



**TOWN OF MIDDLEBURG
PLANNING COMMISSION
WORK SESSION & REGULAR MEETING MINUTES**



**MONDAY, AUGUST 22, 2022
PENDING APPROVAL**

PRESENT: Terence S. Cooke, Chair
Donald Woodruff, Vice Chair
Edward R. Fleischman, Member
Rachel Minchew, Member
H. H. "Dev" Roszel, Member
Mimi Dale Stein, Member
Morris "Bud" Jacobs, Councilmember

STAFF: William M. Moore, Deputy Town Manager/Town Planner
Rhonda S. North, MMC, Town Clerk
Estee LaClare, Planning & Project Associate

The Middleburg Planning Commission held their work session and regular meeting on Monday, August 22, 2022 in the Town Hall Council Chambers. Chair Cooke called the work session to order at 6:30 p.m. Town Clerk North called the roll.

Discussion Item

Zoning Text Amendment 22-02: Amendment to Chapters II and V Pertaining to Short-Term Rentals

Deputy Town Manager Moore reported that the map was updated to include the Residences at Salamander lots, which were platted after the map was first created. He noted that he did his best to show properties that were likely eligible for consideration for use as a short-term rental. Mr. Moore reminded the Commission of the Council's strategic initiative related to this item and advised that the number of inquiries related to short-term rentals had risen over the last year. He reported that he had issued two notices of violation over the past two months for short-term rentals that were operating without a special use permit. Mr. Moore advised that one of those properties was not eligible to apply for a special use permit; therefore, the owner was seeking a long-term renter. He further advised that the property owner for the other property filed an application for a special use permit, for his property on North Jay Street, which the Commission would see next month. Mr. Moore noted that it would have to be considered under the existing regulations.

Chair Cooke opined that the concerns raised last month were addressed in the latest draft amendment – those being to clarify that the property must be owner occupied and addressing the issue of the use of accessory structures as short-term rentals. He reminded the members that they were asked by the staff to consider the proposed number of days and separation distances included in the draft ordinance.

In response to an inquiry from the Commission, Deputy Town Manager Moore explained that the distance would apply to the distance between the dwelling used as a short-term rental and the neighboring dwellings. He reminded the Commission that only single-family dwellings could be used for this use and noted that, with the exception of two non-conforming situations, there were not two legal single-family dwelling units on the same property.

Councilmember Jacobs advised that he would be interested in hearing other's views on the number of days that a unit could be used for short-term rental purposes and noted that he did not know what was reasonable. He opined that Middleburg would be setting the standard as not many jurisdictions had a sliding scale.

Chair Cooke noted that it was up to the Commission to identify the numbers. He opined that less was better and suggested that what was proposed was generous. Mr. Cooke advised that he would prefer to err on the side of being conservative. He suggested the Commission could be open to changing the numbers once the Town had some experience with this use. Mr. Cooke suggested the use be limited to twelve days for properties located in the R-2 District, regardless of the amount of separation between the unit and the neighboring ones. He advised that he would also like to reduce the number of days that were currently proposed to be twenty-four and thirty-six.

In response to an inquiry from the Commission, Deputy Town Manager Moore confirmed the number of days proposed in the ordinance were the maximum number of days an applicant could ask for. He noted that they could ask for less, but in no case could they ask for more.

Vice Chair Woodruff expressed concern about homes being purchased mainly for use as short-term rentals and noted that the occupants would not be a part of the community. He advised that he would be in favor of reducing the number of days a property could be considered for short-term rental use.

In response to a comment from the Commission, Deputy Town Manager Moore clarified that this would not be a by-right use and would only be used for this purpose if a special use permit was granted. He noted that he planned to recommend a change to the draft ordinance to change the word “days” to “nights.”

Commissioner Roszel opined that the purpose of the regulations was to prevent homes from being used as a business.

