

A special meeting of the Botetourt County Board of Supervisors and the Botetourt County Planning Commission was held on Monday, April 11, 2016, in Rooms 226-228 of the Greenfield Education and Training Center in Daleville, Virginia, beginning at 6:00 P. M.

PRESENT: Members: Mr. L. W. Leffel, Jr., Chairman, Board of Supervisors
 Mr. Todd L. Dodson, Vice-Chairman, Board of Supervisors
 Mr. John B. Williamson, III, Supervisors member
 Mr. Billy W. Martin, Sr., Supervisors member
 Dr. Donald M. Scothorn, Supervisors member
 Mr. William Thurman, Chairman, Planning Commission
 Mr. Steve Kidd, Vice-Chairman, Planning Commission
 Mr. John Griffin, Planning Commission member
 Mr. Hiawatha Nicely, Planning Commission member
 Mr. Sam Foster, Planning Commission member

ABSENT: Members: None

Others present at the meeting:

Mr. Gary Larrowe, County Administrator
 Mr. David Moorman, Deputy County Administrator
 Mrs. Nicole Pendleton, Planning Manager
 Ms. Amanda McGee, County Planner

Mr. Leffel called the Board of Supervisors meeting to order at 6:08 P. M.

Mr. Thurman called the Planning Commission meeting to order at 6:09 P. M.

Mrs. Nicole Pendleton, Planning Manager, stated that this meeting is to conduct a work session with the Board and Commission on proposed amendments to Chapter 25. Zoning of the Botetourt County Code regarding short-term rental establishments and other staff-proposed text amendments. She noted that a Vacation Rental and Homestay Advisory Committee was formed last fall and consisted of two Commission members (Mr. Nicely and Mr. Foster), two Supervisors members (Mr. Dodson and Mr. Leffel), and three citizen members (Mrs. Sherry Crumley, Mr. Mitchell Bowman, and Ms. Teresa Hayes).

Mrs. Pendleton stated that the staff would also like to review several other proposed ordinance amendments regarding timelines, RAM use district, enforcement provisions, and updates to the fee schedules with the Board/Commission at this meeting.

She stated that short-term rentals could either be permitted by right in certain districts, permitted by right through an administrative permitting process, through the Special Exceptions Permit (SEP) process, or prohibited in certain districts altogether. She noted that the current definitions of short-term rental uses are unclear and staff is proposing to amend those definitions.

Ms. McGee stated that the current Zoning Ordinance has 10 different short-term rental types of uses, not including hotels and motels. She noted that the current regulations require SEPs for all types of short-term rentals in the A-1, FC, and RR use districts and for tourist homes, rooming houses and boardinghouses that are permitted by right in the B-2 use district; however, there is no definition of a rooming house/boardinghouse in the ordinance.

Ms. McGee then reviewed the proposed regulatory structure for various short-term rental uses. She noted that staff is proposing that the districts in which these types of uses are allowed be expanded to allow cabins or cottages by right in the A-1, FC, and RR districts and by SEP in R-1, R-2, R-3, TND, and PUD districts. She noted that homestay uses would be permitted by right in A-1 and FC districts and through SEPs in the residential and TND districts and

bed and breakfast, boardinghouses, cabin or cottage resort, campground, etc., are proposed to be permitted in various districts by SEP only.

Mrs. Pendleton stated that staff is also proposing that some of these by right uses (cabin or cottage or homestay) be allowed through an administrative permit approval process similar to the home occupation permits currently issued by the Community Development Department. She noted that this permit application would require various data including 24 hour contact information for the owner/manager of the short term rental facility, number of rooms, whether the owner lives on the property, septic tank capacity, concept plan, parking, etc. Mrs. Pendleton stated that, unless information regarding septic capacity indicates otherwise, there is a proposed maximum capacity limit of two people over two years of age in each bedroom.

She stated that the County is proposing to regulate these short-term rentals where there is a need to do so but not to an extent that the requirements become burdensome. Mrs. Pendleton stated the proposed regulations would also allow homeowners to utilize the rental of their property without changing the character of the neighborhood.

