Agenda for
Buncombe County Planning Board -Amended
December 18, 2023 at 9:30 a.m.
Public Meeting will be at 30 Valley St. Asheville, NC  28801

- Call to Order
- Announcements - Nancy Waldrop
- Roll Call of Board Members
- Approval of Agenda
- Approval of Minutes – November 20, 2023
- Public Comment
- Comprehensive Plan Implementation:
  - Text Amendment Modules and Process
  - ZPH2023-00038 Module 1: Short Term Rentals-Introduction to Module
- Follow Up Discussion: Planning Board by-laws/attendance policy
- Adjourn
The Buncombe County Planning Board met on November 2023, at 30 Valley St., Asheville, NC 28801.

Planning Board members present were Nancy Waldrop, John Noor, Mike Fisher, Ken Kahn, Alan Coxie, Eric Robinson.

Also present were Gillian Phillips, Shannon Capezzali, Nathan Pennington, Terri Rogers Planning Staff and Curt Euler, County Attorney.

Call to Order
Chair Ms. Waldrop called the meeting to order at 9:30 am.

Announcements
None

Roll Call of Board Members
Complete.

Approval of Agenda
Mr. Fisher made a motion to approve the agenda as submitted. The motion was seconded by Mr. Noor and passed unanimously.

Approval of Minutes (October 16, 2023)
Mr. Noor asked that the minutes be changed to reflect that he had a conflict of interest in the ZPH2023-00027 case presented last month and that it is the same for today’s continuation that he will be recused again.

Mr. Coxie made a motion to approve the October 16, 2023, meeting minutes as revised. The motion was seconded by Mr. Kahn and passed unanimously.

Public Comment
None

Public Hearings
ZPH2023-00027: Biltmore Farms LLC has applied to rezone two (2) parcels of land identified as tax lot PINs 9635-54-4215 and 9635-37-0439 (176 E Frederick Law Olmsted Way and an unaddressed parcel on Brevard Road) which are zoned R-3 (Residential) R-LD (Residential), NS (Neighborhood Service) and CS (Commercial Service) to EMP (Employment) with the portion of PIN 9635-54-4215 that is currently zoned R-LD remaining R-LD (Continued from the October 16, 2023 meeting)

Bob Oast, Attorney for Biltmore Farms shared a presentation (included with these minutes)
showing the comprehensive plan recently passed by the County and how this rezoning adheres to that plan.

The Board then opened public comment. Tracy Swartout, Superintendent with the Blue Ridge Parkway shared a presentation (attached to these minutes) showing that the French Broad Overlook spot on the Parkway will have the most direct view of the property that Biltmore Farms wants to rezone. She expressed her concern regarding the proposed rezoning. Ms. Swartout indicated that she would like to have the planning board consider changing or revisiting the Blue Ridge Parkway Overlay in the Zoning Ordinance to make it more protective of viewsheds along the Parkway.

The Board then discussed the project and asked questions of the applicant. Other large projects that are adjacent to the Parkway were discussed, including the Ramble. The meeting between the Blue Ridge Parkway and the applicant was discussed. Mr. Pennington shared some technical considerations regarding the Blue Ridge Parkway Overlay, allowed uses in the proposed and current zoning districts, and the topography of the subject property. The Board then discussed the proposal. Ms. Waldrop closed this portion of the public meeting.

Mr. Kahn made a motion to recommend this case for approval, seconded by Mr. Robinson. The vote for recommendation of approval passed 4 to 1 with Mr. Robinson voting against it. Mr. Noor then rejoined the meeting.

Attendance
As brought up in the previous meeting the attendance of board members was questioned and discussed. To meet the current Rule of Order with absences a member can only miss 3 meetings before they can be removed. Mr. Pennington suggested that he vet what other boards require and bring those back to this board to re-visit this in January.

New Business
Ms. Phillips shared with the board members that they have that staff will start bringing them proposed text amendments as part of the implementation of the comprehensive plan. The first text amendment will be in regard to Short-Term Rentals, and may require Special Meetings in January and February. Staff will present the process and modules for text amendments and the proposed text amendment regarding short-term rentals at the next Planning Board meeting.

