prepared a set of draft Zoning Ordinance excerpts and is looking for feedback from the Commission.

Mr. Cross stated that there was extensive discussion at the Commission's August 11 meeting about ten specific proposals related to STR regulations. He stated that based on the consensus of the Commission – or the majority of the Commission – on each item, staff prepared the draft amendments for the Commission to review. He stated that the most significant change is to allow STR use permits to run with the property owner rather than with the property. He stated that staff has been doing this as a matter of policy for months through use permit conditions but is recommending that it be added to the code as a general requirement. He said other suggested changes include a requirement that STR owners maintain a guest log book as well as additional language clarifying that onsite residency is preferred but not required as long as applicants can demonstrate that they have adequate provisions in place to monitor guest behavior.

Mr. Cross stated that most of the ten proposals that were discussed at the August meeting are not reflected in the draft language because the majority of Commissioners were not in favor of them.

He stated that the one that remains undecided is whether or not to impose a limit on the number of rental nights per year. Mr. Cross stated that in response to a request from the Commission, staff contacted the eleven existing STR owner/operators in the County to get their feedback and that there were four responses, all of which were included in the agenda materials. He said this is an issue the Commission will need to discuss and reach closure on so staff can move forward with any actual Zoning Ordinance text amendments.

**Chair Titus** stated that the Commission needs to decide what the maximum number of rental nights per year should be, leave it to the Board of Supervisors to decide on a case-by-case basis, or not have a maximum limit. He said he would rather set the limit at 365 days than have the Board set a limit for each individual case. He said any other number would be arbitrary and capricious and would have no justification.

**Mr. Peterman** referred to the feedback from the current STR owners who stated that such a restriction would cause a hardship that could require them to cease operation. He said there would need to be a good reason for any limit because it could put people out of business. He said there are enough regulations and procedures in place to deal with any complaints that arise and that he did not see a need for a limit.

**Chair Titus** responded that there are localities that do limit the number of rental nights and yet the STRs are able to stay in business somehow.

**Mr. King** agreed with Chair Titus's comment that to impose a limit on the number of rental nights would be arbitrary. He said there are some cases where the Commission might feel no limit is necessary and others where a limit might make sense. Mr. King said he would like to leave it as it is where each case is decided on its own merits. He stated that an alternative would be to give the Board of Supervisors the option of restricting the number of rental days per calendar year. He said he opposes a blanket restriction on the number of rental days. With regard to the other proposed amendments, Mr. King said he thought the staff did a good job of incorporating the Commission's comments. He noted that the major change is to tie STR use permits to the property owner rather than the land.

**Chair Titus** suggested that the limit could be set at 365 days unless the Board decides to change it in a particular case.

**Mr. Criner** said he agrees with that approach.

**Mr. Holroyd** stated that he believes there needs to be a tier system with guidelines that have to be met before an applicant moves up to the next tier. He advocated a probationary period, as was done in Mr. Moberley's case, in which applicants have to demonstrate that they are responsible business owners who follow the rules and pay the taxes. He stated that under such a system, STRs could be limited to 90 days in the first year and then be allowed to increase to 180 days in the second year if they are in compliance with all the regulations and conditions, and ultimately to 365 days by year four. He stated that a limit of 104 days, as some communities have, would be a good starting point because that would establish that they can screen candidates, control renters' behavior, and ensure that neighbors are in support of it.

**Chair Titus** asked if applicants would have to come back to the Board periodically for approval.

**Mr. Holroyd** said that is for staff to decide, and he noted that that is what happened in Mr. Moberley's case. He stated that instead of starting with a 365-day limit, applicants should earn the right to be unlimited by proving that they are meeting the County's expectations.

**Mr. Criner** responded that he is glad there were no such restrictions in place to force him to earn the right to make money when he started his home-based business.

**Mr. Holroyd** responded that an STR is not the same as a business in that it involves a homeowner deciding to utilize spare space in the home to rent out to tourists.

**Ms. Leedom** agreed with Mr. Holroyd that there should be some limit initially and that 365 days is too many. She stated that STRs should be monitored and the applicants should have to come back to the Commission periodically and demonstrate that they are in compliance and that the neighbors are happy.

**Chair Titus** asked Ms. Leedom what makes a short-term rental different from the multitude of other home-based businesses that the County has approved.

**Ms. Leedom** responded that with home-based businesses, the owner is on the premises and able to monitor it and that is not necessarily the case with STRs.

**Mr. Cross** commented that there are provisions in place to revoke use permits when there are problems. He said that years ago, the County had a system similar to what Mr. Holroyd is proposing. He stated that home occupations with non-resident employees were required to come back to the Board every two years and either go through the process again or submit letters from all the neighbors saying they had no objection to the continuation of the business. He said that over time it came to be a pointless exercise that was burdensome to the business owners, some of whom complained. He said that ultimately the Board of Supervisors took that provision out of the ordinance because it was not serving any purpose.

**Mr. Criner**, said that as a business owner who was in that position, he was grateful to the County for removing that provision.

**Richard Hill**, Deputy County Attorney, pointed out in response to the comment that was made earlier regarding sex offenders that the sex offender registry is public and searchable. He stated that STR owners can search the registry to make sure prospective renters are not on it. In addition, he stated that the County Attorney's office would have concerns about requiring STR owners to make their guest logs available to staff on demand. He stated such provision would pose serious Constitutional problems in light of existing Supreme Court precedent. He asked the Commission to take that into consideration.

**Mr. Cross** explained that this provision was included in the draft amendments because a lot of other localities have the same requirement and it seemed reasonable to staff. He added that Mr. Hill had conveyed his comments to staff earlier but they were not received until after the agenda package was sent to the Commission, which is why the language was included as is in the draft document.

**Mr. King** recommended removing the language based on the advice of the Deputy County Attorney. There was no objection.

**Mr. King** commented that there is a process that gives the Planning Commission the opportunity to impose additional restrictions on an STR if it believes there is a need. He added that as was pointed out by Mr. Cross, the County has mechanisms in place to deal with any STR that is being operated in an inappropriate manner. Mr. King stated that regardless of what might be the rule in some other locality, to establish some numerical limit on the number of rental nights would be arbitrary and have no rational basis. He said the Commission should base its recommendations on the unique facts of each case and the comments from the neighbors and not on some arbitrary number.

**Mr. Hill** stated that he and Mr. Cross talked about requiring STR owners to keep a guest log but not requiring that it be available on demand to County staff. He said that would ensure that the information is available in the event that suspicion developed that would justify issuance of a search warrant, so he felt that was a possibility.

**Mr. Cross** said the language can be changed to require a guest log but not require that it be made available on demand to County staff.

**Mr. King** said that is a great idea so that if there is a crime or a complaint, the guest information can be provided with a search warrant.

**Chair Titus** stated with regard to the number of rental days, it could be left unlimited while giving the Board the authority to reduce it in approving a use permit.

**Mr. King** responded that he was not opposed to having language that would say that the number of calendar days could be limited based on the circumstances of the application. He said this would make it clear to the applicants that they are not guaranteed to have up to 365 rental days and there could be factors that dictate a limit on the number of rental days.

**Mr. Cross** commented that such a provision would give the Board of Supervisors some leeway, when there are controversial applications, to adopt a compromise position where the applicants are willing to limit the number of rentals per year. In addition, he stated that at its August 11 meeting, the majority of the Commission did not want to prohibit whole-house rentals but as a practical matter, that is what a limit of 60, 90, or 100 rental nights would do in most cases.

**Chair Titus** summarized the discussion, stating that the proposed amendments should not include a numerical limit but should include language to allow the Board to establish one in any particular case if it deems it necessary.

**Mr. Holroyd** commented that a person could rent his or her home for 90 days or more, which would not be considered a short-term rental, and if they were in a first-year probationary period, restricting the STR use to 100 days would not prevent them from renting out their house for the rest of the year as long as the rental is for at least 90 days.

**Chair Titus** asked Mr. Cross if the Commission has given staff the guidance it needs in order to proceed.

**Mr. Cross** responded that it appears to be the desire of the Commission to make two modifications regarding the guest log and the number of rental nights and sponsor the rest of the amendments as written.

**Mr. Holroyd** expressed his disagreement with language in the staff report that states that the consensus of the Commissioners was that the zoning fees and penalties should remain as they are. He said his recollection is that the Commission said that fines are set by the courts and fees are set by the Board of Supervisors and that the Planning Commission has no voice on it, not that the Commission agreed that they should stay the same.

**Mr. Cross** responded that the Commission agreed not to make any changes and the statement to which Mr. Holroyd was referring reflected his own opinion.

**Mr. King** responded that the bottom line is that the Commission is not recommending any changes.

**Mr. Holroyd** said that is true but that he disagreed with the wording in the memo.

**Chair Titus** stated that in his opinion, the proposed amendments represent guidelines for STRs, and he asked Ms. Leedom and Mr. Holroyd if they agree, since he has heard them say there are no guidelines.

**Mr. Holroyd** responded that once these recommendations are adopted by the Board of Supervisors, there will be guidelines in place.

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**Application No. ZT-194-22, York County Planning Commission:** Consider amendments to Section 24.1-409 of the York County Zoning Ordinance, Standards for Short-Term Rentals (Boarding Houses, Tourist Home and Bed and Breakfast Establishments). The proposed amendments would require the owner/operators of short-term rentals (STRs) to maintain guest logs; authorize the Board of Supervisors to limit the number of rental nights per year when approving an STR; clarify that tourist home owner/proprietors must reside either in the home or in an adjacent premises while rentals are taking place but authorizing the Board of Supervisors, in approving an application for a tourist home, to waive this requirement when certain requirements are met and the owner/proprietor designates a responsible party to promptly resolve problems that arise while rentals are taking place; revise the criteria for evaluating proposed STRs to include proposed provisions for monitoring the operation of the STR as well as the number, percentage, and/or density of legal STRs in the same subdivision or general area, their proximity to the proposed STR, and the cumulative impact of STRs on the surrounding area; require exterior cooking appliances used by guests to have a fuel source of either propane or natural gas, and stipulate that Special Use Permits and YVA approvals for tourist homes run with the property owner and not with the land.

**Timothy Cross**, Deputy Director of Planning and Development Services, summarized the staff report dated December 1, 2022, stating that staff recommends that the Commission forward the application to the Board of Supervisors with a recommendation of approval through the adoption of Resolution No. PC22-27.

**Mr. Smith** asked for clarification regarding the proposed stipulation that any outside fire pits must be lit, supervised, and extinguished by the property owner. He said he has not come across such a requirement in any of his research or his experience staying in short-term rentals (STRs).

**Mr. Cross** responded that this requirement has been recommended by the Department of Fire and Life Safety in conjunction with recent tourist home applications. He stated that he doesn't know if it is specifically required by the Fire Code but that it probably is not or else there would be no need to include it as a Special Use Permit condition.

**Mr. Smith** responded that if it is required by the code or the NFPA (National Fire Protection Association), he would recommend that the Zoning Ordinance language be modified to simply say that short-term rentals must abide by the applicable Fire Code requirements rather than single out one specific requirement.

**Mr. Cross** reiterated that he does not believe it is a code requirement but would check with the Department of Fire and Life Safety. He added that based on their recommendation, staff has been including this requirement as a condition of tourist home approvals for the past year or so, and he noted that the use permit process provides for the imposition of conditions that are stricter than local, state, or national code requirements.

**Mr. Holroyd** asked if the code requires that the owner of a short-term rental be a resident of Virginia.

**Mr. Cross** responded that it does not.

**Mr. Holroyd** asked if there should be such a requirement. He expressed concern about outside companies buying up properties in the County to operate as STRs, which he did not feel was consistent with the intent of the ordinance, which is for the owner/operators to be local residents.

**Mr. Criner** responded that he owns a house that is not in Virginia and he would be upset if the state treated him differently as an out-of-state property owner.

**Mr. Cross** added that the owner would still be expected to designate a local resident as the responsible party who would have to be available to respond promptly to resolve any problems or complaints.

**Mr. Smith** noted that there are lot of businesses in the County that are owned by non-residents and that he would be concerned about treating one specific type business differently than others.

**Ms. Leedom** responded that the difference is that STRs are in people's homes.

**Mr. Holroyd** responded that he believes there needs to be a tighter set of controls for short-term rentals to avoid the problems that have been created in places like Virginia Beach. He stated that he believes that requiring the owner to be a Virginia resident is a reasonable expectation.

**Mr. Titus** responded that he holds the opposite view and stated that it is a matter of the property owners being able to do what they want. He said he would hate to limit it to Virginia residents.

**Mr. Criner** stated that he doesn't think the County should be prejudiced because of where somebody lives.

**Mr. Anderson** noted that someone could live in the far western part of the state and meet the requirement of being a Virginia resident yet live further away from the property than an out-of-state owner in North Carolina.

**Mr. Cross** added that this is the reason that every application is considered on a case by case basis because there are all kinds of scenarios. As a hypothetical example, he stated that there could be a situation with a North Carolina resident who owns a home in York County and has a relative next door who would be present to oversee the property while rentals are taking place.

**Mr. Hill** stated that a similar requirement was struck down by the federal Court of Appeals in New Orleans. He said he would have grave concerns about the constitutionality of such a requirement. He added that although there is no binding decision in Virginia as of yet, he suspects there will be one soon.

**Mr. Holroyd** asked is there a requirement that delinquent taxes be paid for any STR before a permit is granted.

**Mr. Cross** responded that there is a general requirement that all Special Use Permit and rezoning applicants must be current on their taxes.

**Mr. Criner** agreed with Mr. Smith's comment about fire pits and suggested keeping the statement that an outside fire pit must be lit, supervised, and extinguished but striking the requirement placing that responsibility on the property owner.

Mr. Titus responded that he thinks that issue would be better addressed by including the requirement in the rental agreement.

Chair Leedom opened the public hearing.

Richard Howell, 104 Horseshoe Lane, stated that he is glad to see the codification of the requirement that short-term rental approvals run with the owner and not the land as well as the requirement that the owner/operators maintain guest logs. He expressed concern that the owner is not required to live on or adjacent to the STR or even in the state of Virginia and that there is no proposed limit on the number of rental nights per year for STRs. He likened the proposed amendments to allowing a full-blown hotel as opposed to providing an opportunity for homeowners to make some extra money by occasionally renting out a room or two. Mr. Howell further stated that he continues to be concerned about the density of STRs and opined that there needs to be a limit. He stated that the proposed amendments do not provide adequate guidance to the Board of Supervisors in evaluating STR applications and recommended that the Commission send the document back to the staff with specific instructions to provide more definitive guidance and standards.

Dana deJager, 108 Horseshoe Drive, thanked the Commissioners and staff for all the time they have spent on this topic over the years. She said she has been working with the County on these issues with the goal of preserving the County's neighborhoods by ensuring that STRs operate as an ancillary use of the home, protecting the residents and ties that bind the community together. She asked the Commission to protect residential neighborhoods from divisive business expansion and stated that businesses don't need protection because she felt there are plenty of commercially-zoned homes that can be converted in STRs without infringing on the rights as homeowners. Ms. deJager urged the Commission to require that STR owners and operators live in or adjacent to the home in order to ensure minimal disruption to the neighborhoods. She stated that homeowners have invested their life savings in their homes and need to be protected from the adverse impacts of STRs in their neighborhoods.

Ann Grigorian, 117 Baldrick Place, thanked everyone who has been working on this issue, stating that she knows it is a difficult task to balance the needs and desires of all parties concerned. She said that seventeen years ago her family purchased a home that was zoned R20 because it encouraged the traditional subdivision environment with a low rate of transients and a high rate of stability. She stated that STRs allow a steady stream of strangers next door to the homes where families live and are not consistent with the spirit of a medium-density single-family residential neighborhood. She stated that R20 zoning is intended for homes for families rather than motels for tourists. Ms. Grigorian requested that the proposed amendments be revised to allow established neighborhood community associations to register a point of contact to be notified of any STR applications in the neighborhood, just as homeowners' associations are notified. She also requested that any STR located in a medium-density single-family residential areas be subject to the same restrictions as bed-and-breakfast inns outlined in Section 24.1-409(d) of the proposed ordinance, which would require the owner or operator to reside in the home or adjacent to it. She stated that there is little difference between a B&B and a tourist home relative to oversight issues, and she felt they should be treated similarly.

Jonny Grigorian, 117 Baldrick Place, expressed concern about the language in the document stating that tourist home owners and proprietors must reside either in the home or in adjacent premises while rentals are taking place but authorizing the Board of Supervisors, when approving an application for tourist home, to waive this requirement when certain requirements are met. He said that in the absence of a specific metric to measure against, this provision places faith and hope

in the Commission and Board of Supervisors to make the right decision. Mr. Grigorian stated that he does not want tourist homes in his neighborhood, and he asked the Commission to require the owner to live in the home.

**Ron Struble**, 205 Shady Bluff Point, thanked the Planning Commission members for their service, adding that this has been a challenging issue and that there are strong feelings on both sides. He said he is president of the Conserve York County Foundation, which grew out of the neighborhood opposition to the Fenton Mill rezoning application two years ago. He said at that time, the Commission was very sensitive to the concerns of the community, and he asked that the Commission continue that respect for the community in whatever it decides on the proposed amendments. He stated that he thinks there needs to be some resolution of the density issue, although he didn't know what a good solution might be. Lastly, he stated that he agrees with the comments made by Mr. Howell, Ms. deJager, and the Grigorians.

**Christie Van Cleave**, 1304 Dandy Loop Road, stated that she and her husband own the property at 301 Ballard Street in the Yorktown Village Activity (YVA) district, which is occupied by two STRs. She said she would not be commenting on the issues surrounding STRs in residential areas and that she does not necessarily disagree with the comments that were made previously on that issue. She said she understands the concerns raised about having transients in residential neighborhoods but that she feels the YVA district is different since it caters to tourists. Ms. Van Cleave stated that their primary goal is to make sure their STRs are grandfathered and would not be subject to changes in the Zoning Ordinance. She noted that the proposed amendments do not address the use of boats as short-term rentals, which is something she felt needs to be addressed. Regarding the proposed requirement to maintain a guest log, she stated that VRBO (Vacation Rental By Owner) provides an electronic log book, which helps them to know what taxes they need to pay. Lastly, she stated that she agrees with the restrictions on fire pits, stating that they stopped using grills at their STRs because there was too much risk.

**Diane Howell**, 104 Horseshoe Drive, stated that she appreciates the work that has taken place on the part of the Commission and staff but does not feel the amendments are ready to be referred to the Board of Supervisors. She noted the use of such terms as owner/proprietor and operator/provider, and she recommended that the document be simplified for consistency and clarity. She expressed concern about the proposal to eliminate the requirement that the owner of a B&B live on or adjacent to the premises, which would allow B&Bs that are authorized as event venues to have as many guests as Board of Supervisors permits with only a resident manager onsite. Ms. Howell stated that she felt the Board needs detailed metrics. She said that it seems the rights of STR owners are overriding the rights of homeowners to be free from the adverse impacts that STRs can have.

**Kevin Grunkemeyer**, 1000 Cary's Chapel Road, spoke on the question of fire pits. He stated that he felt it would be reasonable to require the owner to provide the means for extinguishing a fire pit.

There being no one else wishing to speak with regard to this application, **Chair Leedom** closed the public hearing.

**Mr. Peterman** stated that the Commission has discussed this issue many times and that he feels the proposed amendments are sufficient and give the Planning Commission the flexibility to consider the individual circumstances surrounding STR proposals. He reminded the Commission of a situation a few years ago when it recommended approval of a short-term rental on a parcel that was surrounded by National Park Service property and had no neighbors. He said in that case,

the applicants had proposed a mechanism to ensure that any problems were addressed. He stated that neighborhoods need to be protected but there needs to be flexibility, and he felt the proposed amendments accomplish that.

**Mr. Criner** said he agreed with most of Mr. Peterman's comments. He stated that he hoped the Commissioners would exercise good judgment when reviewing STR proposals, and he stated that the citizens who spoke raised good points, all of which are considered by the Commission in its review of these applications. He added that the fire pit issue needs to be addressed but that he did not see that as a major hurdle.

**Mr. Titus** stated that the staff has done a good job putting this document together and that citizens in the audience should understand that there are also citizens who think STRs should be permitted a matter of right with some restrictions. He stated that there is no statistical evidence that STRs have a negative impact on neighborhood property values and that he believes homeowners' associations as well as adjacent property owners are notified of tourist home applications. With regard to density, he stated that the Commission struggled with the challenge of trying to define what an appropriate limit would be within a certain radius of an existing or proposed STR.

**Mr. Cross** confirmed that homeowners' associations are notified as a matter of policy.

**Mr. Holroyd** stated that as a frequent user of STRs, what he is looking for from the owner is a strong commitment that they are present and able to address any issues and answer any questions he might have before deciding to rent. He said he looks for that commitment when evaluating a proposed STR and that he wants to see an owner who is committed to running a business and has a strong business case. Mr. Holroyd said the overall document is well-written but that there are some issues, such as density, which he said has been debated at great length. He said it is the job of the Commission and the Board of Supervisors to determine when there are too many STRs in a given area and that it would be difficult to come up with a practical numerical standard. In addition, he stated that he feels the amendments should address the issue of enforcement and what happens when a short-term rental is being operated in violation of the ordinance or approval conditions.

**Mr. Smith** thanked the residents who spoke during the meeting and others who have participated in this process over the years. He said the Commission is trying to do what is right for the citizens and the business owners. He stated he feels the proposed amendments accomplish that, there will probably be a need for more adjustments in the future.

**Mr. Smith** moved the adoption of Resolution No 22-27(R).

A RESOLUTION TO RECOMMEND ADOPTION OF A SERIES OF  
AMENDMENTS TO SECTION 24.1-409, STANDARDS FOR  
BOARDING HOUSES, TOURIST HOME AND BED AND BREAKFAST  
ESTABLISHMENTS, OF THE YORK COUNTY ZONING ORDINANCE  
HEAVY TRUCK AND EQUIPMENT SALES, RENTAL, AND SERVICE

WHEREAS, pursuant to Section 24.1-113(a)(2) of the York County Zoning Ordinance, amendments to the Zoning Ordinance may be initiated by the York County Planning Commission whenever the public necessity, convenience, general welfare, or good zoning practice so requires; and

WHEREAS, the Planning Commission has determined that in accordance with good zoning practice, it is necessary to amend portions of the Zoning Ordinance relative tourist homes and bed-and-breakfast inns;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14<sup>th</sup> day of December, 2022, that Application No. ZT-194-22 be, and it is hereby, forwarded to the York County Board of Supervisors with a recommendation of approval to amend Section 24.1-409 of the York County Zoning Ordinance to read and provide as follows:

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**Sec. 24.1-409. Standards for boarding houses and short-term rental homes (tourist home and bed and breakfast establishments).**

- (a) When located in single-family residential zoning districts, boarding houses and short-term rental homes (tourist homes and bed and breakfast establishments) shall have the appearance of a single-family detached residence and normal residential accessory structures.
- (b) Signage for properties occupied by short-term rental homes (STRs) shall be permitted in accordance with section 24.1-703(b)(2).
- (c) Any parking demand generated by the conduct of such use shall be accommodated off the street in a suitably located and surfaced space.
- (d) When a bed and breakfast establishment is located in a residential zoning district, the owner of the property or the operator/provider shall live on the premises or in an adjacent premises ~~and shall be the operator/provider of the bed and breakfast accommodations and services.~~
- (e) The owner/proprietor of a tourist home shall reside either in the home or in an adjacent premises. Alternatively, in approving a Special Use Permit for a tourist home, the Board may waive this requirement in consideration of the proximity of the owner/proprietor's residence to the tourist home, proposed measures for monitoring guests' behavior, and the character of the surrounding area. ~~or~~ In such cases, the owner/proprietor shall designate a responsible party, who may be the applicant, and who shall be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place. The owner shall be responsible for providing the Sheriff's Office with the responsible party's contact information, including name, address, phone number, and email address.
- (f) The owner/operator shall maintain a guest log that includes the names, addresses, and rental dates of all transient guests occupying the STR on a rental basis.
- (g) There shall be no limit on the number of rental nights per calendar year unless otherwise specified by the Board in its approval of a Special Use Permit for such use.
- (hf) The owner/proprietor of a short-term rental home shall be responsible for obtaining all applicable permits and/or approvals required in accordance with regulations of the Virginia Uniform Statewide Building Code and the Department of Fire and Life Safety prior to use of a structure as a short-term rental home.
- (ig) The board shall specify the maximum number of persons who may be accommodated in the proposed use. Such determination shall be based on a consideration of the density and

character of the vicinity in which located and of the size and characteristics of the proposed site.

- (jh) The following emergency/life safety requirements shall apply to the operation of a short-term rental home:
- (1) An Emergency Action Plan identifying exit routes, fire extinguisher locations, and other life safety procedures shall be submitted to and approved by the Fire Marshal and posted conspicuously for guests' review.
  - (2) One or more fire extinguishers with a minimum rating of 2A10BC shall be installed. The location(s) shall be determined by the fire code official.
  - (3) The establishment shall be maintained in accordance with the State and Local Fire Prevention Code and the Virginia Residential Code and shall have a fire inspection conducted by the Department of Fire and Life Safety prior to the commencement of the short-term rental home and annually thereafter.
  - (4) All smoke detectors shall be interconnected and installed in accordance with the 2012 Virginia Residential Code, Section R314, or as it may from time to time be amended.
  - (4)(5) Any exterior cooking appliances used by guests shall have a fuel source of either propane or natural gas. The use of charcoal shall be prohibited. Any outside fire pits must be lit, supervised, and extinguished by the property owners.
- (ki) The owner/proprietor shall obtain a York County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account.
- (lj) In addition to the submittal requirements set forth in section 24.1-115(a) of this chapter, any special use permit application for a short-term rental home shall be accompanied by the following items which, in addition to the standards set forth in section 24.1-115(b)(3) of this chapter, shall be considered by the planning commission and board of supervisors in their evaluation of the appropriateness of the proposed short-term rental home:
- (1) A detailed narrative description of the project specifying the proposed operating procedures; provisions for monitoring of guests' behavior; the maximum number of occupants (both children and adults); the minimum and maximum length of stay, if any; the number of bedrooms to be rented; and provisions for accommodating off-street parking. The narrative description shall also specify if individual rooms within the house will be rented or if the property will be offered as a whole house rental.
  - (2) A floor plan of the structure clearly delineating all of the rooms in the house and specifically identifying those rooms and areas that will be available to renters.
- (mk) In addition to the items set forth in Section 24.1-115(b)(3) of this chapter, the commission and board shall consider the following when evaluating any special use permit application for a short-term rental home; ~~the commission and board shall consider~~

- (1) proposed provisions for monitoring the operation of the short-term rental home while rentals are taking place and promptly responding to incidents or complaints.
  - (2) the adequacy and capacity of the adjacent roadway network, including pavement widths, traffic volumes, and street ownership and maintenance arrangements as applicable, to accommodate the proposed use without adversely affecting neighboring properties.
  - (3) the number, percentage, and/or density of legally operating short-term rental homes within the same subdivision, neighborhood, or general area, and their proximity to the proposed short-term rental home, but only to the extent that those factors have a cumulative impact on the residential character of the surrounding area.
- (n) Any special use permit or Yorktown Village Activity approval for the establishment of a tourist home shall become null and void upon the transfer of the ownership of the tourist home.
- (eg) The owner/proprietor of an authorized and operating bed & breakfast (B&B) establishment or tourist home may apply for a supplementary Special Use Permit authorization to host private weddings and receptions for a fee as a business venture. In order to be eligible to apply for such supplementary Special Use Permit, the B&B or tourist home shall have been in continuous operation for at least one (1) year prior to the date of the submission of the application. The following performance standards and conditions shall be observed unless specifically modified or waived by the Board of Supervisors at the time of approval:
- (1) *Frequency of events:* No more than one (1) event per day, or two (2) events in any 7-day period, shall be allowed. A wedding ceremony and its associated reception shall be considered to be a single event.
  - (2) *Maximum number of guests:* The maximum number of guests shall be established as a condition of the Special Use Permit approval and shall be based on an assessment of the capacity and suitability of the site in consideration of the size of the property and facilities, the amount of parking available to accommodate guests, the capacity and condition of the highway network providing access to the site, the surrounding land uses and their proximity, and such other considerations as the Board of Supervisors deems to be relevant to prevent adverse effects upon neighboring properties.
  - (3) *Facilities:* Any building or temporary tents used to accommodate ceremonies or receptions shall comply with all applicable Building and Fire Code requirements including, but not limited to: access; materials and fire ratings; emergency lighting; exit lights; fire detection and suppression; etc. Any tent(s) shall be positioned on the property in accordance with all applicable setback requirements for principal structures or such greater setbacks as may be established as a condition of the Special Use Permit approval. Tents shall be dismantled within 48 hours of the conclusion of each event, unless the Special Use Permit shall allow a greater time.
  - (4) *Duration of event:* Events shall be limited to the time period between 10:00 am and 10:00 pm. Set-up and take-down activities may take place no earlier than 8:00 am and no later than 11:00 pm.

