



TOWN OF MIDDLEBURG

Loudoun County, Virginia

MEMORANDUM

TO: Mayor Littleton and Members of the Town Council
FROM: William M. Moore, Deputy Town Manager
MEETING DATE: December 8, 2022
SUBJECT: **Zoning Text Amendment 22-02** - An Ordinance to amend Chapters II, V, X and XVI of the Middleburg Zoning Ordinance pertaining to Short-Term Rentals

Background

Council expressed concerns in late 2021 regarding the potential for an influx of applications for short-term rentals (currently titled "Limited Residential Lodging" in the Zoning Ordinance) and the desire to more closely examine the manner in which such potential applications would be evaluated. The existing regulations were adopted by Council in October 2016. To date, just one recent application has been filed for such use in Town; however, there has been continued growth in the popularity of such uses nationwide and staff occasionally finds one operating in Town in violation of the Ordinance. Staff also notes anecdotally that the number and frequency of inquiries into our regulations pertaining to short-term rentals has increased over the past year.

While the performance measures currently established in the Ordinance eliminate many properties from consideration for such use and establish good practices for ensuring some degree of public health, safety and welfare, there are still approximately 92 existing properties currently potentially eligible to file for such use combined with new residential development under way in Town.

In late 2021 and early 2022, the Commission examined the topic initially and proceeded with preparing and recommending a Comprehensive Plan amendment addressing short-term rentals. The Council adopted the Comp Plan amendment on April 28, 2022. The primary section of the adopted amendment is as follows:

Short-Term Rentals (added 4/28/22)

The Town adopted regulations governing short-term rentals (rentals of fewer than 30 days) in 2016 to address these uses as they became more popular by the emergence of such platforms as AirBnb, VRBO, Craigslist, etc. Defined as "Limited Residential Lodging", the Town currently allows for consideration of such uses in the R-1, R-2 and R-3 Districts; in all cases, the use requires a Special Use Permit and is subject to minimum performance standards outlined in the Zoning Ordinance.

This Plan refers to the value of the Town's "character" throughout all chapters. Maintaining the character of the Town's existing neighborhoods is clearly a priority for the community. The introduction of transient uses into existing, stable residential neighborhoods may affect the character of these neighborhoods if not carefully managed through thoughtful conditions on location, frequency and specific manner of such uses. Likewise, a saturation of such uses in new neighborhoods could be contrary to this Plan's strategy for new development to be compatible with Middleburg's small-town scale and historic character.

While the current performance standards for Limited Residential Lodging address a number of the concerns presented by such uses – primary use as a residential dwelling, provision of off-street parking, separation from other residential dwellings, life safety requirements, etc. – the overarching consideration in each case should be to mitigate potential adverse impacts to neighboring properties and established neighborhoods.

As opposed to a single approach Town-wide, the adopted amendment - and the Commission’s discussions that accompanied its crafting - specifically left open the possibility of treating short-term rentals differently in various neighborhoods.

Analysis

The current regulations allow for consideration of such uses in the R-1, R-2 and R-3 Districts. In all cases, the use requires a Special Use Permit and may only be considered in single family detached dwellings with a number of accompanying minimum performance requirements.

The initial drafts of the amendment considered by the Commission proposed varying degrees of allowable consideration for frequency of the use relative to its location in proximity to surrounding properties. With a tiered approach, the most restrictive regulations on frequency were proposed for those within the R-2 District, which is specifically “designed to accommodate single family detached residential uses in older, established neighborhoods.” A second tier was proposed for properties adjoining or in close proximity to the R-2 District that would allow for consideration of more frequent use than properties within the first tier. A third tier for other properties not in close proximity to the R-2 District was proposed allowing for consideration of more frequent use.

After months of study and consideration, the Commission decided to not proceed in recommending this tiered approach in the previous drafts and instead favored leaving the maximum nights per year available for consideration of such use as 180 regardless of location (Section 61.H.). A condition could still be recommended by the Commission, and imposed by Council, on a particular application that would further limit this number of nights, but there would continue to be no specific limitations dictated in the Ordinance based on location or neighborhood.

