



JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning

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MEMO

TO: Planning Commission

FROM: Alexandra Beaulieu, Zoning Administrator

DATE: September 8, 2021

RE: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

On June 8, 2021, the Planning Commission heard two separate requests to draft an amendment to regulate short term rentals. One request focused on the need to allow short term rentals to occur on a daily basis and to allow more than six (6) unrelated guests in one rental. Another request focused on the need to develop a review process to regulate frequency and location of short term rentals to ensure that residential neighborhoods are protected.

The Planning Commission voted to include as part of their work plan an update to the Zoning Ordinance which would allow short term rentals and directed Staff to draft text that to allow short term rentals to process by right in the County.

Current Ordinance

Presently, the Ordinance defines Dwelling Unit as follows, “One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, **or rental or lease on a weekly, monthly, or longer basis, occupied by no more than one family**, and containing no more than one independent food preparation area together with facilities for sleeping and bathing.”

Based on this definition, a house or a room/rooms could be rented on a week-to-week basis and would still comply with the definition of dwelling unit.

In addition to the definition of Dwelling Unit listed above, the Ordinance includes provisions to allow Bed and Breakfast operations to be established in a single family dwelling unit by right in the Rural and Village zoning districts, **provided the property owner or a designated caretaker reside on premises while the bed and breakfast is occupied**. A Conditional Use Permit is required for Bed and Breakfast operations in the Residential Growth zoning district. A Bed and Breakfast is not permitted in the Residential-Light Industrial-Commercial (mixed use) zoning district.

Many short term rentals do not meet the definition of dwelling or Bed and Breakfast because property owners often prefer the option to rent the dwelling more frequently than on a weekly basis and do not typically reside on premises or have a designated caretaker residing on premises.

Proposed Text

The purpose of the proposed text amendment is to create provisions to allow a property owner to rent out an entire house in a residentially zoned area (e.g. Rural, Residential Growth, and/or Village zoning districts) more frequently than on a weekly basis. These types of home sharing / vacation rental options are often perceived as being non-residential in nature, due to the absence of a permanent/long term resident or host on premises.

Additional Information

The Health Department provided a copy of a memo that was drafted by the Office of Environmental Health Services, which includes a summary of their permitting requirements (attached). Based on the memo, if the residence/facility is not the primary residence of the owner, then it is subject to Health Department approval as a lodging facility.

Other factors to consider during this amendment process include:

- Parking – is there sufficient off-street parking to ensure all visitors park on the rental property?
- Occupancy limits – presently, the definition of family includes, “A group of not more than six (6) unrelated persons living together and sharing living areas in a dwelling unit.” The subject text amendment proposes allowing an occupancy of up to two guests per bedroom.
- Traffic concerns should be addressed by the Division of Highways or if within a major subdivision, the Homeowners’ Association (note: the County does not own or have jurisdiction over any roads).
- Noise is regulated by the County’s noise ordinance and enforced by the Sheriff’s Department.

Comprehensive Plan

As noted during the 06/08/21 Planning Commission meeting, the Comprehensive Plan includes several recommendations related to supporting the rural economy and the tourism industry. Members of the Planning Commission recognized that short term rentals may contribute to a successful tourism industry in the County.

Short Term Rentals may not be specifically addressed in the Envision Jefferson 2035 Comprehensive Plan; however, Section 2.C of the Comprehensive Plan is the Tourism Component and includes several recommendations to support the tourism industry. Recommendation 9 states, “Support and promote rural and recreational tourism to help achieve the County’s economic goals.”

Short term rentals can contribute to a successful tourism industry and support the local economy by offering rental options in some of the more quaint, rural areas of the county.

Attachments:

- Excerpts from Envision Jefferson 2035 Comprehensive Plan RE: Tourism
- ZTA21-01, Short Term Rental Provisions DRAFT
- 02-03-2017, Office of Environmental Health Services Memo RE lodging facilities. *Note, attachment referenced in memo was not included in transmittal from Health Department.
- American Planning Association PAS QuickNotes No. 56 – Regulating Short-Term Rentals
- Agenda packet items related to short term rentals submitted to the PC on 06/08/21.

2.C. Tourism

Jefferson County is the gateway to West Virginia from surrounding states and hosts the most visitors in the state of West Virginia. Direct spending related to tourism in Jefferson County approached \$1 billion in 2012, the highest in the state, with Kanawha County the next closest at \$650 million. Jefferson County's proximity to the Washington, D.C. and Baltimore, MD Metropolitan Areas and to the Eastern Seaboard offers a large market to target visitors interested in the many activities and attractions to be found here. Local tourism and recreational opportunities draw in visitors of all ages, unlike other communities whose tourism options might be appealing to only one demographic.

Cultural, Rural, Horse Racing, and Gaming Tourism

Jefferson County has a wide range of activities for visitors, including recreational, heritage and cultural tourism, local and regionally known restaurants, farmers' markets, flea markets, motor sports, horse racing, gambling, music, theater, festivals, and arts events. The County's inventory of significant historical and architectural sites, historical towns and villages, outdoor recreational activities, natural landscapes, and outdoor amenities offer visitors a variety of meaningful and high quality experiences.

The success of the County's tourism industry depends on the preservation and enhancement of the County's rural character, specifically its natural greenspaces and cultural amenities. Many of the attractions that draw tourists to the County are located in areas where the combination of historic and geographic resources enhances the sense of place and provides an authentic rural experience. Among the attractions are the historic communities with their restaurants, specialty shops, festivals, farm markets or direct to consumers on-site farm sales; wayside stands; outdoor recreational activities, and special events such as farm and ghost tours. Market expansion in the County's tourism industry would boost these grassroots ventures.

Numerous artisans and performers call the County home. This is particularly true in the Shepherdstown area where Shepherd University has facilities and established programs, such as the internationally acclaimed American Contemporary Theatre Festival, now in its 26th year, and in Harpers Ferry with the annual Don Redman Jazz Heritage concert now in its 11th year. Local venues for both performing and visual arts include three theaters and over 40 cultural non-profits that collaborate to sponsor a variety of festivals, fairs, and events where artisans and performers can showcase their talents and wares. The performances, festivals, fairs, and historic and farm tours boost revenue in the County and support a variety of local retail establishments.

In 2012, the three counties in the Eastern Panhandle drew over \$601 million in gambling revenue, representing nearly 54% of all casino and slot revenue in West Virginia. Nearly all of this revenue can be attributed to the Hollywood Casino at Charles Town Races, which provides thoroughbred horse racing and gaming opportunities in the form of table games and slots. In terms of its financial impact, the

Casino is the largest tourism attraction in the County. While there has been robust growth at this facility up to 2012, the recent opening and expansion of gaming facilities located closer to the Washington, D.C. and Baltimore, MD areas has led to a reduction in gaming revenue locally. Nevertheless, the Hollywood Casino at Charles Town Races continues to be an important stakeholder in the community. Thoroughbred horse racing, including the WV Breeders' Classics, has been a critical part of the County's history and continues to be vital to the County's future. Additionally, plans have been announced to develop a 2,500 seat performance venue as a part of the Casino facility. There is also interest in the County for an outdoor entertainment venue or performance center, which could host such things as the National Symphony Orchestra and other music or theatre events.

Heritage Tourism

Jefferson County has played a role in many of the milestones of our Country's history dating back to the era when nomadic Native American tribes hunted and lived in the Eastern Panhandle and proceeding to the founding of our nation. The family of George Washington established 12 estates in the County, eight of which remain, and 75 members of the Washington family are buried in Charles Town cemeteries. In addition, several generals from the Revolutionary War resided here.