- (5) *Lighting*: Exterior lighting shall be limited to fixtures and illumination intensities that will not produce illumination intensities exceeding 0.1 footcandles at any property line.
- (6) *Noise*: The activities on the subject property shall be conducted in complete accordance with all requirements of the York County Noise Ordinance set forth in Section 16-19 of the York County Code.
- (7) *Parking*: Except as specified below and as documented in the Special Use Permit approval, all parking demand associated with the event shall be accommodated on the site on a suitable all-weather surface. The minimum number of spaces shall be calculated at a ratio of one (1) parking space per every two (2) persons based on the maximum allowable occupancy/attendance limit plus one (1) space for every regular or contract employee associated with the reception facility.

The Special Use Permit may allow:

- a. the use of an abutting property owned or controlled by the applicant and from which event attendees can walk without obstruction to reach the reception site. For the purposes of this section, the term abutting shall be construed to include property located on the opposite side of a street right-of-way, provided that event attendees will be able to cross perpendicularly and safely and will not be required to walk along a road or road shoulder;
- b. the use of any available and conveniently located public parking spaces from which attendees can walk safely.

Any parking areas constructed or established specifically for support of the reception use shall be located a minimum of 25 feet from any abutting property not owned by the proprietor, unless with the consent of the owner of the abutting property, and shall be screened from view from those abutting properties and public rights-of-way by evergreen landscaping, unless the abutting property owner consents to waiver of the screening requirement. All applicable stormwater management standards and requirements associated with the installation of the required parking spaces shall be observed.

- (8) *Fire and Emergency Vehicle Access*: Driveway access to the site shall comply with all requirements as to weight capacity, base and surface material, width, configuration and alignment, and vertical and horizontal clearance as set forth in Section 24.1-261. Existing driveways shall be upgraded to meet these standards if they are deficient in any aspect.
- (9) *Sanitation*: Restrooms or toilet facilities shall be provided for event attendees based on the ratios/requirements set forth in the Virginia Uniform Statewide Building Code. Reception venues that would be dependent on the dwelling's on-site septic system will not be approved unless the applicant provides written authorization from the Health Department as to the adequacy of the system. In the event portable restroom or toilet facilities are proposed to be used, all shall be screened from view from adjacent public rights-of-way and abutting properties and all shall be serviced or removed within two working days of the conclusion of the event.

- (10) *Caterers / Vendors:* The proprietor shall ensure that any caterers or other vendors providing services for a reception are properly licensed and permitted, whether such caterer/vendor is hired by the proprietor or by the client contracting for the use of the facility. Likewise, the proprietor shall ensure that all applicable ABC permits have been obtained, either by the client or by the proprietor, and are kept valid.

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On a roll call the vote was:

Yea: (4)	Titus, Criner, Smith, Peterman
Nay: (2)	Holroyd, Leedom

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BOARD OF SUPERVISORS  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the \_\_\_\_ day of \_\_\_\_\_, 2023:

Present

Vote

Thomas G. Shepperd, Jr., Chairman  
G. Stephen Roane, Jr., Vice Chairman  
Walter C. Zaremba  
Sheila S. Noll  
W. Chad Green

On motion of \_\_\_\_\_, which carried \_\_\_\_, the following ordinance was adopted:

AN ORDINANCE TO AMEND SECTION 24.1-409, STANDARDS FOR BOARDING HOUSES, TOURIST HOME AND BED AND BREAKFAST ESTABLISHMENTS, OF THE YORK COUNTY ZONING ORDINANCE

WHEREAS, pursuant to Section 24.1-113(a)(2) of the York County Zoning Ordinance, amendments to the Zoning Ordinance may be initiated by the York County Planning Commission whenever the public necessity, convenience, general welfare, or good zoning practice so requires; and

WHEREAS, the Planning Commission has determined that in accordance with good zoning practice, it is necessary to amend portions of the Zoning Ordinance relative tourist homes and bed-and-breakfast inns;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors that Application No. ZT-194-22 be, and it is hereby, approved to amend Section 24.1-409 of the York County Zoning Ordinance to read and provide as follows:

\*\*\*

**Sec. 24.1-409. Standards for boarding houses and short-term rental homes (tourist home and bed and breakfast establishments).**

- (a) When located in single-family residential zoning districts, boarding houses and short-term rental homes (tourist homes and bed and breakfast establishments) shall have the appearance of a single-family detached residence and normal

residential accessory structures.

- (b) Signage for properties occupied by short-term rental homes (STRs) shall be permitted in accordance with section 24.1-703(b)(2).
- (c) Any parking demand generated by the conduct of such use shall be accommodated off the street in a suitably located and surfaced space.
- (d) When a bed and breakfast establishment is located in a residential zoning district, the owner of the property or the provider shall live on the premises or in an adjacent premises ~~and shall be the operator/provider of the bed and breakfast accommodations and services.~~
- (e) The owner/~~proprietor~~ of a tourist home shall reside either in the home or in an adjacent premises. Alternatively, in approving a Special Use Permit for a tourist home, the Board may waive this requirement in consideration of the proximity of the owner/proprietor's residence to the tourist home, proposed measures for monitoring guests' behavior, and the character of the surrounding area. ~~or~~ In such cases, the owner shall designate a responsible party, who may be the applicant, and who shall be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place. The owner shall be responsible for providing the Sheriff's Office with the responsible party's contact information, including name, address, phone number, and email address.
- (f) The owner/operator shall maintain a guest log that includes the names, addresses, and rental dates of all transient guests occupying the STR on a rental basis.
- (g) There shall be no limit on the number of rental nights per calendar year unless otherwise specified by the Board in its approval of a Special Use Permit for such use.
- (h) ~~(h)~~ The owner/~~proprietor~~ of a short-term rental home shall be responsible for obtaining all applicable permits and/or approvals required in accordance with regulations of the Virginia Uniform Statewide Building Code and the Department of Fire and Life Safety prior to use of a structure as a short-term rental home.
- (i) ~~(i)~~ The board shall specify the maximum number of persons who may be accommodated in the proposed use. Such determination shall be based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.
- (j) ~~(j)~~ The following emergency/life safety requirements shall apply to the operation of a short-term rental home:
  - (1) An Emergency Action Plan identifying exit routes, fire extinguisher

locations, and other life safety procedures shall be submitted to and approved by the Fire Marshal and posted conspicuously for guests' review.

- (2) One or more fire extinguishers with a minimum rating of 2A10BC shall be installed. The location(s) shall be determined by the fire code official.
- (3) The establishment shall be maintained in accordance with the State and Local Fire Prevention Code and the Virginia Residential Code and shall have a fire inspection conducted by the Department of Fire and Life Safety prior to the commencement of the short-term rental home and annually thereafter.
- (4) All smoke detectors shall be interconnected and installed in accordance with the 2012 Virginia Residential Code, Section R314, or as it may from time to time be amended.
- ~~(4)~~(5) Any exterior cooking appliances used by guests shall have a fuel source of either propane or natural gas. The use of charcoal shall be prohibited. Any outside fire pits must be lit, supervised, and extinguished by the property owners.
- (k) The owner/~~proprietor~~ shall obtain a York County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account.
- (l) In addition to the submittal requirements set forth in section 24.1-115(a) of this chapter, any special use permit application for a short-term rental home shall be accompanied by the following items which, in addition to the standards set forth in section 24.1-115(b)(3) of this chapter, shall be considered by the planning commission and board of supervisors in their evaluation of the appropriateness of the proposed short-term rental home:
  - (1) A detailed narrative description of the project specifying the proposed operating procedures; provisions for monitoring of guests' behavior; the maximum number of occupants (both children and adults); the minimum and maximum length of stay, if any; the number of bedrooms to be rented; and provisions for accommodating off-street parking. The narrative description shall also specify if individual rooms within the house will be rented or if the property will be offered as a whole house rental.
  - (2) A floor plan of the structure clearly delineating all of the rooms in the house and specifically identifying those rooms and areas that will be available to renters.
- (m) In addition to the items set forth in Section 24.1-115(b)(3) of this chapter, the

commission and board shall consider the following when evaluating any special use permit application for a short-term rental home; ~~the commission and board shall consider~~

- (1) proposed provisions for monitoring the operation of the short-term rental home while rentals are taking place and promptly responding to incidents or complaints.
  - (2) the adequacy and capacity of the adjacent roadway network, including pavement widths, traffic volumes, and street ownership and maintenance arrangements as applicable, to accommodate the proposed use without adversely affecting neighboring properties.
  - (3) the number, percentage, and/or density of legally operating short-term rental homes within the same subdivision, neighborhood, or general area, and their proximity to the proposed short-term rental home, but only to the extent that those factors have a cumulative impact on the residential character of the surrounding area.
- (n) Any special use permit or Yorktown Village Activity approval for the establishment of a tourist home shall become null and void upon the transfer of the ownership of the tourist home.
- (eo) The owner/~~proprietor~~ of an authorized and operating bed & breakfast (B&B) establishment or tourist home may apply for a supplementary Special Use Permit authorization to host private weddings and receptions for a fee as a business venture. In order to be eligible to apply for such supplementary Special Use Permit, the B&B or tourist home shall have been in continuous operation for at least one (1) year prior to the date of the submission of the application. The following performance standards and conditions shall be observed unless specifically modified or waived by the Board of Supervisors at the time of approval:
- (1) *Frequency of events:* No more than one (1) event per day, or two (2) events in any 7-day period, shall be allowed. A wedding ceremony and its associated reception shall be considered to be a single event.
  - (2) *Maximum number of guests:* The maximum number of guests shall be established as a condition of the Special Use Permit approval and shall be based on an assessment of the capacity and suitability of the site in consideration of the size of the property and facilities, the amount of parking available to accommodate guests, the capacity and condition of the highway network providing access to the site, the surrounding land uses and their proximity, and such other considerations as the Board of Supervisors deems to be relevant to prevent adverse effects upon neighboring properties.

- (3) *Facilities:* Any building or temporary tents used to accommodate ceremonies or receptions shall comply with all applicable Building and Fire Code requirements including, but not limited to: access; materials and fire ratings; emergency lighting; exit lights; fire detection and suppression; etc. Any tent(s) shall be positioned on the property in accordance with all applicable setback requirements for principal structures or such greater setbacks as may be established as a condition of the Special Use Permit approval. Tents shall be dismantled within 48 hours of the conclusion of each event, unless the Special Use Permit shall allow a greater time.
- (4) *Duration of event:* Events shall be limited to the time period between 10:00 am and 10:00 pm. Set-up and take-down activities may take place no earlier than 8:00 am and no later than 11:00 pm.
- (5) *Lighting:* Exterior lighting shall be limited to fixtures and illumination intensities that will not produce illumination intensities exceeding 0.1 footcandles at any property line.
- (6) *Noise:* The activities on the subject property shall be conducted in complete accordance with all requirements of the York County Noise Ordinance set forth in Section 16-19 of the York County Code.
- (7) *Parking:* Except as specified below and as documented in the Special Use Permit approval, all parking demand associated with the event shall be accommodated on the site on a suitable all-weather surface. The minimum number of spaces shall be calculated at a ratio of one (1) parking space per every two (2) persons based on the maximum allowable occupancy/attendance limit plus one (1) space for every regular or contract employee associated with the reception facility.

The Special Use Permit may allow:

- a. the use of an abutting property owned or controlled by the applicant and from which event attendees can walk without obstruction to reach the reception site. For the purposes of this section, the term abutting shall be construed to include property located on the opposite side of a street right-of-way, provided that event attendees will be able to cross perpendicularly and safely and will not be required to walk along a road or road shoulder;
  - b. the use of any available and conveniently located public parking spaces from which attendees can walk safely.
- Any parking areas constructed or established specifically for support of the reception use shall be located a minimum of 25 feet from any abutting

property not owned by the proprietor, unless with the consent of the owner of the abutting property, and shall be screened from view from those abutting properties and public rights-of-way by evergreen landscaping, unless the abutting property owner consents to waiver of the screening requirement. All applicable stormwater management standards and requirements associated with the installation of the required parking spaces shall be observed.

- (8) *Fire and Emergency Vehicle Access:* Driveway access to the site shall comply with all requirements as to weight capacity, base and surface material, width, configuration and alignment, and vertical and horizontal clearance as set forth in Section 24.1-261. Existing driveways shall be upgraded to meet these standards if they are deficient in any aspect.
- (9) *Sanitation:* Restrooms or toilet facilities shall be provided for event attendees based on the ratios/requirements set forth in the Virginia Uniform Statewide Building Code. Reception venues that would be dependent on the dwelling's on-site septic system will not be approved unless the applicant provides written authorization from the Health Department as to the adequacy of the system. In the event portable restroom or toilet facilities are proposed to be used, all shall be screened from view from adjacent public rights-of-way and abutting properties and all shall be serviced or removed within two working days of the conclusion of the event.
- (10) *Caterers / Vendors:* The proprietor shall ensure that any caterers or other vendors providing services for a reception are properly licensed and permitted, whether such caterer/vendor is hired by the proprietor or by the client contracting for the use of the facility. Likewise, the proprietor shall ensure that all applicable ABC permits have been obtained, either by the client or by the proprietor, and are kept valid.

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# COUNTY OF YORK

## MEMORANDUM

DATE: August 28, 2020

TO: York County Board of Supervisors

FROM: Neil A Morgan, County Administrator 

SUBJECT: Short Term Rentals (STR)

### **Background**

In 2019 at the request of the Board staff initiated a review of the Special Use Permit (SUP) process for Short Term Rentals. After recommendations from staff and a review and approval by the Planning Commission, the Board of Supervisors amended the zoning ordinance for Short Term Rentals in March of 2020. Attached is the staff report that you reviewed at that time.

### **Current Situation**

In that there are two SUP requests for STR's at your September 15<sup>th</sup> meeting a member of the Board suggested that these documents, including a matrix of previous cases, should once again be shared with you as you prepare for the September 15<sup>th</sup> meeting.

# COUNTY OF YORK

## MEMORANDUM

**DATE:** March 3, 2020 (BOS Mtg. 3/17/20)

**TO:** York County Board of Supervisors

**FROM:** Neil A. Morgan, County Administrator 

**SUBJECT:** Application No. ZT-182-20, York County Planning Commission – Zoning Ordinance Text Amendments for Short-Term Rental Homes

### ISSUE

This application is to consider a series of proposed amendments to various sections of the York County Zoning Ordinance: Sections 24.104, *Definitions*, 24.1-409, *Standards for Boarding Houses, Tourist Home and Bed and Breakfast Establishments*, and 24.1-606(a), *Minimum Off-Street Parking and Loading Requirements*.

### DISCUSSION

In response to the high volume of Special Use Permit applications for tourist homes over the past few years, the Board and the Planning Commission have both expressed a desire for additional Zoning Ordinance standards or guidelines to assist them in evaluating such applications. In August 2019, at the request of the Board of Supervisors, the Planning Commission conducted a work session at which staff provided the attached issue paper, which includes a detailed analysis of the issue of short-term rental homes (STRs) and how they are regulated in York County, including case studies of recent applications and a review of the various policy options.<sup>1</sup> Staff also provided the attached summary of zoning regulations for short-term rentals utilized by some other Virginia localities. Following discussion, the Commissioners expressed a preference for keeping the flexibility that the use permit process provides while adding some criteria or considerations that will provide guidance to the decision-makers evaluating proposals for short-term rentals. (For more details, please see the attached Planning Commission work session minutes for August 26, 2019.)

With the Board's and the Commission's guidance in mind, staff drafted a set of proposed Zoning Ordinance text amendments relative to STRs. Under the proposed changes, a Special Use Permit would continue to be required for any STR in a residential zoning district. Although many Virginia localities require a special (or conditional) use permit for STRs, a number of jurisdictions allow them as a matter of right subject to compliance with certain performance criteria. Given the sensitivity that often surrounds proposals to establish commercial or quasi-commercial uses in residential areas, I believe it is important to retain the use permit requirement in residential districts.

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<sup>1</sup> This issue paper was included in the Board's weekly correspondence package for February 7. It has since been updated to reflect a tourist home application that was approved by the Board in September 2019.

The proposed amendments to the performance standards and parking requirements for STRs are detailed below, followed by staff commentary explaining the rationale for each:

- The proposed amendments specifically require applicants to submit a detailed narrative description of the project specifying the proposed operating procedures; provisions for monitoring of guests' behavior; the maximum number of occupants (both children and adults); the minimum and maximum length of stay, if any; the number of bedrooms to be rented; provisions for accommodating off-street parking; and indicating whether individual rooms within the house will be rented or the property will be offered as a whole house rental. The amendments also require applicants to submit a floor plan of the structure clearly delineating all of the rooms in the house and specifically identifying those rooms and areas that will be available to renters.

*Comment: The thoroughness and overall quality of use permit application submissions for STRs varies greatly from application to application. For the benefit of both applicants and those reviewing the applications, staff feels it is important to clearly specify in the ordinance what kind of information must be submitted with an application. A sketch plan is not included in the specified submittal requirements because it is already required by Section 24.1-115(a), which states that any application for a Special Use Permit must include a sketch plan of the site showing all existing and proposed physical improvements and such other information as is necessary to clearly indicate to the Board and the Planning Commission that adequate provisions will be made for compliance with all applicable standards.*

- It is proposed that language be added to specify that the Board and the Planning Commission will consider the adequacy and capacity of the adjacent roadway network – specifically including street ownership and maintenance arrangements – to accommodate any proposed STR without adversely affecting neighboring properties.

*Comment: Many of the relevant evaluation criteria for STR applications are already spelled out in the general use permit requirements, which state that the Commission must consider the following criteria when reviewing a use permit application;*

- *Consistency with the Comprehensive Plan,*
- *Compatibility with the surrounding area,*
- *Availability of adequate utilities, drainage, parking, and landscaping,*
- *Compatibility with the intent of the zoning district in which located,*
- *Compliance with applicable performance standards and requirements, and*
- *Ability to mitigate negative external impacts of the proposal.*

*The issue of road access has risen with respect to several tourist home and B&B applications in the past. In particular, concerns have been raised regarding proposed STRs on private streets owned by others or where ownership and/or maintenance responsibility is shared. While staff does not believe it is advisable to pro-*

*hibit STRs on private streets, it does believe that the ownership status of the affected street(s) and the impact on those who maintain or help to maintain those streets should be taken into consideration by the Board and the Planning Commission.*

- A requirement is proposed to be added to specify that the owner/proprietor of a tourist home must either live in the home or in an adjacent premises or designate a responsible party (who may be the applicant) who will be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place.

*Comment: Some localities require the owners of an STR to use the house as their principal place of residence and to be physically present when rentals are taking place. While such a requirement addresses the frequently raised concern about unruly behavior on the part of unsupervised guests, it makes no allowance for other living arrangements that can provide for an equivalent level of oversight. For example, the County has approved two tourist homes where the owners lived in an adjacent residence and a third in which the owners lived about ten minutes away. In lieu of a residency requirement, a number of localities require the STR owner to designate a local "responsible party" who is on call while rentals are taking place to respond to any problems or complaints that might arise. This strategy was utilized with a recently approved tourist home on Goosley Road where the owners lived in James City County. (The proposed language does not include B&Bs because the Zoning Ordinance definition of B&Bs already specifies that the owner must live on the premises or in an adjacent premises.)*

- The parking standards are proposed to be revised to require one less space for those tourist homes where the owner does not live in the home. In addition, the existing language requiring landscaped screening of parking areas and prohibiting them in required front yards is proposed to be deleted.

*Comment: For a tourist home in which the owner/operator resides and rents out one or more rooms on a short-term basis, it makes sense to require two spaces for the residential use and one additional space for each bedroom, as the Zoning Ordinance currently does. However, not in every case does the owner reside in the home, so in those cases, staff proposes to continue to require one space per bedroom but require just one space for the owner/operator, who might need to visit the property while it is being rented to meet renters or address problems or complaints that might arise.*

*The performance standards include language requiring STRs in residential zoning districts to have parking areas screened by landscaping from view from adjacent properties and to be outside of any required front yard. Strict enforcement of such requirements can prohibit the use of an existing parking area in which residential parking is permitted as a matter of right. Off-street residential parking for single-family detached homes is not subject to similar location and landscaping requirements, and staff feels it would be appropriate to treat STRs the same way. Removal of this language will not preclude denial of an application where the proposed*

*parking arrangement is deemed to be incompatible with the surrounding area, nor will it prevent the imposition of use permit conditions restricting the location of parking or requiring additional landscaping in cases where particular site characteristics would warrant such conditions.*

- Fire and life safety requirements – emergency action plan, fire extinguishers, smoke detectors, and annual fire inspections – that are normally included as Special Use Permit conditions are proposed to be added to the performance standards for short-term rentals. The amendments also make reference to the applicable building and fire code requirements as well as the applicable requirements relative to business licensing and taxation.

*Comment: Incorporation of these safety and other requirements in the ordinance enables prospective STR operators to be aware at the outset of what will be required while also ensuring that these standards will be applied to by-right STRs (i.e., those located in commercial districts) as well as those for which a Special Use Permit is required.*

- References to the more common term – “short-term rental” – are proposed to be added to the performance standards.

*Comment: Citizens are often unaware that short-term rentals are covered by the tourist home/B&B standards, and people sometimes react negatively to the term “tourist home” because it suggests a use that is more commercial and possibly more intensive than a typical short-term rental.*

- Staff recommends that requirements for owners of bed-and-breakfast establishments in residential districts to reside in the home or in an adjacent premises and to be the operator of the B&B, which currently appear in the B&B definition, to be moved to the performance standards.

*Comment: As a general rule, zoning regulations should not include standards, measurements, or other control standards. Moreover, since the proposed revisions to the performance standards include similar requirements for tourist homes, it would be appropriate to have both sets of standards in the same section of the Zoning Ordinance.*

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission considered the proposed amendments at its February 12 meeting and, subsequent to conducting a public hearing at which eight people spoke, voted 5:0 (Messrs. King and Sturk absent) to recommend approval of the amendments as written. The citizens who spoke were generally supportive of the proposed amendments while expressing a desire for three additional changes: 1) requiring STR owners to live in the residence or an adjacent residence; 2) requiring use permits for STRs to run with the applicant rather than with the land; and 3) prohibiting signage in connection with home occupations. In addition, one speaker recommended that neighborhoods be given the oppor-

tunity to essentially “opt out” of the allowance for STRs through a public survey process. Of these recommendations, the only one that was given serious consideration by members of the Commission was the suggestion that the owner be required to live in the home or in an adjacent home. Two of the Commissioners expressed an interest in including such a requirement, while other members pointed out that even with the opportunity to designate a “responsible party,” the Board would still have the flexibility to deny any application where it feels the circumstances are such that this would not adequately protect the surrounding neighborhood from the possibility of unruly guest behavior.

### **COUNTY ADMINISTRATOR RECOMMENDATION**

The most fundamental questions surrounding STRs is whether to allow them at all and, if so, whether to allow them as a matter of right or to require a public hearing process that gives residents an opportunity to voice their opinion on whether or not a proposed STR is appropriate in their neighborhood. The proposed amendments would retain the current use permit requirement in residential districts while providing additional clarity and guidance to prospective STR operators and to those – i.e., the Board and the Planning Commission – who will be reviewing their proposals. With regard to the suggestions that were made by various citizens who spoke at the Planning Commission meeting, I offer the following comments.

As the Board is aware, it generally has not been the County’s practice to tie Special Use Permit approvals to specific individuals. This is based on the notion that if the Board deems a given use to be acceptable and appropriate in a given location subject to a given set of conditions, it should not matter who owns the property since any future owner would be subject to the same conditions of approval as the applicant. In fact, the case law on conditions attached to special exceptions and special use permit indicates that as a general rule, conditions that relate to the use of the land are upheld by the courts, while “those that do not relate to the use of the land, such as a condition that terminates the conditional use when there is a change in ownership” are not.<sup>2</sup> For these reasons, the County Attorney and the Planning Division staff have consistently advised against imposing this type of condition, and the Planning Commission agreed that such a requirement should not be added; I concur.

With regard to signage, the opportunity for tourist homes and B&Bs in residential zoning districts to have a freestanding sign already exists in the Zoning Ordinance and it has for 35 years. Such signs can be up to three (3) square feet in area and three feet (3’) in height. As a practical matter, very few STR owners take advantage of this opportunity. Of the sixteen STR applications considered since 2015, in only two or three cases did the applicant propose to install a sign. Furthermore, the Board has discretionary authority to deviate from this standard if it so desires in conjunction with its approval of a Special Use Permit for such a use; this provision was added to the Zoning Ordinance last year as part of the rewrite of the sign standards.

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<sup>2</sup> Daniel R. Mandelker, Land Use Law, 4<sup>th</sup> edition (Charlottesville, Virginia: Lexis Law Publishing, 1997) 272.

With regard to one citizen's suggestion to "by special ballot or other official means, find out whether or not a majority of the residents of each neighborhood want Tourist or B&B rentals in their midst" so that the Planning Commission and Board "can reflect the will of [their] constituents by neighborhood in dealing with these kinds [of] special use permits," I believe that in addition to being impractical, such an extralegal mechanism might conflict with Section 15.2-2282 of the *Code of Virginia*, which states that all zoning regulations must be uniform for uses throughout each district. For example, if STRs are permitted with a Special Use Permit in one neighborhood that is zoned Rural Residential (RR), then they must be allowed with a use permit in *all* RR-zoned neighborhoods. Moreover, the public hearing process already gives affected residents the opportunity to make their views known with regard to a proposed STR, and the Board and Commission have consistently given considerable weight to neighborhood input, among other factors, in evaluating these applications.

The one citizen recommendation that generated discussion among the Commissioners is the proposal to require the owner/proprietor of an STR to live in the home or in an adjacent premises and not allow for, as an alternative, the designation of a third party to respond to problems or complaints. I do believe an argument can be made for requiring on-site residency by the owner, especially since the three documented cases of STRs where problems occurred involved rentals that were operated – illegally – by absentee property owners. Certainly the risk of neighborhood disruption on the part of unruly renters would be minimized – and the promptness of corrective action maximized – by an owner residency requirement. Alternatively, as was noted by some of the Planning Commissioners, the proposed amendments would merely allow an off-site ownership arrangement to be *considered*; they would not guarantee that such an arrangement would be approved.

Short-term rentals do not lend themselves to a "one size fits all" regulatory approach. Because of the uniqueness of each case, I believe it is essential to continue to provide a public forum for affected neighbors to express their views while allowing the Board and the Planning Commission the flexibility to use their best judgment in evaluating each application on its particular merits. I believe the proposed guidelines will help to inform those decisions while adding clarity to the application process. Therefore, based on the considerations and conclusions as noted, I recommend that the Board approve the proposed amendments through the adoption of proposed Ordinance No. 20-5.

Cross/3496

Attachments:

- Planning Commission minutes excerpts, February 12, 2020
- Short-Term Rental Issue Paper
- Overview of Short-Term Rental Regulations in Virginia Localities
- Planning Commission Work Session Minutes, August 26, 2019
- Citizen Correspondence
- Proposed Ordinance No. 20-5

## Home Away From Home: Short-Term Rentals In York County

### INTRODUCTION

Cities and counties across the United States are grappling with the issue of how to address the permitting of short-term vacation rental homes in their zoning ordinances. Short-term rentals are nothing new. In fact, York County has provided for them since the adoption of its first Zoning Ordinance in 1957. What has changed in recent years is the increased popularity of internet sites such as Airbnb and VRBO (Vacation Rentals by Owner) that have made it easy for homeowners interested in renting out their homes – or rooms within their homes – on a short-term basis to connect with travelers who are looking for a place to stay other than a hotel, motel, or timeshare. Once limited mainly to tourist areas and beachfront communities, short-term rentals are now springing up in residential neighborhoods all over the country, sometimes leading to conflicts that often arise when commercial land uses are located in residential areas.