Deputy Town Manager Moore advised that if the property was used as a short-term rental, it would be a business. He reminded the Commission that they were trying to weigh the impacts of this use on neighborhoods and noted that this impact could be greater in the established neighborhoods. Mr. Moore explained that the purpose of the tiered approach was to address the impacts if the properties were closer together. In response to an inquiry from the Commission, Mr. Moore advised that the reason for proposing an increased number of days if the properties were greater than 35 feet apart was that proximity mattered. He noted that he was not sure of the right number. Mr. Moore advised that in theory, the closer the properties, the greater the impact of a transient occupancy on the neighbors.

After some discussion, the Commission suggested the properties in the R-2 District should only be allowed to do short-term rentals for a maximum of twelve days.

Prem Devadas, of Salamander Hospitality, reported that there were currently no buyers or perspective buyers for houses in The Residences at Salamander that would be permanent residents. He advised that all of them had more than one home and were buying these houses so they could gather together with their families. Mr. Devadas expressed concern that if the ordinance were changed to include a primary residency requirement, no one would qualify for a special use permit in their development. He advised that some buyers did not want to rent their homes through the resort; however, they did want it maintained and would pay an HOA fee so Salamander could maintain them to ensure they always looked right. Mr. Devadas advised that the homeowners were not expected to be present every weekend. He explained that Salamander would manage the rentals around the concept of maintaining the homes. Mr. Devadas opined that some of the homeowners would love to offset their costs of ownership; however, they wanted their family members to be able to make reservations to stay at their homes with no money being involved. He explained that they designed their home rental program to manage reservations for both visitors and residents.

Mr. Devadas questioned whether the noise generated by visitors was different than noise generated by homeowners. He acknowledged, however, the concerns related to items such as noise and advised that Salamander was different in that it would provide 24-hour security, in addition to the check-in/check-out services, to govern guests' behavior. Mr. Devadas stressed that they would enforce the rules, including calling local law enforcement if necessary.

Mr. Devadas advised that a regulation requiring the homes to be the primary residence of the owner in order to be considered for use as a short-term rental would be damaging to Salamander. He acknowledged that things changed and advised that he was not dismissing the concerns; however, Salamander had experience in managing such issues. Mr. Devadas reminded the Commission that there were not many Five Star places in the United States and advised that Salamander operated at that level. He advised that they put processes in place to ensure the guests would be well behaved, even if they were non-paying.

Mr. Devadas advised that he did not have much to say regarding the limits on the number of days a dwelling could be used as a short-term rental and noted that they did not foresee their homes would be rented for half a year, as that was not what their buyers were looking for. He advised that they were okay with a reasonable number of days.

Mr. Devadas opined that if the issue was operating a business out of a home, that was a philosophical issue. He suggested that if the purpose of the amendments was to control noise, the Commission should focus on how to manage disturbances. Mr. Devadas opined that no one would be able to manage their short-term rentals like Salamander. He noted that unlike AirBnB, they were not an absentee service with no stake in the community. Mr. Devadas advised that if the intent of the amendments was to create a community of full-time residents, this would not occur in Salamander's development, as the regulations would only discourage people from buying their homes.

Vice Chair Woodruff noted that if a family member was making the reservation and no money was involved, this would not be considered to be a short-term rental.

Mr. Devadas reiterated that people were primarily purchasing homes in their development for family use – not to rent them out. He opined that the same risks of disruption would occur if someone had family visiting.

Councilmember Jacobs advised that while it was encouraging that Salamander's homes would be subjected to the same management as the resort, the Town was trying to manage the threat for those outside of the Salamander development. He noted that the Town had experienced an uptick in the number of inquiries about short-term rentals and received an application for a special use permit. Mr. Jacobs advised that this was an emerging threat nationwide, as hedge funds were purchasing homes in communities to commercialize them by renting them out, either long- or short-term. He opined that the threat was enhanced in the R-2 District and advised that the Town needed to limit the attractiveness of purchasing homes for this use and turning the town into a resort community. Mr. Jacobs noted the need to determine how the regulations could be equitable to Salamander's interest, while addressing this threat.