Harpers Ferry was established during the Presidency of George Washington as one of only two U.S. Federal armories. The Lewis and Clark expedition, funded under President Thomas Jefferson and which precipitated the westward expansion, was outfitted at the Harpers Ferry Armory. Later, prior to the Civil War, John Brown in 1859 attacked Harpers Ferry with hopes of securing a major munitions stockpile that would lead to a spontaneous uprising by slaves. He was unsuccessful. Brown and several of his associates were captured, tried, and convicted at the Jefferson County Courthouse in Charles Town and hanged a few blocks away on what is now South Samuel Street.

Harpers Ferry and the rest of Jefferson County were critical during the Civil War as they served as a main rail corridor between the eastern and western theatres of the War. The strategic value of the site led to the area changing hands between Union and Confederate forces many times during the war. Over 12,000 Union troops garrisoned at Harpers Ferry surrendered while under attack from Confederate forces led by General Stonewall Jackson. This was the largest surrender of troops on American soil. Without that surrender, the bloodiest battle of the Civil War, Antietam, may have never occurred. The battlefield at Shepherdstown has recently been studied by the National Park Service and was determined to have played an important role in the end stages of the battle of Antietam. In addition Jefferson County served as a staging area during the Shenandoah Valley campaign, which included battlefield sites at Summit Point and Middleway.

Harpers Ferry played a significant role in the African American community after the Civil War, with the establishment of what eventually became Storer College in 1865 as

one of the first public institutions of education for former slaves. Harpers Ferry was also the site of the second meeting of the Niagara Movement in 1906, which eventually led to the founding of the NAACP. Today, the town of Harpers Ferry is surrounded by the Harpers Ferry National Historical Park, a 3.7 square mile area with numerous rehabilitated and rebuilt structures dating from the Civil War era.

Charles Town played a role after the turn of the 20th century when the treason trials for coal miners affiliated with the United Mine Workers' West Virginia Coal Mine Wars were held at the same courthouse where John Brown's treason trial was held about 70 years earlier. The acquittal of the mine workers in 1922 was the culmination of two decades of strikes, gunfights, assassinations, and violence over working conditions that occurred in the southern coal fields of West Virginia.

Jefferson County is also a part of a larger historical and cultural landscape known as The Journey Through Hallowed Ground National Heritage Area, a 180-mile long, 75-mile wide area stretching from Gettysburg, PA to Monticello in Charlottesville, VA.

Recreational Tourism

The County is home to a variety of outdoor recreational opportunities for visitors, such as fishing, hunting, hiking, bicycling, auto racing, a wide range of river activities, and other outdoor adventure activities.

Jefferson County is adjacent to the conjunction of two national trails. The first trail is the Appalachian National Scenic Trail, a 2,160-mile long footpath extending from Maine to Georgia, with Harpers Ferry at the midpoint. Additionally, the Chesapeake and Ohio (C&O) Canal National Historical Park, a linear bicycle and walking trail extending from Washington, D.C. to Cumberland, MD is accessible from Jefferson County near Harpers Ferry and Shepherdstown.

Outdoor recreation complements the County's natural, cultural, and built environments. It is anticipated that recreational tourism opportunities in Jefferson County will continue to expand in the coming years. This is particularly true in areas near the Potomac and Shenandoah Rivers, where the numerous outfitters and private outdoor recreation providers in the region are expanding their offerings to visitors and residents. The type and scale of new recreational development should be appropriate to the rural nature of Jefferson County.

The following recommendations support the expansion and enhancement of a variety of tourism activities in Jefferson County.

Tourism Recommendations (Goal 9)	
1.	Create a unique “brand” for the County for all promotional and marketing materials.
	a. Increase awareness of public and private recreational opportunities that are available to visitors and residents of Jefferson County.
	b. Coordinate with the Jefferson County Convention and Visitors Bureau (CVB) to maintain and promote a community calendar.
2.	Develop a robust arts and culture program in Jefferson County by identifying and utilizing a range of public and private funding sources.
3.	Create additional opportunities for arts, cultural, and heritage tourism programs and facilities in Jefferson County.
4.	Establish plans and funding strategies for a county cultural arts center that will incorporate a variety of facilities including studios, galleries, multiple performance spaces, educational and training facilities, and gathering areas.
5.	Use historic and agricultural structures to support tourism for traditional and non-traditional functions that promote preservation of cultural landscapes.
6.	Create a public art program that would encourage the installation of locally produced art in publicly owned facilities and sites.
7.	Coordinate with various local and regional heritage tourism entities to create a trail that connects historic and battlefield sites located in the County and neighboring counties and states.
	a. Collaborate with the Journey Through Hallowed Ground or the Canal Towns Partnership’s efforts.
8.	Coordinate with riverside property owners and river tourism service providers to identify and implement methods that would enhance recreation options along the County’s waterways, including public river access.
	a. When considering additional river recreation activities, rural landowners’ property rights and the quality of life of the individuals and families living along the waterways should be factored into proposed development plans.
	b. Encourage all river recreation activities to occur in a manner which supports the Chesapeake Bay Initiative.
9.	Support and promote rural and recreational tourism to help achieve the County’s economic goals.
10.	Use multi-media technologies to promote tourism, including tourist businesses and the tourism efforts of the incorporated Towns.
11.	Continue to support the Jefferson County Fair and encourage the continued upgrading of fair facilities.

Article 2 – Definitions

Short Term Rental – a dwelling unit intended to provide overnight accommodations to guests for periods of less than seven (7) consecutive days. Occupancy shall be limited to not more than two (2) guests/occupants per bedroom.

Article 8 – Section 8.16 – Short Term Rentals

A short term rental is permitted anywhere a single family dwelling is permitted. A short term rental shall have no more effect on adjacent properties than a typical residential use. All parking shall be off-street.

A short term rental shall not operate as a special event facility (unless approval through the special event facility provisions is granted) including large gatherings such as family reunions, birthday parties, weddings, business meetings, or other similar gatherings which may include additional guests who are not included in the overnight stay.

All short term rentals shall obtain a Zoning Certificate to reflect compliance with the standards established herein. A sketch depicting that sufficient off-street parking exists for the maximum number of occupants shall be included. One sign not exceeding four (4) square feet in area, may be permitted and shall be included as part of the zoning certificate application. Additionally, as part of the Zoning Certificate application, documentation reflecting approval from the Health Department shall be submitted, if such approval is required by said agency.

Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement. It is the responsibility of the property owner to research any private covenants or restrictions relating to the subject property which may be enforced by the parties to the restriction.