The Commission had also earlier considered a draft proposal that the dwelling must be the owner’s primary residence; this was removed due to a federal court ruling issued in August striking down such a requirement because it violates the dormant Commerce Clause as it discriminates against interstate commerce. The current draft leaves in place existing Ordinance language still requiring the dwelling to used primarily for residential use – just not specifying that such primary use must be by the owner (Section 61.A.).

As recommended by the Commission, Draft 4 of the amendment dated 9/19/22 proposes:

- **renaming the use as “Short-Term Rental”**
- **clarification that the use cannot occur in an accessory dwelling unit**
- **referring to “nights” of use (rather than days) for clarification**
- **additional language specifying the need for the owner to have a business license and to collect/remit applicable taxes**

Recommendation

The Commission held a public hearing on the amendment at its October 24 meeting. No one spoke regarding the amendment. Following the hearing, the Commission forwarded the amendment to Council recommending approval as contained in Draft 4 dated 9/19/22.

Council discussed the amendment at its November 10 meeting. There was interest expressed in discussing additional amendments, whether ones previously considered - but not forwarded - by the Commission (i.e. the tiered approach) or even an outright prohibition. Council directed staff to proceed with advertisement of the current amendment as recommended by the Commission and to then return with further discussion, to include a possible Council-initiated amendment, in January.

Staff recommends conducting the public hearing as scheduled.

Absent any major concerns, staff recommends that Council adopt the Ordinance as recommended by the Commission. A motion to that effect could read:

MOVE that Council adopt an Ordinance to amend Chapters II, V, X and XVI of the Middleburg Zoning Ordinance pertaining to Short-Term Rentals.

Attachments:

ZTA 22-02 Ordinance

ZTA 22-02 – Draft 4 dated 9/19/22

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**AN ORDINANCE TO AMEND ARTICLES II, V, X AND XVI OF THE MIDDLEBURG ZONING ORDINANCE
PERTAINING TO SHORT-TERM RENTALS**

ZTA 22-02

WHEREAS, the Middleburg Zoning Ordinance contains provisions for regulation of residential rentals for periods of fewer than 30 consecutive days, currently defined as “Limited Residential Lodging”; and,

WHEREAS, the Town Council directed staff and the Planning Commission in late 2021 to study concerns related to short-term rentals of residential dwellings; and,

WHEREAS, in March 2022 the Planning Commission approved, and thereafter in April 2022 the Town Council adopted, an amendment to the *Town of Middleburg Comprehensive Plan 2019* pertaining to Short-Term Rentals; and,

WHEREAS, the Planning Commission subsequently initiated an amendment to the Zoning Ordinance at its July 25, 2022 meeting to amend various Articles of the Zoning Ordinance pertaining to short-term rentals; and,

WHEREAS, the Commission continued to carefully study and refine various drafts of the amendment during its monthly work sessions, regular meetings, and a special meeting on the topic; and,

WHEREAS, the Commission considered the amendment following a Public Hearing at its September 26, 2022 meeting and forwarded said amendment to the Town Council recommending approval as contained in Draft 4 dated 9/19/22; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted as required by the Code of Virginia, 1950, as amended.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Middleburg, Virginia that Articles II, V, X and XVI of the Middleburg Zoning Ordinance are hereby amended as contained in Draft 4 dated 9/19/22.

This Ordinance shall be effective upon passage. Adopted _____.

Vote: Aye:
Nay:
Abstain:
Absent:

APPROVED:

Trowbridge M. Littleton, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk

AN ORDINANCE TO AMEND ARTICLES II, V, X AND XVI OF THE MIDDLEBURG ZONING ORDINANCE
PERTAINING TO SHORT-TERM RENTALS

ZTA 22-02
Draft 4 - 9/19/22

Note: The following text represents excerpts of the Zoning Ordinance that are subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

ARTICLE II. BASIC DEFINITIONS

Section 17: Definitions of Basic Terms

~~56b~~ **89. Lodging, Limited Residential Rental, Short-Term**. The secondary use of a residential dwelling or a portion thereof to provide room or space that is suitable for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy, provided only that 1) the primary use of the dwelling shall remain residential, 2) any applicable taxes required to be collected and remitted by state and local law for each booking transaction are collected and remitted, and 3) such secondary use does not include simultaneous occupancy by more than one party under separate contracts.