In response to inquiries from the Commission, Mr. Devadas confirmed someone would have to physically check in at the resort to rent a home. He also confirmed the properties would be available for rent by individuals who were not family members; however, he reiterated that the buyers wanted to make sure their family members could stay at no charge. Mr. Devadas advised that any guest, even family members, must leave a credit card at the resort, as they would be responsible for any charges incurred or any damage to the property. In response to an inquiry from the Commission, he opined that these would be short-term rentals through the resort; therefore, they would be different than ones through platforms like AirBnB. Mr. Devadas advised that less than half of the buyers were interested in using their homes for short-term rentals and acknowledged that the homes would be listed on their website for rent. He reminded the Commission that in addition to complying with the ordinance requirements, there would be phones in the Salamander homes that would be connected to the resort so the guests could be a part of it. Mr. Devadas acknowledged that homeowners had a right to rent their property and opined that if a short-term rental was not a part of the resort, there should be restrictions. He expressed an understanding of the Commission's desire to be conservative and agreed that disturbances must be responded to. Mr. Devadas suggested that there be a loss of the special use permit if there were repeated disturbances at a property.

In response to a comment from the Commission about whether all their houses would qualify to apply for a special use permit, Mr. Devadas confirmed that not all of them would, as there was no room to move the houses

in The Vineyard section due to the size of the lots. He noted that in one case, the buyer asked for a smaller home. Mr. Devadas advised that the homes could be enlarged by going down into the grade. He reminded the Commission that the homes on the larger lots would have a 4,500 square foot footprint, which would not change.

Commissioner Fleischman reviewed the current regulations. He opined that other than the name change, it was unnecessary to consider the other proposed changes.

In response to inquiries from the Commission as to whether the properties that did not elect to do short-term rentals would be under Salamander's same oversight as those that did, Mr. Devadas confirmed all the property owners must comply with the same HOA rules. He advised that if the property owners applied for a special use permit on their own without going through the resort, the resort would not respond if there were problems. Mr. Devadas suggested that if that were the case, the property owner should have to comply with the ordinance.

In response to inquiries from the Commission, Deputy Town Manager Moore confirmed that anyone who used their property for short-term rental use must have a special use permit and must meet the criteria identified in the ordinance. He further confirmed that property owners must apply individually, as no blanket permits would be issued; however, Salamander could act as the owner's agent during the application process. Mr. Moore advised that once a permit was issued, the property owner would not have to return to the Town as long as they operated within the parameters of the permit.

Chair Cooke opined that the ordinance was not ready for a public hearing yet. He suggested the Commission consider the input received and that the draft continue to be fine-tuned.

Deputy Town Manager Moore agreed the ordinance was not ready to advance to a public hearing. He reminded the Commission that they may receive new information during the public hearing as well. Mr. Moore noted that he had not received any direction from the Commission as to what changes they would like to see to make the draft ordinance more palatable.

Chair Cooke opined that the Commission was not yet certain on how they wished to craft the ordinance. He suggested they schedule a work session to discuss it further. Mr. Cooke further suggested the Commission needed to reach a consensus as to whether this was a worthwhile endeavor.

After some discussion, the Commission agreed with the need to discuss this further in a work session. It was agreed that the Deputy Town Manager would send the members some possible meeting dates for their consideration.

Chair Cooke closed the work session at 7:45 p.m. and called the regular meeting to order.

Disclosure of Meetings with Applicants

The members reported that they had no meetings with applicants.

Public Comment

Pam Curran, 800 Blue Ridge Avenue, opined that a noise disturbance was a noise disturbance. She advised that she has stayed in short-term rentals in Middleburg. Ms. Curran asked that the Commission look at this further and suggested the need to be responsible to the neighborhoods.

Commissioner Fleischman noted that many people did not understand the difference between the Town of Middleburg and the Middleburg area in general. He offered as a point of clarification that even though they say they have rented in Middleburg, the houses were not in the town limits.

Roxene Hill agreed with Ms. Curran.

Prem Devadas, of Salamander Hospitality, noted that he would not be available to attend a work session if it were held on September 12th and advised that he would like to be a part of the discussion. He noted, however, that his team could represent him if necessary. Mr. Devadas opined that it would be important for the Commission to discuss what they were trying to control.