Adjourn
Mr. Kahn motioned to adjourn the meeting seconded by Mr. Fisher. The meeting adjourned at 10:57 A.M.
MEMORANDUM

To: Buncombe County Planning Board
From: Planning and Development, Long Range Planning

Date: December 1, 2023

RE: Text Amendment Adoption Process

Overview: As we move from the adoption of the Buncombe County Comprehensive Plan to the adoption of policies and actions, the first step in implementation will be a series of text amendments to the County’s development ordinances. This will modernize the regulations and make sure the development pattern and vision for the future laid out in the Comprehensive Plan is achieved. As such, planning staff has outlaid a five-phase process for text amendments. and has categorized the different text amendment changes in the development code into seven separate related modules. See below for overview of each phase of the process.

TEXT AMENDMENT MODULES

There are a total of 6 text amendment modules, plus a module for the completion, of the County’s Unified Development Ordinance (UDO).

MODULE 1: SHORT TERM RENTALS
This module takes its direction from the Growth, Equity, and Conservation (GEC) Chapter of the Buncombe 2043 Comprehensive Plan (The Plan). It will focus on changes and standards to short-term rentals.

MODULE 2: MIXED USE, DESIGN STANDARDS, MISSING MIDDLE, AFFORDABLE HOUSING AND TRANSPORTATION
This module takes its direction from the GEC, Transportation & Connectivity, Economic Development, Hazards & Resilience, and Infrastructure & Energy Chapters of The Plan. It will
identify ways to improve the built environment to encourage more sustainable development patterns that provide various options for housing and transportation. It will also focus on development standards and programs to incentivize affordable housing, sustainability, cluster development, and green building techniques.

MODULE 3: PUD & CONDITIONAL ZONING
This module takes its direction from the GEC, Economic Development, Health & Recreation, and Infrastructure & Energy Chapters of The Plan. It will focus on improving design and review standards to encourage recreation opportunities, sustainable energy projects, collaboration with the community, and additional community benefits.

MODULE 4: ENVIRONMENT, ENERGY, & SAFETY
This module takes its direction from the GEC, Hazards & Resilience, Health & Recreation, and Infrastructure & Energy Chapters of The Plan. It will seek to reduce hazard risks for development, review our overlays that protect steep slopes, ridges, and parks, increase options for urban agriculture and composting, incentivize alternative energy, and increase access to broadband.

MODULE 6: ECONOMIC DEVELOPMENT
This module takes its direction from the Economic Development Chapters of The Plan. It will focus on adopting regulations to allow multi-year development of large economic development projects, allow development agreements, and increase PUD thresholds in commercial/manufacturing areas.

MODULE 7: UNIFIED ORDINANCE
This module’s purpose will be to modernize the current development regulations in Buncombe County by codifying them into one Ordinance which covers all the regulations regarding the development of property in Buncombe County. This module will also review and revise other stand-alone ordinances that need to be revised, modernized, or folded into a unified ordinance.

PROCESS OVERVIEW:

- This is a 5-phase process that helps guide county staff and boards through the text amendment process for Buncombe County.
- Staff will implement the Equity Analysis Tool laid out in the Buncombe County Comprehensive Plan throughout this process.
- Planning staff will employ the help of an inter-departmental committee to provide technical feedback and support for the process.
- Planning staff will work with internal and external experts, county staff, and the County Legal Department throughout the process.
PHASE 1: RESEARCH

- Phase 1 is anticipated to take 2 to 7 months based on scope and size of the module.
- Staff will review adopted plans for direction and guidance (ex: Comprehensive Plan).
- Staff will internally identify why the existing ordinance section needs to be changed, and synthesize what issues need to be addressed.
- Research will be conducted on best practices, how other jurisdictions regulate the issue, and what North Carolina enabling legislation allows.
- The Equity Analysis Tool will be utilized to help identify issues in the existing ordinance, guide research, and ensure the equitable engagement of stakeholders.
- Stakeholders (both internal and external) will be identified and engaged for feedback and knowledge.
- The inter-departmental committee will convene to analyze the process and provide feedback.
- The County Legal department will be provided with policy direction for review and feedback.