Short-term rentals offer benefits to homeowners and travelers alike. For homeowners, they provide a source of income that can require little investment; for travelers, they provide a comfortable alternative to hotels and motels, especially for families or other groups that require more than one room. Unfortunately, when located in residential areas, these rentals can also cause problems – such as increased traffic, noise, and parking demand – for nearby residents who purchased their homes in a residential subdivision or neighborhood with the expectation that their residential quality of life would not be disturbed by the presence of what are essentially commercial establishments.

While it is local governments that deal most directly with this issue, short-term rentals have also been a topic of considerable discussion at the state level. Senate Bill SB 1578, approved by the Virginia General Assembly in 2017 and signed by the Governor, affirmed the right of Virginia localities to regulate the short-term rental of property through zoning provisions and authorized localities to require the registration of persons offering property for short-term rental. For localities that do not currently regulate short-term rentals through zoning, this legislation provides an opportunity to consider amending their ordinances to address this type of use. For others, such as York County, the question is whether or not existing regulations are adequate to provide for such uses while ensuring that they will not have adverse impacts on their surroundings.

### SHORT-TERM RENTALS IN YORK COUNTY

In York County, short-term rentals (STRs) fall into the category of either *tourist homes* or *bed and breakfast inns* (B&B's), as defined below in Section 24.1-104 of the Zoning Ordinance:

- *Bed and breakfast inn.* A dwelling in which, for compensation, breakfast and overnight accommodations are provided for transient guests. When the establishment is located in a residential zoning district, the owner of the property shall live on the premises or in an adjacent premises and shall be the operator/provider of the bed and breakfast accommodations and services.
- *Tourist home.* An establishment, either in a private dwelling or in a structure accessory and subordinate to a private dwelling, in which temporary accommodations are provided to overnight transient guests for a fee.

Also relevant is the following Zoning Ordinance definition of *transient*, since both tourist homes and B&Bs provide accommodations specifically for transient guests:

- *Transient occupancy.* Occupancy of a lodging unit or accommodation on a temporary basis for less than (ninety) 90 continuous days by a visitor whose permanent address for legal purposes is not the lodging unit occupied by the visitor.

The distinction between tourist homes and B&Bs is that in the latter, breakfast is provided in addition to overnight accommodations. In addition, for B&Bs the Zoning Ordinance requires the property owner to live on the premises or in adjacent premises, whereas no such restriction exists for tourist homes.

Tourist homes and B&Bs are permitted as a matter of right in the GB (General Business) and LB (Limited Business) zoning districts. In residential districts – RC (Resource Conservation), RR (Rural Residential) R33 (Low density single-family residential), R20 (Medium density single-family residential), R13 (High density single-family residential), and RMF (Residential Multi-Family) – a Special Use Permit is required. STRs are also permitted in the YVA (Yorktown Village Activity) district subject to Board of Supervisors approval through the YVA process, which is virtually identical to the Special Use Permit process.

STRs are subject to the following performance standards set forth in Section 24.1-409 of the Zoning Ordinance:

- When located in single-family residential zoning districts, tourist homes, and bed and breakfast establishments shall have the appearance of a single-family detached residence and normal residential accessory structures.
- Other provisions of this chapter notwithstanding, one freestanding, non-illuminated sign, not exceeding four (4) square feet in area, may be permitted to identify such use.
- In all residential districts, required off-street parking for the subject use shall be effectively screened by landscaping from view from adjacent residential properties and shall not be located in any required front yard area.
- The board shall specify the maximum number of persons who may be accommodated in the proposed use. Such determination shall be based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.

In addition to these standards, Section 24.1-409(e) provides an opportunity for the owner of a tourist home or B&B to apply for a supplementary Special Use Permit to host private weddings and receptions as a commercial venture subject to additional performance standards governing the frequency of events, the number of guests, parking, noise, etc. The tourist home or B&B must have been in operation for at least a year before the proprietor can apply for a supplementary use permit.

STRs are subject to the state sales tax as well as the 5% County transient occupancy tax and \$2.00 per night room tax. The proprietor of any such establishment is required to obtain a County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account.

For most of the County's history, STRs were mostly limited to the Yorktown village. Prior to 2015, there were ten applications for such uses, nine of which were approved. Seven were in Yorktown, while two were in the Moore House area just east of the village and one involved a waterfront parcel in Seaford. Since 2015 and the advent of the Airbnb phenomenon, however, sixteen such applications have been submitted involving property all over the County. Nine were approved and four were denied. Two were withdrawn by the applicants after being recommended for denial by the Planning Commission, and one was deferred indefinitely at the request of the applicant. These cases are described below.

## CASE STUDIES

### Queens Lake I

In April 2015, a County homeowner applied for a business license to operate a three-bedroom tourist home on his property located on Valor Court in Queens Lake and was informed that a Special Use Permit was required. He subsequently advertised the tourist home on the VRBO website and was issued a Notice of Violation by the County's Zoning and Code Enforcement staff, after which he applied for a Special Use Permit. Valor Court is a seven-home cul-de-sac street. This small, self-contained area consists of two streets with a total of fourteen homes and is the only section of Queens Lake that is zoned R20 (Medium density single-family residential) rather than RR (Rural Residential). Staff recommended denial of the application, citing concerns about traffic and activity levels, the house's proximity to other single-family detached homes, and the fact that there would be no one on-site to monitor the conduct of the renters. The Planning Commission conducted a public hearing at which only the applicant's business partner spoke, after which the Commission voted 3 to 2 to recommend approval. Two citizens spoke in opposition to the application when it came before the Board of Supervisors, and after discussion the Board denied the application by a vote of 3 to 1.

### Spivey Lane

In January 2017, the Planning Commission considered an application submitted by a couple seeking to operate a three-bedroom B&B out of their waterfront home on a 1.5-acre parcel located on Spivey Lane in a relatively isolated part of Seaford that is zoned RC (Resource Conservation). Two of the applicants' four immediate neighbors spoke in support of the application at both the Planning Commission and Board of Supervisors public hearings. The Commission voted 5 to 2 to recommend approval, but ultimately, the Board denied the application on a split vote, with 2 in favor, 2 opposed, and 1 abstention. The denial was based on concerns about access to the property, which was via a narrow, unpaved private road across property owned by a third party who did not support the application.

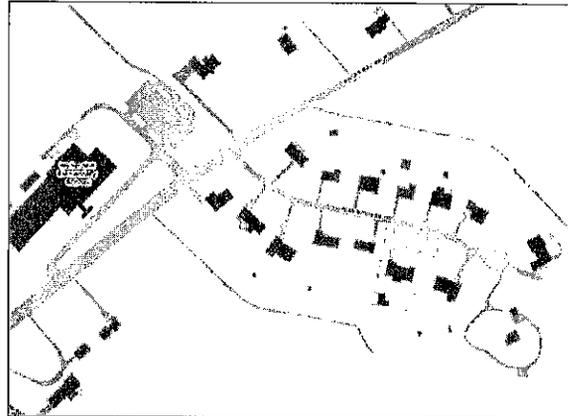
### Dandy

The Planning Commission considered another use permit application for a waterfront B&B, this one located on a five-acre parcel on Sandbox Lane (a paved private driveway) in Dandy. The proposed B&B would be in an existing 8,500-square foot single-family detached home and would have five guest rooms, with a sixth bedroom to be occupied by the owner/proprietor. Staff recommended approval of the application, opining that both the property and the home were suitable for this type of use and that it would not adversely affect the Dandy area. At the Planning Commission public hearing, eighteen citizens spoke against the application and six citizens spoke in favor. While the application was specifically for a B&B, the applicant had in the accompanying materials expressed his intent ultimately to apply for a supplementary use permit to operate the B&B as an event venue, and most of the negative citizen comments were specifically in opposition to the possibility of an event venue. Other concerns were in reference to the additional traffic that a B&B – or a B&B operated as an event venue – would bring to Dandy Loop Road, which is fairly narrow and the only road into and out of Dandy. Following the public hearing, the Commission voted 3 to 2 to recommend approval. Scheduled to be considered by the Board at its July 2017 meeting, the application was deferred at the request of the applicant, who indicated that he needed time to reconsider his plans in light of additional conditions of approval that were being proposed by the County Administrator in his memo to the Board on the application. To date, the Board public hearing has yet to be rescheduled.

### Plantation Drive

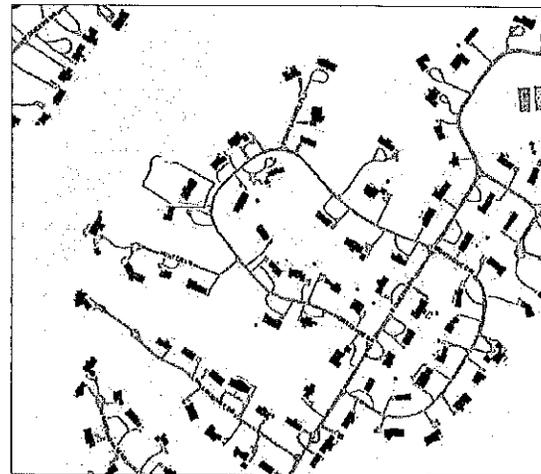
In July 2017, a couple on Plantation Drive in the upper County appeared before the Planning Commission to request a Special Use Permit to operate a tourist home with up to three guest rooms in their existing

single-family detached home. Plantation Drive is a fourteen-home cul-de-sac street off of Waller Mill Road in the upper County. The neighborhood is zoned R20 (Medium density single-family residential) In this case, the applicants planned to occupy the house while guests were staying there. Largely for that reason, staff recommended approval of the application subject to a proposed condition that would limit the initial term of the use permit to one year, after which the applicant would be required to submit a request to the Board of Supervisors for a minor amendment of the permit to extend the term. As proposed by staff, such an application could be approved by Board resolution with no public hearings, provided that the request is accompanied by written statements from the owners of each of the properties abutting the subject property indicating that they have no objection to continuation of the tourist home use. The purpose of the one-year review requirement was to give the Board an opportunity to discontinue the use if its operation was determined to be incompatible with its residential setting. The Planning Commission conducted a public hearing at which six citizens spoke in opposition, citing concerns about traffic, safety, and privacy. The Commission voted six to zero to recommend denial, and the applicants subsequently withdrew the application.



#### Queens Lake II

In August 2017, the Planning Commission considered another Special Use Permit application to operate a tourist home in Queens Lake on Horseshoe Drive. Horseshoe Drive is a loop road off the main street – East Queens Drive – and serves 28 single-family detached homes. The entire area is zoned RR (Rural Residential). This application was generated by a complaint from a citizen who saw the property advertised for short-term rental on the Airbnb website. A Notice of Violation was issued by County zoning staff, and the homeowner ultimately applied for a Special Use Permit in order to continue operation even though she indicated that she was no longer offering the home for occupancy as a tourist home and only wanted to honor reservations that had already been booked. Staff recommended denial of the application with a recommendation that if the use permit were approved, the applicant should be required to occupy the house while it was being rented. Eleven citizens spoke in opposition, expressing concerns about safety, traffic, and the possibility of short-term renters using the community facilities. One citizen spoke in support and another speaker spoke positively about the application without expressing an overt opinion. In doing so, they cited the positive aspects of short-term rentals for both homeowners and travelers and noted that short-term renters have not proven to be any less neighborly than permanent residents. The Commission, by a vote of four to one, recommended denial of the application. The applicant subsequently withdrew the application, so it was never considered by the Board of Supervisors.

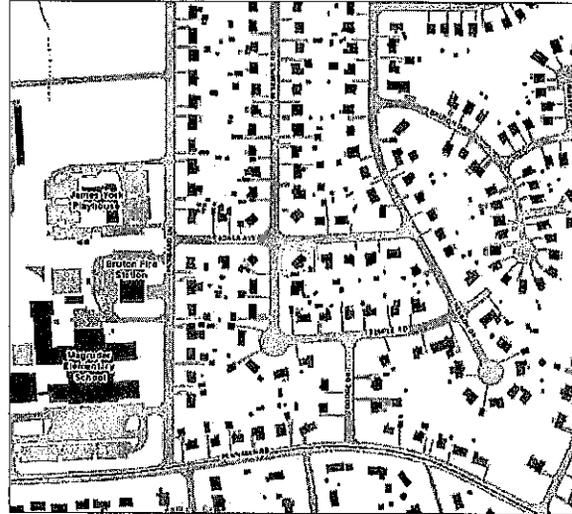


#### Edale Avenue

The following month, the Commission considered another Special Use Permit application submitted by a homeowner on Edale Avenue seeking to operate a two-bedroom tourist home out of his house. This application differed from the Plantation Drive and Queens Lake applications in several respects. First, while

the subject parcel is located in a residential subdivision – Nelson Circle – it is a subdivision that is part of a much larger residential area with a fairly extensive, highly interconnected street network that offers multiple means of ingress and egress to and from the property. The property, which is zoned R13 (High density single-family residential), is only 350 feet from Hubbard Lane and thus is relatively close to a road that serves various nonresidential uses (e.g., James-York Playhouse, James-York Plaza, the Bruton Fire Station, and Magruder Elementary School) and functions as a collector road for traffic from a number of residential neighborhoods. Moreover, the adjacent streets – Edale Avenue and West Semple Road – carry an average of only 670 and 420 vehicles per day and, with pavement widths of approximately 36 feet each, are able to safely accommodate the modest increase in traffic that might be associated with the proposed tourist home. For these reasons, the additional traffic generated by the proposed tourist home

was not considered likely to be noticeable to neighboring residents. Staff recommended approval as did the Planning Commission, by a unanimous vote. The Board also voted unanimously to approve the application. It is noteworthy that there was no citizen opposition to the application and two of the adjacent property owners sent emails expressing their support. In this case, staff recommended an initial use permit term of one year, after which the applicant could apply for an extension of the term to be processed as a minor modification with review and authorization by the Board and provided that the request is accompanied by written statements from owners of the adjacent properties indicating that they have no objection to continuation of the tourist home use. The purpose of this one-year review requirement was to give the Board an opportunity to discontinue the use if its operation were determined



to be incompatible with its residential setting. At the end of the initial term, the application provided letters of support from all the adjacent property owners, and the Board voted to remove the term limit.

### Yorktown Village

In December 2017, the Board unanimously approved a Yorktown Village Activity (YVA) application to authorize a two-bedroom tourist home in an existing building (the former Nancy Thomas Gallery) on Ballard Street in historic Yorktown. The application, which generated no citizen opposition, was recommended for approval by both the staff and the Planning Commission (unanimously) based on a number of factors, including its location on a higher-order street that carries a considerable amount of non-local traffic, the absence of residential neighbors, and most importantly, its location in Yorktown, where lodging spaces for tourists are common and, in fact, encouraged by the adopted Yorktown Master Plan. This approval did not include a requirement that the owners, who lived in Marbank (and have since moved to Dandy), reside in the home while it is being rented out. A use permit for a second tourist home in the same building was unanimously approved by the Board in September 2019 with no citizen opposition and a unanimous recommendation of approval from the Planning Commission.

### Wichita Lane

In August 2018, the Board unanimously approved a two-bedroom B&B on a 2.1-acre parcel on the cul-de-sac at the end of Wichita Lane, located in the Skimino Hills subdivision. The Planning Commission had also recommended approval by a unanimous vote. There was no citizen opposition.

### Yorkville Road

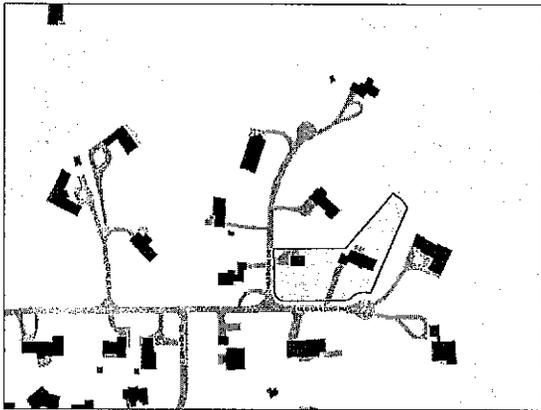
A use permit for a two-bedroom tourist home on a one-acre parcel at 604 Yorkville Road was unanimously approved by the Board in November 2018; the Planning Commission also had recommended approval. The property is one of three lots created through a family subdivision and accessed by a private driveway off of Yorkville Road, which is a local road carrying 1,900 vehicles per day. The applicants own all three lots and were not proposing to live in the tourist home; however, they live in the adjacent home to the rear. At the Planning Commission meeting, a next door neighbor spoke in opposition to the application, stating that a tourist home does not belong in a Rural Residential area and expressing concern that it would set a precedent for more tourist homes in residential areas. Another neighbor spoke in support of the application. No citizens other than the applicants spoke at the Board meeting.



### Carters Neck Road, Part I

Also in August 2018, the Board considered a second tourist home application, this one involving a 1.9-acre parcel located on Carters Neck Road, which is a relatively sparsely developed local road carrying 250 vehicles per day. The proposal was for a three-bedroom tourist home to be used as a whole house rental. As with the Yorkville Road application, the applicants were not proposing to live in the tourist home; however, they live in the house next door. The Planning Commission unanimously recommended approval of the application, and it was approved by the Board by a vote of 4 to 1. There was no citizen opposition.

### Old Landing Road



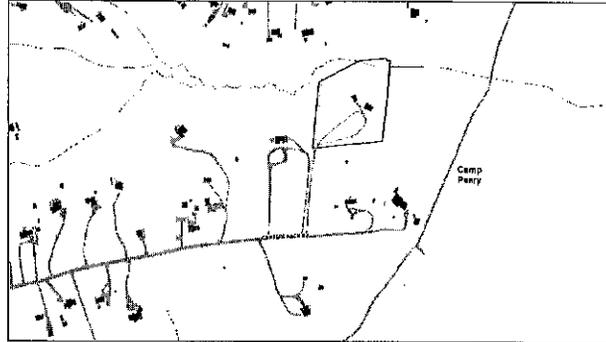
In December 2018, the Board unanimously approved a two-bedroom tourist home on a one-acre waterfront parcel located on Old Landing Road in the Marlbank Farm subdivision. Old Landing Road is a local subdivision street carrying 650 vehicles per day. The application had received a recommendation of approval from the Planning Commission. The applicant indicated that the two-bedroom guest suite would be rented out as a single unit and that there would be no rental of individual bedrooms. She also indicated that she and her husband would reside in the house while rentals are taking place. The applicant submitted letters of support from five of her neighbors as part of her application, and the County received one email from a neighbor opposing the application. No one other than the applicant spoke at either public hearing.

### Carters Neck Road, Part II

A second tourist home application was submitted for Carters Neck Road, this one involving a 5.0-acre parcel located on the private, unpaved western section of the road. The owner had an existing one-bedroom accessory apartment, for which a Special Use Permit was approved in 1986, on the second floor of a detached garage building and wanted to offer it for short-term rental. The surrounding area is fairly rural, characterized by large lots and low densities. The seven immediately adjacent lots range in size from 2.7 to 9.4 acres, and the nearest home is 450 feet away. Because of its location at the end of a long, narrow

driveway off of a dirt and gravel road, combined with the absence of public water, the Department of Fire and Life Safety expressed significant concerns about the application, even though the garage apartment was approved for year-round residential occupancy.

The owners of two adjacent properties spoke in opposition to the application, stating that the tourist home would detract from their privacy and safety by bringing strangers into the neighborhood on a regular basis as well as place an additional financial burden on those who maintain that portion of Carters Neck Road, which, according to the staff's estimates, carries approximately 60 vehicles per day. The Commission voted to recommend denial by a vote of 4 to 2. When the application came before the Board of Supervisors in March 2019, two neighbors spoke in opposition, and the Board denied the application by a unanimous vote.

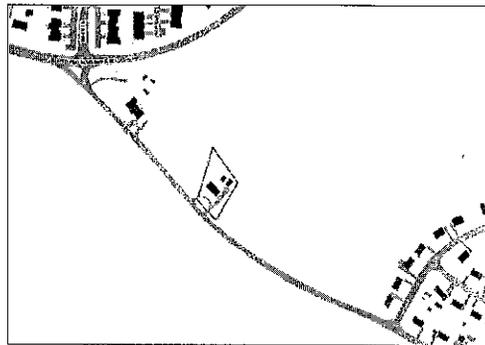


### Tom Thomas Road

Also at the March 2019 Board meeting, the Board reviewed another tourist home in the Skimino area. The subject property, located on Tom Thomas Drive approximately two miles from the site of the unsuccessful Carters Neck Road application, is 0.4 acre in size. The applicants live approximately ten minutes away in Queens Lake and indicated that they would not be residing in the home. No citizens expressed opposition to the application, which received a unanimous recommendation of approval from the Planning Commission and was subsequently approved by the Board by a vote of 4 to 1.

### Goosley Road

In June 2019, the Board voted 3 to 2 to approve a tourist home on a 0.6-acre parcel on Goosley Road. The applicant, who lives in James City County, planned to purchase the property, which is completely surrounded by vacant land – most of it owned by the National Park Service and unlikely ever to be developed – solely for the purpose of offering it as a short-term rental. The nearest home is 370 feet away, and there was no citizen opposition. Goosley Road is classified as a minor arterial road carrying approximately 6,000 vehicles per day. In recommending approval, staff included a proposed condition requiring the applicant to designate a “responsible party” who would be available to address any problems (e.g., noise, parties, littering, on-street parking, etc.) that might occur while rentals are taking place. The purpose of this requirement, which numerous other localities in Virginia and across the United States have adopted, was to address the concern that commonly arises about the absence of someone on the premises to monitor the guests’ behavior. The contact information for this person would be maintained in both the Zoning and Code Enforcement office and the Sheriff’s Office.



The application was recommended favorably by the Planning Commission by a vote of 4 to 2. Commissioners who opposed the application expressed concern about the commercial nature of the proposal, and one member also expressed concern about the impact of short-term rentals on the availability of affordable housing, noting that the house in question has a relatively low assessed value and would no longer be available for permanent residency if converted to a tourist home.

Queens Lake III

A third application for a tourist home in Queens Lake, this one on a 0.6-acre lot on Sherwood Drive, was considered by the Board in August 2019. The applicant was seeking authorization (after the fact) to operate a two-bedroom tourist home out of her single-family detached home. She indicated that she would be present in the home during rental periods. At the Planning Commission, five citizens spoke in favor of the application and three spoke in opposition. The Planning Commission recommended approval by a vote of six to zero, subject to an additional, fairly unusual, condition that would require the use permit to expire if the applicant were ever to sell the property. When the application was considered by the Board, however, there were nine citizens who expressed opposition to the application and only three who spoke in favor, and the application was denied unanimously.

Summary of Case Studies

Summary data for these sixteen tourist home and B&B applications is provided in the table below. In comparing applications that were approved with those that either were denied or were withdrawn by the applicants following a recommendation of denial from the Planning Commission, it is interesting to note that lot size and density have little bearing on whether or not an application is approved. In fact, the average lot size is somewhat higher for the unsuccessful applications (1.59 acres) than for the successful applications (0.89 acre). Regarding the size and scale of the proposed uses, the successful and unsuccessful applications are almost identical; the average number of bedrooms and maximum occupancy are slightly lower for successful applications (2.1 vs. 2.5 bedrooms and 5.7 vs. 6.0 guests). Another factor that is often considered by the Commission and the Board is whether or not the property owner would reside in the home while rentals are taking place. Five of the six unsuccessful applications would have required resident occupancy, whereas only three of the nine successful applications included such a requirement (although in two of those successful cases, the owners lived next door to the proposed tourist home).

The one factor that most differentiates successful applications from unsuccessful ones is the absence of neighborhood opposition. In the table below, Public Input is characterized as “anti” if most of the public comments were in opposition, “pro” if most of the public comments were in support, “even” if the public comments were evenly divided between opponents and supporters, and “none” if there were no public comments. Public input was mostly negative in five of the six unsuccessful applications and either supportive, neutral, or nonexistent in all nine of the successful applications.

Lot Size	Zoning	Bedrooms	On-Site Manager	Maximum Occupancy	Public Input	PC Action	BOS Action
0.22	R13	2	Yes	4	Pro	Approval	Approved
0.43	YVA	2	No	5	None	Approval	Approved
0.43	YVA	2	No	5	None	Approval	Approved
2.10	RR	2	Yes	6	None	Approval	Approved
1.00	RR	2	Next Door	4	Even	Approval	Approved
1.90	RR	3	Next Door	9	None	Approval	Approved
1.00	RR	2	Yes	6	Pro	Approval	Approved
0.40	RR	2	No	5	None	Approval	Approved
0.57	R13	3	No	8	None	Approval	Approved
0.74	R20	3	No	6	Anti	Approval	Denied
1.40	RC	3	Yes	9	Pro	Approval	Denied
4.90	RR	1	Yes	3	Anti	Denial	Denied
0.60	RR	2	Yes	4	Anti	Approval	Denied
0.60	R20	3	Yes	8	Anti	Denial	Withdrawn
1.26	RR	3	Yes	6	Anti	Denial	Withdrawn
5.00	RR	5	Yes	10	Anti	Approval	Deferred

## Observations

Though residential in character, tourist homes and B&B's are commercial establishments in which homeowners provide a service – lodging and possibly meals – to customers (renters) for a fee. In that respect, a single-family home used as short-term rental is similar to a home occupation with on-site customer/client contact, which, with a few exceptions, requires a Special Use Permit. When considering home occupations – or any proposed land use involving property within or close to a residential neighborhood – the Planning Commission and Board of Supervisors have consistently placed a high priority on the goal of preserving the residential character of the area and the neighbors' quality of life.

STRs often generate some of the same concerns from neighboring residents as do home occupations, such as traffic and parking. However, concerns have also been raised about the possibility of loud parties, crime, safety, and a general uneasiness about living among strangers who are only staying for a short time and might not have the best interests of the neighborhood – or the neighbors – at heart.

Some of these concerns have more of a factual basis than others. There is no evidence, for example, that short-term renters are more likely to commit crimes or hold loud parties than are permanent residents. In one of the cases discussed above, there was a complaint about a disruptive late-night party at a home that was being operated illegally as a short-term rental; however, the party was being held not by a short-term renter but by an on-site caretaker who was living in the basement of the house.

Traffic and parking, on the other hand, can be legitimate concerns, particularly in smaller residential areas with low-volume – and often narrow – local streets where relatively small increases in traffic can be especially disruptive. The potential for problems is compounded when a single home has more than one guest suite and thus a higher intensity of use (although it should be added that even when a tourist home is rented out as a single unit, there is no guarantee that it will be rented out by a single family; the potential exists for multiple families or groups of guests to share a short-term rental, each arriving in a separate vehicle).