ARTICLE V. ZONING, SPECIAL USE, COMMISSION AND TEMPORARY USE PERMITS

Section 61: Special Use Permits; ~~Limited Residential Lodging~~ Short-Term Rentals.

In addition to the criteria above, the additional, minimum standards set forth below shall apply to all applications for ~~Limited Residential Lodging Use~~ **Short-Term Rentals**. These are intended to serve as minimum standards for consideration of such uses and are not intended to substitute for other applicable provisions of this Ordinance or for additional and/or more stringent conditions that may be imposed in connection with specific special use permit approvals.

- A. Any such use shall only be established in a single family detached dwelling used primarily for residential use (used for residential occupancy 183 days or more per calendar year).
- B. No accessory dwelling unit, whether within the primary residence or in an accessory structure, shall be used for, or created for use as, a short-term rental.**
- ~~B.C.~~ **C.** Each occurrence of such use shall be for a minimum two-night stay; single ~~day~~/night rentals are prohibited.
- ~~C.D.~~ **D.** Minimum lot size: 10,000 square feet.
- ~~D.E.~~ **E.** Minimum separation of 25' from the dwelling in which such use is located to any neighboring residential dwelling.
- ~~E.F.~~ **F.** Maximum number of guests allowed: 2, plus 2 per guest bedroom.
- ~~F.G.~~ **G.** All parking for such use shall be located off-street and in designated, improved areas only. The minimum number of spaces must be provided in accordance with Section 222.

- G.H. The maximum number of ~~days~~ **nights** (cumulative) allowable for consideration of such use during any calendar year shall be 180 ~~days~~ **nights**.
- H.I. There shall be no signage or any other indication from exterior of property that it is being used other than as a residential dwelling.
- I.J. The dwelling shall be connected to public water and sewer.
- J.K. The property owner shall maintain a minimum of \$500,000 liability insurance.
- K.L. Working fire extinguishers, smoke detectors and carbon monoxide detectors shall be provided and accessible to guests at all times.
- L.M. A property management plan shall be included as part of the application and kept current (verified/renewed annually at a minimum). Such plan will include, at a minimum: 24 hour contact information for a responsible party (owner on premise or a management entity within 20 miles of Town); method(s) by which bookings will be facilitated; procedures by which guests will check-in (such check-in shall be in-person with the responsible party); procedures for collection of fees and taxes; floor plan and site sketch; provisions for buffering and/or screening from neighboring residential properties; plans for addressing routine and emergency maintenance (in-house maintenance by management entity, list of contractors on-call, etc).
- M.N. The property owner shall sign and provide a declaration to the effect that the dwelling meets all applicable building codes.
- N.O. An information package shall be provided to guests upon check-in and include, as a minimum: responsible party contact information for maintenance or other issues; emergency/public safety contact information; an evacuation plan; provisions for solid waste disposal (trash and recycling); and, information on the Town noise ordinance.
- O.P. The property shall be made available for entry and inspection upon request by the Zoning Administrator, and other officials the Zoning Administrator may deem necessary, to verify that the use is being maintained in accordance with the Special Use Permit. Such inspection shall take place at least one time per calendar year or more frequently as deemed necessary by the Zoning Administrator.
- Q. The owner shall apply for and actively maintain a Town Business and Occupational License and shall collect and remit transient occupancy taxes and any other applicable state and local taxes as required.**

ARTICLE X. RESIDENTIAL ZONING DISTRICTS

PART I. R-1 SINGLE FAMILY RESIDENTIAL DISTRICT

Section 111: Special Exception Uses

- G. ~~Limited Residential Lodging~~ **Short-Term Rental**

PART II. R-2 SINGLE FAMILY RESIDENTIAL DISTRICT

Section 119: Special Exception Uses

- F. ~~Limited Residential Lodging~~ **Short-Term Rental**

PART III. R-3 RESIDENTIAL DISTRICT

Section 126: Special Exception Uses

F. ~~Limited Residential Lodging~~ **Short-Term Rental**

ARTICLE XVI. OFF-STREET PARKING AND LOADING REQUIREMENTS

Section 222: Number of Off-Street Parking Spaces Required

| <u>Use</u> | <u>Parking Requirement</u> |
|--|----------------------------|
| Limited Residential Lodging <u>Short-Term Rental</u> | 1 space/guest room |