After questioning by Mr. Williamson, Mrs. Pendleton stated that the number of vehicles is limited to two per each rented bedroom. Ms. McGee noted that all short-term rental parking is required to be on-site. After further questioning by Mr. Williamson, Mrs. Pendleton stated that, in the case where parking is shared in a complex or development, the owner would have to verify that there is parking available for the rental unit and this would be verified by staff during the SEP process.

Mrs. Pendleton stated that, for the more intense short-term rental uses, a SEP would be required to be obtained from the Commission and Board.

After discussion, she further noted that staff was concerned about overcrowding of units and this resulted in their suggestion of a limit of two people over two years of age allowed per bedroom. Mrs. Pendleton stated that these regulations are meant to provide "a level playing field" for everyone.

She further stated that staff was also concerned about language in the current ordinance requiring that rental establishments have "safe access" to and from a public road, while other uses require that the site have access from a VDoT maintained roadway. Mrs. Pendleton stated that the current Zoning Ordinance only allows private roads in R-3 districts; however, there are many private roads in the County, especially in the northern, rural areas.

After questioning by Mr. Williamson, Mrs. Pendleton stated that the current bed and breakfast provisions require "safe access to and from a public road" while the other short-term use provisions have language requiring access from VDoT-maintained roadways "or from a road designed and constructed so as to be accepted in the VDoT system."

Mrs. Pendleton stated that the ordinance proposes a 30 consecutive night maximum rental by a guest for short-term uses in one calendar year to ensure that someone is not residing in a short-term rental property. She also noted that the applicant/owner is required to keep a log of all guests which includes various information, e.g., guest name, address, length of stay, vehicle license plate number, etc., for review by County staff when requested.

After questioning by Mr. Williamson about a guest who has stayed at a short-term rental for 30 days and would like to stay an additional 3, 4, or 5 days, Mrs. Pendleton stated that the County would not become involved in investigating this issue unless a complaint is received.

Mr. Kidd then stated that the issue regarding access to these short-term rentals has not been resolved. He noted that according to the Zoning Ordinance each lot is supposed to have access off of a State-maintained road except for the planned developments (TND, PUD, etc.).

He noted that there are several areas that have private roads and properties that do not have access off of a VDoT roadway. Mr. Kidd questioned safe access to these properties by fire and EMS vehicles in the event of an emergency.

Mrs. Pendleton stated that private road access is a common issue in the County.

Mr. Foster stated that, if a SEP is submitted for a short-term rental use, then the issue of fire/EMS access could be discussed/considered during the public hearing process and/or conditions included requiring roadways that are adequate to handle these large vehicles.

Mr. Leffel noted that the development on Purgatory Mountain near Buchanan has private roads.

Mrs. Pendleton stated that the staff is reviewing other localities' short-term rental ordinances to determine how they handle the safe access issue on private roads. She noted that the VDoT-maintained roadway requirement is for multi-unit, short-term rental operations.

After discussion, Mr. Kidd stated that VDoT roadway access may not be needed for rental of cottages along Craig Creek, for example, but the larger-sized rental facilities should have VDoT-maintained access for a number of reasons including fire and rescue vehicle accessibility. He further stated that large numbers of renters using a private roadway would result in significant wear and tear on the road. Mr. Kidd noted that any short-term rental applicant should be made aware that the County will consider access to their property in the permit approval process.

Ms. McGee then reviewed the short-term rental permit application. She noted that this form would require the owner's contact information, number of dwellings, number of bedrooms, and other information about the property, septic system capabilities, concept plan, fee, parking availability, smoke detectors, fire extinguishers, trash collection, etc. It was noted that a copy of the approved permit would be distributed to various County departments, e.g., Commissioner of Revenue, Building Official, etc.

After questioning by Mr. Williamson, Ms. McGee stated that the Sheriff's Department would be added to this permit distribution list.

Mr. Foster suggested that the Department of Fire and EMS review the short-term rental's entrance road to ensure that fire/rescue squad vehicles could access the site.

Mrs. Pendleton then reviewed the proposed amended definitions for short-term rental uses. She noted that the current Zoning Ordinance does not include a definition of cabin or cottage, or cabin or cottage resort. Mrs. Pendleton further noted that definitions of tourist house and rooming house are proposed to be removed from the ordinance and the definition of boarding camp has been combined with campground.

After questioning by Mr. Martin, Ms. McGee stated that a rural resort is considered a tourist facility on a large scale while a rural retreat is a corporate-type facility for conferences or employee training.