As the case studies show, every case, every property, and every neighborhood is different, and the Planning Commission and Board of Supervisors have wide discretion in evaluating STR proposals. This is the purpose of the Special Use Permit process, as set forth in Section 24.1-115 of the Zoning Ordinance:

*“Certain uses, because of their unique characteristics or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but may, under the right set of circumstances and conditions be acceptable in certain specific locations. These uses are permitted only through the issuance of a special use permit by the board after ensuring that the use can be appropriately accommodated on the specific property, will be in conformance with the comprehensive plan, can be constructed and operated in a manner which is compatible with the surrounding land uses and overall character of the community, and that the public interest and general welfare of the citizens of the county will be protected. No inherent right exists to receive a special use permit; such permits are a special privilege granted by the board under a specific set of circumstances and conditions, and each application and situation is unique. Consequently, mere compliance with the generally applicable requirements may not be sufficient and additional measures, occasionally substantial, may be necessary to mitigate the impact of the proposed development. In other situations, no set of conditions would be sufficient to approve an application, even though the same request in another location would be approved.”*

The Virginia Supreme Court has ruled that zoning ordinances do not need to include standards concerning the issuance of special use permits where local governing bodies are to exercise their legislative judgment

or discretion, stating that “It would be impractical to provide standards in ordinances that would be applicable to all situations that might arise.”<sup>1</sup> While certain minimum standards are appropriate – limitations on signage and parking, for example – for the County to impose specific, uniform requirements for STRs in residential areas would be contrary to the intent of the use permit process, which is based on the premise that for some uses in some zoning districts, a “one size fits all” approach is not appropriate. In lieu of strict standards, however, a set of evaluation criteria to be used in determining the appropriateness of a tourist home in a residential zoning district could have some benefit. It would give additional guidance not only to the Planning Commission and the Board of Supervisors in evaluating tourist home applications but also to potential applicants (and possibly save some of them the trouble and expense of applying for a Special Use Permit that has little chance of success). Such criteria might include one or more of the following:

- Provisions for monitoring guest behavior. One of the most frequently raised concerns about STRs has been that if the owner does not reside in the home, there will be no one present to monitor the guests’ behavior. York County has approved five tourist homes in which the owner did not propose to live in the house being rented. In two of those cases, the owners lived next door, and in two others, they lived in the County about ten minutes away. In the fifth case, the owners live approximately thirty minutes away in an adjacent locality. (Interestingly, in only one of the six unsuccessful applications was the applicant *not* proposing to occupy the home during rental periods.)
- Limitations on the number of bedrooms/guest suites that can be rented. The Zoning Ordinance currently states that the Board of Supervisors “shall specify the maximum number of persons who may be accommodated in the proposed use ... based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.” Although the number of bedrooms has really not been much of an issue with any of the STR applications in the County, setting a maximum occupancy would be one way to limit the commercial aspect of the use.
- Capacity of the adjacent street network, including not just pavement width but the number of routes of ingress and egress. For example, the traffic associated with an STR with multiple bedrooms would likely be more disruptive to residential neighbors on an older, narrow cul-de-sac than on a through-street that meets the current VDOT pavement with standards. Two of the five unsuccessful applications involved properties located on narrow, unpaved private streets, which likely contributed to their eventual denial.
- Emergency/life safety requirements. Because the Fire Code does not specifically address tourist homes or B&Bs, staff, at the request of the Department of Fire and Life Safety has included a series of additional conditions in the approving resolution for all STRs. Intended to provide safety for visitors to the proposed tourist home, these conditions require an Emergency Action Plan identifying exit routes, fire extinguisher locations, and other life safety procedures; one or more fire extinguishers with a minimum rating of 2A10BC; and annual fire inspections. This is one case where strict, uniform standards make sense, and it would be appropriate to incorporate these into the performance standards for all STRs, regardless of zoning.
- Permitting requirements. Another standard condition in all recent STR approvals specifies that the applicant is responsible for obtaining all applicable permits and/or approvals required in accordance with regulations of the Virginia Uniform Statewide Building Code and the York County Department of Fire and Life Safety prior to use of the dwelling as a tourist home.

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<sup>1</sup> *Bollinger v. Roanoke County Board of Supervisors*, 217 Va. 185, 227 S.E. 2d 682 (1976)

- Business license/tax requirements. Every STR operator is required to obtain a County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account. While not related to land use, it might be helpful to reference these requirements in the performance standards to ensure that potential applicants are aware.
- Provisional term limits. In one case a tourist home was approved for an initial one-year term to allow it to operate on a provisional basis. A year later, the Board approved an extension of the term when the applicant was able to provide written statements from the owners of each of the adjoining properties indicating that they have no objection to continuation of the tourist home use. Some STR cases could involve unusual circumstances that would warrant a similar initial term limit, after which the Board could either extend the term of the use permit or, in the event of documented violations or complaints, revoke the permit.
- Expiration requirements upon the sale of the home. Although not recommended by staff, the Commission has in one case recommended approval of a tourist home subject to an additional condition specifying that the use permit would be null and void upon the transfer of ownership of the property in question. This was in response to concerns expressed by opponents about the use permit running with the land. It has not been the County's practice to tie Special Use Permit approvals to specific individuals. The County Attorney and Planning Division staff have consistently advised against imposing this type of condition, noting that if the Board deems a given use to be acceptable and appropriate in a given location subject to a given set of conditions, it should not matter who owns the property since any future owner would be subject to the same conditions of approval as the applicant. The case law on conditions attached to special exceptions and special use permit indicates that as a general rule, conditions that relate to the use of the land are upheld, while "conditions that do not relate to the use of the land, such as a condition that terminates the conditional use when there is a change in ownership," are not.<sup>2</sup>

## CONCLUSION

Short-term rentals and single-family detached homes can coexist in the same residential neighborhood under the right circumstances and with proper controls and limitations. While some of the concerns that short-term rentals generate among residential neighbors are matters of perception rather than reality, there are valid reasons to subject them to the close scrutiny that the Special Use Permit process affords. As always with commercial uses in residential areas, preserving neighborhood character and the residents' quality of life is paramount. Incorporating appropriate evaluation criteria into the Zoning Ordinance standards for tourist homes and B&B's would assist policymakers and potential applicants alike by providing additional direction as to the types of areas that are and are not considered suitable for these uses. It is hoped that in so doing, it would also reduce the incidence of contentious public hearings with neighbors pitted against one another, which can have serious, long-term negative impacts on a community.

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<sup>2</sup> Daniel R. Mandelker, Land Use Law, 4<sup>th</sup> edition (Charlottesville, Virginia: Lexis Law Publishing, 1997) 272.

**SPECIAL USE PERMIT APPLICATIONS FOR SHORT-TERM RENTALS (TOURIST HOMES AND BED & BREAKFAST INNS)  
2015-2020**

Application	Applicant	Address	Type	Lot Size	Zoning	Bed-rooms	Owner Occupancy	Maximum Occupancy	Public Comments	PC Action	BOS Action
UP-864-15	Stephen Casto	104 Valor Court	TH	0.74	R20	3	No	6	Anti	Approval	Denied
UP-879-17	Kevin Earley	408 Spivey Lane	B&B	1.40	RC	3	Yes	9	Pro	Approval	Denied
UP-890-17	Timothy Hyatt	118 Sandbox Lane	B&B	5.00	RR	5	Yes	10	Anti	Approval	N/A
UP-892-17	Amanda & Brian Owens	111 Plantation Dr.	TH	0.60	R20	3	Yes	8	Anti	Denial	Withdrawn
UP-894-17	Janice Evans	125 Horseshoe Dr.	TH	1.26	RR	3	Yes	6	Anti	Denial	Withdrawn
UP-895-17	Ryan Moberley	113 Edale Avenue	TH	0.22	R13	2	Yes	4	Pro	Approval	Approved
YVA-40-17	Jimmy & Christie Van Cleave	301 Ballard Street	TH	0.43	YVA	2	No	5	None	Approval	Approved
UP-910-18	Deborah Hoernlein	210 Wichita Lane	B&B	2.10	RR	2	Yes	6	None	Approval	Approved
UP-913-18	Denise King-Holzager	604 Yorkville Road	TH	1.00	RR	2	Next Door	4	Even	Approval	Approved
UP-914-18	Historic Triangle Hospitality, LLC	308 Carters Neck Road	TH	1.90	RR	3	Next Door	9	None	Approval	Approved
UP-917-18	Anne McCann	600 Old Landing Rd	TH	1.00	RR	2	Yes	6	Pro	Approval	Approved
UP-921-19	Anthony Steele	807 Carters Neck Road	TH	4.90	RR	1	Yes	3	Anti	Denial	Denied
UP-922-19	David Dafashy & Mariangela Sechi	102 Tom Thomas Road	TH	0.40	RR	2	No	5	None	Approval	Approved
UP-926-19	StarrWhite Enterprises LLC	209 Goosley Road	TH	0.57	R13	3	No	8	None	Approval	Approved
UP-929-19	Heather Phillips	105 Sherwood Dr.	TH	0.64	RR	2	Yes	4	Anti	Approval	Denied
YVA-44-19	Jimmy & Christie Van Cleave	301 Ballard Street	TH	0.43	YVA	1	No	4		Approval	Approved
<b>SUMMARY</b>											
Average ALL Applications				1.41		2.4		6.1			
Average of APPROVED Applications (9)				0.89		2.1		5.7			
Average of DENIED Applications (4)				1.92		3.0		7.3			
Average of DENIED OR WITHDRAWN Applications (6)				1.59		2.5		6.0			

# COUNTY OF YORK

## MEMORANDUM

**DATE:** February 7, 2020

**TO:** York County Board of Supervisors

**FROM:** Neil A. Morgan, County Administrator 

**SUBJECT:** Draft Zoning Ordinance Text Amendments – Short-Term Rental Homes

In response to the significant increase in the number of Special Use Permit applications for tourist homes over the past few years, the Board and the Planning Commission have both expressed a desire for additional Zoning Ordinance standards or guidelines to assist them in evaluating such applications. In August, 2019, the Planning Commission conducted a work session at which staff provided the attached issue paper, which includes a detailed analysis of the issue of short-term rentals (STRs) and how they are regulated in York County, including case studies of recent applications and a review of the various policy options. For purposes of comparison, staff also provided the attached summary of zoning regulations for short-term rentals utilized by some other Virginia localities. Following discussion, the Commissioners expressed a preference for keeping the flexibility that the use permit process provides while adding some criteria or considerations that will provide guidance to the decision-makers evaluating proposals for short-term rentals. (For more details, please see the attached Planning Commission work session minutes.)

With the Board's and the Commission's guidance in mind, staff has drafted a set of potential Zoning Ordinance text amendments relative to STRs. These are attached for the Board's information. Under the proposed changes, a Special Use Permit would continue to be required for any STR in a residential zoning district. Performance standards are proposed to be added to specify the application submittal requirements and evaluation criteria as well as to address fire and life safety needs permitting and taxation requirements. Minor changes to the parking requirements for STRs are also proposed.

The regulation of STRs in residential areas raises several policy questions that the Board will need to consider in evaluating possible changes to the current STR requirements. These are discussed in detail on pages 10-11 of the attached issue paper, but there are three I believe are worth highlighting:

- Matter-of-Right vs. Special Use Permit. The most fundamental question surrounding STRs is whether to allow them as a matter of right or to require a public hearing process that gives residents an opportunity to voice their opinion on whether or not a proposed STR is appropriate in their neighborhood. Although many Virginia localities require a conditional or special use permit for STRs, a surprising number allow them as a matter of right subject to compliance with certain performance criteria. Given the sensitivity that often surrounds proposals to establish commercial

or quasi-commercial uses in residential areas, staff believes it is important to retain the use permit requirement in residential districts.

- Residency Requirements. Some localities require the owners of an STR to use the house as their principal place of residence and to be physically present when rentals are taking place. While such a requirement addresses the frequently raised concern about unruly behavior on the part of unsupervised guests, it makes no allowance for other living arrangements that can provide for an equivalent level of oversight. For example, in two cases the Board has approved tourist homes where the owners lived in an adjacent residence, and in a third case, the owners lived about ten minutes away. In lieu of a residency requirement, a number of localities require the STR owner to designate a local “responsible party” who is on call while rentals are taking place to respond to any problems or complaints that may arise. As the Board may recall, this strategy was utilized with a recently approved tourist home on Goosley Road where the owners lived in James City County, which was approved by the Board on a 3:2 vote following a 4:2 recommendation of approval from the Planning Commission. The proposed text amendments that have been drafted would not require on-premises residency by the owner and would add language specifically requiring applicants to describe in their application submittals how they would ensure that their guests’ behavior is monitored.
- Maximum Number of Occupants/Bedrooms. In order to limit the commercial aspect of STRs in neighborhoods and address concerns about allowing “mini-hotels” in residential areas, some localities have adopted maximum limits on the number of occupants and/or bedrooms that can be rented at one time. Such blanket limits are inherently arbitrary and do not provide an opportunity to distinguish between a normal single-family detached home within a subdivision, where the intensity of use might be a major concern, and a larger house on a large lot in a fairly isolated location where the neighbors are few and far between. Under the current regulations, the Board establishes the maximum occupancy as part of the use permit approval, and this is not proposed to change.

I should emphasize that the recommended changes would not alter the basic dynamics of our current process whereby the Board is able to evaluate short-term rentals in residential districts on a case-by-case basis, which ensures that neighborhood input will continue to be a key factor in the decision-making process. What the changes would do is create a more systematic application and review process by providing additional clarity and guidance to prospective STR operators and to those – the Board and the Planning Commission – who will be reviewing their proposals.

The draft proposed zoning text amendments are being forwarded to the Planning Commission for review, study, and, following a public hearing, a recommendation. Depending on how long that process takes, the amendments would likely come to the Board for review and action in the spring of 2020. In the meantime, staff would welcome Board members’ input on the draft proposed amendments in particular or on the regulation of short-term rentals in general.

Cross/3496

Attachments:

- Short-Term Rental Issue Paper
- Overview of Short-Term Rental Regulations in Virginia Localities
- Planning Commission Work Session Minutes, August 26, 2019
- Draft Zoning Ordinance Text Amendments

## Home Away From Home: Short-Term Rentals In York County

### INTRODUCTION

Cities and counties across the United States are grappling with the issue of how to address the permitting of short-term vacation rental homes in their zoning ordinances. Short-term rentals are nothing new. In fact, York County has provided for them since the adoption of its first Zoning Ordinance in 1957. What has changed in recent years is the increased popularity of internet sites such as Airbnb and VRBO (Vacation Rentals by Owner) that have made it easy for homeowners interested in renting out their homes – or rooms within their homes – on a short-term basis to connect with travelers who are looking for a place to stay other than a hotel, motel, or timeshare. Once limited mainly to tourist areas and beachfront communities, short-term rentals are now springing up in residential neighborhoods all over the country, sometimes leading to conflicts that often arise when commercial land uses are located in residential areas.

Short-term rentals offer benefits to homeowners and travelers alike. For homeowners, they provide a source of income that can require little investment; for travelers, they provide a comfortable alternative to hotels and motels, especially for families or other groups that require more than one room. Unfortunately, when located in residential areas, these rentals can also cause problems – such as increased traffic, noise, and parking demand – for nearby residents who purchased their homes in a residential subdivision or neighborhood with the expectation that their residential quality of life would not be disturbed by the presence of what are essentially commercial establishments.

While it is local governments that deal most directly with this issue, short-term rentals have also been a topic of considerable discussion at the state level. Senate Bill SB 1578, approved by the Virginia General Assembly in 2017 and signed by the Governor, affirmed the right of Virginia localities to regulate the short-term rental of property through zoning provisions and authorized localities to require the registration of persons offering property for short-term rental. For localities that do not currently regulate short-term rentals through zoning, this legislation provides an opportunity to consider amending their ordinances to address this type of use. For others, such as York County, the question is whether or not existing regulations are adequate to provide for such uses while ensuring that they will not have adverse impacts on their surroundings.

### SHORT-TERM RENTALS IN YORK COUNTY

In York County, short-term rentals (STRs) fall into the category of either *tourist homes* or *bed and breakfast inns* (B&B's), as defined below in Section 24.1-104 of the Zoning Ordinance:

- *Bed and breakfast inn.* A dwelling in which, for compensation, breakfast and overnight accommodations are provided for transient guests. When the establishment is located in a residential zoning district, the owner of the property shall live on the premises or in an adjacent premises and shall be the operator/provider of the bed and breakfast accommodations and services.
- *Tourist home.* An establishment, either in a private dwelling or in a structure accessory and subordinate to a private dwelling, in which temporary accommodations are provided to overnight transient guests for a fee.

Also relevant is the following Zoning Ordinance definition of *transient*, since both tourist homes and B&Bs provide accommodations specifically for transient guests:

- *Transient occupancy.* Occupancy of a lodging unit or accommodation on a temporary basis for less than (ninety) 90 continuous days by a visitor whose permanent address for legal purposes is not the lodging unit occupied by the visitor.

The distinction between tourist homes and B&Bs is that in the latter, breakfast is provided in addition to overnight accommodations. In addition, for B&Bs the Zoning Ordinance requires the property owner to live on the premises or in adjacent premises, whereas no such restriction exists for tourist homes.

Tourist homes and B&Bs are permitted as a matter of right in the GB (General Business) and LB (Limited Business) zoning districts. In residential districts – RC (Resource Conservation), RR (Rural Residential) R33 (Low density single-family residential), R20 (Medium density single-family residential), R13 (High density single-family residential), and RMF (Residential Multi-Family) – a Special Use Permit is required. STRs are also permitted in the YVA (Yorktown Village Activity) district subject to Board of Supervisors approval through the YVA process, which is virtually identical to the Special Use Permit process.

STRs are subject to the following performance standards set forth in Section 24.1-409 of the Zoning Ordinance:

- When located in single-family residential zoning districts, tourist homes, and bed and breakfast establishments shall have the appearance of a single-family detached residence and normal residential accessory structures.
- Other provisions of this chapter notwithstanding, one freestanding, non-illuminated sign, not exceeding four (4) square feet in area, may be permitted to identify such use.
- In all residential districts, required off-street parking for the subject use shall be effectively screened by landscaping from view from adjacent residential properties and shall not be located in any required front yard area.
- The board shall specify the maximum number of persons who may be accommodated in the proposed use. Such determination shall be based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.

In addition to these standards, Section 24.1-409(e) provides an opportunity for the owner of a tourist home or B&B to apply for a supplementary Special Use Permit to host private weddings and receptions as a commercial venture subject to additional performance standards governing the frequency of events, the number of guests, parking, noise, etc. The tourist home or B&B must have been in operation for at least a year before the proprietor can apply for a supplementary use permit.

STRs are subject to the state sales tax as well as the 5% County transient occupancy tax and \$2.00 per night room tax. The proprietor of any such establishment is required to obtain a County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account.

For most of the County's history, STRs were mostly limited to the Yorktown village. Prior to 2015, there were ten applications for such uses, nine of which were approved. Seven were in Yorktown, while two were in the Moore House area just east of the village and one involved a waterfront parcel in Seaford. Since 2015 and the advent of the Airbnb phenomenon, however, fifteen such applications have been submitted involving property all over the County. Eight were approved and four were denied. Two were withdrawn by the applicants after being recommended for denial by the Planning Commission, and one was deferred indefinitely at the request of the applicant. These cases are described below.

## CASE STUDIES

### Queens Lake I

In April 2015, a County homeowner applied for a business license to operate a three-bedroom tourist home on his property located on Valor Court in Queens Lake and was informed that a Special Use Permit was required. He subsequently advertised the tourist home on the VRBO website and was issued a Notice of Violation by the County's Zoning and Code Enforcement staff, after which he applied for a Special Use Permit. Valor Court is a seven-home cul-de-sac street. This small, self-contained area consists of two streets with a total of fourteen homes and is the only section of Queens Lake that is zoned R20 (Medium density single-family residential) rather than RR (Rural Residential). Staff recommended denial of the application, citing concerns about traffic and activity levels, the house's proximity to other single-family detached homes, and the fact that there would be no one on-site to monitor the conduct of the renters. The Planning Commission conducted a public hearing at which only the applicant's business partner spoke, after which the Commission voted 3 to 2 to recommend approval. Two citizens spoke in opposition to the application when it came before the Board of Supervisors, and after discussion the Board denied the application by a vote of 3 to 1.

### Spivey Lane

In January 2017, the Planning Commission considered an application submitted by a couple seeking to operate a three-bedroom B&B out of their waterfront home on a 1.5-acre parcel located on Spivey Lane in a relatively isolated part of Seaford that is zoned RC (Resource Conservation). Two of the applicants' four immediate neighbors spoke in support of the application at both the Planning Commission and Board of Supervisors public hearings. The Commission voted 5 to 2 to recommend approval, but ultimately, the Board denied the application on a split vote, with 2 in favor, 2 opposed, and 1 abstention. The denial was based on concerns about access to the property, which was via a narrow, unpaved private road across property owned by a third party who did not support the application.

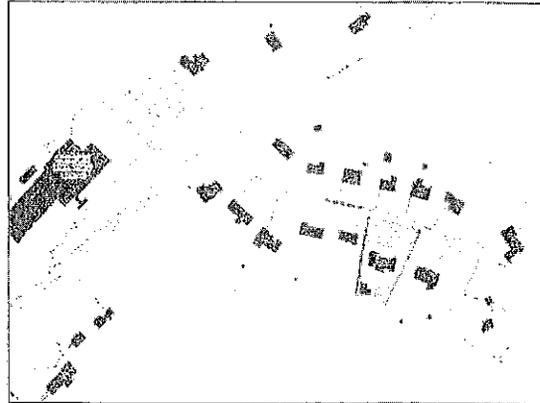
### Dandy

The Planning Commission considered another use permit application for a waterfront B&B, this one located on a five-acre parcel on Sandbox Lane (a paved private driveway) in Dandy. The proposed B&B would be in an existing 8,500-square foot single-family detached home and would have five guest rooms, with a sixth bedroom to be occupied by the owner/proprietor. Staff recommended approval of the application, opining that both the property and the home were suitable for this type of use and that it would not adversely affect the Dandy area. At the Planning Commission public hearing, eighteen citizens spoke against the application and six citizens spoke in favor. While the application was specifically for a B&B, the applicant had in the accompanying materials expressed his intent ultimately to apply for a supplementary use permit to operate the B&B as an event venue, and most of the negative citizen comments were specifically in opposition to the possibility of an event venue. Other concerns were in reference to the additional traffic that a B&B – or a B&B operated as an event venue – would bring to Dandy Loop Road, which is fairly narrow and the only road into and out of Dandy. Following the public hearing, the Commission voted 3 to 2 to recommend approval. Scheduled to be considered by the Board at its July 2017 meeting, the application was deferred at the request of the applicant, who indicated that he needed time to reconsider his plans in light of additional conditions of approval that were being proposed by the County Administrator in his memo to the Board on the application. To date, the Board public hearing has yet to be rescheduled.

### Plantation Drive

In July 2017, a couple on Plantation Drive in the upper County appeared before the Planning Commission to request a Special Use Permit to operate a tourist home with up to three guest rooms in their ex-

isting single-family detached home. Plantation Drive is a fourteen-home cul-de-sac street off of Waller Mill Road in the upper County. The neighborhood is zoned R20 (Medium density single-family residential) In this case, the applicants planned to occupy the house while guests were staying there. Largely for that reason, staff recommended approval of the application subject to a proposed condition that would limit the initial term of the use permit to one year, after which the applicant would be required to submit a request to the Board of Supervisors for a minor amendment of the permit to extend the term. As proposed by staff, such an application could be approved by

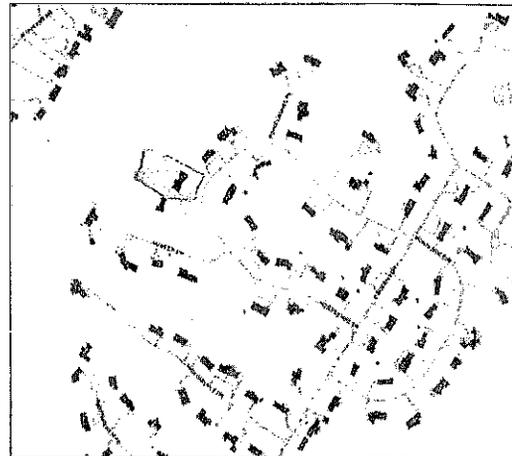


Board resolution with no public hearings, provided that the request is accompanied by written statements from the owners of each of the properties abutting the subject property indicating that they have no objection to continuation of the tourist home use. The purpose of the one-year review requirement was to give the Board an opportunity to discontinue the use if its operation was determined to be incompatible with its residential setting. The Planning Commission conducted a public hearing at which six citizens spoke in opposition, citing concerns about traffic, safety, and privacy. The Commission voted six to zero to recommend denial, and the applicants subsequently withdrew the application.

#### Queens Lake II

In August 2017, the Planning Commission considered another Special Use Permit application to operate a tourist home in Queens Lake on Horseshoe Drive. Horseshoe Drive is a loop road off the main street – East Queens Drive – and serves 28 single-family detached homes. The entire area is zoned RR (Rural Residential). This application was generated by a complaint from a citizen who saw the property advertised for short-term rental on the Airbnb website. A Notice of Violation was issued by County zoning staff, and the homeowner ultimately applied for a Special Use Permit in order to continue operation even though she indicated that she was no longer offering the home for occupancy as a tourist home and only wanted to honor reservations that had already been booked. Staff recommended denial of the application

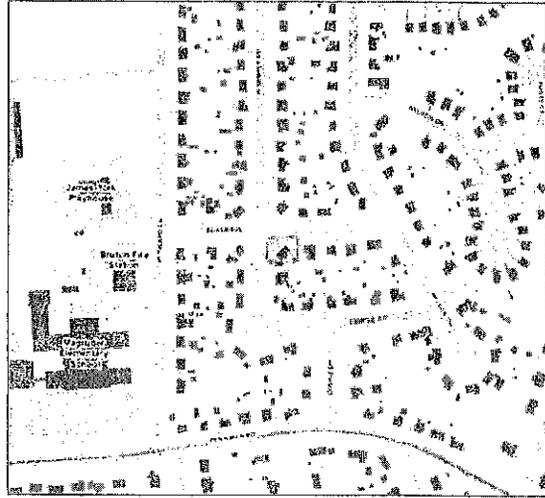
with a recommendation that if the use permit were approved, the applicant should be required to occupy the house while it was being rented. Eleven citizens spoke in opposition, expressing concerns about safety, traffic, and the possibility of short-term renters using the community facilities. One citizen spoke in support and another speaker spoke positively about the application without expressing an overt opinion. In doing so, they cited the positive aspects of short-term rentals for both homeowners and travelers and noted that short-term renters have not proven to be any less neighborly than permanent residents. The Commission, by a vote of four to one, recommended denial of the application. The applicant subsequently withdrew the application, so it was never considered by the Board of Supervisors.



#### Edale Avenue

The following month, the Commission considered another Special Use Permit application submitted by a homeowner on Edale Avenue seeking to operate a two-bedroom tourist home out of his house. This application differed from the Plantation Drive and Queens Lake applications in several respects. First,

while the subject parcel is located in a residential subdivision – Nelson Circle – it is a subdivision that is part of a much larger residential area with a fairly extensive, highly interconnected street network that offers multiple means of ingress and egress to and from the property. The property, which is zoned R13 (High density single-family residential), is only 350 feet from Hubbard Lane and thus is relatively close to a road that serves various nonresidential uses (e.g., James-York Playhouse, James-York Plaza, the Bruton Fire Station, and Magruder Elementary School) and functions as a collector road for traffic from a number of residential neighborhoods. Moreover, the adjacent streets – Edale Avenue and West Semple Road – carry an average of only 670 and 420 vehicles per day and, with pavement widths of approximately 36 feet each, are able to safely accommodate the modest increase in traffic that might be associated with the proposed tourist home. For these reasons, the additional traffic generated by the proposed tourist home was not considered likely to be noticeable to neighboring residents. Staff recommended approval as did the Planning Commission, by a unanimous vote. The Board also voted unanimously to approve the application. It is noteworthy that there was no citizen opposition to the application and two of the adjacent property owners sent emails expressing their support. In this case, staff recommended an initial use permit term of one year, after which the applicant could apply for an extension of the term to be processed as a minor modification with review and authorization by the Board and provided that the request is accompanied by written statements from owners of the adjacent properties indicating that they have no objection to continuation of the tourist home use. The purpose of this one-year review requirement was to give the Board an opportunity to discontinue the use if its operation were determined to be incompatible with its residential setting. At the end of the initial term, the application provided letters of support from all the adjacent property owners, and the Board voted to remove the term limit.



#### Yorktown Village

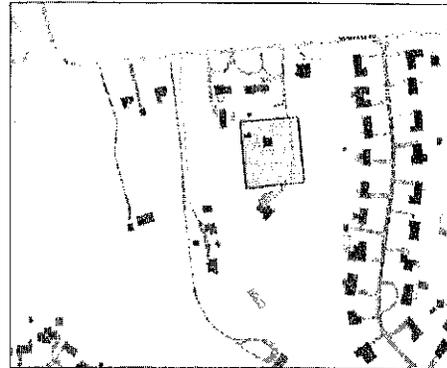
In December 2017, the Board unanimously approved a Yorktown Village Activity (YVA) application to authorize a two-bedroom tourist home in an existing building (the former Nancy Thomas Gallery) on Ballard Street in historic Yorktown. The application, which generated no citizen opposition, was recommended for approval by both the staff and the Planning Commission (unanimously) based on a number of factors, including its location on a higher-order street that carries a considerable amount of non-local traffic, the absence of residential neighbors, and most importantly, its location in Yorktown, where lodging spaces for tourists are common and, in fact, encouraged by the adopted Yorktown Master Plan. This approval did not include a requirement that the owners, who lived in Marlbank (and have since moved to Dandy), reside in the home while it is being rented out.