<u>Short Term Rental</u> ⁴¹	<u>A dwelling unit intended to provide overnight accommodations to guests for periods of less than seven (7) consecutive days. Occupancy shall be limited to not more than two (2) guests/occupants per bedroom.</u>
Shrub, Evergreen	A low growing, usually several stemmed, woody plant which has foliage that remains green and functional through more than one growing season.
Sign	Any object, device display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.
Sign, Animated	A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants.
Sign, Billboard ³⁶	A structure on which is portrayed information which directs attention to a business commodity, service or entertainment not necessarily related to the other uses permitted on the premises upon which the structure is located.
Sign, Attached Business ³⁶	A sign attached to a building/structure which directs attention to a business or profession or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located.
Sign, Electronic ³⁶	A sign utilizing lights that change to form a static message or graphic wherein the sequence of messages and rate of change is electronically programmed.
Sign, Freestanding Business ³⁶	A sign supported by a permanent structure, other than a building, that is affixed to the earth and placed on the same parcel of land on which the business commodity, service, or entertainment advertised by the sign is located.
Sign, Inflatable ³⁶	Any display capable of being expanded by air or other gas and used on a temporary or permanent basis to advertise a product or event.
Sign, Off Premises ³⁶	A sign structure which directs attention to a business, commodity, service, or entertainment not necessarily conducted, sold, or offered upon the premises where such sign is located.
Sign, Pylon ³⁶	A sign which advertises more than one land use on the premises where the sign is located.
Sign, Vehicle	A sign or advertising device which is painted, mounted, affixed or otherwise attached to a vehicle or trailer, which is used for the purpose of providing advertisements of products and services or directing people to a business or service or other activity on or off the premises or public right-of-way where such vehicle sign is located. This does not include identification signs on vehicles which are moved regularly and used in the normal, day-to-day operation of the business.

- B. An “Accessory Agricultural Dwelling Unit” for agricultural purposes is defined as a dwelling unit that is incidental and subordinate to the principal dwelling unit, which is located on the same lot as the principal building and meets all of the following criteria:³²
- (a) is secondary in size to the principal dwelling unit, limited in size to a maximum of 1,700 heated square feet, gross floor area;³²
 - (b) is located on a property for which the primary use is an agricultural use as defined by this ordinance;
 - (c) is located on a property of at least ten acres in area;
 - (d) is limited to use by a person (and family) who performs agricultural work on the property or acts as a caretaker for the property; and
 - (e) is approved by the Health Department.³²

One of each type of Accessory Dwelling Unit as defined in this section may be permitted administratively for each property meeting the criteria of Section 8.15 on the effective date of this Amendment. Additional units may be permitted by Special Exception in accordance with Section 6.5.^{32, 35}

RVs are prohibited as Accessory Dwelling Units.³²

Section 8.16 ~~Reserved~~³² Short Term Rentals⁴¹

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Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement. It is the responsibility of the property owner to research any private covenants or restrictions relating to the subject property which may be enforced by the parties to the restriction.

Section 8.17 Campgrounds³¹

Campground facilities provide tourism related accommodations for visitors of Jefferson County. The level of amenities at these facilities can vary greatly in relation to the type of camping facility proposed. Campground facilities may include both commercial and non-profit operations. Campgrounds are identified as Principal Permitted Uses in Appendix C in the General Commercial (GC), Residential-Light Industrial-Commercial (RLIC), Industrial-Commercial (IC), and Rural (R) zoning districts.

- A. The following uses are identified as permitted uses within a campground:

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Bar	P	P	P	P	NP	P	P	NP	NP	P	P	CU	
Barber/Beauty Shop, Limited	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Bed and Breakfast	P	NP	NP	NP	NP	NP	NP	P	CU	NP	NP	P	Sec. 8.3
Brewpub	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.5
Business Equipment Sales and Service	CU	P	P	P	CU	P	P	CU	CU	P	P	CU	
Building Maintenance Services	CU	P	P	P	P	P	P	CU	CU	P	P	CU	
Building Materials and Supplies	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Campground ³¹	CU	P	NP	NP	NP	P	NP	P	CU	P	P	CU	Sec. 8.17
Car Wash	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Commercial Blood Plasma Center	NP	P	P	P	NP	CU	CU	CU	CU	CU	P	CU	
Commercial Uses	NP	NP	NP	NP	NP	NP	NP	NP	**	P	P	CU	Sec. 8.9
Contractor with No Outdoor Storage	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Contractor with Outdoor Storage	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Convenience Store, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Convenience Store	CU	P	P	P	CU	P	NP	CU	CU	CU	P	CU	Sec. 5.8C (RLIC only)
Country Inn	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Crematorium, Pet ³⁷	NP	P	NP	P	NP	NP	NP	P	NP	P	P	CU	Sec. 8.19
Custom Manufacturing	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Facility	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Equipment Rental, Sales, or Service	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Exterminating Services	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Florist	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Food Preparation	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Hotel/Motel	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Gambling Facilities	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	CU	Sec. 4.4G
Gas Station, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station, Large	NP	CU	P	P	CU	CU	CU	CU	CU	P	P	CU	
Golf Course	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Grocery Store	P	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Horse Racing Facility	NP	NP	NP	P	NP	NP	NP	CU	CU	P	P	CU	
Kennel	NP	P	P	P	CU	P	P	P	CU	P	P	CU	Sec. 8.4
Medical/Dental/Optical Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Medical/Dental/Optical Office	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Mobile Home, Boat and Trailer Sales	NP	P	P	P	CU	P	NP	CU	CU	CU	P	CU	
Movie Theater	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Nightclub	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Non Profit Commercial Uses	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Non-Profit Community Centers	P	P	P	P	CU	P	CU	P	CU	P	P	CU	
Parking, Commercial Offsite Accessory	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Pawn Shop Services	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Personal Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Professional Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Professional Office	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food	CU	P	P	P	CU	P	P	CU	CU	CU	P	CU	
Restaurant, Fast Food, Drive-Through ⁴⁰	NP	P	P	P	CU	CU	P	CU	CU	P	P	CU	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Restaurant	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Retail Sales Limited	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Retail Sales and Services, General	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Retail Store, Large	NP	CU	P	CU	NP	CU	NP	CU	CU	CU	CU	CU	
Shipping and Mailing Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
<u>Short Term Rental⁴¹</u>	<u>CU</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>Sec. 8.16</u>
Special Event Facility	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.14
Storage, Commercial	NP	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Veterinary Services	P	P	P	P	CU	P	P	P	CU	P	P	CU	
Wireless Telecommunications Facilities	P	P	P	P	P	P	P	P	P	P	P	P	Art. 4B
Agricultural Uses*													
Agricultural Uses, as defined in Article 2	P	P	P	P	P	P	P	P	P	P	P	P	
Agricultural Repair Center	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Agricultural Tourism	P	P	P	P	P	P	P	P	P	P	P	P	
Crematorium, Livestock ³⁷	CU	CU	CU	CU	CU	CU	CU	P	CU	CU	CU	CU	Sec. 8.19
Farm Brewery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Winery or Distillery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Market	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.6
Farm Vacation Enterprise	P	P	P	P	P	P	P	P	P	P	P	P	
Farmer's Market	P	P	P	NP	NP	P	NP	P	CU	P	NP	CU	Sec. 8.6
Feed and/or Farm Supply Center	CU	P	P	P	P	P	P	P	CU	P	P	NP	
Horticultural Nurseries and Commercial Greenhouses	P	P	P	P	P	P	P	P	CU	P	P	NP	
Landscaping Business	P	P	P	P	P	P	P	P	CU	P	P	NP	
Rental of Existing Farm Building for Commercial Storage Structure must have existed for 5 years	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Special Event Facility, Agricultural	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.14
Accessory Uses													
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P	

NC Neighborhood Commercial

GC General Commercial

HC Highway Commercial

LI Light Industrial

MI Major Industrial

PND Planned Neighborhood Development

P Permitted Uses

NP Not Permitted Uses

CU Conditional Uses (subject to requirements of district and/or other requirements of this Ordinance)

** Accessory Use to a planned residential community, if permitted pursuant to Section 5.4 and processed as a CU

¹ The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.

² Approval process is per the Salvage Yard Ordinance.