After discussion, Mrs. Pendleton stated that Camp Bethel in Nace is considered a campground and an RV park as they have campground facilities and recently obtained a SEP to operate a RV park on part of the property.

Mrs. Pendleton further stated that staff is proposing other related ordinance amendments to Section 25-222 Permitted Uses under the B-1 use district to remove "(c) General stores, country including residence."

After questioning by Mr. Williamson, Mrs. Pendleton stated that this would remove the option of having a residence located above general/convenience-type stores. She noted that

allowing residences above a commercial use is incorporated in the various mixed-use districts, PUD, TND, etc.

She further stated that staff is also proposing to modify Section 25-473. Required off-street parking and loading spaces to include the short-term rental uses that were not previously included in the chart, and to change the definition of “dwelling, single family; single-family detached” to specify that this is a unit that can only be used as a permanent dwelling for a period longer than a month. Mrs. Pendleton stated that staff is also proposing amendments to the Zoning Ordinance’s enforcement provisions to clarify the procedures for revocation of a short-term rental permit as a by-right use, revocation of a SEP through the Board of Supervisors, and creation of civil penalties as an enforcement mechanism.

After questioning by Mr. Williamson, Mrs. Pendleton stated that currently the County can only implement criminal proceedings against Zoning Ordinance violations; there is no option for civil penalties, e.g., fines, tickets, fees, etc., to be assessed on violators.

She noted that the staff has reviewed other localities’ ordinances to obtain appropriate language for this type of enforcement situation. She noted that civil penalties cannot be implemented for violations relating to land development. Mrs. Pendleton stated that a courtesy notice would be mailed to the property owner and then, if the issue is not resolved, a summons is issued and the issue taken to District Court.

Mrs. Sherry Crumley, Committee member, stated that one of the largest challenges for short-term rentals is the rural versus town situation as they are totally different issues. Mrs. Crumley stated that she currently rents out a cabin on her property and, if a bad report is submitted to the Airbnb or Vacation Rentals by Owner (VRBO) organizations/websites, then it is a “bad mark” on her operation that other potential renters can read about on-line. Mrs. Crumley stated that, in her short-term rental situation, she is already doing what the County is proposing with these amendments, plus a lot more.

Mrs. Crumley then stated that later this summer she has a renter proposing to stay in her cabin for 31 nights and, under the proposed amendments, that would constitute an ordinance violation. Mrs. Crumley stated that she wants to do everything right and help the County by bringing visitors and their dollars into the County. She noted that people from all over the world treasure what the County has to offer and she has had people from Japan, Italy, etc., rent her property.

After discussion, Mrs. Crumley commended Mrs. Pendleton and her staff for addressing the Committee’s issues in drafting these amendments.

Discussion was then held on property owners vetting their proposed short-term renters.

Mr. Dodson stated that the ordinance has to be written “for those people who only want to put money in their pocket” through short-term rentals. He noted that the proposed ordinance was not meant to put a burden on property owners such as Mrs. Crumley.

After questioning by Mr. Dodson regarding the limit of two individuals per bedroom above the age of two, Mrs. Pendleton stated that this is a balance of regulation and oversight and was not intended to put an extra burden on the property owner. Mrs. Pendleton stated that the two year age limit was taken from other localities’ ordinances.

Discussion was then held on proposed amendments to the submittal timelines and staff review process for zoning map amendments, Comprehensive Plan amendments, property owner or Board/Commission initiated text amendments, and property owner or Board/Commission initiated rezoning and special exceptions permit requests.

Mrs. Pendleton stated that the current application and review timelines are not reasonable and need to be brought into compliance with the State Code. She noted that an applicant can withdraw a request up until the public hearing notice is published in the local newspaper.

After questioning by Mr. Williamson, Mrs. Pendleton stated that, if an applicant withdraws a request prior to action taken by the Commission/Board, then the request can be brought back before the Commission/Board within 90 days. She stated that, if the Commission/Board denies a request, it cannot be resubmitted to the Commission/Board for one year.

Mrs. Pendleton stated that a new item on which the staff is requesting consideration is for amendments to the Comprehensive Plan. She noted that requests have been received from owners of R-1 zoned properties to be allowed to place conservation easements on their land and this could require an amendment to the Comp Plan.