Vice Chair Woodruff opined that the Commission needed to determine their goal. He noted the need to respect everyone involved and to protect the Town.

Mr. Devadas reiterated that if the objective of the ordinance amendments was to get people to live in the town, that would not be a factor for Salamander's homes.

Approval of Minutes

Vice Chair Woodruff moved, seconded by Councilmember Jacobs, that the Planning Commission approve the July 25, 2022 regular meeting minutes as presented.

Vote: Yes – Commissioners Woodruff, Fleischman, Minchew, Roszel, and Stein and Councilmember Jacobs

No – N/A

Abstain – N/A

Absent – N/A

(Chair Cooke only votes in the case of a tie.)

Council Representative Report

Councilmember Jacobs noted the statement given by Commissioner Fleischman during the last meeting and advised that he wanted to clarify some misunderstandings and rebut some aspects of it. He opined that Mr. Fleischman's statement served as a point for members of the community who were opposed to the proposed boundary line adjustments (BLAs) to attack the Council, Planning Commission Chair, and staff. Mr. Jacobs noted the accusations that the Council and staff had engaged in secret BLA discussions. He advised for the record that there were no secret BLAs and that the Council's efforts related to the Homewood Farms and Windy Hill potential BLAs were characterized by the transparency with which the Council had attempted to deal with the issues. Mr. Jacobs noted that public briefings and information sessions had been held and more than two hundred public comments received. He advised that the Council was working to analyze the comments and would share the results with the residents and potential applicants. Mr. Jacobs noted that as to the meetings the individual members of Council had regarding Mt. Defiance's proposed BLA related to a hotel, those kinds of discussions were normal for localities to have. He advised that Loudoun County required such meetings and opined that it made sense to do so before an applicant spent money and energy on an application so he/she would know what would or would not be acceptable. Mr. Jacobs noted, for the record, The Hill School discussions related to the extension of the public sewer main and potential associated BLA and reported that representatives from the school appeared publicly during the May 14, 2020 and June 11, 2020 Council meetings to present their request.

Councilmember Jacobs noted Commissioner Fleischman's comments related to the Planning Commission's role and his view that it should be involved in the BLAs. He reported that there were no jurisdictions in Virginia where planning commissions were involved in BLAs before they were approved. Mr. Jacobs explained that BLAs were judicial proceedings between the applicant and the governing bodies of the jurisdictions. He noted that once approved, they moved to the planning commission for action related to any rezoning requests. Mr. Jacobs reiterated that planning commissions were not involved in BLAs anywhere in Virginia. He suggested the need to remove distractions from the deliberations before the Commission and noted that their work was hard enough as it was. Mr. Jacobs further suggested there not be unnecessary statements for the record that impeded the ability of the Town to get its business done.

Chair Cooke noted that there were State Code provisions that governed the process of considering BLAs and advised that there was no reference to planning commissions in the code. He suggested this be the end of that discussion.

Commissioner Fleischman opined that Councilmember Jacobs' personal attack on him was unnecessary. He explained that he was not seeking to have the Planning Commission deal with the proposed BLAs as a matter of process, but rather suggested there were Comprehensive Plan issues that it needed to address. Mr. Fleischman reminded the Commission that the Comprehensive Plan included the Town's boundaries and opined that there should be general discussion of the items as they affected it. He acknowledged that he had been told that this item was off the table, which was why he did not raise it during this meeting.

Quorum of September Meeting

Chair Cooke advised that he would be available to attend the September 26th meeting after all. Commissioner Fleischman noted that he would let the staff know whether he would be available to attend the meeting. The remaining members indicated they would be present for the meeting.

There being no further business, Chair Cooke adjourned the meeting at 8:06 p.m.

RESPECTFULLY SUBMITTED:

Rhonda S. North, MMC, Town Clerk

Middleburg Planning Commission Transcript
August 22, 2022

(Note: This is a transcript prepared by a Town contractor based on the video of the meeting. It may not be entirely accurate. For greater accuracy, we encourage you to review the video that is on the Town's website – www.middleburgva.gov)

Terry Cooke: Good evening, everyone. We will convene the work session for August 22 for the Middleburg Planning Commission. At the conclusion of the work session, we will move into the regular meeting. Rhonda would you please call the work session roll please.