PHASE 2: DRAFTING & REVIEW

- Phase 2 is anticipated to take 3 to 8 months based on the size and scope of the module.
- At this point, staff will create a draft memo that will act as a staff report document. The memo will include the Equity Analysis Tool and the narrative connecting the text amendments to the goals, policies, and actions of adopted plans such as the Comprehensive Plan. It will include a review of the research from Phase 1, and an overview of proposed text amendments.
- Staff will then draft the actual text amendments to the development regulations.
- Outside experts will then review proposed amendments and propose changes as necessary
- The inter-departmental committee will review the proposed amendments and propose changes as necessary.
- The County Legal Department will review the proposed amendments and propose changes as necessary.
- Staff will revise the memo and draft text amendments based on the review of the three groups above.

PHASE 3: PLANNING BOARD

- Phase 3 is anticipated to take 2 to 5 months.
- Staff will schedule an informational meeting (Meeting 1) for the Planning Board. At this meeting, staff will present Planning Board members with an introduction to the proposed amendments, a summary of the research gathered, and the proposed text amendments. This may require multiple meetings.
- CAPE will advertise proposed changes to the community.
- The Planning Board will then meet to discuss the text amendment and propose their revisions (Meeting 2). This may require multiple meetings.
• Note that Planning Board revisions may trigger the need for the text amendment to go through the Equity Analysis Tool again to ensure the integrity of the revised text amendment and that additional meetings may be required for the Planning Board to come to a consensus.
• Staff will revise the text amendment based on Planning Board review and create a adoption memo to follow the text amendment through till adoption.
• A public hearing will be scheduled, and a legal advertisement and notification run.
• Planning Board will hold their third meeting (Meeting 3), hold a public hearing for the text amendments, and make a formal recommendation to the Board of Commissioners.
• Create the adoption memo to be sent onto the Board of Commissioners

PHASE 4: BOARD OF COMMISSIONERS

• Phase 4 is anticipated to take 1 to 4 months.
• At a Commissioner’s Briefing, Staff will present to the Board of Commissioners and County Management with an introduction to the proposed amendments, a summary of the research gathered, and a review of the Planning Board’s recommendation. The Board of Commissioners will provide feedback.
• There will be a legal advertisement and notification of the upcoming public hearing.
• Staff will present to the Board of Commissioners at a regularly scheduled Commissioner’s Meeting, which will act as the public hearing for the proposed text amendment. The Commissioners will vote on the proposed amendment.
• Staff will create the final version of the text amendment to include any revisions made and/or approved by the Board of Commissioners and send to the Clerk to the BOC.
• Staff will make sure that text amendments are correctly codified by Municode when code is updated.

PHASE 5: IMPLEMENTATION & REVIEW

• Phase 5 is anticipated to take 4 months.
• Staff will advertise the changes made to the ordinance for the public and development community.
• An evaluation of internal department processes to adjust to the new ordinance standards (ex: new permitting process, update forms used, update software, etc.).
• An Evaluation of the impact of text amendments every 3 years and recommend changes if needed.
SHORT-TERM RENTAL TEXT AMENDMENTS MEMORANDUM

Date: 12-1-2023
To: Buncombe County Planning Board
From: Buncombe County Planning and Development Department

PURPOSE

The Short-Term Rental (STR) Memorandum provides an overview of key issues and proposed Zoning Ordinance changes related to short-term rentals in Buncombe County. The working definition of STR is any lodging rental that is for less than 30 days. The current Buncombe County Zoning Ordinance defines “vacation rentals”, but these can also be referred to as ”short-term rentals”. This document will summarize an analysis of equity issues, relevant case law, current bills before the General Assembly, a consideration of regulations in other jurisdictions, and proposed text amendments.