OC Office / Commercial Mixed-Use

R Rural

RG Residential Growth District

RLIC Residential-Light Industrial-Commercial District

IC Industrial-Commercial District

V Village District


Alexandra Beaulieu

From: Beach, Gillian R
Sent: Friday, August 6, 2021 3:17 PM
To: Alexandra Beaulieu
Subject: Re: Short Term Rentals
Attachments: Air B&B Memo.pdf

Office of Environmental Health Services had to get legal interpretations of our regulations and whether air b and bs and other similar short term rentals met the definition of a lodging facility. The interpretation was that if the residence/facility is not the primary residence of the owner, then it is subject to our regulations because it does meet the definition of a lodging facility. If it is the primary residence of the owner and they provide short term lodging AND at least one meal they are also subject to our general sanitation regulations. I have attached a memo from OEHS regarding this decision.

Gillian Beach, R.S.

Acting Administrator, Environmental Health Manager
Jefferson County Health Department
1948 Wiltshire Rd. Suite 1
Kearneysville, WV 25430
(304) 728-8416 ext 3033

	West Virginia Department of Health and Human Resources				
	MANUAL OF ENVIRONMENTAL HEALTH PROCEDURES				
Section	Housing and Institutions	Date	February 3, 2017	Procedure #	H-25
Subject	Guidelines for Permitting and Inspecting Accommodations Made Through Lodging Reservation Web Sites			Page	1 of 1

Attached hereto is a copy of an [Interoffice Memorandum](#) sent to Walt Ivey, Director, OEHS, from Brian J. Skinner, General Counsel. The Memorandum addresses the question of whether persons who list or rent short-term lodging in residential properties with the cost of such accommodation set by the property owner, to others using lodging reservation web sites (*i.e.* Airbnb, Inc.) are subject to the permit and inspection requirements of WV 64CSR18 (General Sanitation).

Legal Counsel’s opinion is, “the language of the General Sanitation rule is circumscribed and cannot be read to include in the definition of a "lodging facility" persons who are providing accommodations, *in their home*, to others for a fee.”

Also, “... as currently promulgated, the General Sanitation rule cannot be read to include in the definition of a "bed and breakfast inn" persons who are providing accommodations to others in their home for a fee, unless the host not only provides sleeping accommodations, but also a breakfast. However persons renting a house or apartment *that is not their residence* may be subject to the provisions of the General Sanitation rule, but only if the house or residence meets one of the definitions included in the general definition of a "lodging facility.”

Questions concerning this memorandum should be directed to Walt Ivey, Director, Office of Environmental Health Services, 350 Capitol Street, Room 313 Charleston, WV 25301-1798, telephone: (304) 558-2981.

References

History

Attachments November 9, 2016 Interoffice Memorandum sent from Brian J. Skinner, General Counsel to Walt Ivey, Director, Office of Environmental Health Services

QUICKNOTES

Regulating Short-Term Rentals

The concept of renting rooms or homes on a short-term basis is not new. Many cities have boarding houses that rent rooms by the week or month, just as many small towns and rural areas host bed and breakfasts. And in some tourist hotspots, dedicated vacation rentals are common. However, new online services that facilitate short-term rentals have led to a rapid proliferation of home sharing as an alternative to more traditional visitor lodging arrangements in communities across the country. In many places, this trend has sparked debates about whether or not new regulatory or enforcement mechanisms are necessary to mitigate potential effects on host communities. While different localities are likely to draw varying conclusions about the necessity of new standards or procedures, the following sections provide some context and recommendations for local policy.

Background

In many communities, home sharing is one facet of a larger trend commonly referred to as the “sharing economy.” This phrase often encompasses a wide range of transactions mediated by websites or mobile technology related to sharing property or services. Because home sharing has the potential to change the character of established residential areas, many communities are taking a closer look at how best to accommodate the demand for new types of lodging without undermining goals related to housing, land use, or transportation.

There are three basic varieties of short-term rentals: (1) hosted sharing, where the primary occupants of a residence remain on-site with guests; (2) unhosted sharing, where the primary occupants of a residence vacate the unit while it is rented to short-term guests; and (3) dedicated vacation rentals, where there are no primary occupants. Home sharing and vacation rental services can provide residents and landlords an easy way to make some extra income and, in some cases, offering residences exclusively as short-term rentals can be far more lucrative than traditional leases. Meanwhile, the properties marketed through home sharing and vacation rental sites often appeal to travelers looking for a more authentic local experience or affordable alternatives to downtown hotels and motels.

For communities with a mature short-term rental market, new regulations or enforcement mechanisms may seem unnecessary. Many of these cities and counties either already have standards and procedures addressing short-term rentals on the books or have decided, based on experience, that such provisions are unnecessary. Similarly, communities with an abundance of affordable rental housing and relatively inelastic demand for conventional short-term lodging space may not feel the need to add new standards or procedures to their codes. This is because home sharing is unlikely to create housing shortages or provide direct competition for hotels and motels. However, in places with a surge in home sharing combined with a shortage of affordable rental housing or unmet demand for rooms in hotels or motels, new standards and procedures may be appropriate.

Clarify Use Definitions

Many localities explicitly prohibit the rental of rooms or dwelling units for periods shorter than one month, unless owners comply with all applicable local regulations for boarding houses, hotels, motels, or bed and breakfasts. Meanwhile, many other cities and counties explicitly permit the short-term rental of dwelling units, subject to specific operational or location restrictions. However, few localities address short-term rentals in instances where a unit is occupied as a primary residence for the majority of the year. Often this means hosted or unhosted home sharing is either explicitly or implicitly prohibited. Given the prevalence of home sharing, it may make sense to consider adding new definitions for different types of sharing situations, such as hosted or unhosted accessory home sharing and vacation rentals as a primary use.



In some communities with especially high demand for short-term rentals, landlords may be tempted to take units out of the long-term rental market.



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Identify Appropriate Locations

Some cities and counties with mature short-term rental markets permit full-time sharing in zoning districts that include a mix of primary residences and vacation rentals. Others restrict vacation rentals to tourist-oriented districts. One potential risk of permitting home sharing in residential districts is that it may incentivize landlords to take rental properties off the market, creating a shortage of affordable rental housing. Another potential risk is that frequent unhosted sharing and vacation rentals may lead to increased complaints related to noise, traffic, or parking. In areas with high concentrations of home-sharing or vacation rentals, there is also a chance that the fundamental character may change from residential to quasi-commercial.

Consider New Zoning or Licensing Standards

While some cities and counties have elected to explicitly prohibit home sharing altogether, several others have made recent code amendments to accommodate short-term rentals in residential districts, subject to specific zoning or licensing standards intended to mitigate community impacts. These standards address topics such as registration and record keeping, advertising, fees or taxes, annual limits on the total number of short-term rental nights, spatial concentration, inspections, and insurance coverage.

For example, San Francisco prohibits dedicated vacation rentals and requires residents or landlords to register all hosted and unhosted short-term rental units. It limits unhosted rentals to 90 days per year and requires registrants to pay hotel taxes and carry liability insurance for claims up to \$500,000 (§41A.5.g).

Meanwhile, Portland, Oregon, recently added new standards for accessory short-term rentals to address hosted and unhosted home sharing. For units where no more than two bedrooms are offered as short-term rentals, residents or landlords must obtain an administrative permit and limit unhosted sharing to a maximum of 95 days per year. Accessory short-term rentals offering more than two bedrooms are subject to a conditional use approval process. In both cases, no more than 25 percent of units in multifamily buildings can be used as short-term rentals (§33.207).