#### Wichita Lane

In August 2018, the Board unanimously approved a two-bedroom B&B on a 2.1-acre parcel on the cul-de-sac at the end of Wichita Lane, located in the Skimino Hills subdivision. The Planning Commission had also recommended approval by a unanimous vote. There was no citizen opposition.

### Yorkville Road

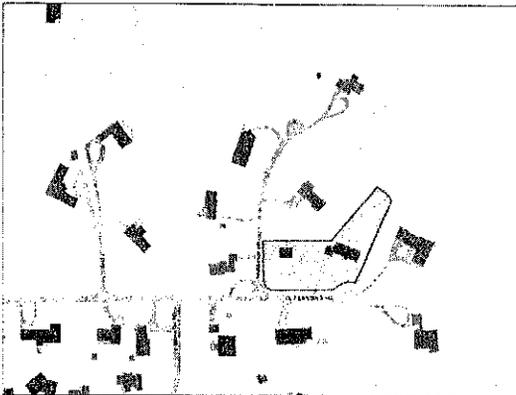
A use permit for a two-bedroom tourist home on a one-acre parcel at 604 Yorkville Road was unanimously approved by the Board in November 2018; the Planning Commission also had recommended approval. The property is one of three lots created through a family subdivision and accessed by a private driveway off of Yorkville Road, which is a local road carrying 1,900 vehicles per day. The applicants own all three lots and were not proposing to live in the tourist home; however, they live in the adjacent home to the rear. At the Planning Commission meeting, a next door neighbor spoke in opposition to the application, stating that a tourist home does not belong in a Rural Residential area and expressing concern that it would set a precedent for more tourist homes in residential areas. Another neighbor spoke in support of the application. No citizens other than the applicants spoke at the Board meeting.



### Carters Neck Road, Part I

Also in August 2018, the Board considered a second tourist home application, this one involving a 1.9-acre parcel located on Carters Neck Road, which is a relatively sparsely developed local road carrying 250 vehicles per day. The proposal was for a three-bedroom tourist home to be used as a whole house rental. As with the Yorkville Road application, the applicants were not proposing to live in the tourist home; however, they live in the house next door. The Planning Commission unanimously recommended approval of the application, and it was approved by the Board by a vote of 4 to 1. There was no citizen opposition.

### Old Landing Road



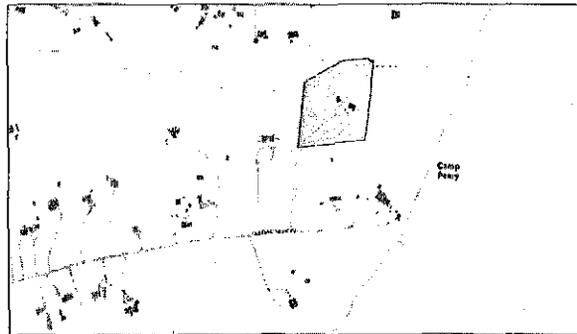
In December 2018, the Board unanimously approved a two-bedroom tourist home on a one-acre waterfront parcel located on Old Landing Road in the Marlbank Farm subdivision. Old Landing Road is a local subdivision street carrying 650 vehicles per day. The application had received a recommendation of approval from the Planning Commission. The applicant indicated that the two-bedroom guest suite would be rented out as a single unit and that there would be no rental of individual bedrooms. She also indicated that she and her husband would reside in the house while rentals are taking place. The applicant submitted letters of support from five of her neighbors as part of her application, and the County received one email from a neighbor opposing the application. No one other than the applicant spoke at either public hearing.

### Carters Neck Road, Part II

A second tourist home application was submitted for Carters Neck Road, this one involving a 5.0-acre parcel located on the private, unpaved western section of the road. The owner had an existing one-bedroom accessory apartment, for which a Special Use Permit was approved in 1986, on the second floor of a detached garage building and wanted to offer it for short-term rental. The surrounding area is fairly rural, characterized by large lots and low densities. The seven immediately adjacent lots range in

size from 2.7 to 9.4 acres, and the nearest home is 450 feet away. Because of its location at the end of a long, narrow driveway off of a dirt and gravel road, combined with the absence of public water, the Department of Fire and Life Safety expressed significant concerns about the application, even though the garage apartment was approved for year-round residential occupancy.

The owners of two adjacent properties spoke in opposition to the application, stating that the tourist home would detract from their privacy and safety by bringing strangers into the neighborhood on a regular basis as well as place an additional financial burden on those who maintain that portion of Carters Neck Road, which, according to the staff's estimates, carries approximately 60 vehicles per day. The Commission voted to recommend denial by a vote of 4 to 2. When the application came before the Board of Supervisors in March 2019, two neighbors spoke in opposition, and the Board denied the application by a unanimous vote.

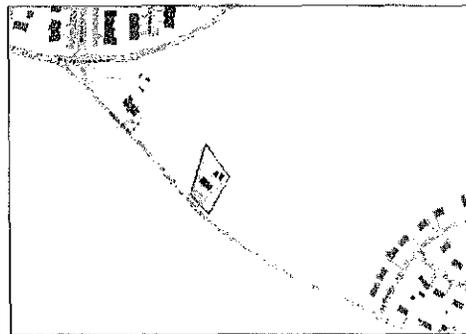


#### Tom Thomas Road

Also at the March 2019 Board meeting, the Board reviewed another tourist home in the Skimino area. The subject property, located on Tom Thomas Drive approximately two miles from the site of the unsuccessful Carters Neck Road application, is 0.4 acre in size. The applicants live approximately ten minutes away in Queens Lake and indicated that they would not be residing in the home. No citizens expressed opposition to the application, which received a unanimous recommendation of approval from the Planning Commission and was subsequently approved by the Board by a vote of 4 to 1.

#### Goosley Road

In June 2019, the Board voted 3 to 2 to approve a tourist home on a 0.6-acre parcel on Goosley Road. The applicant, who lives in James City County, planned to purchase the property, which is completely surrounded by vacant land – most of it owned by the National Park Service and unlikely ever to be developed – solely for the purpose of offering it as a short-term rental. The nearest home is 370 feet away, and there was no citizen opposition. Goosley Road is classified as a minor arterial road carrying approximately 6,000 vehicles per day. In recommending approval, staff included a proposed condition requiring the applicant to designate a “responsible party” who would be available to address any problems (e.g., noise, parties, littering, on-street parking, etc.) that might occur while rentals are taking place. The purpose of this requirement, which numerous other localities in Virginia and across the United States have adopted, was to address the concern that commonly arises about the absence of someone on the premises to monitor the guests’ behavior. The contact information for this person would be maintained in both the Zoning and Code Enforcement office and the Sheriff’s Office.



The application was recommended favorably by the Planning Commission by a vote of 4 to 2. Commissioners who opposed the application expressed concern about the commercial nature of the proposal, and one member also expressed concern about the impact of short-term rentals on the availability of affordable housing, noting that the house in question has a relatively low assessed value and would no longer be available for permanent residency if converted to a tourist home.

Queens Lake III

A third application for a tourist home in Queens Lake, this one on a 0.6-acre lot on Sherwood Drive, was considered by the Board in August 2019. The applicant was seeking authorization (after the fact) to operate a two-bedroom tourist home out of her single-family detached home. She indicated that she would be present in the home during rental periods. At the Planning Commission, five citizens spoke in favor of the application and three spoke in opposition. The Planning Commission recommended approval by a vote of six to zero, subject to an additional, fairly unusual, condition that would require the use permit to expire if the applicant were ever to sell the property. When the application was considered by the Board, however, there were nine citizens who expressed opposition to the application and only three who spoke in favor, and the application was denied unanimously.

Summary of Case Studies

Summary data for these fifteen tourist homes and B&B applications is provided in the table below. In comparing applications that were approved with those that either were denied or were withdrawn by the applicants following a recommendation of denial from the Planning Commission, it is interesting to note that lot size and density have little bearing on whether or not an application is approved. In fact, the average lot size is somewhat higher for the unsuccessful applications (1.59 acres) than for the successful applications (0.95 acre). Regarding the size and scale of the proposed uses, the successful and unsuccessful applications are almost identical; the average number of bedrooms and maximum occupancy are slightly lower for successful applications (2.3 vs. 2.5 bedrooms and 5.9 vs. 6.0 guests). Another factor that is often considered by the Commission and the Board of Supervisors is whether or not the property owner would reside in the home while rentals are taking place. Five of the six unsuccessful applications would have required resident occupancy, whereas only three of the eight successful applications included such a requirement (although in two of those successful cases, the owner lived next door to the proposed tourist home).

The one factor that most differentiates successful applications from unsuccessful ones is the absence of neighborhood opposition. In the table below, Public Input is characterized as "anti" if most of the public comments were in opposition, "pro" if most of the public comments were in support, "even" if the public comments were evenly divided between opponents and supporters, and "none" if there were no public comments. Public input was mostly negative in four of the five unsuccessful applications and either supportive, neutral, or nonexistent in all eight of the successful applications.

Lot Size	Zoning	Bedrooms	On-Site Manager	Maximum Occupancy	Public Input	PC Action	BOS Action
0.22	R13	2	Yes	4	Pro	Approval	Approved
0.43	YVA	2	No	5	None	Approval	Approved
2.10	RR	2	Yes	6	None	Approval	Approved
1.00	RR	2	Next Door	4	Even	Approval	Approved
1.90	RR	3	Next Door	9	None	Approval	Approved
1.00	RR	2	Yes	6	Pro	Approval	Approved
0.40	RR	2	No	5	None	Approval	Approved
0.57	R13	3	No	8	None	Approval	Approved
0.74	R20	3	No	6	Anti	Approval	Denied
1.40	RC	3	Yes	9	Pro	Approval	Denied
4.90	RR	1	Yes	3	Anti	Denial	Denied
0.60	RR	2	Yes	4	Anti	Approval	Denied
0.60	R20	3	Yes	8	Anti	Denial	Withdrawn
1.26	RR	3	Yes	6	Anti	Denial	Withdrawn
5.00	RR	5	Yes	10	Anti	Approval	Deferred

## Observations

Though residential in character, tourist homes and B&B's are commercial establishments in which homeowners provide a service – lodging and possibly meals – to customers (renters) for a fee. In that respect, a single-family home used as short-term rental is similar to a home occupation with on-site customer/client contact, which, with a few exceptions, requires a Special Use Permit. When considering home occupations – or any proposed land use involving property within or close to a residential neighborhood – the Planning Commission and Board of Supervisors have consistently placed a high priority on the goal of preserving the residential character of the area and the neighbors' quality of life.

STRs often generate some of the same concerns from neighboring residents as do home occupations, such as traffic and parking. However, concerns have also been raised about the possibility of loud parties, crime, safety, and a general uneasiness about living among strangers who are only staying for a short time and might not have the best interests of the neighborhood – or the neighbors – at heart.

Some of these concerns have more of a factual basis than others. There is no evidence, for example, that short-term renters are more likely to commit crimes or hold loud parties than are permanent residents. In one of the cases discussed above, there was a complaint about a disruptive late-night party at a home that was being operated illegally as a short-term rental; however, the party was being held not by a short-term renter but by an on-site caretaker who was living in the basement of the house.

Traffic and parking, on the other hand, can be legitimate concerns, particularly in smaller residential areas with low-volume – and often narrow – local streets where relatively small increases in traffic can be especially disruptive. The potential for problems is compounded when a single home has more than one guest suite and thus a higher intensity of use (although it should be added that even when a tourist home is rented out as a single unit, there is no guarantee that it will be rented out by a single family; the potential exists for multiple families or groups of guests to share a short-term rental, each arriving in a separate vehicle).

As the case studies show, every case, every property, and every neighborhood is different, and the Planning Commission and Board of Supervisors have wide discretion in evaluating STR proposals. This is the purpose of the Special Use Permit process, as set forth in Section 24.1-115 of the Zoning Ordinance:

*“Certain uses, because of their unique characteristics or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but may, under the right set of circumstances and conditions be acceptable in certain specific locations. These uses are permitted only through the issuance of a special use permit by the board after ensuring that the use can be appropriately accommodated on the specific property, will be in conformance with the comprehensive plan, can be constructed and operated in a manner which is compatible with the surrounding land uses and overall character of the community, and that the public interest and general welfare of the citizens of the county will be protected. No inherent right exists to receive a special use permit; such permits are a special privilege granted by the board under a specific set of circumstances and conditions, and each application and situation is unique. Consequently, mere compliance with the generally applicable requirements may not be sufficient and additional measures, occasionally substantial, may be necessary to mitigate the impact of the proposed development. In other situations, no set of conditions would be sufficient to approve an application, even though the same request in another location would be approved.”*

The Virginia Supreme Court has ruled that zoning ordinances do not need to include standards concerning the issuance of special use permits where local governing bodies are to exercise their legislative judgment or discretion, stating that “It would be impractical to provide standards in ordinances that

would be applicable to all situations that might arise.”<sup>1</sup> While certain minimum standards are appropriate – limitations on signage and parking, for example – for the County to impose specific, uniform requirements for STRs in residential areas would be contrary to the intent of the use permit process, which is based on the premise that for some uses in some zoning districts, a “one size fits all” approach is not appropriate. In lieu of strict standards, however, a set of evaluation criteria to be used in determining the appropriateness of a tourist home in a residential zoning district could have some benefit. It would give additional guidance not only to the Planning Commission and the Board of Supervisors in evaluating tourist home applications but also to potential applicants (and possibly save some of them the trouble and expense of applying for a Special Use Permit that has little chance of success). Such criteria might include one or more of the following:

- Provisions for monitoring guest behavior. One of the most frequently raised concerns about STRs has been that if the owner does not reside in the home, there will be no one present to monitor the guests’ behavior. York County has approved five tourist homes in which the owner did not propose to live in the house being rented. In two of those cases, the owners lived next door, and in two others, they lived in the County about ten minutes away. In the fifth case, the owners live approximately thirty minutes away in an adjacent locality. (Interestingly, in only one of the six unsuccessful applications was the applicant *not* proposing to occupy the home during rental periods.)
- Limitations on the number of bedrooms/guest suites that can be rented. The Zoning Ordinance currently states that the Board of Supervisors “shall specify the maximum number of persons who may be accommodated in the proposed use ... based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.” Although the number of bedrooms has really not been much of an issue with any of the STR applications in the County, setting a maximum occupancy would be one way to limit the commercial aspect of the use.
- Capacity of the adjacent street network, including not just pavement width but the number of routes of ingress and egress. For example, the traffic associated with an STR with multiple bedrooms would likely be more disruptive to residential neighbors on an older, narrow cul-de-sac than on a through-street that meets the current VDOT pavement standards. Two of the five unsuccessful applications involved properties located on narrow, unpaved private streets, which likely contributed to their eventual denial.
- Emergency/life safety requirements. Because the Fire Code does not specifically address tourist homes or B&Bs, staff, at the request of the Department of Fire and Life Safety has included a series of additional conditions in the approving resolution for all STRs. Intended to provide safety for visitors to the proposed tourist home, these conditions require an Emergency Action Plan identifying exit routes, fire extinguisher locations, and other life safety procedures; one or more fire extinguishers with a minimum rating of 2A10BC; and annual fire inspections. This is one case where strict, uniform standards make sense, and it would be appropriate to incorporate these into the performance standards for all STRs, regardless of zoning.
- Permitting requirements. Another standard condition in all recent STR approvals specifies that the applicant is responsible for obtaining all applicable permits and/or approvals required in accordance with regulations of the Virginia Uniform Statewide Building Code and the York County Department of Fire and Life Safety prior to use of the dwelling as a tourist home.
- Business license/tax requirements. Every STR operator is required to obtain a County business license, establish a County transient occupancy tax account, and file with the Virginia Depart-

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<sup>1</sup> *Bollinger v. Roanoke County Board of Supervisors*, 217 Va. 185, 227 S.E. 2d 682 (1976)

ment of Taxation for a Virginia State Sales Tax account. While not related to land use, it might be helpful to reference these requirements in the performance standards to ensure that potential applicants are aware.

- Provisional term limits. In one case a tourist home was approved for an initial one-year term to allow it to operate on a provisional basis. A year later, the Board approved an extension of the term when the applicant was able to provide written statements from the owners of each of the adjoining properties indicating that they have no objection to continuation of the tourist home use. Some STR cases could involve unusual circumstances that would warrant a similar initial term limit, after which the Board could either extend the term of the use permit or, in the event of documented violations or complaints, revoke the permit.
- Expiration requirements upon the sale of the home. Although not recommended by staff, the Commission has in one case recommended approval of a tourist home subject to an additional condition specifying that the use permit would be null and void upon the transfer of ownership of the property in question. This was in response to concerns expressed by opponents about the use permit running with the land. It has not been the County's practice to tie Special Use Permit approvals to specific individuals. The County Attorney and Planning Division staff have consistently advised against imposing this type of condition, noting that if the Board deems a given use to be acceptable and appropriate in a given location subject to a given set of conditions, it should not matter who owns the property since any future owner would be subject to the same conditions of approval as the applicant. The case law on conditions attached to special exceptions and special use permit indicates that as a general rule, conditions that relate to the use of the land are upheld, while "conditions that do not relate to the use of the land, such as a condition that terminates the conditional use when there is a change in ownership," are not.<sup>2</sup>

## CONCLUSION

Short-term rentals and single-family detached homes can coexist in the same residential neighborhood under the right circumstances and with proper controls and limitations. While some of the concerns that short-term rentals generate among residential neighbors are matters of perception rather than reality, there are valid reasons to subject them to the close scrutiny that the Special Use Permit process affords. As always with commercial uses in residential areas, preserving neighborhood character and the residents' quality of life is paramount. Incorporating appropriate evaluation criteria into the Zoning Ordinance standards for tourist homes and B&B's would assist policymakers and potential applicants alike by providing additional direction as to the types of areas that are and are not considered suitable for these uses. It is hoped that in so doing, it would also reduce the incidence of contentious public hearings with neighbors pitted against one another, which can have serious, long-term negative impacts on a community.

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<sup>2</sup> Daniel R. Mandelker, Land Use Law, 4<sup>th</sup> edition (Charlottesville, Virginia: Lexis Law Publishing, 1997) 272.

## Regulation of Short-Term Rentals in Virginia

Not surprisingly, Virginia's cities and counties vary widely in their respective approaches to the regulation of short-term rentals (STRs). Some localities allow them as a matter of right with an administrative permit that must be renewed annually, while others require a Special Use Permit or Special Exception from the governing body or the Board of Zoning Appeals. In some cases, whether or not such uses can be approved administratively depends on whether or not the owner/proprietor resides in the home while rentals are taking place.

In York County, STRs fall into the category of either tourist homes or bed-and-breakfast inns (B&Bs), the difference being that with B&Bs, breakfast is provided to the guests and the owner is required to live in the home or in an adjacent premises. York County allows both uses as a matter of right in the GB (General Business) and LB (Limited Business) zoning districts. In residential districts (RR, R33, R20, R13, and RMF), a Special Use Permit is required. STRs are subject to the following performance standards set forth in Section 24.1-409 of the Zoning Ordinance:

- STRs in residential districts must have the appearance of a single-family detached home and normal residential accessory structures.
- One freestanding sign up to four (4) square feet in area is permitted.
- In residential districts, required off-street parking for the subject use must be effectively screened by landscaping and cannot be located in any required front yard area.
- The maximum number of guests is determined by the Board of Supervisors based on a consideration of the density and character of the area and of the size and characteristics of the proposed site.

Whether they allow STRs by right or with a Special Use Permit, most localities in Virginia specify various standards or guidelines applicable to such uses. Some of the more commonly used guidelines and requirements in Virginia are:

- Owner residency and/or occupancy requirements
- Limitations on the number of occupants and/or the number of bedrooms that can be rented
- Limitations on the number of rentals over a given period
- Minimum and/or maximum length of stay requirements
- Designation of a responsible party or authorized agent to respond to problems
- Prohibitions on signage

For purposes of comparison, staff has compiled Zoning Ordinance requirements for short-term rentals from several other localities in Virginia. These are summarized below:

### Virginia Beach

The City of Virginia Beach adopted its Short Term Rental Ordinance in January 2019. Virginia Beach's ordinance distinguishes "home sharing" from "short term rentals." For home sharing, the owner must utilize the dwelling as his or her principal residence and must occupy the dwelling during the rental period. Home sharing is permitted as a matter of right in residential zoning districts. Short term rentals differ from home sharing in that the owner is not required to use the home as a principal dwelling and is not required to occupy the dwelling while rentals are occurring. A short term rental requires a Conditional Use Permit,

including public hearings and Planning Commission review. The owner/operator of the short term rental must provide the name and phone number of a responsible person who is available to be contacted and to address conditions occurring at the short term rental within thirty (30) minutes.

#### Charlottesville

The City of Charlottesville refers to short term rentals by the term "homestay," which is defined as "a home occupation in which an individual who owns a dwelling and uses it as his or her permanent residence within a dwelling hires out, as lodging: (i) such dwelling, or any portion thereof, or (ii) a lawful accessory dwelling." The City allows homestays as a matter of right with a Provisional Use Permit, which involves an administrative approval process. The operator of the homestay must be a permanent resident of the dwelling and, similar to Virginia Beach, there must be a responsible party located within thirty (30) miles who will be available 24/7 to respond to and resolve issues and complaints that arise while rentals are occurring.

#### Blacksburg

The Town of Blacksburg's also uses the term "homestay," and its regulations are similar to Charlottesville's. Blacksburg allows homestays by administrative permit in the primary residence of the host, who must be available by phone 24/7. Unlike Charlottesville, Blacksburg also requires that a "principal guest" be designated as a contact person for Town officials in the event of "safety or behavioral issues" at the unit. The host is responsible for providing the principal guest's contact information to the Town.

#### Williamsburg

The City of Williamsburg adopted its Short Term Rental ordinance in February 2019. In general, the City is somewhat more restrictive than most other localities, allowing STRs only in single-family detached homes and only upon the approval of a Special Exception by the Board of Zoning Appeals following a public hearing. Furthermore, rentals are limited to a single room within the home, which can include a bedroom, bathroom, closet(s), and a sitting area for the exclusive use of the transient visitors; separate cooking facilities are not permitted. Occupancy is limited to a maximum of two adults, not including minor children. The ordinance does not set forth specific guidelines or criteria to be used by the BZA in evaluating a Special Exception application for a STR, stating merely that the BZA "shall determine if the property at issue meets the occupancy requirement, provides an adequate plan for managing the property, and shall determine if the property may be operated as a short-term rental consistent with the" general considerations applicable to all Special Exception applications (e.g., traffic impacts; surrounding uses; the health, safety, and welfare of the neighbors; and impacts on neighboring property values).

**MINUTES**  
**YORK COUNTY PLANNING COMMISSION**  
Work Session  
York Hall – East Room, 301 Main Street  
August 26, 2019

**MEMBERS**  
Robert T. Criner  
Montgoussaint E. Jons  
Michael S. King  
Robert W. Peterman  
Donald H. Phillips  
Bruce R. Sturk  
Glen D. Titus

**CALL TO ORDER**

Chair **Michael S. King** called the work session to order at 7:00 PM.

**ROLL CALL**

The roll was called and all members were present with the exception of Mr. Jons. Staff members present were Susan Kassel, Director of Planning and Development Services; Timothy C. Cross, Deputy Director of Planning and Development Services; Amy Parker, Senior Planner; and Earl Anderson, Senior Planner; Daria Linsinbigler, Planning Assistant; and Justin Atkins, Assistant County Attorney.

**OPENING REMARKS**

**Chair King** explained that the purpose of the work session was to speak about ideas regarding regulations for tourist homes. He thanked the staff for the briefing paper that was sent to the Commissioners, and he opened the floor for comments.

**Mr. Peterman** said the information provided by staff was very informative and commended them for the presentation. He stated that he participated in the Commission's review of most of the recent tourist home and bed-and-breakfast (B&B) applications and that it was clear that community sentiment played an important part in the decision-making process for both the Planning Commission and the Board of Supervisors. He said that in most cases when there has been neighborhood dissent, the application was not approved.

**Dr. Phillips** noted that at its last meeting, the Commission considered an expansion of a previously approved tourist home in the Yorktown village where the proprietor did not live on the premises and, in fact, had since moved further away from the property, from Marlbank to Dandy. He said that if the County continues to allow non-residents to operate short-term rentals, the location of the owner's residence is a concern, and he suggested that maybe they could be required to come back for approval if they move.

**Chair King** asked where the line should be drawn; for example, should a non-resident owner be required to live in the County or within a certain distance from the property?

**Mr. Titus** stated that he sees little difference between a short-term rental and a one-room hotel. He asked how the rental home is monitored if the owner lives off-site or goes on vacation.

**Chair King** said that typically if the proprietor lives in the home, he or she is less likely to allow trouble-making from the guests, and he said that monitoring is key.

**Mr. Sturk** questioned how far the County needs to go in regulating these establishments, and he inquired if the Sheriff's Office has reported any issues involving these short-term rentals. He said that if regulations and standards are met, he did not feel a need to over-regulate tourist homes.

**Chair King** agreed that Mr. Sturk made a valid point and that most of the concerns about crime and bad behavior are a matter of perception rather than fact. He said that consistency and clarity are factors being weighed to make a decision.

**Mr. Sturk** said these are revenue-generating businesses and if the community is not protesting, there is no need to be so regulatory.

**Mr. Criner** stated that a minimum list of standards can be set that addresses such items as fire safety and parking. He added that the ongoing question of managing the property from a distance is not easily solved.

**Mr. Cross** stated, in response to Mr. Sturk's question, that there had been one case of criminal activity at a short-term rental in Cobble Creek that was being operated illegally without a Special Use Permit. He stated that ultimately the County had to take the owner to court. He added that there was an incident involving a loud party in a home in Queens Lake that was being operated as a short-term rental without a use permit, but in that case, the party was held by the resident caretaker who had been hired by the owner to manage the property.

**Mr. Titus** likened tourist homes to home occupation, neither of which generate much crime.

**Dr. Phillips** agreed that serious crimes at short-term rentals are rare and that a minimum set of standards is needed.

#### **STAFF PRESENTATION**

**Mr. Cross** gave a slide presentation on short-term rentals in York County. He stated that they are categorized as either tourist homes or bed-and-breakfast inns (B&Bs), and he explained the difference between the two. He summarized the Zoning Ordinance standards for short-term rentals, and noted that the number of use permit applications for these uses has increased dramatically in recent years with the advent of internet reservation sites such as Airbnb and VRBO (Vacation Rentals by Owner). Mr. Cross then presented summary data for recent applications, noting that the main factor that distinguishes the successful applications from the unsuccessful ones is not lot size or density or the presence of the owner in the home but rather the absence of neighborhood opposition. In addition, he distributed copies of a handout describing some of the standards and requirements imposed on short-term rentals in other Virginia localities.

#### **COMMISSION DISCUSSION**

**Chair King** asked why the County cares if breakfast is served in a short-term rental.

**Mr. Cross** answered that it is a factor by which the two types of rentals are distinguished from each other.

**Chair King** noted that a tourist home can still provide food and that it might no longer be necessary to distinguish between the two. He asked if providing breakfast would qualify a tourist home as a bed and breakfast.

**Mr. Cross** answered that it would not necessarily since B&Bs are required to have the owner live in the house or in an adjacent premises.

**Mr. Titus** asked if there is a difference the Commissioners needed to be aware of.

**Mr. Cross** stated that B&Bs are subject to the same requirements as tourist homes, except that a permit from the Virginia Department of Health would likely be required if breakfast is provided. He added that some other localities specifically prohibit the serving of food or the presence of a separate kitchen.

**Mr. Titus** asked what the phrase "subordinate to a private dwelling" means in the context of the tourist home definition.

**Mr. Cross** cited the example of a use permit application for a tourist home that was approved in the Moore House area in which the owners lived in the main house on the property while they rented out a smaller cottage on the property that was ancillary to the principal dwelling. He stated that the definition means that a rental located in a separate building on a residential property has to be in the accessory structure and not in the principal dwelling.

**Mr. Criner** asked why that is a concern.

**Mr. Cross** responded that it keeps the neighborhood residential since the principal use of the property would be the owner's residence and not the tourist home, which is a commercial use.

**Mr. Criner** suggested that a minimum standard should be set so that occupancy does not exceed the number of bedrooms.

**Mr. Cross** responded that the maximum occupancy is determined by the Board on a case-by-case basis and that floor plans are required as part of the application submittal.