EQUITY ANALYSIS

Planning staff are proposing a series of text amendments to the current zoning ordinance regarding STRs. These text amendments seek to mitigate the impact of STRs on affordable housing stock by limiting the use of existing and future residential development for STRs. The goal is to create more long-term rental and owner-occupied housing opportunities for residents and the local workforce.

During the extensive public input process of the Buncombe 2043 Comprehensive Plan, residents, including historically marginalized groups, expressed concerns about the lack of housing affordability and the use of housing as STRs, which leaves fewer options for year-round residents.

The changes in these text amendments will affect low and middle-income renters, home buyers, and local workers by seeking to make more housing stock available for long-term rentals and owner-occupied housing. According to a 2021 Dogwood Health Trust study, Buncombe County’s long-term rental housing gap was 7,699 units, while the housing ownership gap was 2,048 units. 1 Individuals and families earning less than or equal to 50% AMI make up 70% of the housing gaps (both rental and home ownership); therefore, the loss of housing to short-term rentals uniquely affects Buncombe’s low-income population.

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Using AirDNA, a software company that provides analysis of vacation rental data, our Comprehensive Plan consulting firm Clarion & Associates identified 5,268 STRs in Buncombe as of 2022, which is roughly 4.5% of the county’s housing stock. These rentals account for around 68% of the rental housing gap of 7,699 units. By limiting the amount of housing used for STRs, the County can work towards closing the long-term rental and homeownership gaps outlined in the Dogwood Study. Allowing STRs only within detached single-family dwellings can also help reduce conflict related to noise and safety that can be exacerbated in multi-family developments. Multi-family units also tend to be more affordable types of housing. Without these proposed text amendments, the County may be unable to minimize the ongoing loss of long-term rental and owner-occupied dwelling units to STRs.

The proposed text amendments aim to prioritize existing and new long-term housing stock. To measure the success of these Zoning Ordinance changes, staff will use the performance metrics from the Buncombe 2043 Comprehensive Plan. These metrics will measure the increase in the number of ownership units and rental units which are affordable to households earning less than 80% Average Median Income (AMI).

**CASE LAW**

*Schroeder v. Wilmington*

A 2019 amendment to G.S. 42A-3 clarified that housing code inspection, permits, and registration (IPR) programs apply to properties subject to the Vacation Rental Act (VRA), which was written with long-term rentals in mind but also includes most if not all STRs. The North Carolina Court of Appeals ruled that, per state law, local governments may not require registration or permits as a condition of renting. However, general land use zoning authority is retained: you may require a zoning compliance permit but not a leasing/rental permit. Many regulatory provisions in the Wilmington ordinance were upheld by the ruling while others were struck down simply because they were intertwined with the registration requirement. Density caps on rental units and requirements that the rentals be separated by a certain distance from each other are two issues that may be problematic. Both were among those struck down due to the relationship with the registration requirements of the Wilmington ordinance but are likely achievable through conventional zoning methods, which begin with defining short-term rentals as a land use. For more information, see the October 2022 memo prepared by Clarion Associates, as well as the summary by Adam Lovelady from UNC School of Government on the Coates’ Canons law blog.

**STR REGULATION IN OTHER JURISDICTIONS**

This is a curated look at STR regulations from other counties and local governments in the state (generally and in response to Schroeder), including examples from other localities outside of North Carolina. Please note, the examples from other states may not be allowed by North Carolina General Statute, but are presented to illustrate a variety of approaches.

**Common Practices and Language**

Common design and operation standards are listed below. These are provisions which many or most jurisdictions include in their ordinances.

<table>
<thead>
<tr>
<th><strong>Trash</strong></th>
<th>Owner is required to provide receptacles for and collect and dispose of trash</th>
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<tbody>
<tr>
<td><strong>Liability Insurance</strong></td>
<td>Owner is required to carry liability insurance</td>
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</tbody>
</table>
Various safety, information and contact info is required to be posted inside, often property manager’s contact, but can include relevant ordinances or waste disposal information

Property manager is required to be within some reasonable and defined distance of the unit

Minimum, off-street parking requirements

Places the tax responsibility on the owner/operator

Rentals are limited to 30 days or less

Zoning permits required for short-term rental land use

Limits on the number of occupants or visitors to the site, most often when located in residential areas

Many prohibit cooking in bedrooms

**Zoning Districts**

Most localities limit, restrict, or prohibit STRs in various districts through their Permitted Use table. Where permitted by-right, many localities have a “use-by-right with additional requirements” category. Most localities prohibit STRs in residential districts.