After discussion and questioning by Mr. Leffel, Ms. Pendleton stated that, under the Code of Virginia, conservation easements have to obtain certification from either the Planning/Zoning Office or through a decision of the Board of Supervisors before the easement can be considered by the State.

Mr. Moorman noted that the State Code requires that the locality say whether the proposed conservation easement is or is not in compliance with the locality's Comprehensive Plan.

Ms. McGee noted that the Virginia Outdoors Foundation recommended this approval process to the staff as it has been implemented in other localities.

Mrs. Pendleton stated that the staff would prefer to have input from the Commission/Board on any proposed conservation easements which were not clearly in conformance with the Comprehensive Plan rather than denying them administratively by her office.

After questioning by Mr. Williamson, Mrs. Pendleton stated that the County has a database containing the current conservation easement acreage and she will forward this information to Mr. Williamson.

Mr. Kidd questioned the process by which a rezoning or SEP request could be tabled indefinitely and whether any other type of use could occur on this parcel of land if there is an indefinite tabling on a proposed use.

Dr. Scothorn stated that there are two parts to this situation—the land and the proposed use of the land.

Mr. Kidd questioned whether the indefinite tabling issue would have to be cleared up/resolved before any new use request on that parcel could be considered by the Commission/Board.

Mr. Moorman stated that the indefinite tabling would pertain to the specific action brought before the Board for consideration.

After further discussion, it was determined that this issue should be discussed with the County Attorney to obtain a legal interpretation.

Mrs. Pendleton stated that the proposed amendments to the timelines for review of rezonings, SEPs, Comp Plan updates makes it clear that not only can the Board/Commission consider the 37 SEP categories but can also impose conditions.

She noted that staff is also proposing to clarify the SEP process to bring it into compliance with State and federal regulations. Mrs. Pendleton stated that these timelines include a 10 day completeness review by staff, action by the Commission within 100 days of the completeness review, and action by the Board within 12 months of the completion review. She noted that for SEP requests for new telecommunications towers staff have to complete their review

within 30 days, the Commission has to take action within 90 days of the completion review, and the Supervisors have to take action within 150 days of the completion review.

Ms. McGee stated that the staff has only one chance to get the completion review of new telecommunications towers finalized under the new State/federal regulations. She noted that staff cannot go back to the applicant after the initial review and request additional information.

Ms. Pendleton then noted that staff is proposing several amendments regarding the Research and Advanced Manufacturing (RAM) Use District to include this district in several Ordinance sections (Section 25-57. Districts Established; Section 25-462. Sign Standards and Regulations; Section 25-472. General Standards; and Section 25-573. Site Plan Review) to clarify the use's original intent in the parking, sign regulations, and site plan view requirements.

Mrs. Pendleton stated that the proposed amendments regarding enforcement and penalties would clarify procedures for criminal penalties for zoning violations and establishes procedures and fees for utilizing civil penalties in compliance with the State Code. She stated that these amendments would also allow the zoning administrator to revoke an administrative permit, e.g., home occupation, short-term rental, sign permit.

Mrs. Pendleton stated that the County would prefer to work out ordinance violation issues with the property owner instead of taking the issue to court. She noted that the County gives violators more time to bring their issues into compliance than is required. She further noted that the proposed "per day" civil fine amounts included in the proposed text amendments are the same as those listed in the State Code.

After questioning by Mr. Williamson, Mrs. Pendleton stated that, in the case of inoperable vehicles, the Sheriff's Department investigates complaints of one or two vehicles on a parcel, while the Planning/Zoning Office investigates complaints of more than four inoperable vehicles on the same lot.

She further noted that staff is drafting a proposed summons form for use in civil violations based on forms used by other localities in these enforcement matters.

Mrs. Pendleton then stated that the Board of Supervisors most recent update to the Zoning and Subdivision Fee Schedule was effective as of July 1, 2005. She noted that staff is recommending an increase in some of these fees and the addition of new fees for items such as short-term rental permits, Comp Plan amendment requests, plat/easement vacations, etc. Mrs. Pendleton stated that the proposed short-term rental permit fee would be \$50 per rental unit, the Comp Plan amendment fee is proposed to be \$500 as this entails a very staff-intensive review process, the text amendment fee is proposed to be \$200; the Zoning Administrator's determination is proposed to be \$100; the zoning verification fee, which the County does not currently assess, would be \$150; the Commission Permit fee would be \$150; the site plan/ordinance waiver request would have a fee of \$100; and a boundary line adjustment, plat, right-of-way, or easement vacation fee would be \$75.