**Chair King** stated that parking is also a factor.

**Dr. Phillips** asked if private roads have been a factor in the unsuccessful applications.

**Mr. Cross** responded that in cases where the owners of the private roads were against the application, the application usually fails. He added that one of the few instances where most of the public comments were in support of the application but it was ultimately denied was because it was on a narrow private road on property owned by someone else. He added that different localities approach short-term rentals in different ways, some allowing them by right subject to certain standards and payment of an annual fee, and some requiring the owner to live on the premises and be available when unit is rented or designate a local manager.

**Mr. Sturk** asked if there has been any citizen input about short-term rentals as part of the Comprehensive Plan review process.

**Mr. Cross** responded that no citizen comments pertaining to short-term rentals have been received but that the survey results showed strong support for home occupations.

**Chair King** commented that although no one is clamoring to support or oppose allowing short term rentals, the Planning Commission is trying to be proactive.

**Mr. Sturk** stated that the Zoning Ordinance should clearly address basic parameters such as parking, life safety, food, and neighborhood input.

**Mr. Titus** stated that people will stretch the limits if not held in check and the important items that need to be considered are traffic, roads, noise, lights, and odor because they affect the neighbors.

**Mr. Sturk** stated that the Board of Supervisors leans on the Planning Commission and staff to bring policies to the table that need to be tweaked and he agreed that a system of checks and balances was necessary.

**Mr. Criner** asked if a having manager who lives fifteen minutes away is a problem and if there should be a minimum standard of distance.

**Chair King** said he did not think it was a problem as long as the contact person is within a reasonable distance.

**Justin Atkins, Assistant County Attorney**, added that the owner could have a management contract with a real estate company. He stated that the Commissioners have wide discretion and that the question is whether regulations are arbitrary and reasonable and related to public health, safety, morals and general welfare. He stated that localities have the power to include various guidelines in the Zoning Ordinance that would serve not as requirements but as considerations or evaluation criteria to be used when deliberating on a use permit application.

**Mr. Cross** added that in the briefing paper, staff had included some possible suggestions for such considerations that would still leave room for flexibility. He stressed that having evaluation criteria rather than strict standards recognizes that each case is different and that it gives the Commission and Board more flexibility to consider each application based on its individual merits. He stated that spelling out a series of specific requirements that must be met can open the County up to legal challenge if it were to approve an application that meets those requirements and deny another one that also meets them.

**Chair King** asked for clarification regarding evaluation criteria.

**Mr. Cross** answered that there are some specific standards already in place and that there might be others, such as the fire and life safety and tax filing requirements that are typically included as conditions of approval in every short-term rental. He said these could be supplemented with a list of considerations to help the Commission and the Board make their decisions. Such considerations, he stated, might include such things as road access and adequate provisions for monitoring guest behavior.

**Chair King** said he liked the idea of adding considerations to the Zoning Ordinance and restating them in the use permit resolutions.

**Mr. Criner** suggested the possibility of granting provisional approval with an annual review requirement.

**Mr. Cross** responded that the Zoning Ordinance used to require an annual review for home occupations with non-resident employees but eventually deleted that requirement because it proved to be too cumbersome. He noted that all approved special uses are checked annually by the Zoning staff, but the applicant does not have to come back to the Board.

**Mr. Criner** suggested limiting use permit for short-term rentals to the applicant such that they would become null and void if the property were to be sold.

**Mr. Cross** said the position of the Planning staff is that use permits should run with the land based on the notion that the permit is for a specific use in a specific location subject to specific conditions but not for a specific individual.

**Mr. Criner** asked how somebody would know if a neighbor has this type of business.

**Mr. Atkins** noted that all use permit resolutions are recorded in the courthouse, so the information can be found during a title search.

**Mr. Criner** asked if a maximum can be set for the number of people per room.

**Mr. Cross** answered that most rentals state a maximum of two adults per room.

**Dr. Phillips** noted that sometimes people staying in a short-term rental will have visitors and that this should be regulated.

**Mr. Cross** stated that staff is open to any guidance from the Commission as to possible evaluation criteria to include in the ordinance.

**Chair King** said that putting considerations in place, perhaps with an annual review, seems like a good idea and that any considerations should be flexible.

**Mr. Sturk** stated that rules should be in place to ensure that guests' behavior is monitored.

**Mr. Cross** said the applicant can be asked to address specific items in their application narrative.

**Dr. Phillips** asked about the owner moving away from the rental property after getting the use permit.

**Chair King** responded that there could be a provision requiring that a manager be available day and night.

**Mr. Cross** noted that in one recent case the owner of a short-term rental was required to designate a responsible party whose contact information would be provided to the Zoning and Code Enforcement Office and the Sheriff's Office.

**Susan Kassel, Director of Planning and Development Services**, added that the Sheriff's Office would need the responsible party's contact information to respond to an incident, while the Zoning

and Code Enforcement staff would need the owner's information since the owner would be responsible for any zoning violations.

**Mr. Peterman** said he did not anticipate seeing a large number of these types of uses in York County outside of the Williamsburg area, which has a lot of tourists.

**Mr. Criner** stated that there are quite a few available online and he mentioned that one he viewed that was offered for twenty-two dollars a night.

**Earl Anderson, Senior Planner**, responded that the rental he was referring to requires a ninety-day minimum stay and would not be considered a short-term rental.

**Chair King** suggested the Planning Commission examine flexible considerations for short term rental limits, fire and life safety, taxes, and location of owner's residence. He asked the staff to prepare a list to for the Commission to review.

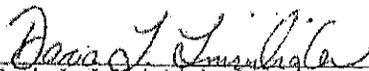
By consensus, the Commission expressed its agreement with the proposed approach of developing considerations that will provide guidance while leaving flexibility in the decision-making process.

**Mr. Cross** stated that staff should be able to provide draft language for the Commission's review within a few months.

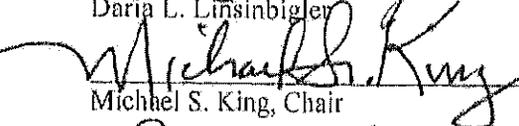
**ADJOURN**

There being no further business to discuss, Chair King adjourned the work session at 8:28 p.m.

SUBMITTED:

  
Daria L. Linsinbigler

APPROVED:

  
Michel S. King, Chair

DATE:

9 OCT 19

## ARTICLE I. IN GENERAL

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### Sec. 24.1-104. Definitions.

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*Bed and breakfast inn.* A dwelling in which, for compensation, breakfast and overnight accommodations are provided for transient guests. ~~When the establishment is located in a residential zoning district, the owner of the property shall live on the premises or in an adjacent premises and shall be the operator/provider of the bed and breakfast accommodations and services.~~

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*Tourist home.* An establishment, either in a private dwelling or in a structure accessory and subordinate to a private dwelling, in which temporary accommodations are provided to overnight transient guests for a fee.

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## ARTICLE IV. PERFORMANCE STANDARDS FOR USES

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### Sec. 24.1-409. Standards for boarding houses, and short-term rental homes (tourist home and bed and breakfast establishments).

- (a) When located in single-family residential zoning districts, boarding houses, and short-term rental homes (tourist homes, and bed and breakfast establishments) shall have the appearance of a single-family detached residence and normal residential accessory structures.
- (b) Signage for properties occupied by ~~tourist home or bed and breakfast uses~~ short-term rental homes shall be permitted in accordance with section 24.1-703(b)(2).
- (c) ~~In all residential districts, required off-street parking for the subject use shall be effectively screened by landscaping from view from adjacent residential properties and shall not be located in any required front yard area.~~ Any parking demand generated by the conduct of such use shall be accommodated off the street in a suitably located and surfaced space.
- (d) ~~When a bed and breakfast establishment is located in a residential zoning district, the owner of the property shall live on the premises or in an adjacent premises and shall be the operator/provider of the bed and breakfast accommodations and services.~~
- (e) ~~The owner/proprietor of a tourist home shall reside either in the home or in an adjacent premises or shall designate a responsible party, who may be the applicant, and who shall be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place. The owner shall be responsible for providing the Sheriff's Office with the responsible party's contact information, including name, address, phone number, and email address.~~
- (f) ~~The owner/proprietor of a short-term rental home shall be responsible for obtaining all applicable permits and/or approvals required in accordance with regulations of the Virginia Uniform Statewide Building Code and the Department of Fire and Life Safety prior to use of a structure as a short-term rental home.~~
- (g) The board shall specify the maximum number of persons who may be accommodated in the proposed use. Such determination shall be based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.
- (h) The following emergency/life safety requirements shall apply to the operation of a short-term rental home:
  - (1) An Emergency Action Plan identifying exit routes, fire extinguisher locations, and other life safety procedures shall be submitted to and approved by the Fire Marshal and posted conspicuously for guests' review.

- (2) One or more fire extinguishers with a minimum rating of 2A10BC shall be installed. The location(s) shall be determined by the fire code official.
- (3) The establishment shall be maintained in accordance with the State and Local Fire Prevention Code and the Virginia Residential Code and shall have a fire inspection conducted by the Department of Fire and Life Safety prior to the commencement of the short-term rental home and annually thereafter.
- (4) All smoke detectors shall be interconnected and installed in accordance with the 2012 Virginia Residential Code, Section R314, or as it may from time to time be amended.
- (i) The owner/proprietor shall obtain a York County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account.
- (j) In addition to the submittal requirements set forth in section 24.1-115(a) of this chapter, any special use permit application for a short-term rental home shall be accompanied by the following items which, in addition to the standards set forth in section 24.1-115(b)(3) of this chapter, shall be considered by the planning commission and board of supervisors in their evaluation of the appropriateness of the proposed short-term rental home:
- (1) A detailed narrative description of the project specifying the proposed operating procedures; provisions for monitoring of guests' behavior; the maximum number of occupants (both children and adults); the minimum and maximum length of stay, if any; the number of bedrooms to be rented; and provisions for accommodating off-street parking. The narrative description shall also specify if individual rooms within the house will be rented or if the property will be offered as a whole house rental.
  - (2) A floor plan of the structure clearly delineating all of the rooms in the house and specifically identifying those rooms and areas that will be available to renters.
- (k) In evaluating any special use permit application for a short-term rental home, the commission and board shall consider the adequacy and capacity of the adjacent roadway network, including pavement widths, traffic volumes, and street ownership and maintenance arrangements as applicable, to accommodate the proposed use without adversely affecting neighboring properties.
- (le) The owner/proprietor of an authorized and operating bed & breakfast (B&B) establishment or tourist home may apply for a supplementary Special Use Permit authorization to host private weddings and receptions for a fee as a business venture. In order to be eligible to apply for such supplementary Special Use Permit, the B&B or tourist home shall have been in continuous operation for at least one (1) year prior to the date of the submission of the application. The following performance standards and conditions shall be observed unless specifically modified or waived by the Board of Supervisors at the time of approval:
- (1) Frequency of events: No more than one (1) event per day, or two (2) events in any 7-day period, shall be allowed. A wedding ceremony and its associated reception shall be considered to be a single event.
  - (2) Maximum number of guests: The maximum number of guests shall be established as a condition of the Special Use Permit approval and shall be based on an assessment of the capacity and suitability of the site in consideration of the size of the property and facilities, the amount of parking available to accommodate guests, the capacity and condition of the highway network providing access to the site, the surrounding land uses and their proximity, and such other considerations as the Board of Supervisors deems to be relevant to prevent adverse effects upon neighboring properties.
  - (3) Facilities: Any building or temporary tents used to accommodate ceremonies or receptions shall comply with all applicable Building and Fire Code requirements including, but not limited to: access; materials and fire ratings; emergency lighting; exit lights; fire detection and suppression; etc. Any tent(s) shall be positioned on the property in accordance with all applicable setback requirements for principal structures or such greater setbacks as may be established as a condition of the Special Use Permit approval. Tents shall be

dismantled within 48 hours of the conclusion of each event, unless the Special Use Permit shall allow a greater time.

- (4) Duration of event: Events shall be limited to the time period between 10:00 am and 10:00 pm. Set-up and take-down activities may take place no earlier than 8:00 am and no later than 11:00 pm.
- (5) Lighting: Exterior lighting shall be limited to fixtures and illumination intensities that will not produce illumination intensities exceeding 0.1 footcandles at any property line.
- (6) Noise: The activities on the subject property shall be conducted in complete accordance with all requirements of the York County Noise Ordinance set forth in Section 16-19 of the York County Code.
- (7) Parking: Except as specified below and as documented in the Special Use Permit approval, all parking demand associated with the event shall be accommodated on the site on a suitable all-weather surface. The minimum number of spaces shall be calculated at a ratio of one (1) parking space per every two (2) persons based on the maximum allowable occupancy/attendance limit plus one (1) space for every regular or contract employee associated with the reception facility.

The Special Use Permit may allow:

- a. the use of an abutting property owned or controlled by the applicant and from which event attendees can walk without obstruction to reach the reception site. For the purposes of this section, the term abutting shall be construed to include property located on the opposite side of a street right-of-way, provided that event attendees will be able to cross perpendicularly and safely and will not be required to walk along a road or road shoulder;
- b. the use of any available and conveniently located public parking spaces from which attendees can walk safely.

Any parking areas constructed or established specifically for support of the reception use shall be located a minimum of 25 feet from any abutting property not owned by the proprietor, unless with the consent of the owner of the abutting property, and shall be screened from view from those abutting properties and public rights-of-way by evergreen landscaping, unless the abutting property owner consents to waiver of the screening requirement. All applicable stormwater management standards and requirements associated with the installation of the required parking spaces shall be observed.

- (8) Fire and Emergency Vehicle Access: Driveway access to the site shall comply with all requirements as to weight capacity, base and surface material, width, configuration and alignment, and vertical and horizontal clearance as set forth in Section 24.1-261. Existing driveways shall be upgraded to meet these standards if they are deficient in any aspect.
- (9) Sanitation: Restrooms or toilet facilities shall be provided for event attendees based on the ratios/requirements set forth in the Virginia Uniform Statewide Building Code. Reception venues that would be dependent on the dwelling's on-site septic system will not be approved unless the applicant provides written authorization from the Health Department as to the adequacy of the system. In the event portable restroom or toilet facilities are proposed to be used, all shall be screened from view from adjacent public rights-of-way and abutting properties and all shall be serviced or removed within two working days of the conclusion of the event.
- (10) Caterers / Vendors: The proprietor shall ensure that any caterers or other vendors providing services for a reception are properly licensed and permitted, whether such caterer/vendor is hired by the proprietor or by the client contracting for the use of the facility. Likewise, the proprietor shall ensure that all applicable ABC permits have been obtained, either by the client or by the proprietor, and are kept valid.

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## ARTICLE VI. OFF-STREET PARKING AND LOADING

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### Sec. 24.1-606. Minimum off-street parking and loading requirements.

Off-street parking spaces and loading spaces shall be provided in accordance with the minimum standards set forth in the following tables. These standards prescribe the minimum amount of parking and loading space that must be provided in conjunction with various uses and nothing shall prohibit the installation of more than the required minimums, provided however, that an additional twenty (20) landscape credits shall be provided/earned on the site for every ten (10) spaces in excess of the minimum number. Such additional landscaping shall be installed in the parking lot or around its perimeter.

(a) Category 1 - Residential and related uses.

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Dwelling: single-family detached & duplex	Two (2) spaces per unit	None.
(2) Dwelling: single-family attached (townhouse & multiplex)	Two (2) spaces per unit; plus One (1) space per three (3) units for visitor parking	None.
(3) Dwelling: multi-family	One and one-half (1½) spaces per unit; plus One (1) space per three (3) units for visitor parking.	None.
(4) Manufactured Home on individual lot	Two (2) spaces per unit.	None.
(5) Manufactured Home Park	Two (2) spaces per unit; plus One (1) space per three (3) units for visitor parking.	None.
(6) Rooming, Boarding, Lodging House, Bed and Breakfast, Tourist Home	Two (2) spaces, <u>or one (1) space if the owner/proprietor does not reside in the home</u> ; plus One (1) space per each sleeping room.	None.
(7) Group Home	Three (3) spaces, plus One (1) space per each two (2) beds:	None
(8) Senior Housing – Independent Living Facility	One (1) space per unit; plus one space per six (6) units for visitor parking	None
(9) Senior Housing – Congregate Care Facility, Assisted Living Facility	One (1) space per two (2) units; plus one space per six (6) units for visitors	None

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## ARTICLE VII. SIGNS

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### Sec. 24.1-703. Permitted signs.

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(b) Other provisions of Section 24.1-703 notwithstanding, the following permanent signs shall be permitted in accordance with conditions and requirements as stated and in compliance with provisions of Section 24.1-702, unless otherwise specified herein.

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- (1) On residentially zoned property containing a tourist home or bed and breakfast use, one (1) non-illuminated freestanding sign not exceeding three (3) square feet in area and three (3) feet in height, or one (1) non-illuminated wall sign not exceeding four (4) square feet in

area, may be installed unless otherwise specified by the Board of Supervisors in conjunction with the approval of a special use permit for such use.

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# COUNTY OF YORK

## MEMORANDUM

**DATE:** February 7, 2020

**TO:** York County Board of Supervisors

**FROM:** Neil A. Morgan, County Administrator 

**SUBJECT:** Draft Zoning Ordinance Text Amendments – Short-Term Rental Homes

In response to the significant increase in the number of Special Use Permit applications for tourist homes over the past few years, the Board and the Planning Commission have both expressed a desire for additional Zoning Ordinance standards or guidelines to assist them in evaluating such applications. In August, 2019, the Planning Commission conducted a work session at which staff provided the attached issue paper, which includes a detailed analysis of the issue of short-term rentals (STRs) and how they are regulated in York County, including case studies of recent applications and a review of the various policy options. For purposes of comparison, staff also provided the attached summary of zoning regulations for short-term rentals utilized by some other Virginia localities. Following discussion, the Commissioners expressed a preference for keeping the flexibility that the use permit process provides while adding some criteria or considerations that will provide guidance to the decision-makers evaluating proposals for short-term rentals. (For more details, please see the attached Planning Commission work session minutes.)

With the Board's and the Commission's guidance in mind, staff has drafted a set of potential Zoning Ordinance text amendments relative to STRs. These are attached for the Board's information. Under the proposed changes, a Special Use Permit would continue to be required for any STR in a residential zoning district. Performance standards are proposed to be added to specify the application submittal requirements and evaluation criteria as well as to address fire and life safety needs permitting and taxation requirements. Minor changes to the parking requirements for STRs are also proposed.

The regulation of STRs in residential areas raises several policy questions that the Board will need to consider in evaluating possible changes to the current STR requirements. These are discussed in detail on pages 10-11 of the attached issue paper, but there are three I believe are worth highlighting:

- Matter-of-Right vs. Special Use Permit. The most fundamental question surrounding STRs is whether to allow them as a matter of right or to require a public hearing process that gives residents an opportunity to voice their opinion on whether or not a proposed STR is appropriate in their neighborhood. Although many Virginia localities require a conditional or special use permit for STRs, a surprising number allow them as a matter of right subject to compliance with certain performance criteria. Given the sensitivity that often surrounds proposals to establish commercial

or quasi-commercial uses in residential areas, staff believes it is important to retain the use permit requirement in residential districts.

- Residency Requirements. Some localities require the owners of an STR to use the house as their principal place of residence and to be physically present when rentals are taking place. While such a requirement addresses the frequently raised concern about unruly behavior on the part of unsupervised guests, it makes no allowance for other living arrangements that can provide for an equivalent level of oversight. For example, in two cases the Board has approved tourist homes where the owners lived in an adjacent residence, and in a third case, the owners lived about ten minutes away. In lieu of a residency requirement, a number of localities require the STR owner to designate a local “responsible party” who is on call while rentals are taking place to respond to any problems or complaints that may arise. As the Board may recall, this strategy was utilized with a recently approved tourist home on Goosley Road where the owners lived in James City County, which was approved by the Board on a 3:2 vote following a 4:2 recommendation of approval from the Planning Commission. The proposed text amendments that have been drafted would not require on-premises residency by the owner and would add language specifically requiring applicants to describe in their application submittals how they would ensure that their guests’ behavior is monitored.
- Maximum Number of Occupants/Bedrooms. In order to limit the commercial aspect of STRs in neighborhoods and address concerns about allowing “mini-hotels” in residential areas, some localities have adopted maximum limits on the number of occupants and/or bedrooms that can be rented at one time. Such blanket limits are inherently arbitrary and do not provide an opportunity to distinguish between a normal single-family detached home within a subdivision, where the intensity of use might be a major concern, and a larger house on a large lot in a fairly isolated location where the neighbors are few and far between. Under the current regulations, the Board establishes the maximum occupancy as part of the use permit approval, and this is not proposed to change.

I should emphasize that the recommended changes would not alter the basic dynamics of our current process whereby the Board is able to evaluate short-term rentals in residential districts on a case-by-case basis, which ensures that neighborhood input will continue to be a key factor in the decision-making process. What the changes would do is create a more systematic application and review process by providing additional clarity and guidance to prospective STR operators and to those – the Board and the Planning Commission – who will be reviewing their proposals.

The draft proposed zoning text amendments are being forwarded to the Planning Commission for review, study, and, following a public hearing, a recommendation. Depending on how long that process takes, the amendments would likely come to the Board for review and action in the spring of 2020. In the meantime, staff would welcome Board members’ input on the draft proposed amendments in particular or on the regulation of short-term rentals in general.

Cross/3496

Attachments:

- Short-Term Rental Issue Paper
- Overview of Short-Term Rental Regulations in Virginia Localities
- Planning Commission Work Session Minutes, August 26, 2019
- Draft Zoning Ordinance Text Amendments

## Home Away From Home: Short-Term Rentals In York County

### INTRODUCTION

Cities and counties across the United States are grappling with the issue of how to address the permitting of short-term vacation rental homes in their zoning ordinances. Short-term rentals are nothing new. In fact, York County has provided for them since the adoption of its first Zoning Ordinance in 1957. What has changed in recent years is the increased popularity of internet sites such as Airbnb and VRBO (Vacation Rentals by Owner) that have made it easy for homeowners interested in renting out their homes – or rooms within their homes – on a short-term basis to connect with travelers who are looking for a place to stay other than a hotel, motel, or timeshare. Once limited mainly to tourist areas and beachfront communities, short-term rentals are now springing up in residential neighborhoods all over the country, sometimes leading to conflicts that often arise when commercial land uses are located in residential areas.

Short-term rentals offer benefits to homeowners and travelers alike. For homeowners, they provide a source of income that can require little investment; for travelers, they provide a comfortable alternative to hotels and motels, especially for families or other groups that require more than one room. Unfortunately, when located in residential areas, these rentals can also cause problems – such as increased traffic, noise, and parking demand – for nearby residents who purchased their homes in a residential subdivision or neighborhood with the expectation that their residential quality of life would not be disturbed by the presence of what are essentially commercial establishments.

While it is local governments that deal most directly with this issue, short-term rentals have also been a topic of considerable discussion at the state level. Senate Bill SB 1578, approved by the Virginia General Assembly in 2017 and signed by the Governor, affirmed the right of Virginia localities to regulate the short-term rental of property through zoning provisions and authorized localities to require the registration of persons offering property for short-term rental. For localities that do not currently regulate short-term rentals through zoning, this legislation provides an opportunity to consider amending their ordinances to address this type of use. For others, such as York County, the question is whether or not existing regulations are adequate to provide for such uses while ensuring that they will not have adverse impacts on their surroundings.

### SHORT-TERM RENTALS IN YORK COUNTY

In York County, short-term rentals (STRs) fall into the category of either *tourist homes* or *bed and breakfast inns* (B&B's), as defined below in Section 24.1-104 of the Zoning Ordinance:

- *Bed and breakfast inn.* A dwelling in which, for compensation, breakfast and overnight accommodations are provided for transient guests. When the establishment is located in a residential zoning district, the owner of the property shall live on the premises or in an adjacent premises and shall be the operator/provider of the bed and breakfast accommodations and services.
- *Tourist home.* An establishment, either in a private dwelling or in a structure accessory and subordinate to a private dwelling, in which temporary accommodations are provided to overnight transient guests for a fee.

Also relevant is the following Zoning Ordinance definition of *transient*, since both tourist homes and B&Bs provide accommodations specifically for transient guests:

- *Transient occupancy.* Occupancy of a lodging unit or accommodation on a temporary basis for less than (ninety) 90 continuous days by a visitor whose permanent address for legal purposes is not the lodging unit occupied by the visitor.

The distinction between tourist homes and B&Bs is that in the latter, breakfast is provided in addition to overnight accommodations. In addition, for B&Bs the Zoning Ordinance requires the property owner to live on the premises or in adjacent premises, whereas no such restriction exists for tourist homes.

Tourist homes and B&Bs are permitted as a matter of right in the GB (General Business) and LB (Limited Business) zoning districts. In residential districts – RC (Resource Conservation), RR (Rural Residential) R33 (Low density single-family residential), R20 (Medium density single-family residential), R13 (High density single-family residential), and RMF (Residential Multi-Family) – a Special Use Permit is required. STRs are also permitted in the YVA (Yorktown Village Activity) district subject to Board of Supervisors approval through the YVA process, which is virtually identical to the Special Use Permit process.

STRs are subject to the following performance standards set forth in Section 24.1-409 of the Zoning Ordinance:

- When located in single-family residential zoning districts, tourist homes, and bed and breakfast establishments shall have the appearance of a single-family detached residence and normal residential accessory structures.
- Other provisions of this chapter notwithstanding, one freestanding, non-illuminated sign, not exceeding four (4) square feet in area, may be permitted to identify such use.
- In all residential districts, required off-street parking for the subject use shall be effectively screened by landscaping from view from adjacent residential properties and shall not be located in any required front yard area.
- The board shall specify the maximum number of persons who may be accommodated in the proposed use. Such determination shall be based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.

In addition to these standards, Section 24.1-409(e) provides an opportunity for the owner of a tourist home or B&B to apply for a supplementary Special Use Permit to host private weddings and receptions as a commercial venture subject to additional performance standards governing the frequency of events, the number of guests, parking, noise, etc. The tourist home or B&B must have been in operation for at least a year before the proprietor can apply for a supplementary use permit.

STRs are subject to the state sales tax as well as the 5% County transient occupancy tax and \$2.00 per night room tax. The proprietor of any such establishment is required to obtain a County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account.

For most of the County's history, STRs were mostly limited to the Yorktown village. Prior to 2015, there were ten applications for such uses, nine of which were approved. Seven were in Yorktown, while two were in the Moore House area just east of the village and one involved a waterfront parcel in Seaford. Since 2015 and the advent of the Airbnb phenomenon, however, fifteen such applications have been submitted involving property all over the County. Eight were approved and four were denied. Two were withdrawn by the applicants after being recommended for denial by the Planning Commission, and one was deferred indefinitely at the request of the applicant. These cases are described below.

## CASE STUDIES

### Queens Lake I

In April 2015, a County homeowner applied for a business license to operate a three-bedroom tourist home on his property located on Valor Court in Queens Lake and was informed that a Special Use Permit was required. He subsequently advertised the tourist home on the VRBO website and was issued a Notice of Violation by the County's Zoning and Code Enforcement staff, after which he applied for a Special Use Permit. Valor Court is a seven-home cul-de-sac street. This small, self-contained area consists of two streets with a total of fourteen homes and is the only section of Queens Lake that is zoned R20 (Medium density single-family residential) rather than RR (Rural Residential). Staff recommended denial of the application, citing concerns about traffic and activity levels, the house's proximity to other single-family detached homes, and the fact that there would be no one on-site to monitor the conduct of the renters. The Planning Commission conducted a public hearing at which only the applicant's business partner spoke, after which the Commission voted 3 to 2 to recommend approval. Two citizens spoke in opposition to the application when it came before the Board of Supervisors, and after discussion the Board denied the application by a vote of 3 to 1.

### Spivey Lane

In January 2017, the Planning Commission considered an application submitted by a couple seeking to operate a three-bedroom B&B out of their waterfront home on a 1.5-acre parcel located on Spivey Lane in a relatively isolated part of Seaford that is zoned RC (Resource Conservation). Two of the applicants' four immediate neighbors spoke in support of the application at both the Planning Commission and Board of Supervisors public hearings. The Commission voted 5 to 2 to recommend approval, but ultimately, the Board denied the application on a split vote, with 2 in favor, 2 opposed, and 1 abstention. The denial was based on concerns about access to the property, which was via a narrow, unpaved private road across property owned by a third party who did not support the application.