In Aspen, Colorado, short-term vacation rentals are permitted by right in most residential districts, provided owners obtain a business license and a vacation rental permit, designate a local property manager, notify any affected home owners association, and pay sales and lodging taxes (§26.575.220).

Evaluate Enforcement Alternatives

Without data from home-sharing and vacation rental services, communities may be dependent on complaint-driven enforcement of regulations for short-term rentals. Instead, cities and counties may find it beneficial to establish a proactive enforcement system to ensure that registered properties are complying with applicable standards. This may involve routine monitoring of listings on home-sharing service websites. In communities with short-term rental regulations, violators are typically subject to fines or the revocation of registrations or permits.

Summary

Home-sharing and vacation rental services are growing trends that show no sign of slowing down. While some communities may ultimately decide that short-term rentals do not have a place in established residential districts, there may be no effective enforcement mechanism for a blanket prohibition. Practically speaking, the key is making regulations that are clear, easily enforced, and do not make residents or landlords out to be scofflaws unnecessarily.

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FURTHER READING

1. Published by the American Planning Association

Hutchinson, Nate. 2002. "Short-Term Vacation Rentals: Residential or Commercial Use?" *Zoning News*, March.

2. Other Resources

City Policies for Short-Term Rentals. 2015. Oakland, California: Sustainable Economies Law Center. Available at theselc.org/str_discussion.

Garvin, Elizabeth. 2015. "RMLUI Corner: Thinking About Regulating the Sharing Economy." *Western Planner*, February. Available at <http://tinyurl.com/q4x3zfq>.

National Association of Realtors. 2015. "Field Guide to Short-Term Rental Restrictions." Available at <http://tinyurl.com/pxcdwvc>.

Agenda Item #5

Requests for the Planning Commission to consider incorporating within their work plan two possible text amendments to the Zoning and Land Development Ordinance (Discussion / Possible Action):

- A. Consider developing provisions for short term rentals.
 - i. Request from Amy Bowman, landowner
 - ii. Request from Chris Rife, landowner
- B. Consider reducing the setback requirements for lots in the Residential Growth zoning district.
 - i. Request from the Board of Zoning Appeals

Zoning

From: Amy Bowman <amywrites@yahoo.com>
Sent: Monday, May 17, 2021 2:59 PM
To: Zoning
Subject: Request for Text Amendment to Zoning and Land Development Ordinances

Alex:

I am writing to request a text amendment of definitions found on pages 23-23 of the Jefferson County Zoning and Land Development Ordinances that would allow more than one guest stay per week in a short-term rental and to increase the occupancy to include more than six unrelated persons..

Dwelling Unit One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a **daily**, weekly, monthly, or longer basis, occupied by no more than one family **except in the case of a short-term rental**, and containing no more than one independent food preparation area together with facilities for sleeping and bathing.

To add a **daily** as a rental option and add "**except in the case of a short-term rental**" to accommodate unrelated tourists traveling together.

Dwelling, Single Family Detached building containing not more than one dwelling unit and not occupied by more than one family **except in the case of a short-term rental**. A Single Family Dwelling shall include modular, manufactured and mobile homes as defined herein.

Add "**except in the case of a short-term rental**" to accommodate unrelated tourists traveling together.

Family Any of the following cases constitutes a family: A. An individual; or B. Two (2) or more persons related by blood, marriage or adoption, or under approved foster care; or C. A group of not more than six (6) unrelated persons living together and sharing living areas in a dwelling unit **except in the case of a short-term rental**; or D. A group of persons occupying a dwelling unit meeting the definition of a Residential Care Home.

Add "**except in the case of a short-term rental**" to accommodate more than six (6) unrelated tourists traveling together.

Thank you for your assistance today. I will be in touch tomorrow morning to follow-up.

Amy Bowman
202-271-1688

Short-term Rental Text Amendment Statement of Consistency with Comprehensive Plan

Historic and heritage tourism is a significant element of Jefferson County's economy. In the county's Envision Jefferson 2035 Comprehensive Plan and in its Vision Statement, tourism is an essential part the area's economic viability. From the Comprehensive Plan: "There is a well-diversified economic base of manufacturing, services, government, tourism, and agriculture that is not reliant on any single business type."

The proposed text amendment will clarify the county's ordinances to take full advantage of the short-term rental (STR) market by defining the ability of hosts to rent to tourists on a daily basis and to increase the number of unrelated guests allowed to vacation together.

Leveraging rural landscapes to the county's economic advantage: According to the Comprehensive Plan, "There must be a viable rural economy to maintain the rural landscape." Many of the county's STR's are located in unincorporated areas or areas zoned rural. A diversified rural economy includes more than traditional farming and agriculture. Tourism and short-term rentals play an important role in maintaining the economies of rural communities.

Travelers from around the world recognize Jefferson County as a hidden vacation destination. Accessible, affordable, beautiful, historical—it checks all the right boxes for modern travelers.

Regional economic stimulus: Tourists have proved a welcome source of economic stimulus for communities across the state. In 2018 roughly 900 home-sharing hosts in West Virginia brought in a combined \$10 million in supplemental income. Those numbers have increased steadily year-by-year. In 2019, for example, the annual market growth rate for STR's was 6.9 percent. Post-Covid trends see an increased interest in rural tourism--59 percent of families are more likely to drive instead of fly on their next trip, industry specialists project a return to a roughly 7.0 percent annual industry growth rate. Cabins have increased in popularity by 80 percent. By accepting the proposed text amendment, Jefferson County will be positioned to take advantage of these favorable trends.

A guaranteed source of revenue for local communities: Homes used as whole-house STR's are not eligible for the Homestead Exemption and are taxed at a higher rate, bringing in additional real estate tax to the county.

Guests who stay in STR's shop and eat in the county generating much needed revenue for small businesses and tax receipts for the county.

All STR's are required to pay Jefferson County's Hotel Occupancy Tax and remit a 6 percent monthly tax on all stays. In the future, tax collection on the local level will be administered by STR platforms, such as AirBnB and VRBO, taking away uncertainty in collections. West Virginia lawmakers have passed Senate Bill 163, aimed at enforcing the collection of lodging tax from

short-term rental units, such as those offered through the Airbnb online platform.

Officials have projected that the proposed law change contained in Bill 163 would generate thousands of dollars in additional lodging-tax revenue for Eastern Panhandle tourism promotion, parks and recreation, and cultural initiatives.

West Virginia is close to final action on S.B. 163 or similar legislation, which would bring rental marketplaces into the states's marketplace facilitator law with respect to local occupancy taxes.

Keeping good-paying jobs local: Lodging dedicated to STR employs local repairmen, painters, gardeners, housekeepers, property managers, and other service providers.

How STR fits with the county's goals and objectives:

Goal #6: Encourage the Growth of Jefferson County's Economy and Enable the Creation of High Quality Jobs within the County.

Objective #1: In coordination with the Jefferson County Development Authority (JCDA) and other agencies, work to build and expand existing local businesses and to enable the start-up of new businesses within Jefferson County.

STR's are small businesses. Many Jefferson County residents are full-time hosts, others supplement retirement income, or use funds for property improvements.

Objective #5: Provide opportunities to engage local employers with the existing local workforce to enable county residents to work locally.

STR hosts are employers. We hire local handymen, housekeepers, gardeners, and other service providers.

