

COUNTY OF YORK

MEMORANDUM

DATE: August 28, 2020

TO: York County Board of Supervisors

FROM: Neil A Morgan, County Administrator 

SUBJECT: Short Term Rentals (STR)

Background

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

Current Situation

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

COUNTY OF YORK

MEMORANDUM

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

TO: York County Board of Supervisors

FROM: Neil A. Morgan, County Administrator 

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

ISSUE

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PLANNING COMMISSION RECOMMENDATION

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

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

COUNTY ADMINISTRATOR RECOMMENDATION

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

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

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

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

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

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

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

Cross/3496

Attachments:

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

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

INTRODUCTION

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

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

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

SHORT-TERM RENTALS IN YORK COUNTY

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

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

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

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

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

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

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

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

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

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

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

CASE STUDIES

Queens Lake I

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

Spivey Lane

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

Dandy

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

Plantation Drive

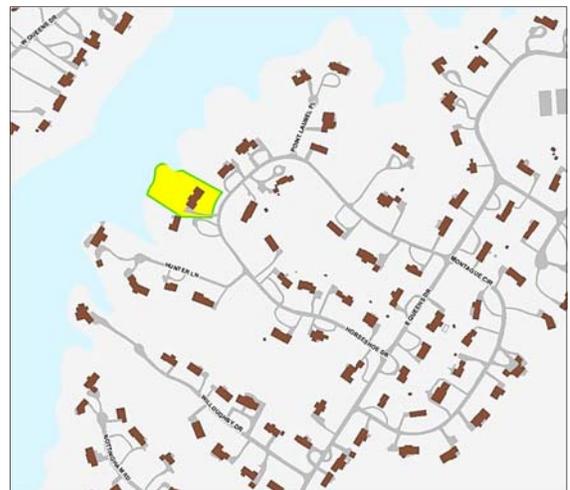
In July 2017, a couple on Plantation Drive in the upper County appeared before the Planning Commission to request a Special Use Permit to operate a tourist home with up to three guest rooms in their existing

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



Queens Lake II

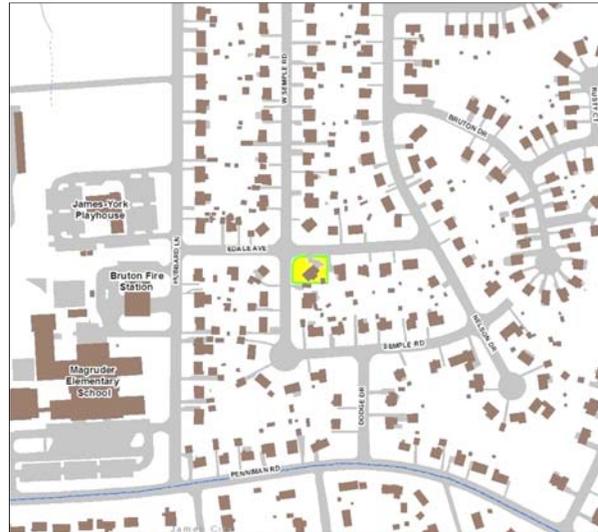
In August 2017, the Planning Commission considered another Special Use Permit application to operate a tourist home in Queens Lake on Horseshoe Drive. Horseshoe Drive is a loop road off the main street – East Queens Drive – and serves 28 single-family detached homes. The entire area is zoned RR (Rural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



Edale Avenue

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

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



Yorktown Village

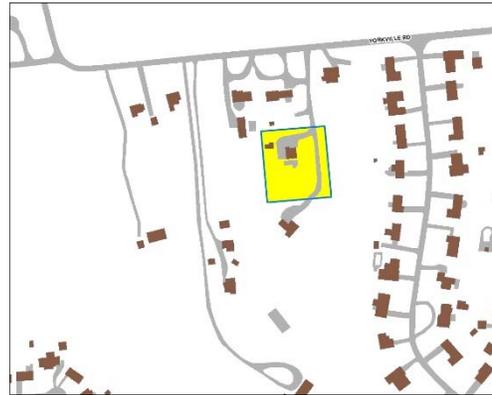
In December 2017, the Board unanimously approved a Yorktown Village Activity (YVA) application to authorize a two-bedroom tourist home in an existing building (the former Nancy Thomas Gallery) on Ballard Street in historic Yorktown. The application, which generated no citizen opposition, was recommended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

Wichita Lane

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

Yorkville Road

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



Carters Neck Road, Part I

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

Old Landing Road



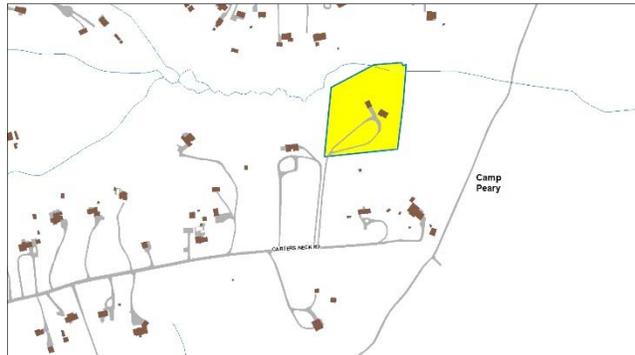
In December 2018, the Board unanimously approved a two-bedroom tourist home on a one-acre waterfront parcel located on Old Landing Road in the Marlbank Farm subdivision. Old Landing Road is a local subdivision street carrying 650 vehicles per day. The application had received a recommendation of approval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

Carters Neck Road, Part II

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

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

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



Tom Thomas Road

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

Goosley Road

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



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

Queens Lake III

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

Summary of Case Studies

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

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

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

Observations

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

SUMMARY

Average ALL Applications	1.41		2.4		6.1	
Average of APPROVED Applications (9)	0.89		2.1		5.7	
Average of DENIED Applications (4)	1.92		3.0		7.3	
Average of DENIED OR WITHDRAWN Applications (6)	1.59		2.5		6.0	