**Owner-Occupied/Homestays vs. Whole-Home/Dedicated Short-Term Rentals**

There is an important distinction between owner-occupied homestays and whole-home dedicated STRs. These two kinds of STR are sometimes considered separate uses based on locality. For example, Asheville and Boone distinguish between homestays and non-owner-occupied STRs and have standards for each. Sylva limits STRs to accessory uses where the primary use is an owner-occupied residence or long-term rental. Chapel Hill distinguishes between primary residence STRs and dedicated STRs; the former differs from homestays in that there is no provision requiring the owner to be on-site during the rental period but only that the unit be their primary residence. In communities that take this approach, it is often difficult to police and enforce the nuances of homestays versus whole-home STRs.

**Localities**

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>STR STANDARD</th>
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<tr>
<td>Sylva, NC</td>
<td>In August 2022, Sylva redefined STRs as an accessory use provided the primary use is owner-occupied or a long-term rental. Requires that outdoor signage be no greater than 2 square feet and list the manager’s name and 24-hour number. Requires the noise ordinance and waste disposal process, schedule, and routes to be posted conspicuously.</td>
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<td>Highlands, NC</td>
<td><em>Notable for involved parties.</em> The board sought amortization (a method requiring the termination of a nonconforming use within a specific time period) of existing STRs but encountered resistance including opposition from Institute for Justice firm, which won the Wilmington case. A text amendment passed on 9/15/22 which grandfathered STRs as nonconforming uses and required that the ordinance standards be posted in the rental unit.</td>
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<td>Pinehurst, NC</td>
<td>Village Council recently voted to prohibit new STRs in residential districts and require existing ones to get a Zoning Certificate and be classified as a legal, nonconforming use.</td>
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<tr>
<td>Location</td>
<td>Regulations/Restrictions</td>
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<tr>
<td>Chapel Hill, NC</td>
<td>Dedicated STRs are not allowed in residential districts but are allowed in mixed-use districts. Owner-occupied STRs are allowed in neighborhoods based on certain residency criteria.</td>
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<td>Asheville, NC</td>
<td>Asheville discerns between short-term vacation rentals (STVRs) and homestays, defining each as a commercial lodging use. Homestays are permitted only in the conditional-zoning-only Expansion (EXP) district and are classified as a “use by right subject to special requirements” (USSR) for most other districts, including all Residential districts. STVRs are permitted by right in two conditional zoning districts and as USSR in the resort district; they are not allowed anywhere else, including residential.</td>
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<td>Black Mountain, NC</td>
<td>The Town Council recently directed staff to draft life, safety, and permitting regulations for short-term rentals, including: zoning permit requirement, annual fire inspection, and tax reporting if not using a management company or online rental booking site; Units required to have functional smoke and CO2 detectors, bear-proof trash cans, sufficient off-street guest parking spaces, an emergency ladder in upper story bedrooms, and posting of public safety and non-emergency numbers, garbage and recycling information, and noise ordinance requirements on the site; A local owner or property manager must live within 60 miles of the rental unit, and their contact information must be posted in the unit and on file with the town.</td>
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<td>Charleston, SC</td>
<td>Charleston recognizes two types of STR: residential and commercial. Both are permitted as conditional uses. Commercial use is subject to an overlay district. Residential is owner-occupied only and requires a 15-day notice to neighbors about the STR application process; concerns must be addressed prior to approval.</td>
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<td>Chattanooga, TN</td>
<td>The city allows homestays in limited areas and allows whole-house STRs in the commercial districts.</td>
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<td>Jackson Hole, WY</td>
<td>STRs are only allowed in the Lodging Overlay District. The ordinance is framed as protecting the tourism economy and community from low-quality rentals. 300 ft neighbor notices are required. Unpermitted STR operator/owners are not allowed to operate a STR for 5 years from the date of the violation.</td>
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<tr>
<td>Santa Fe, NM</td>
<td><em>Notable for comparable tourism economy and variety of unique regulations.</em> Santa Fe caps the number of STRs at a maximum of 1,000 STRs on residential property. There is a 50-foot spacing minimum between STRs and a 25% unit cap up to 12 STR permits in multifamily developments. The owner must be able to arrive on-site within an hour of receiving a complaint and keep 3 years of records. Units may only be rented once in a 7-day period. Neighbors within 200 feet of a permitted STR must be notified within 10 days of permit issuance.</td>
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PROPOSED TEXT AMENDMENTS