Goal #9: Preserve, Promote and Enhance Components of Jefferson County's Natural, Cultural, Built, Historic, Recreational, and Rural Environments that Encourage Tourism.

Objective #1: Collaborate with the Jefferson Arts Council (JAC), Historic Landmarks Commission (HLC), Jefferson County Convention and Visitors Bureau (JCCVB), and other organizations in the creation of a long-range cultural tourism and management plan.

STR's are an important part of any long-term tourism plan because they can uniquely meet the increasing demand for more and larger tourist accommodations.

Objective #3: Protect and enhance the viability of natural, cultural, and built environments within Jefferson County while allowing recreational and tourism opportunities.

Many STR hosts have completed renovations, small and large, of existing structures to provide a welcoming visitor experience.

STR's are the golden goose, especially in these uncertain, upside-down financial times.

Throttling the goose is not only an economic loser. but a shortsighted cause with untold ripple effects.

Submitted by Amy Bowman
Resident of Shepherdstown, WV
Phone: 202-271-1688
Email: amywrites@yahoo.com
Address: P.O. Box 835, Shepherdstown, WV 25443

Proposed New Text for Jefferson County Planning and Zoning Ordinances
June 1, 2021

Proposed Additional Ordinance/Definitions:

A: Proposed Addition: Short-Term Residential Rental (STR)

- a) A Short-Term Residential Rental (STR) means the commercial use, or the making available for commercial use, of a residential dwelling unit for dwelling, lodging, or sleeping purposes, wherein any individual guest rents or occupies the entire dwelling unit or one or more individual rooms within the unit for a period of less than thirty-one (31) consecutive calendar days.
- b) A separation requirement of one thousand (1,000) feet between an STR and any other STR or bed and breakfast (B&B) in rurally zoned areas
- c) STRs need to comply with the same ADA accommodations that are required for B&Bs.

Rationale for Short-Term Residential Rental inclusion and how it is consistent with the 2035

Comprehensive Plan: The Envision Jefferson 2035 Comprehensive Plan focuses on the following areas: affordable housing, growth in urban and preferred growth areas, preservation of rural land use.

- 1) Without regulations and clarity on short-term residential rentals (STRs) the rise of STRs could limit available long-term housing with the county like what was seen in Lancaster County Pennsylvania.
 - a) "While the cost of housing in Jefferson County may be lower than much of the Washington, D.C. and Baltimore, MD Metropolitan Areas, other counties in the Eastern Panhandle are more affordable. However, when considering the cost associated with commuting, including lost time and automotive expenses, home buyers relocating to Jefferson County have been willing to pay slightly more to be closer to their place of employment. A factor that can be difficult to quantify is what prospective buyers are willing to pay to have the quality of life that can be found within Jefferson County. While these factors are subjective, those who have decided to buy in Jefferson County rather than other Eastern Panhandle communities have cited the quality of life found in Jefferson County. Reasons cited tend to be a perception that Jefferson County is less congested, has an attractive rural and historical character and that local land use regulations assure homeowners that one of their greatest financial investments, their home, is protected." Page 54 of Envision Jefferson 2035 Comprehensive Plan
- 2) The rise of STRs will also further the decline of affording housing within Jefferson County.
 - a) "A review of housing prices in Jefferson County indicates that a variety of owner-occupied housing options are available to families making between 80% to 120% of the median household income for the County (\$62,418/year); however, options are greatly reduced when compared to the median wages for individuals employed in Jefferson County (\$35,620/year). Additionally, rental options for those making a 100% or a 120% of the median wages are limited to studio, one bedroom and two-bedroom rental units in the County. The affordability of rental or owner-occupied housing in Jefferson County for three or more-bedroom homes is difficult for someone making as much as 120% of the County's median wages for individuals, based on HUD standards. On the other hand, there are some options for affordable rental housing available to low to moderate income residents if they qualify for subsidized rents." Page 56 of Envision Jefferson 2035 Comprehensive Plan
- 3) By limited the number of STRs within rural areas, it preserves the quality of life and rural lifestyle for current and future property owners.
 - a) "Rural Land Use One of the highest priorities of the Envision Jefferson 2035 Steering Committee and the public was the desire to preserve the rural landscapes, heritage, and lifestyle that

attracted many residents to Jefferson County. Comments were received that indicated Jefferson County needs to balance the demands of growth with the protection of agricultural lands. Efforts of the agricultural and artisan communities can create desirable places for tourism to thrive. In these communities, visitors can visit working farms, shop at an artisan studio, and eat at restaurants that are either located on farms or that serve food derived from local enterprises.” Page 34 of the Envision Jefferson 2035 Comprehensive Plan

- b) “Existing Neighborhoods in the Rural Environment While most of the land outside of the Urban Growth Boundaries and/or Preferred Growth Area is zoned as Rural, several pockets of large lot development and rural residential subdivisions coexist within the County’s rural agricultural areas. Home sites in these subdivisions typically have larger lot sizes than in subdivisions in the existing Residential Growth (RG) Zoning District or subdivisions served by water and sewer, but are of a smaller scale than the farms that surround them. Homes in the large lot developments and rural residential subdivisions are typically served by private well and septic systems, with a limited probability that public services will be extended to these properties in the future. The preservation of the quality of life and rural lifestyle for existing and future residents is of great importance for property owners in these communities.” Pages 38-39 Envision Jefferson 2035 Comprehensive Plan
- 4) Too many STRs located in rural and/or residential areas would put undue pressure on local and privately maintained roads discouraging settlement or commerce within those locations. The rural road network was also never designed to handle the additional pressure of non-agricultural or low-density rural area traffic.
 - a) “There is a direct relationship between land use activity and the transportation network. As the level of commercial and/or residential activity that occurs along an existing roadway increases, so does the demand for the roadway to handle an increase in traffic volume. In other cases, roadways are built to meet future anticipated land use activity and related traffic volumes. A corridor that develops too quickly without adequate roadway improvements may be the desired location for the housing and commerce needs of the community, but can frustrate and discourage residents and customers due to traffic congestion.” Page 96 of Envision Jefferson 2035 Comprehensive Plan
 - b) “The County’s rural road network originally evolved serving the needs of the farming community and is not intended to serve the needs associated with the higher traffic volumes and speeds required for large residential subdivisions. At certain seasons of the year conflict can be created between residential traffic and large pieces of slow-moving farm equipment. The LESA/CUP system has not effectively protected the rural road network from this type of development pressure. As such, this Plan recommends utilizing cluster developments as the preferred form of residential development within the rural areas. Limiting suburban development in the rural area helps protect agricultural land use activities. Most of the roads in the County’s rural area are paved, but tend to have narrow widths, excessive horizontal and vertical curvatures, bridge and drainage problems, and poor intersection alignments. These conditions contribute to the safety concerns associated with increasing motor vehicle traffic on the rural roads. The increased residential densities that have occurred in the rural area in the past are producing additional traffic volume and requiring more maintenance of the rural road network of predominantly narrow, two-lane paved roads with existing design issues.” Page 76 of Envision Jefferson 2035 Comprehensive Plan