She further stated that most of these proposed fees in almost all cases are less than what is charged by the adjacent localities. She noted that, as an example, Montgomery County charges \$125 for a zoning verification fee, while Roanoke City charges \$150.

Mrs. Pendleton stated that fees for mixed use developments (TND and PUD) are proposed to be increased from \$350 to \$1,000 plus \$30 per acre, and the fees for Shopping Center and POP requests would be increased from \$350 to \$600 plus \$30 per acre. She noted that the County previously charged a per acre fee for SEP requests and this is now proposed to be a flat

fee depending on the type of use; however, the SEP fee for telecommunications towers would be \$500.

After discussion, Mrs. Pendleton stated that the Planning/Zoning Office also charges the applicant for postage costs associated with notifying the adjacent property owners (\$6.75 each for certified mail) but does not charge the applicant for the public hearing advertisement. She stated that the cost of these advertisements usually exceeds the fee charged to the applicant.

Mr. Williamson stated that the County can either have the taxpayers fund these application, postage, etc., costs or the applicants making the specific rezoning, SEP, etc., request should do so.

There being no further discussion on these proposed amendments, Mr. Nicely stated that it was a great idea to bring the Board and Commission together to hear the staff's ordinance amendment proposals at the same time.

Mrs. Pendleton thanked the staff for their input and assistance in drafting these ordinance amendments and fees.

After discussion, Mr. Moorman stated that these amendments are being proposed for public hearing in May so that they can be adopted prior to the beginning of the summer vacation rental season.

After discussion, on motion by Mr. Leffel, seconded by Dr. Scothorn, and carried by the following recorded vote, the Board authorized staff to advertise the proposed amendments to Chapter 25. Zoning regarding short-term rental establishments and other text amendments regarding timelines and procedures, the Research and Advanced Manufacturing (RAM) Use District, enforcement and penalties for public hearing, and to consider a resolution regarding the revised Zoning and Subdivision Fee Schedule at the May 2016 Planning Commission and Board of Supervisors meetings. (Resolution Number 16-04-01)

AYES: Mr. Williamson, Mr. Dodson, Mr. Martin, Mr. Leffel, Dr. Scothorn

NAYS: None

ABSENT: None

ABSTAINING: None

Dr. Scothorn noted that portions of the Board's strategic plan pertain to zoning in certain areas of the County. He suggested that a joint Commission/Supervisors meeting be scheduled to discuss the zoning impacts of the strategic plan.

After discussion by Mr. Williamson, it was suggested that the Planning Commission receive the same strategic planning update that was presented to the School Board a few months ago.

Mr. Nicely stated that this would be a good idea as it would allow both groups to consider the overall development program for the County, projections for the future, and needed long-term planning efforts.

Mr. Kidd stated that "if it is not in the Zoning Ordinance or the Comprehensive Plan then the Planning Commission has no teeth in it."

Mr. Foster stated that it has been difficult for him to make decisions as a Commission member when he does not know what the County's long-term development strategy will be.

Mr. Leffel noted that the Commission is the "spear point" on development in the County. He noted that both groups should review the zoning in each section of the County versus the others.

Mr. Kidd stated that he believes that the County should have a highway corridor overlay along U. S. Route 220 from the Alleghany County line to Exit 150 included in the Comprehensive Plan.

Mr. Williamson stated that infill development was discussed during the strategic plan process and this should be communicated to the development community.

After discussion, Mr. Williamson agreed that the Board and Commission should have joint meetings on a yearly basis.

Mrs. Pendleton thanked the Board and Commission members for their participation in this work session and their input on these proposed ordinance amendments.

Mr. Williamson then thanked the Community Development staff for their professionalism and work in drafting these proposed amendments.

There being no further discussion, Mr. Leffel then adjourned the Board of Supervisors meeting and Mr. Thurman adjourned the Planning Commission meeting at 8:04 P. M.