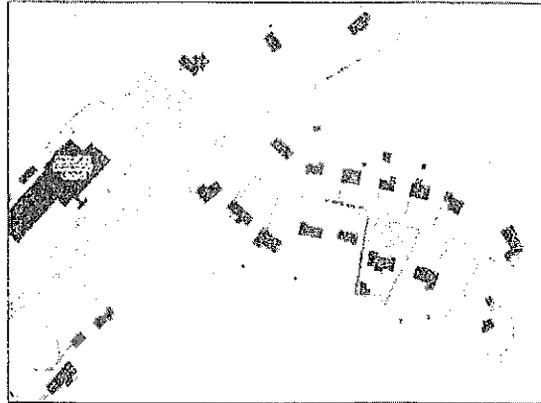
### Dandy

The Planning Commission considered another use permit application for a waterfront B&B, this one located on a five-acre parcel on Sandbox Lane (a paved private driveway) in Dandy. The proposed B&B would be in an existing 8,500-square foot single-family detached home and would have five guest rooms, with a sixth bedroom to be occupied by the owner/proprietor. Staff recommended approval of the application, opining that both the property and the home were suitable for this type of use and that it would not adversely affect the Dandy area. At the Planning Commission public hearing, eighteen citizens spoke against the application and six citizens spoke in favor. While the application was specifically for a B&B, the applicant had in the accompanying materials expressed his intent ultimately to apply for a supplementary use permit to operate the B&B as an event venue, and most of the negative citizen comments were specifically in opposition to the possibility of an event venue. Other concerns were in reference to the additional traffic that a B&B – or a B&B operated as an event venue – would bring to Dandy Loop Road, which is fairly narrow and the only road into and out of Dandy. Following the public hearing, the Commission voted 3 to 2 to recommend approval. Scheduled to be considered by the Board at its July 2017 meeting, the application was deferred at the request of the applicant, who indicated that he needed time to reconsider his plans in light of additional conditions of approval that were being proposed by the County Administrator in his memo to the Board on the application. To date, the Board public hearing has yet to be rescheduled.

### Plantation Drive

In July 2017, a couple on Plantation Drive in the upper County appeared before the Planning Commission to request a Special Use Permit to operate a tourist home with up to three guest rooms in their ex-

isting single-family detached home. Plantation Drive is a fourteen-home cul-de-sac street off of Waller Mill Road in the upper County. The neighborhood is zoned R20 (Medium density single-family residential) In this case, the applicants planned to occupy the house while guests were staying there. Largely for that reason, staff recommended approval of the application subject to a proposed condition that would limit the initial term of the use permit to one year, after which the applicant would be required to submit a request to the Board of Supervisors for a minor amendment of the permit to extend the term. As proposed by staff, such an application could be approved by



Board resolution with no public hearings, provided that the request is accompanied by written statements from the owners of each of the properties abutting the subject property indicating that they have no objection to continuation of the tourist home use. The purpose of the one-year review requirement was to give the Board an opportunity to discontinue the use if its operation was determined to be incompatible with its residential setting. The Planning Commission conducted a public hearing at which six citizens spoke in opposition, citing concerns about traffic, safety, and privacy. The Commission voted six to zero to recommend denial, and the applicants subsequently withdrew the application.

#### Queens Lake II

In August 2017, the Planning Commission considered another Special Use Permit application to operate a tourist home in Queens Lake on Horseshoe Drive. Horseshoe Drive is a loop road off the main street – East Queens Drive – and serves 28 single-family detached homes. The entire area is zoned RR (Rural Residential). This application was generated by a complaint from a citizen who saw the property advertised for short-term rental on the Airbnb website. A Notice of Violation was issued by County zoning staff, and the homeowner ultimately applied for a Special Use Permit in order to continue operation even though she indicated that she was no longer offering the home for occupancy as a tourist home and only wanted to honor reservations that had already been booked. Staff recommended denial of the application with a recommendation that if the use permit were approved, the applicant should be required to occupy the house while it was being rented. Eleven citizens spoke in opposition, expressing concerns about safety, traffic, and the possibility of short-term renters using the community facilities. One citizen spoke in support and another speaker spoke positively about the application without expressing an overt opinion. In doing so, they cited the positive aspects of short-term rentals for both homeowners and travelers and noted that short-term renters have not proven to be any less neighborly than permanent residents. The Commission, by a vote of four to one, recommended denial of the application. The applicant subsequently withdrew the application, so it was never considered by the Board of Supervisors.

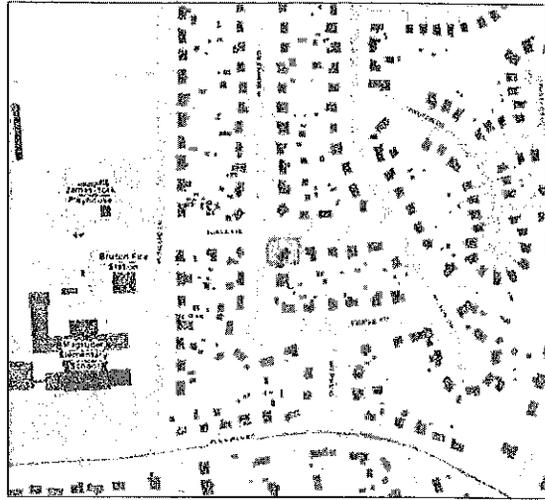


#### Edale Avenue

The following month, the Commission considered another Special Use Permit application submitted by a homeowner on Edale Avenue seeking to operate a two-bedroom tourist home out of his house. This application differed from the Plantation Drive and Queens Lake applications in several respects. First,

while the subject parcel is located in a residential subdivision – Nelson Circle – it is a subdivision that is part of a much larger residential area with a fairly extensive, highly interconnected street network that offers multiple means of ingress and egress to and from the property. The property, which is zoned R13 (High density single-family residential), is only 350 feet from Hubbard Lane and thus is relatively close to a road that serves various nonresidential uses (e.g., James-York Playhouse, James-York Plaza, the Bruton Fire Station, and Magruder Elementary School) and functions as a collector road for traffic from a number of residential neighborhoods. Moreover, the adjacent streets – Edale Avenue and West Semple Road – carry an average of only 670 and 420 vehicles per day and, with pavement widths of approximately 36 feet each, are able to safely accommodate the modest increase in traffic that might be associated with the proposed tourist home. For these reasons, the additional traffic generated by the proposed tourist

home was not considered likely to be noticeable to neighboring residents. Staff recommended approval as did the Planning Commission, by a unanimous vote. The Board also voted unanimously to approve the application. It is noteworthy that there was no citizen opposition to the application and two of the adjacent property owners sent emails expressing their support. In this case, staff recommended an initial use permit term of one year, after which the applicant could apply for an extension of the term to be processed as a minor modification with review and authorization by the Board and provided that the request is accompanied by written statements from owners of the adjacent properties indicating that they have no objection to continuation of the tourist home use. The purpose of this one-year review requirement was to give the Board an opportunity to discontinue the use if its operation were determined to be incompatible with its residential setting. At the end of the initial term, the application provided letters of support from all the adjacent property owners, and the Board voted to remove the term limit.



#### Yorktown Village

In December 2017, the Board unanimously approved a Yorktown Village Activity (YVA) application to authorize a two-bedroom tourist home in an existing building (the former Nancy Thomas Gallery) on Ballard Street in historic Yorktown. The application, which generated no citizen opposition, was recommended for approval by both the staff and the Planning Commission (unanimously) based on a number of factors, including its location on a higher-order street that carries a considerable amount of non-local traffic, the absence of residential neighbors, and most importantly, its location in Yorktown, where lodging spaces for tourists are common and, in fact, encouraged by the adopted Yorktown Master Plan. This approval did not include a requirement that the owners, who lived in Marlbank (and have since moved to Dandy), reside in the home while it is being rented out.

#### Wichita Lane

In August 2018, the Board unanimously approved a two-bedroom B&B on a 2.1-acre parcel on the cul-de-sac at the end of Wichita Lane, located in the Skimino Hills subdivision. The Planning Commission had also recommended approval by a unanimous vote. There was no citizen opposition.

### Yorkville Road

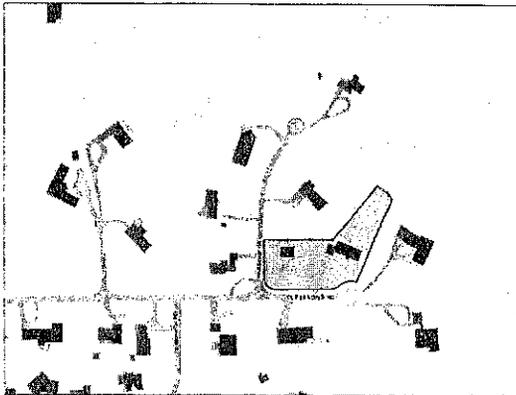
A use permit for a two-bedroom tourist home on a one-acre parcel at 604 Yorkville Road was unanimously approved by the Board in November 2018; the Planning Commission also had recommended approval. The property is one of three lots created through a family subdivision and accessed by a private driveway off of Yorkville Road, which is a local road carrying 1,900 vehicles per day. The applicants own all three lots and were not proposing to live in the tourist home; however, they live in the adjacent home to the rear. At the Planning Commission meeting, a next door neighbor spoke in opposition to the application, stating that a tourist home does not belong in a Rural Residential area and expressing concern that it would set a precedent for more tourist homes in residential areas. Another neighbor spoke in support of the application. No citizens other than the applicants spoke at the Board meeting.



### Carters Neck Road, Part I

Also in August 2018, the Board considered a second tourist home application, this one involving a 1.9-acre parcel located on Carters Neck Road, which is a relatively sparsely developed local road carrying 250 vehicles per day. The proposal was for a three-bedroom tourist home to be used as a whole house rental. As with the Yorkville Road application, the applicants were not proposing to live in the tourist home; however, they live in the house next door. The Planning Commission unanimously recommended approval of the application, and it was approved by the Board by a vote of 4 to 1. There was no citizen opposition.

### Old Landing Road



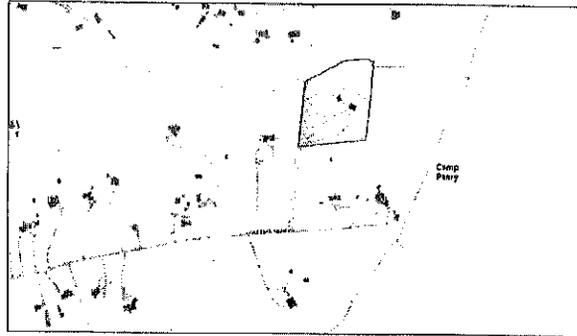
In December 2018, the Board unanimously approved a two-bedroom tourist home on a one-acre waterfront parcel located on Old Landing Road in the Marbank Farm subdivision. Old Landing Road is a local subdivision street carrying 650 vehicles per day. The application had received a recommendation of approval from the Planning Commission. The applicant indicated that the two-bedroom guest suite would be rented out as a single unit and that there would be no rental of individual bedrooms. She also indicated that she and her husband would reside in the house while rentals are taking place. The applicant submitted letters of support from five of her neighbors as part of her application, and the County received one email from a neighbor opposing the application. No one other than the applicant spoke at either public hearing.

### Carters Neck Road, Part II

A second tourist home application was submitted for Carters Neck Road, this one involving a 5.0-acre parcel located on the private, unpaved western section of the road. The owner had an existing one-bedroom accessory apartment, for which a Special Use Permit was approved in 1986, on the second floor of a detached garage building and wanted to offer it for short-term rental. The surrounding area is fairly rural, characterized by large lots and low densities. The seven immediately adjacent lots range in

size from 2.7 to 9.4 acres, and the nearest home is 450 feet away. Because of its location at the end of a long, narrow driveway off of a dirt and gravel road, combined with the absence of public water, the Department of Fire and Life Safety expressed significant concerns about the application, even though the garage apartment was approved for year-round residential occupancy.

The owners of two adjacent properties spoke in opposition to the application, stating that the tourist home would detract from their privacy and safety by bringing strangers into the neighborhood on a regular basis as well as place an additional financial burden on those who maintain that portion of Carters Neck Road, which, according to the staff's estimates, carries approximately 60 vehicles per day. The Commission voted to recommend denial by a vote of 4 to 2. When the application came before the Board of Supervisors in March 2019, two neighbors spoke in opposition, and the Board denied the application by a unanimous vote.

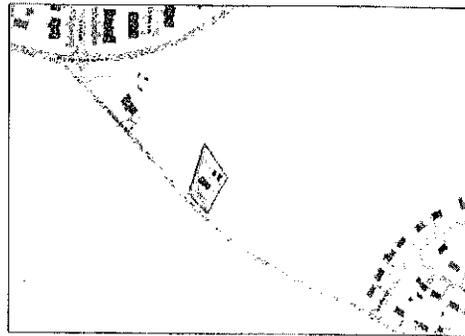


#### Tom Thomas Road

Also at the March 2019 Board meeting, the Board reviewed another tourist home in the Skimino area. The subject property, located on Tom Thomas Drive approximately two miles from the site of the unsuccessful Carters Neck Road application, is 0.4 acre in size. The applicants live approximately ten minutes away in Queens Lake and indicated that they would not be residing in the home. No citizens expressed opposition to the application, which received a unanimous recommendation of approval from the Planning Commission and was subsequently approved by the Board by a vote of 4 to 1.

#### Goosley Road

In June 2019, the Board voted 3 to 2 to approve a tourist home on a 0.6-acre parcel on Goosley Road. The applicant, who lives in James City County, planned to purchase the property, which is completely surrounded by vacant land – most of it owned by the National Park Service and unlikely ever to be developed – solely for the purpose of offering it as a short-term rental. The nearest home is 370 feet away, and there was no citizen opposition. Goosley Road is classified as a minor arterial road carrying approximately 6,000 vehicles per day. In recommending approval, staff included a proposed condition requiring the applicant to designate a “responsible party” who would be available to address any problems (e.g., noise, parties, littering, on-street parking, etc.) that might occur while rentals are taking place. The purpose of this requirement, which numerous other localities in Virginia and across the United States have adopted, was to address the concern that commonly arises about the absence of someone on the premises to monitor the guests' behavior. The contact information for this person would be maintained in both the Zoning and Code Enforcement office and the Sheriff's Office.



The application was recommended favorably by the Planning Commission by a vote of 4 to 2. Commissioners who opposed the application expressed concern about the commercial nature of the proposal, and one member also expressed concern about the impact of short-term rentals on the availability of affordable housing, noting that the house in question has a relatively low assessed value and would no longer be available for permanent residency if converted to a tourist home.

Queens Lake III

A third application for a tourist home in Queens Lake, this one on a 0.6-acre lot on Sherwood Drive, was considered by the Board in August 2019. The applicant was seeking authorization (after the fact) to operate a two-bedroom tourist home out of her single-family detached home. She indicated that she would be present in the home during rental periods. At the Planning Commission, five citizens spoke in favor of the application and three spoke in opposition. The Planning Commission recommended approval by a vote of six to zero, subject to an additional, fairly unusual, condition that would require the use permit to expire if the applicant were ever to sell the property. When the application was considered by the Board, however, there were nine citizens who expressed opposition to the application and only three who spoke in favor, and the application was denied unanimously.

Summary of Case Studies

Summary data for these fifteen tourist homes and B&B applications is provided in the table below. In comparing applications that were approved with those that either were denied or were withdrawn by the applicants following a recommendation of denial from the Planning Commission, it is interesting to note that lot size and density have little bearing on whether or not an application is approved. In fact, the average lot size is somewhat higher for the unsuccessful applications (1.59 acres) than for the successful applications (0.95 acre). Regarding the size and scale of the proposed uses, the successful and unsuccessful applications are almost identical; the average number of bedrooms and maximum occupancy are slightly lower for successful applications (2.3 vs. 2.5 bedrooms and 5.9 vs. 6.0 guests). Another factor that is often considered by the Commission and the Board of Supervisors is whether or not the property owner would reside in the home while rentals are taking place. Five of the six unsuccessful applications would have required resident occupancy, whereas only three of the eight successful applications included such a requirement (although in two of those successful cases, the owner lived next door to the proposed tourist home).

The one factor that most differentiates successful applications from unsuccessful ones is the absence of neighborhood opposition. In the table below, Public Input is characterized as "anti" if most of the public comments were in opposition, "pro" if most of the public comments were in support, "even" if the public comments were evenly divided between opponents and supporters, and "none" if there were no public comments. Public Input was mostly negative in four of the five unsuccessful applications and either supportive, neutral, or nonexistent in all eight of the successful applications.

Lot Size	Zoning	Bedrooms	On-Site Manager	Maximum Occupancy	Public Input	PC Action	BOS Action
0.22	R13	2	Yes	4	Pro	Approval	Approved
0.43	YVA	2	No	5	None	Approval	Approved
2.10	RR	2	Yes	6	None	Approval	Approved
1.00	RR	2	Next Door	4	Even	Approval	Approved
1.90	RR	3	Next Door	9	None	Approval	Approved
1.00	RR	2	Yes	6	Pro	Approval	Approved
0.40	RR	2	No	5	None	Approval	Approved
0.57	R13	3	No	8	None	Approval	Approved
0.74	R20	3	No	6	Anti	Approval	Denied
1.40	RC	3	Yes	9	Pro	Approval	Denied
4.90	RR	1	Yes	3	Anti	Denial	Denied
0.60	RR	2	Yes	4	Anti	Approval	Denied
0.60	R20	3	Yes	8	Anti	Denial	Withdrawn
1.26	RR	3	Yes	6	Anti	Denial	Withdrawn
5.00	RR	5	Yes	10	Anti	Approval	Deferred

## Observations

Though residential in character, tourist homes and B&B's are commercial establishments in which homeowners provide a service – lodging and possibly meals – to customers (renters) for a fee. In that respect, a single-family home used as short-term rental is similar to a home occupation with on-site customer/client contact, which, with a few exceptions, requires a Special Use Permit. When considering home occupations – or any proposed land use involving property within or close to a residential neighborhood – the Planning Commission and Board of Supervisors have consistently placed a high priority on the goal of preserving the residential character of the area and the neighbors' quality of life.

STRs often generate some of the same concerns from neighboring residents as do home occupations, such as traffic and parking. However, concerns have also been raised about the possibility of loud parties, crime, safety, and a general uneasiness about living among strangers who are only staying for a short time and might not have the best interests of the neighborhood – or the neighbors – at heart.

Some of these concerns have more of a factual basis than others. There is no evidence, for example, that short-term renters are more likely to commit crimes or hold loud parties than are permanent residents. In one of the cases discussed above, there was a complaint about a disruptive late-night party at a home that was being operated illegally as a short-term rental; however, the party was being held not by a short-term renter but by an on-site caretaker who was living in the basement of the house.

Traffic and parking, on the other hand, can be legitimate concerns, particularly in smaller residential areas with low-volume – and often narrow – local streets where relatively small increases in traffic can be especially disruptive. The potential for problems is compounded when a single home has more than one guest suite and thus a higher intensity of use (although it should be added that even when a tourist home is rented out as a single unit, there is no guarantee that it will be rented out by a single family; the potential exists for multiple families or groups of guests to share a short-term rental, each arriving in a separate vehicle).

As the case studies show, every case, every property, and every neighborhood is different, and the Planning Commission and Board of Supervisors have wide discretion in evaluating STR proposals. This is the purpose of the Special Use Permit process, as set forth in Section 24.1-115 of the Zoning Ordinance:

*“Certain uses, because of their unique characteristics or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but may, under the right set of circumstances and conditions be acceptable in certain specific locations. These uses are permitted only through the issuance of a special use permit by the board after ensuring that the use can be appropriately accommodated on the specific property, will be in conformance with the comprehensive plan, can be constructed and operated in a manner which is compatible with the surrounding land uses and overall character of the community, and that the public interest and general welfare of the citizens of the county will be protected. No inherent right exists to receive a special use permit; such permits are a special privilege granted by the board under a specific set of circumstances and conditions, and each application and situation is unique. Consequently, mere compliance with the generally applicable requirements may not be sufficient and additional measures, occasionally substantial, may be necessary to mitigate the impact of the proposed development. In other situations, no set of conditions would be sufficient to approve an application, even though the same request in another location would be approved.”*

The Virginia Supreme Court has ruled that zoning ordinances do not need to include standards concerning the issuance of special use permits where local governing bodies are to exercise their legislative judgment or discretion, stating that “It would be impractical to provide standards in ordinances that

would be applicable to all situations that might arise.”<sup>1</sup> While certain minimum standards are appropriate – limitations on signage and parking, for example – for the County to impose specific, uniform requirements for STRs in residential areas would be contrary to the intent of the use permit process, which is based on the premise that for some uses in some zoning districts, a “one size fits all” approach is not appropriate. In lieu of strict standards, however, a set of evaluation criteria to be used in determining the appropriateness of a tourist home in a residential zoning district could have some benefit. It would give additional guidance not only to the Planning Commission and the Board of Supervisors in evaluating tourist home applications but also to potential applicants (and possibly save some of them the trouble and expense of applying for a Special Use Permit that has little chance of success). Such criteria might include one or more of the following:

- Provisions for monitoring guest behavior. One of the most frequently raised concerns about STRs has been that if the owner does not reside in the home, there will be no one present to monitor the guests’ behavior. York County has approved five tourist homes in which the owner did not propose to live in the house being rented. In two of those cases, the owners lived next door, and in two others, they lived in the County about ten minutes away. In the fifth case, the owners live approximately thirty minutes away in an adjacent locality. (Interestingly, in only one of the six unsuccessful applications was the applicant *not* proposing to occupy the home during rental periods.)
- Limitations on the number of bedrooms/guest suites that can be rented. The Zoning Ordinance currently states that the Board of Supervisors “shall specify the maximum number of persons who may be accommodated in the proposed use ... based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.” Although the number of bedrooms has really not been much of an issue with any of the STR applications in the County, setting a maximum occupancy would be one way to limit the commercial aspect of the use.
- Capacity of the adjacent street network, including not just pavement width but the number of routes of ingress and egress. For example, the traffic associated with an STR with multiple bedrooms would likely be more disruptive to residential neighbors on an older, narrow cul-de-sac than on a through-street that meets the current VDOT pavement with standards. Two of the five unsuccessful applications involved properties located on narrow, unpaved private streets, which likely contributed to their eventual denial.
- Emergency/life safety requirements. Because the Fire Code does not specifically address tourist homes or B&Bs, staff, at the request of the Department of Fire and Life Safety has included a series of additional conditions in the approving resolution for all STRs. Intended to provide safety for visitors to the proposed tourist home, these conditions require an Emergency Action Plan identifying exit routes, fire extinguisher locations, and other life safety procedures; one or more fire extinguishers with a minimum rating of 2A10BC; and annual fire inspections. This is one case where strict, uniform standards make sense, and it would be appropriate to incorporate these into the performance standards for all STRs, regardless of zoning.
- Permitting requirements. Another standard condition in all recent STR approvals specifies that the applicant is responsible for obtaining all applicable permits and/or approvals required in accordance with regulations of the Virginia Uniform Statewide Building Code and the York County Department of Fire and Life Safety prior to use of the dwelling as a tourist home.
- Business license/tax requirements. Every STR operator is required to obtain a County business license, establish a County transient occupancy tax account, and file with the Virginia Depart-

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<sup>1</sup> *Bollinger v. Roanoke County Board of Supervisors*, 217 Va. 185, 227 S.E. 2d 682 (1976)

ment of Taxation for a Virginia State Sales Tax account. While not related to land use, it might be helpful to reference these requirements in the performance standards to ensure that potential applicants are aware.

- Provisional term limits. In one case a tourist home was approved for an initial one-year term to allow it to operate on a provisional basis. A year later, the Board approved an extension of the term when the applicant was able to provide written statements from the owners of each of the adjoining properties indicating that they have no objection to continuation of the tourist home use. Some STR cases could involve unusual circumstances that would warrant a similar initial term limit, after which the Board could either extend the term of the use permit or, in the event of documented violations or complaints, revoke the permit.
- Expiration requirements upon the sale of the home. Although not recommended by staff, the Commission has in one case recommended approval of a tourist home subject to an additional condition specifying that the use permit would be null and void upon the transfer of ownership of the property in question. This was in response to concerns expressed by opponents about the use permit running with the land. It has not been the County's practice to tie Special Use Permit approvals to specific individuals. The County Attorney and Planning Division staff have consistently advised against imposing this type of condition, noting that if the Board deems a given use to be acceptable and appropriate in a given location subject to a given set of conditions, it should not matter who owns the property since any future owner would be subject to the same conditions of approval as the applicant. The case law on conditions attached to special exceptions and special use permit indicates that as a general rule, conditions that relate to the use of the land are upheld, while "conditions that do not relate to the use of the land, such as a condition that terminates the conditional use when there is a change in ownership," are not.<sup>2</sup>

## CONCLUSION

Short-term rentals and single-family detached homes can coexist in the same residential neighborhood under the right circumstances and with proper controls and limitations. While some of the concerns that short-term rentals generate among residential neighbors are matters of perception rather than reality, there are valid reasons to subject them to the close scrutiny that the Special Use Permit process affords. As always with commercial uses in residential areas, preserving neighborhood character and the residents' quality of life is paramount. Incorporating appropriate evaluation criteria into the Zoning Ordinance standards for tourist homes and B&B's would assist policymakers and potential applicants alike by providing additional direction as to the types of areas that are and are not considered suitable for these uses. It is hoped that in so doing, it would also reduce the incidence of contentious public hearings with neighbors pitted against one another, which can have serious, long-term negative impacts on a community.

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<sup>2</sup> Daniel R. Mandelker, Land Use Law, 4<sup>th</sup> edition (Charlottesville, Virginia: Lexis Law Publishing, 1997) 272.

## Regulation of Short-Term Rentals in Virginia

Not surprisingly, Virginia's cities and counties vary widely in their respective approaches to the regulation of short-term rentals (STRs). Some localities allow them as a matter of right with an administrative permit that must be renewed annually, while others require a Special Use Permit or Special Exception from the governing body or the Board of Zoning Appeals. In some cases, whether or not such uses can be approved administratively depends on whether or not the owner/proprietor resides in the home while rentals are taking place.

In York County, STRs fall into the category of either tourist homes or bed-and-breakfast inns (B&Bs), the difference being that with B&Bs, breakfast is provided to the guests and the owner is required to live in the home or in an adjacent premises. York County allows both uses as a matter of right in the GB (General Business) and LB (Limited Business) zoning districts. In residential districts (RR, R33, R20, R13, and RMF), a Special Use Permit is required. STRs are subject to the following performance standards set forth in Section 24.1-409 of the Zoning Ordinance:

- STRs in residential districts must have the appearance of a single-family detached home and normal residential accessory structures.
- One freestanding sign up to four (4) square feet in area is permitted.
- In residential districts, required off-street parking for the subject use must be effectively screened by landscaping and cannot not be located in any required front yard area.
- The maximum number of guests is determined by the Board of Supervisors based on a consideration of the density and character of the area and of the size and characteristics of the proposed site.

Whether they allow STRs by right or with a Special Use Permit, most localities in Virginia specify various standards or guidelines applicable to such uses. Some of the more commonly used guidelines and requirements in Virginia are:

- Owner residency and/or occupancy requirements
- Limitations on the number of occupants and/or the number of bedrooms that can be rented
- Limitations on the number of rentals over a given period
- Minimum and/or maximum length of stay requirements
- Designation of a responsible party or authorized agent to respond to problems
- Prohibitions on signage

For purposes of comparison, staff has compiled Zoning Ordinance requirements for short-term rentals from several other localities in Virginia. These are summarized below:

### Virginia Beach

The City of Virginia Beach adopted its Short Term Rental Ordinance in January 2019. Virginia Beach's ordinance distinguishes "home sharing" from "short term rentals." For home sharing, the owner must utilize the dwelling as his or her principal residence and must occupy the dwelling during the rental period. Home sharing is permitted as a matter of right in residential zoning districts. Short term rentals differ from home sharing in that the owner is not required to use the home as a principal dwelling and is not required to occupy the dwelling while rentals are occurring. A short term rental requires a Conditional Use Permit,

Including public hearings and Planning Commission review. The owner/operator of the short term rental must provide the name and phone number of a responsible person who is available to be contacted and to address conditions occurring at the short term rental within thirty (30) minutes.