The following table summarizes the proposed Zoning Ordinance Text Amendments related to Short-term Rentals, and the associated Comprehensive Plan section related to the changes.

<table>
<thead>
<tr>
<th>SUMMARY OF PROPOSED TEXT AMENDMENTS</th>
<th>PLANNING BOARD REVIEW</th>
<th>COMP PLAN SECTION</th>
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<tr>
<td>1 Limit the use of dwelling units for the purpose of short-term rentals or grouped complexes of STRs to commercial zoning districts (NS, CS, EMP, PS, CR). In Open Use District, allow grouped complexes of STRs as a Special Use Permit (SEC 78-641 Permitted Uses.)</td>
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<td>GEC - Policy 7: Increase housing options and improve housing affordability for all residents.</td>
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<tr>
<td>2 Change the definition of short-term rental to allow only single-family detached units to be rented short-term.</td>
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<td>GEC - Action 4: Expand and protect affordable and accessible housing choices. Support a mix of housing types within growth areas to accommodate the projected demand for long-term rental and owner-occupied housing...</td>
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<td>3 Lower the maximum gross floor area that a single unit can be for a short-term rental. (SEC 78-581 Definitions.)</td>
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<td>4 Clarify the definition of a short-term rental to state that it includes those which are rented for a minimum of two days and no greater than 30 days. (SEC 78-581 Definitions.)</td>
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<td>GEC - Action 5: Consider the utilization of available tools to mitigate the loss of year-round housing to short-term rentals.</td>
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<td>5 Create Special Requirement (SR) standards for short-term rentals in the commercial areas where they are allowed. Standards include parking, spacing, limits on events, waste management, signage, owner/operator distance from unit, access standards, permitting requirements, and fire safety. (SEC 78-678 Uses by right subject to special requirements and special use standards.)</td>
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<td>ECON. DEV., EDUCATION, AND JOBS - Policy 2: Provide adequate housing options for all income levels to meet the needs of economic development opportunities.</td>
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<td>6 Provide a zoning permit process to grant legal, non-conforming status to pre-existing short-term rentals to allow them to remain in operation. (SEC 78-657 Nonconforming Uses.)</td>
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<td>GEC - Policy 7: Explore protections for existing affordable housing, with a particular emphasis on manufactured housing parks...</td>
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<td>7 To maintain legal, non-conforming status the structure must be rented as a short-term rental for a minimum of two nights every 180 days. (SEC 78-657 Nonconforming Uses.)</td>
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<td>8 Indicate that an existing non-conforming short-term rental that is transferred by deed shall end the grandfathering status of the use for a short-term rental. (SEC 78-657 Nonconforming Uses.)</td>
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<td>9 Prohibit short-term rentals in Manufactured Home Parks (SEC 78-678 Uses by right subject to special requirements and special use standards.)</td>
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<td>10 Prohibit short-term rentals in developments that receive a county incentive, such as a PUD, COD, density bonus program, etc.</td>
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<td>11 Create a definition of detached structure.</td>
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TIMELINE

November 2023 - Staff held internal technical meetings with County Departments regarding the proposed amendments.

December 2023 – Memo provided to Planning Board

December 20, 2023 – Staff presentation of proposed amendments to Planning Board