- c) “Local Road: Low speed, low volume roadways that provide localized access within a neighborhood or subdivision. While there are some state maintained local roadways, most local roads in Jefferson County are privately maintained by homeowners’ associations.” Page 245 of Envision Jefferson 2035 Comprehensive Plan
- 5) Other states and countries have updated zoning ordinances to ensure clarity around this emerging trend and how zoning should be handled to minimize adverse events from STRs.
 - a) “The adverse effects of short-term rentals (STRs) are generally directed at four entities: surrounding individuals, STR users, lodging businesses, and municipal governments. First, in regard to the effects on surrounding residents, an influx of transient visitors into otherwise residential neighborhoods is bound to create problems. Common issues arise from noise disturbances, congestion, parking concerns, and trash disposal.²¹ Additionally, STRs contribute to the breakdown of once-residential neighborhoods composed of long-term residents.²² On a larger scale, the cumulative effect of converting long-term residences into short-term housing is the decrease in housing supply, which inevitably increases housing costs and rental prices.²³” Page 344-345 in *The Short-Term Rental Economy in Rural Maine Communities* (21. See *Janine Pineo, Short-term Rentals Becoming More Common in Vacationland, ME. TOWNSMAN, June 2017, at 11, 14; Peter McGuire, Maine Towns Pressured To Rein in Short-Term Rentals of Homes as Popularity Grows, PORTLAND PRESS HERALD (Aug. 8, 2016), <https://www.pressherald.com/2016/08/08/maine-towns-pressured-to-rein-in-short-term-rentals-of-homes-as-popularity-grows/> [<https://perma.cc/P8DP-BRPP>]. 22. See *Zale, supra note 1, at 983-85. 23. See Miller, supra note 13, at 169.*”)*
- 6) Clarifies the difference between B&Bs and short-term residential rentals.

B: Proposed Addition: TRANSIENT OCCUPANCY.

- 1) Use, occupancy, and/or possession of a dwelling unit or portion thereof for a period of thirty (30) consecutive calendar days or less.

Rationale for Addition of Transient Occupancy:

- a) Clarifies the occupancy of a dwelling between residential (31 or more consecutive days) or transient (less than 31 consecutive days)
- b) Ensures that the county taxes all types of transient occupancy locations (hotels/motels, B&Bs, short-term residential rentals) appropriately
- c) Lancaster County (PA) Planning Commission enacted this definition in January 2019 for Elizabethtown Borough Zoning to clarify that occupancy of any dwelling under 31 consecutive days constitutes a non-resident status.
 - i) Lancaster County Pennsylvania is a rural, artisan, and historic area similar to Jefferson County

Proposed Updates to Existing Ordinances/Definitions:

A: Proposed Dwelling Unit text update

One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a **monthly, or longer basis**, occupied by no more than one family, and containing no more than one independent food preparation area together with facilities for sleeping and bathing. **A dwelling shall not include transient occupancy unless otherwise permitted as a bed and breakfast establishment.**

Rationale for Dwelling Unit text update:

- 1) Clarifies the occupancy of a dwelling between residential (31 or more consecutive days) or short-term/transient (less than 31 consecutive days) uses
- 2) Clarifies the difference between a short-term residential rental (STR) and a dwelling rental. Which helps to ensure there is no further decline in affordable housing within the county.
 - a) "A review of housing prices in Jefferson County indicates that a variety of owner-occupied housing options are available to families making between 80% to 120% of the median household income for the County (\$62,418/year); however, options are greatly reduced when compared to the median wages for individuals employed in Jefferson County (\$35,620/year). Additionally, rental options for those making a 100% or a 120% of the median wages are limited to studio, one bedroom and two-bedroom rental units in the County. The affordability of rental or owner-occupied housing in Jefferson County for three or more-bedroom homes is difficult for someone making as much as 120% of the County's median wages for individuals, based on HUD standards. On the other hand, there are some options for affordable rental housing available to low to moderate income residents if they qualify for subsidized rents." Page 56 of Envision Jefferson 2035 Comprehensive Plan
- 3) It will help to ensure new and existing residents have available long-term housing options.
 - a) "The adverse effects of short-term rentals (STRs) are generally directed at four entities: surrounding individuals, STR users, lodging businesses, and municipal governments. First, in regard to the effects on surrounding residents, an influx of transient visitors into otherwise residential neighborhoods is bound to create problems. Common issues arise from noise disturbances, congestion, parking concerns, and trash disposal.²¹ Additionally, STRs contribute to the breakdown of once-residential neighborhoods composed of long-term residents.²² On a larger scale, the cumulative effect of converting long-term residences into short-term housing is the decrease in housing supply, which inevitably increases housing costs and rental prices.²³" Page 344-345 in *The Short-Term Rental Economy in Rural Maine Communities* (21. See *Janine Pineo, Short-term Rentals Becoming More Common in Vacationland, ME. TOWNSMAN, June 2017, at 11, 14; Peter McGuire, Maine Towns Pressured To Rein in Short-Term Rentals of Homes as Popularity Grows, PORTLAND PRESS HERALD (Aug. 8, 2016), <https://www.pressherald.com/2016/08/08/maine-towns-pressured-to-rein-in-short-term-rentals-of-homes-as-popularity-grows/> [<https://perma.cc/P8DP-BRPP>]. 22. See *Zale, supra note 1, at 983-85. 23. See Miller, supra note 13, at 169.*")*
 - b) "While the cost of housing in Jefferson County may be lower than much of the Washington, D.C. and Baltimore, MD Metropolitan Areas, other counties in the Eastern Panhandle are more affordable. However, when considering the cost associated with commuting, including lost time and automotive expenses, home buyers relocating to Jefferson County have been willing to pay slightly more to be closer to their place of employment. A factor that can be difficult to quantify

is what prospective buyers are willing to pay to have the quality of life that can be found within Jefferson County. While these factors are subjective, those who have decided to buy in Jefferson County rather than other Eastern Panhandle communities have cited the quality of life found in Jefferson County. Reasons cited tend to be a perception that Jefferson County is less congested, has an attractive rural and historical character and that local land use regulations assure homeowners that one of their greatest financial investments, their home, is protected.” Page 54 of Envision Jefferson 2035 Comprehensive Plan

- c) Lancaster County (PA) Planning Commission enacted this definition in January 2019 for Elizabethtown Borough Zoning to clarify that occupancy of any dwelling under 31 consecutive days constitutes a non-resident status.
 - i) Lancaster County Pennsylvania is a rural, artisan, and historic area like Jefferson County

B: Proposed Residential text update

Any detached or attached structure that is used for permanent living quarters (31 or more consecutive days) and has kitchen facilities.

Rationale for Residential text update:

- 1) The updated text provides clarity on what constitutes a permanent residence verses a transient/temporary place to stay. When people stay in a place more than 30 days, they are usually looking for permanency.
 - a) “Additionally, this Plan proposes that the Zoning Ordinance be reviewed and amended to consider a higher density for rural/agricultural lots utilizing the cluster provision instead of allowing rural residential developments via the Condition Use Permit process.” Page 24 of Envision Jefferson 2035 Comprehensive Plan
- 2) It further clarifies what is classified as residential for the propose of growth and zoning.
 - a) “Residential Preferred Growth Area - Based on comments received during the Envision Jefferson 2035 public input process, it was determined that it is important to denote the areas where a concentration of existing or approved residential development currently exists but may be not be fully developed and is outside of the Urban Growth Boundary (UGB). One such residential area exists that consists of properties currently zoned for Residential Growth (RG) or which have a vested development right to develop at a low density or medium density residential rate. This core residential area, bounded by Old Country Club Road, Flowing Springs Road, Job Corps Road, Shepherdstown Pike (WV 230) to the railroad tracks, is depicted by a Preferred Growth Area boundary, but is compromised only of future large lot, low density, and medium density residential uses. It is anticipated that this will be a primarily detached single family suburban housing area.” Page 23 of Envision Jefferson 2035 Comprehensive Plan

C: Proposed Section 4A.1 Home Occupation and Cottage Industry, General Standards Text Updated

The following land uses cannot be established as a Home Occupation or Cottage Industry: 1.