#### Charlottesville

The City of Charlottesville refers to short term rentals by the term "homestay," which is defined as "a home occupation in which an individual who owns a dwelling and uses it as his or her permanent residence within a dwelling hires out, as lodging: (i) such dwelling, or any portion thereof, or (ii) a lawful accessory dwelling." The City allows homestays as a matter of right with a Provisional Use Permit, which involves an administrative approval process. The operator of the homestay must be a permanent resident of the dwelling and, similar to Virginia Beach, there must be a responsible party located within thirty (30) miles who will be available 24/7 to respond to and resolve issues and complaints that arise while rentals are occurring.

#### Blacksburg

The Town of Blacksburg's also uses the term "homestay," and its regulations are similar to Charlottesville's. Blacksburg allows homestays by administrative permit in the primary residence of the host, who must be available by phone 24/7. Unlike Charlottesville, Blacksburg also requires that a "principal guest" be designated as a contact person for Town officials in the event of "safety or behavioral issues" at the unit. The host is responsible for providing the principal guest's contact information to the Town.

#### Williamsburg

The City of Williamsburg adopted its Short Term Rental ordinance in February 2019. In general, the City is somewhat more restrictive than most other localities, allowing STRs only in single-family detached homes and only upon the approval of a Special Exception by the Board of Zoning Appeals following a public hearing. Furthermore, rentals are limited to a single room within the home, which can include a bedroom, bathroom, closet(s), and a sitting area for the exclusive use of the transient visitors; separate cooking facilities are not permitted. Occupancy is limited to a maximum of two adults, not including minor children. The ordinance does not set forth specific guidelines or criteria to be used by the BZA in evaluating a Special Exception application for a STR, stating merely that the BZA "shall determine if the property at issue meets the occupancy requirement, provides an adequate plan for managing the property, and shall determine if the property may be operated as a short-term rental consistent with the" general considerations applicable to all Special Exception applications (e.g., traffic impacts; surrounding uses; the health, safety, and welfare of the neighbors; and impacts on neighboring property values).

**MINUTES  
YORK COUNTY PLANNING COMMISSION**

Work Session  
York Hall – East Room, 301 Main Street  
August 26, 2019

**MEMBERS**

Robert T. Criner  
Montgoussaint E. Jons  
Michael S. King  
Robert W. Peterman  
Donald H. Phillips  
Bruce R. Sturk  
Glen D. Titus

**CALL TO ORDER**

Chair Michael S. King called the work session to order at 7:00 PM.

**ROLL CALL**

The roll was called and all members were present with the exception of Mr. Jons. Staff members present were Susan Kassel, Director of Planning and Development Services; Timothy C. Cross, Deputy Director of Planning and Development Services; Amy Parker, Senior Planner; and Earl Anderson, Senior Planner; Daria Linsinbigler, Planning Assistant; and Justin Atkins, Assistant County Attorney.

**OPENING REMARKS**

Chair King explained that the purpose of the work session was to speak about ideas regarding regulations for tourist homes. He thanked the staff for the briefing paper that was sent to the Commissioners, and he opened the floor for comments.

Mr. Peterman said the information provided by staff was very informative and commended them for the presentation. He stated that he participated in the Commission's review of most of the recent tourist home and bed-and-breakfast (B&B) applications and that it was clear that community sentiment played an important part in the decision-making process for both the Planning Commission and the Board of Supervisors. He said that in most cases when there has been neighborhood dissent, the application was not approved.

Dr. Phillips noted that at its last meeting, the Commission considered an expansion of a previously approved tourist home in the Yorktown village where the proprietor did not live on the premises and, in fact, had since moved further away from the property, from Marlbank to Dandy. He said that if the County continues to allow non-residents to operate short-term rentals, the location of the owner's residence is a concern, and he suggested that maybe they could be required to come back for approval if they move.

Chair King asked where the line should be drawn; for example, should a non-resident owner be required to live in the County or within a certain distance from the property?

Mr. Titus stated that he sees little difference between a short-term rental and a one-room hotel. He asked how the rental home is monitored if the owner lives off-site or goes on vacation.

**Chair King** said that typically if the proprietor lives in the home, he or she is less likely to allow trouble-making from the guests, and he said that monitoring is key.

**Mr. Sturk** questioned how far the County needs to go in regulating these establishments, and he inquired if the Sheriff's Office has reported any issues involving these short-term rentals. He said that if regulations and standards are met, he did not feel a need to over-regulate tourist homes.

**Chair King** agreed that Mr. Sturk made a valid point and that most of the concerns about crime and bad behavior are a matter of perception rather than fact. He said that consistency and clarity are factors being weighed to make a decision.

**Mr. Sturk** said these are revenue-generating businesses and if the community is not protesting, there is no need to be so regulatory.

**Mr. Criner** stated that a minimum list of standards can be set that addresses such items as fire safety and parking. He added that the ongoing question of managing the property from a distance is not easily solved.

**Mr. Cross** stated, in response to Mr. Sturk's question, that there had been one case of criminal activity at a short-term rental in Cobble Creek that was being operated illegally without a Special Use Permit. He stated that ultimately the County had to take the owner to court. He added that there was an incident involving a loud party in a home in Queens Lake that was being operated as a short-term rental without a use permit, but in that case, the party was held by the resident caretaker who had been hired by the owner to manage the property.

**Mr. Titus** likened tourist homes to home occupation, neither of which generate much crime.

**Dr. Phillips** agreed that serious crimes at short-term rentals are rare and that a minimum set of standards is needed.

#### **STAFF PRESENTATION**

**Mr. Cross** gave a slide presentation on short-term rentals in York County. He stated that they are categorized as either tourist homes or bed-and-breakfast inns (B&Bs), and he explained the difference between the two. He summarized the Zoning Ordinance standards for short-term rentals, and noted that the number of use permit applications for these uses has increased dramatically in recent years with the advent of internet reservation sites such as Airbnb and VRBO (Vacation Rentals by Owner). Mr. Cross then presented summary data for recent applications, noting that the main factor that distinguishes the successful applications from the unsuccessful ones is not lot size or density or the presence of the owner in the home but rather the absence of neighborhood opposition. In addition, he distributed copies of a handout describing some of the standards and requirements imposed on short-term rentals in other Virginia localities.

#### **COMMISSION DISCUSSION**

**Chair King** asked why the County cares if breakfast is served in a short-term rental.

**Mr. Cross** answered that it is a factor by which the two types of rentals are distinguished from each other.

**Chair King** noted that a tourist home can still provide food and that it might no longer be necessary to distinguish between the two. He asked if providing breakfast would qualify a tourist home as a bed and breakfast.

**Mr. Cross** answered that it would not necessarily since B&Bs are required to have the owner live in the house or in an adjacent premises.

**Mr. Titus** asked if there is a difference the Commissioners needed to be aware of.

**Mr. Cross** stated that B&Bs are subject to the same requirements as tourist homes, except that a permit from the Virginia Department of Health would likely be required if breakfast is provided. He added that some other localities specifically prohibit the serving of food or the presence of a separate kitchen.

**Mr. Titus** asked what the phrase "subordinate to a private dwelling" means in the context of the tourist home definition.

**Mr. Cross** cited the example of a use permit application for a tourist home that was approved in the Moore House area in which the owners lived in the main house on the property while they rented out a smaller cottage on the property that was ancillary to the principal dwelling. He stated that the definition means that a rental located in a separate building on a residential property has to be in the accessory structure and not in the principal dwelling.

**Mr. Criner** asked why that is a concern.

**Mr. Cross** responded that it keeps the neighborhood residential since the principal use of the property would be the owner's residence and not the tourist home, which is a commercial use.

**Mr. Criner** suggested that a minimum standard should be set so that occupancy does not exceed the number of bedrooms.

**Mr. Cross** responded that the maximum occupancy is determined by the Board on a case-by-case basis and that floor plans are required as part of the application submittal.

**Chair King** stated that parking is also a factor.

**Dr. Phillips** asked if private roads have been a factor in the unsuccessful applications.

**Mr. Cross** responded that in cases where the owners of the private roads were against the application, the application usually fails. He added that one of the few instances where most of the public comments were in support of the application but it was ultimately denied was because it was on a narrow private road on property owned by someone else. He added that different localities approach short-term rentals in different ways, some allowing them by right subject to certain standards and payment of an annual fee, and some requiring the owner to live on the premises and be available when unit is rented or designate a local manager.

**Mr. Sturk** asked if there has been any citizen input about short-term rentals as part of the Comprehensive Plan review process.

**Mr. Cross** responded that no citizen comments pertaining to short-term rentals have been received but that the survey results showed strong support for home occupations.

**Chair King** commented that although no one is clamoring to support or oppose allowing short term rentals, the Planning Commission is trying to be proactive.

**Mr. Sturk** stated that the Zoning Ordinance should clearly address basic parameters such as parking, life safety, food, and neighborhood input.

**Mr. Titus** stated that people will stretch the limits if not held in check and the important items that need to be considered are traffic, roads, noise, lights, and odor because they affect the neighbors.

**Mr. Sturk** stated that the Board of Supervisors leans on the Planning Commission and staff to bring policies to the table that need to be tweaked and he agreed that a system of checks and balances was necessary.

**Mr. Criner** asked if a having manager who lives fifteen minutes away is a problem and if there should be a minimum standard of distance.

**Chair King** said he did not think it was a problem as long as the contact person is within a reasonable distance.

**Justin Atkins, Assistant County Attorney**, added that the owner could have a management contract with a real estate company. He stated that the Commissioners have wide discretion and that the question is whether regulations are arbitrary and reasonable and related to public health, safety, morals and general welfare. He stated that localities have the power to include various guidelines in the Zoning Ordinance that would serve not as requirements but as considerations or evaluation criteria to be used when deliberating on a use permit application.

**Mr. Cross** added that in the briefing paper, staff had included some possible suggestions for such considerations that would still leave room for flexibility. He stressed that having evaluation criteria rather than strict standards recognizes that each case is different and that it gives the Commission and Board more flexibility to consider each application based on its individual merits. He stated that spelling out a series of specific requirements that must be met can open the County up to legal challenge if it were to approve an application that meets those requirements and deny another one that also meets them.

**Chair King** asked for clarification regarding evaluation criteria.

**Mr. Cross** answered that there are some specific standards already in place and that there might be others, such as the fire and life safety and tax filing requirements that are typically included as conditions of approval in every short-term rental. He said these could be supplemented with a list of considerations to help the Commission and the Board make their decisions. Such considerations, he stated, might include such things as road access and adequate provisions for monitoring guest behavior.

**Chair King** said he liked the idea of adding considerations to the Zoning Ordinance and restating them in the use permit resolutions.

**Mr. Criner** suggested the possibility of granting provisional approval with an annual review requirement.

**Mr. Cross** responded that the Zoning Ordinance used to require an annual review for home occupations with non-resident employees but eventually deleted that requirement because it proved to be too cumbersome. He noted that all approved special uses are checked annually by the Zoning staff, but the applicant does not have to come back to the Board.

**Mr. Criner** suggested limiting use permit for short-term rentals to the applicant such that they would become null and void if the property were to be sold.

**Mr. Cross** said the position of the Planning staff is that use permits should run with the land based on the notion that the permit is for a specific use in a specific location subject to specific conditions but not for a specific individual.

**Mr. Criner** asked how somebody would know if a neighbor has this type of business.

**Mr. Atkins** noted that all use permit resolutions are recorded in the courthouse, so the information can be found during a title search.

**Mr. Criner** asked if a maximum can be set for the number of people per room.

**Mr. Cross** answered that most rentals state a maximum of two adults per room.

**Dr. Phillips** noted that sometimes people staying in a short-term rental will have visitors and that this should be regulated.

**Mr. Cross** stated that staff is open to any guidance from the Commission as to possible evaluation criteria to include in the ordinance.

**Chair King** said that putting considerations in place, perhaps with an annual review, seems like a good idea and that any considerations should be flexible.

**Mr. Sturk** stated that rules should be in place to ensure that guests' behavior is monitored.

**Mr. Cross** said the applicant can be asked to address specific items in their application narrative.

**Dr. Phillips** asked about the owner moving away from the rental property after getting the use permit.

**Chair King** responded that there could be a provision requiring that a manager be available day and night.

**Mr. Cross** noted that in one recent case the owner of a short-term rental was required to designate a responsible party whose contact information would be provided to the Zoning and Code Enforcement Office and the Sheriff's Office.

**Susan Kassel, Director of Planning and Development Services**, added that the Sheriff's Office would need the responsible party's contact information to respond to an incident, while the Zoning

and Code Enforcement staff would need the owner's information since the owner would be responsible for any zoning violations.

**Mr. Peterman** said he did not anticipate seeing a large number of these types of uses in York County outside of the Williamsburg area, which has a lot of tourists.

**Mr. Criner** stated that there are quite a few available online and he mentioned that one he viewed that was offered for twenty-two dollars a night.

**Earl Anderson, Senior Planner**, responded that the rental he was referring to requires a ninety-day minimum stay and would not be considered a short-term rental.

**Chair King** suggested the Planning Commission examine flexible considerations for short term rental limits, fire and life safety, taxes, and location of owner's residence. He asked the staff to prepare a list to for the Commission to review.

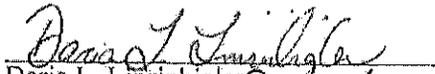
By consensus, the Commission expressed its agreement with the proposed approach of developing considerations that will provide guidance while leaving flexibility in the decision-making process.

**Mr. Cross** stated that staff should be able to provide draft language for the Commission's review within a few months.

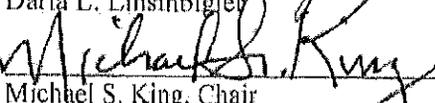
**ADJOURN**

There being no further business to discuss, Chair King adjourned the work session at 8:28 p.m.

SUBMITTED:

  
Daria L. Linsinbigler

APPROVED:

  
Michael S. King, Chair

DATE:

9 OCT 19

## ARTICLE I. IN GENERAL

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### Sec. 24.1-104. Definitions.

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*Bed and breakfast inn.* A dwelling in which, for compensation, breakfast and overnight accommodations are provided for transient guests. ~~When the establishment is located in a residential zoning district, the owner of the property shall live on the premises or in an adjacent premises and shall be the operator/provider of the bed and breakfast accommodations and services.~~

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*Tourist home.* An establishment, either in a private dwelling or in a structure accessory and subordinate to a private dwelling, in which temporary accommodations are provided to overnight transient guests for a fee.

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## ARTICLE IV. PERFORMANCE STANDARDS FOR USES

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### Sec. 24.1-409. Standards for boarding houses, and short-term rental homes (tourist home and bed and breakfast establishments).

- (a) When located in single-family residential zoning districts, boarding houses, and short-term rental homes (tourist homes, and bed and breakfast establishments) shall have the appearance of a single-family detached residence and normal residential accessory structures.
- (b) Signage for properties occupied by tourist home or bed and breakfast uses/short-term rental homes shall be permitted in accordance with section 24.1-703(b)(2).
- (c) ~~In all residential districts, required off-street parking for the subject use shall be effectively screened by landscaping from view from adjacent residential properties and shall not be located in any required front yard area.~~ Any parking demand generated by the conduct of such use shall be accommodated off the street in a suitably located and surfaced space.
- (d) When a bed and breakfast establishment is located in a residential zoning district, the owner of the property shall live on the premises or in an adjacent premises and shall be the operator/provider of the bed and breakfast accommodations and services.
- (e) The owner/proprietor of a tourist home shall reside either in the home or in an adjacent premises or shall designate a responsible party, who may be the applicant, and who shall be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place. The owner shall be responsible for providing the Sheriff's Office with the responsible party's contact information, including name, address, phone number, and email address.
- (f) The owner/proprietor of a short-term rental home shall be responsible for obtaining all applicable permits and/or approvals required in accordance with regulations of the Virginia Uniform Statewide Building Code and the Department of Fire and Life Safety prior to use of a structure as a short-term rental home.
- (gd) The board shall specify the maximum number of persons who may be accommodated in the proposed use. Such determination shall be based on a consideration of the density and character of the vicinity in which located and of the size and characteristics of the proposed site.
- (h) The following emergency/life safety requirements shall apply to the operation of a short-term rental home:
  - (1) An Emergency Action Plan identifying exit routes, fire extinguisher locations, and other life safety procedures shall be submitted to and approved by the Fire Marshal and posted conspicuously for guests' review.

- (2) One or more fire extinguishers with a minimum rating of 2A10BC shall be installed. The location(s) shall be determined by the fire code official.
- (3) The establishment shall be maintained in accordance with the State and Local Fire Prevention Code and the Virginia Residential Code and shall have a fire inspection conducted by the Department of Fire and Life Safety prior to the commencement of the short-term rental home and annually thereafter.
- (4) All smoke detectors shall be interconnected and installed in accordance with the 2012 Virginia Residential Code, Section R314, or as it may from time to time be amended.
- (i) The owner/proprietor shall obtain a York County business license, establish a County transient occupancy tax account, and file with the Virginia Department of Taxation for a Virginia State Sales Tax account.
- (i) In addition to the submittal requirements set forth in section 24.1-115(a) of this chapter, any special use permit application for a short-term rental home shall be accompanied by the following items which, in addition to the standards set forth in section 24.1-115(b)(3) of this chapter, shall be considered by the planning commission and board of supervisors in their evaluation of the appropriateness of the proposed short-term rental home:
  - (1) A detailed narrative description of the project specifying the proposed operating procedures; provisions for monitoring of guests' behavior; the maximum number of occupants (both children and adults); the minimum and maximum length of stay, if any; the number of bedrooms to be rented; and provisions for accommodating off-street parking. The narrative description shall also specify if individual rooms within the house will be rented or if the property will be offered as a whole house rental.
  - (2) A floor plan of the structure clearly delineating all of the rooms in the house and specifically identifying those rooms and areas that will be available to renters.
- (k) In evaluating any special use permit application for a short-term rental home, the commission and board shall consider the adequacy and capacity of the adjacent roadway network, including pavement widths, traffic volumes, and street ownership and maintenance arrangements as applicable, to accommodate the proposed use without adversely affecting neighboring properties.
- (le) The owner/proprietor of an authorized and operating bed & breakfast (B&B) establishment or tourist home may apply for a supplementary Special Use Permit authorization to host private weddings and receptions for a fee as a business venture. In order to be eligible to apply for such supplementary Special Use Permit, the B&B or tourist home shall have been in continuous operation for at least one (1) year prior to the date of the submission of the application. The following performance standards and conditions shall be observed unless specifically modified or waived by the Board of Supervisors at the time of approval:
  - (1) Frequency of events: No more than one (1) event per day, or two (2) events in any 7-day period, shall be allowed. A wedding ceremony and its associated reception shall be considered to be a single event.
  - (2) Maximum number of guests: The maximum number of guests shall be established as a condition of the Special Use Permit approval and shall be based on an assessment of the capacity and suitability of the site in consideration of the size of the property and facilities, the amount of parking available to accommodate guests, the capacity and condition of the highway network providing access to the site, the surrounding land uses and their proximity, and such other considerations as the Board of Supervisors deems to be relevant to prevent adverse effects upon neighboring properties.
  - (3) Facilities: Any building or temporary tents used to accommodate ceremonies or receptions shall comply with all applicable Building and Fire Code requirements including, but not limited to: access; materials and fire ratings; emergency lighting; exit lights; fire detection and suppression; etc. Any tent(s) shall be positioned on the property in accordance with all applicable setback requirements for principal structures or such greater setbacks as may be established as a condition of the Special Use Permit approval. Tents shall be

dismantled within 48 hours of the conclusion of each event, unless the Special Use Permit shall allow a greater time.

- (4) Duration of event: Events shall be limited to the time period between 10:00 am and 10:00 pm. Set-up and take-down activities may take place no earlier than 8:00 am and no later than 11:00 pm.
- (5) Lighting: Exterior lighting shall be limited to fixtures and illumination intensities that will not produce illumination intensities exceeding 0.1 footcandles at any property line.
- (6) Noise: The activities on the subject property shall be conducted in complete accordance with all requirements of the York County Noise Ordinance set forth in Section 16-19 of the York County Code.
- (7) Parking: Except as specified below and as documented in the Special Use Permit approval, all parking demand associated with the event shall be accommodated on the site on a suitable all-weather surface. The minimum number of spaces shall be calculated at a ratio of one (1) parking space per every two (2) persons based on the maximum allowable occupancy/attendance limit plus one (1) space for every regular or contract employee associated with the reception facility.

The Special Use Permit may allow:

- a. the use of an abutting property owned or controlled by the applicant and from which event attendees can walk without obstruction to reach the reception site. For the purposes of this section, the term abutting shall be construed to include property located on the opposite side of a street right-of-way, provided that event attendees will be able to cross perpendicularly and safely and will not be required to walk along a road or road shoulder;
- b. the use of any available and conveniently located public parking spaces from which attendees can walk safely.

Any parking areas constructed or established specifically for support of the reception use shall be located a minimum of 25 feet from any abutting property not owned by the proprietor, unless with the consent of the owner of the abutting property, and shall be screened from view from those abutting properties and public rights-of-way by evergreen landscaping, unless the abutting property owner consents to waiver of the screening requirement. All applicable stormwater management standards and requirements associated with the installation of the required parking spaces shall be observed.

- (8) Fire and Emergency Vehicle Access: Driveway access to the site shall comply with all requirements as to weight capacity, base and surface material, width, configuration and alignment, and vertical and horizontal clearance as set forth in Section 24.1-261. Existing driveways shall be upgraded to meet these standards if they are deficient in any aspect.
- (9) Sanitation: Restrooms or toilet facilities shall be provided for event attendees based on the ratios/requirements set forth in the Virginia Uniform Statewide Building Code. Reception venues that would be dependent on the dwelling's on-site septic system will not be approved unless the applicant provides written authorization from the Health Department as to the adequacy of the system. In the event portable restroom or toilet facilities are proposed to be used, all shall be screened from view from adjacent public rights-of-way and abutting properties and all shall be serviced or removed within two working days of the conclusion of the event.
- (10) Caterers / Vendors: The proprietor shall ensure that any caterers or other vendors providing services for a reception are properly licensed and permitted, whether such caterer/vendor is hired by the proprietor or by the client contracting for the use of the facility. Likewise, the proprietor shall ensure that all applicable ABC permits have been obtained, either by the client or by the proprietor, and are kept valid.

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## ARTICLE VI. OFF-STREET PARKING AND LOADING

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### Sec. 24.1-606. Minimum off-street parking and loading requirements.

Off-street parking spaces and loading spaces shall be provided in accordance with the minimum standards set forth in the following tables. These standards prescribe the minimum amount of parking and loading space that must be provided in conjunction with various uses and nothing shall prohibit the installation of more than the required minimums, provided however, that an additional twenty (20) landscape credits shall be provided/earned on the site for every ten (10) spaces in excess of the minimum number. Such additional landscaping shall be installed in the parking lot or around its perimeter.

(a) Category 1 - Residential and related uses.

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Dwelling: single-family detached & duplex	Two (2) spaces per unit	None.
(2) Dwelling: single-family attached (townhouse & multiplex)	Two (2) spaces per unit; plus One (1) space per three (3) units for visitor parking	None.
(3) Dwelling: multi-family	One and one-half (1½) spaces per unit; plus One (1) space per three (3) units for visitor parking.	None.
(4) Manufactured Home on individual lot	Two (2) spaces per unit.	None.
(5) Manufactured Home Park	Two (2) spaces per unit; plus One (1) space per three (3) units for visitor parking.	None.
(6) Rooming, Boarding, Lodging House, Bed and Breakfast, Tourist Home	Two (2) spaces, <u>or one (1) space if the owner/proprietor does not reside in the home</u> ; plus One (1) space per each sleeping room.	None.
(7) Group Home	Three (3) spaces, plus One (1) space per each two (2) beds:	None.
(8) Senior Housing – Independent Living Facility	One (1) space per unit; plus one space per six (6) units for visitor parking	None.
(9) Senior Housing – Congregate Care Facility, Assisted Living Facility	One (1) space per two (2) units; plus one space per six (6) units for visitors	None.

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## ARTICLE VII. SIGNS

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### Sec. 24.1-703. Permitted signs.

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(b) Other provisions of Section 24.1-703 notwithstanding, the following permanent signs shall be permitted in accordance with conditions and requirements as stated and in compliance with provisions of Section 24.1-702, unless otherwise specified herein.

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- (1) On residentially zoned property containing a tourist home or bed and breakfast use, one (1) non-illuminated freestanding sign not exceeding three (3) square feet in area and three (3) feet in height, or one (1) non-illuminated wall sign not exceeding four (4) square feet in

area, may be installed unless otherwise specified by the Board of Supervisors in conjunction with the approval of a special use permit for such use.

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# COUNTY OF YORK

## MEMORANDUM

**DATE:** February 6, 2024  
**TO:** York County Board of Supervisors  
**FROM:** Mark L. Bellamy, Jr., Interim County Administrator   
**SUBJECT:** Tyler Board Summary

The County's Director of Information Technology has provided me with a memorandum outlining an upcoming procurement resolution that will be coming before the Board for consideration. The proposed action would migrate the County's on-premises servers to a cloud-based solution. I thought the Board would be interested in some additional background information, which will offer a possible cost savings opportunity and additional enhancements.

**Attachment:**

- Memorandum dated February 6, 2024

# COUNTY OF YORK

## MEMORANDUM

**DATE:** February 6, 2024

**TO:** York County Board of Supervisors

**FROM:** Timothy D. Wyatt, Director of Information Technology *TW*

**SUBJECT:** Tyler Board Summary

I plan to submit a procurement resolution to migrate our Tyler Munis servers from on-premises to the cloud. Tyler Munis is the ERP (Enterprise Resource Planning) solution for Finance, Payroll, and Human Resources for York County Government, York County School Division, and Colonial Behavioral Health. The County purchased Tyler Munis in 2017 and finished implementation of the final piece in 2020. The primary reason the software was initially implemented on-premises was due to the cost compared to the cloud option.

Tyler, like most software companies, has made the strategic decision to discontinue their on-premises support and migrate their customers solely to the cloud, also known as SaaS (Software as a Solution). In Tyler's case, the current version we are using will be the highest version they will ever offer to on-premises customers, which means until we move to the cloud we will not benefit from any new software features or enhancements and will be continually falling behind the industry standard. Tyler will still fix bugs and address security issues for several more years for on-premises customers.

Currently, York County School Division and Colonial Behavioral Health have network connections into the York County Government network in order to share the Tyler Munis resources. The proposed cloud configuration will allow each organization to connect directly to Tyler's cloud service, limiting the cyber security exposure if one of our organizations were hacked or compromised. Both of these organizations' IT departments are prepared to migrate to the cloud should the Board of Supervisors approve the resolution.

The cost to migrate to the cloud is based on the prior year's support cost. If we migrate to the cloud now our current support rate will be increasing from about \$170,000 to about \$300,000 per year (about a 75% increase). Each year we delay, our onsite costs are expected to increase at the rate of ~10% per year. With the proposed cloud contract, Tyler has agreed to lock in our rate for 3 years at 0% increase. Ultimately, Tyler will discontinue on-premises support and we will be forced to migrate to the cloud or seek an alternative solution. The County paid several million dollars to migrate to Tyler and the process took over two and half years. It would cost a similar amount of time and staff resources today to migrate to another alternative solution. The proposed \$300,000 per year is a competitive price for an equivalent cloud service based on communications with other local governments. By migrating to the cloud now, we will be able to take advantage of the negotiated rate as well as benefit from enhancements as soon as they are released. If the County proceeds with moving to the cloud now, we would be migration

from the same Tyler software version onsite that is currently running in their cloud environment. If the County chooses to delay this project, we will have to upgrade the system simultaneously with the migration to the cloud. This will mean substantially increased costs for the migration (expected in the hundreds of thousands of dollar range), the upgrade will require much more staff time, and due to the increased complexity, the risk of technical issues increases greatly.

While this is a sizable increase in cost, ultimately the County will have to make this migration at some point. We recommend migrating to the Tyler cloud environment at this time while both systems are at the same software level, due to the increased risks and long-term cost increase. We anticipate proposing a board resolution for the February 20<sup>th</sup> Board meeting to approve the cloud migration contract.

Wyatt/3589:aer