Boarding or rooming homes. 2. Bed and breakfast establishments or short-term residential rentals (STRs).

Rational for Text Update to Section 4A.1

- 1) A home occupation or cottage industry is meant to be to support the growth of locate artisans and home businesses not short-term residential rentals (STRs)
 - a) “There are many creative people that live and work in Jefferson County, using their talents to create poetry, pottery, paintings, plays, performances, photographs, novels,

fabric art, sculpture, carvings, installations, music and dance, and the fine art and culture of all forms. The County is home to numerous cultural and historical organizations as well as artist studios, galleries, museums, and theaters which host a number of activities and events throughout the year. These activities and organizations add to the cultural value in the County and provide economic resources for the artisan. This Plan supports the artisan community and its needs for developing a robust economic and cultural community. While most of these types of Cottage Industries and Home Occupations are permitted by right in the Rural District, some more intense uses may require a CUP. This Plan recommends that the use of the CUP in the Rural District be limited to non-residential uses not permitted in the Rural District which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare. Some non-agricultural/non-residential related rural CUPs should only be proposed on a small portion of a rural property to help preserve farmland and open space, and continue agricultural operations. This requires eliminating the Land Evaluation Site Assessment (LESA) system and modifying the CUP process. For additional discussion, see Rural Land Use Planning Section (page 34).” Page 74 of Envision Jefferson 2035 Comprehensive Plan

- b) “Cottage Industry An occupation conducted at a residential premise, as described in Article 4A.5 of the Jefferson County Zoning and Land Development Ordinance. While this designation can encompass a wide range of businesses, it is often used in reference to artisan workshops.” Page 248 of Envision Jefferson 2035 Comprehensive Plan

- WV DOH comments on the TIS about the right in only.

Ms. Brockman also stated that the 2.5 acres will have to be subdivided from the existing parcel; noted that the Subdivision Regulations require sidewalks/ bike paths on at least one side of the street; and require interconnectivity with adjoining properties.

Mr. Mike Shepp opened the Public Workshop.

Ricki Twyford, Charles Town City Councilman spoke in support of the project and the proposed intersection improvements and inquired whether Huyett Rd would be a part of the intersection improvements.

Mr. Mike Shepp closed the Public Workshop.

Mr. Jason Gerhart stated that there are no current plans related to Huyett Rd improvements to Huyett Road because the applicant is currently limited to “right in” access to their site. He also noted that the draft TIS evaluated the US340/Augustine Avenue intersection and that there may be improvements related to the Sheetz project. The WV DOH may also be looking at other safety concerns that have existed prior to this project.

Mr. Jack Hefestay made motion to accept this Concept Plan as presented; the motion was seconded by Donnie Fisher; and passed unanimously.

Mr. Mike Shepp stated that no public comment will be taken for the following Agenda Items.

Mr. Stolipher re-entered the meeting.

5. Requests for the Planning Commission to consider incorporating within their work plan two possible text amendments to the Zoning and Land Development Ordinance (Discussion/Possible Action):

A. Consider developing provisions for short term rentals.

- i. Request from Amy Bowman, landowner
- ii. Request from Chris Rife, landowner

Ms. Alex Beaulieu provided an overview of the two requests above. She explained these are opposing requests. The Zoning Ordinance currently allows residential units to be rented by the week, month or year.. One request is to draft an amendment to address short-term rentals, whether allowing by right on more frequent basis and the other request is to make the requirements more stringent. Currently the definition of “family” in the Zoning Ordinance allows up to six unrelated individuals to occupy a single dwelling unit. Ms. Beaulieu stated that the Planning Commission could form a committee to address the concerns related to short-term rentals or determine that this cannot be undertaken at this time.

- i. The applicants were permitted to make a presentation to the Planning Commission: Amy Bowman and Butch Diehl stated that they are asking the Planning Commission for clarity in the Ordinance regarding the short-term rental provisions and that there is a large market for “home shares.”

Mr. Mike Shepp asked if this discussion related to Air B&Bs. Ms. Bowman stated that the term actually refers to room rental and the definition of dwelling, does not apply to room rental, particularly if there is no access to a kitchen. She further stated that she believes that there are 120 Air B&Bs already in Jefferson County. She and Mr. Diehl are the ambassadors for the County and their guests spend money in Jefferson County. Ms. Bowman stated that there was

law passed in 2018 that requires collection of sales tax. There was a bill that went to Governor Justice and didn't pass; however, they are moving forward with the idea that the state will collect the hotel/motel tax for the County and it will be a guaranteed 6% (similar to how the state has their guaranteed 6%).

Mr. Steve Stolipher made the statement that the hotel/motel tax which is collected is what funds the County Visitors Bureau (CVB), Parks and Recreation and the Historic Landmarks Commission (JCHLC).

Amy Bowman also explained that the Air B&B constituents pay higher real estate taxes. She reiterated that they would like the Ordinance to be clarified for them.

- ii. Ms. Chris Rife spoke and agreed that the ordinance is unclear. She is a home owner in rural neighborhood with five Air B&Bs within one mile radius on a back road that is not paved. Ms. Chris Rife would like more restrictions. The residents of their neighborhood have had to post signage stating private property, due to tenants coming in and out all the time. Ms. Chris Rife is looking for limitations in rural areas.

Mr. Steve Stolipher inquired if there are limitations for different zoning districts. Ms. Alex Beaulieu explained that right now, a dwelling can be rented out for weekly basis, for any district. There are no provisions to allow on daily basis, except for processing as a hotel, or if you reside on the property, to process as bed/breakfast. What is coming into question is renting entire dwellings on a more frequent rate or renting rooms that are not part of a Bed and Breakfast. Ms. Beaulieu reiterated that the request is before the Planning Commission to determine if they want to consider these amendments as a part of their current workplan.

Mr. Steve Stolipher expressed his opinion and stated that Jefferson County is the highest grossing tourist county in the state. He expressed his opinion that the County should clarify the regulations to encourage tourism and that includes Air B&Bs. Mr. Steve Stolipher that, from property rights standpoint, the tourist need to be informed that they cannot trespass on other properties. He also stated that the regulations should address all the zoning districts.

Mr. Stolipher made a motion to ask staff to work on drafting new language and updating the ordinance as part of the current workplan; Donnie Fisher seconded the motion, and it passed unanimously.

B. Consider reducing the setback requirements for lots in the Residential Growth zoning district.

- i. Request from the Board of Zoning Appeals

Ms. Alex Beaulieu provided an overview of this text amendment request. The Board of Zoning Appeals had a zoning variance request related to a proposed subdivision in which the lots were not final platted and the Board they felt they couldn't approve the request. The letter is submitted on their behalf of the Board of Zoning Appeals for the Planning Commission to consider reducing the side setbacks in the RG Zoning District.

Mr. Nathan Cochran, further explained the actions of the Board of Zoning Appeals.

Mr. Jason Gerhart, Gordon, noted that he was available if the Planning Commission had any questions as the variance in question related to the King's Crossing subdivision.

Mr. Stolipher made asked for a motion to ask staff to propose new setbacks in the RG zoning district; Donnie Fisher seconded the motion, and it passed unanimously.