Rhonda North: Yes, sir. Chair Cooke.

Terry Cooke: Present.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: Present.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: I'm here. Thank you.

Rhonda North: Commissioner Minchew.

Rachel Minchew: Present.

Rhonda North: Commissioner Roszel.

Dev Roszel: Present.

Rhonda North: Commissioner Stein.

Mimi Stein: Here.

Rhonda North: Council Member Jacobs.

Bud Jacobs: Present.

Terry Cooke: We have just one discussion item on the work session agenda this evening. It is Zoning Text Amendment 22-02 amending the Middleburg Zoning Ordinance pertaining to short term rentals.

Staff has provided us with a memo orienting us once again to this issue and along with a draft of the proposed zoning text amendment and a map showing the properties in town that are potentially eligible for short term rentals. Is there anything you want to add to the memo Will?

Will Moore: Just a couple of things really quickly. One is just to highlight the update to the map. So, in particular, what you saw last month was an older version before the Residences at Salamander had gone to record. So those properties are now platted. I've done my best on that map to show you the likely scenarios. That is which ones, which are all of them, which would be potentially eligible for short term rentals. The actual conclusive determination will be once a home is built, many of them in their preliminary sightings are shown just barely meeting the 25-foot separation that's required. So, assuming all is built to spec, that is likely the scenario is that all 49 homes would be potentially eligible for short term rentals. I do want to make one other update. We've been having some conversations about maybe are we trying to solve a problem that doesn't exist, that is in updating these regulations? And I've, of course, made it clear that this the ordinance amendments and in particular this one is one of Council's strategic initiatives. We know that just anecdotally from a staff perspective, that the inquiry is about potentially doing short term rentals have greatly increased over the last 12 months or so and not just related to the Residences at Salamander, this is town wide the inquiries. We in the past two months have issued notices of violation for two short term rentals that were operating without the requisite permits. We found some in the past and have been able to deal with those owners in a more informal basis without issuing a notice of violation. The circumstances with these two made locating the owners a little more difficult, so we had to go through the formal process. Both of those owners have responded. One is clearly ineligible based on the criteria and has removed the property and is just going to be seeking a long-term renter. The other, and this is an update to the memo, has actually filed an application. So, you will have a special use permit application before you for hearing and consideration next month for the first application for a short-term rental.

Terry Cooke: Is this one in the R2 district.

Will Moore: This one is not. This one is in the R3 district specifically in the first block of North Jay that is between Washington Street and Marshall Street. So, you will have that for you to consider next month. And it will be considered under the regulations as they currently stand, because the amendments you are considering are just that they are a consideration at this point. So those are the updates.

Terry Cooke: Okay. Thank you. Of course, the commission remembers we discussed this at some length at last month's meeting, and there were a couple of suggestions or concerns expressed by members of the commission, which are, I believe, now addressed in the draft, the second draft that's been circulated to us. And one has to do with a requirement or a clarification, I should say that property as used for short term rentals be owner occupied residences and the other having to do with the use of accessory structures as short-term rental locations. And one of the things that we as a commission were asked to do by staff between last month and tonight was to consider that element of the regulations that sets out a table, putting forth the limitations on the number of days per year that a

property may be used for short term rentals, and the distances required separation distances required for short term rental uses from adjoining residential properties. And specifically, we were asked to consider those distances and whether we felt that they were too little or too much. And so, I will invite the Commission to share their comments or thoughts on this. Please remember to identify yourself before you speak and ask to be recognized. Anyone? Commissioner Woodruff.

Don Woodruff: A question with regard to adjacent structures on the same property. Would they have the same stipulation that they had to be a certain distance from the main house, or could they be closer than we have indicated?

Will Moore: So, the separation requirement is from the dwelling in which the rental would take place to a neighboring dwelling. So, the likelihood is that because this is limited to single family, detached, is that you're generally not going to have two structures on the same property that have dwellings in them. There are a couple of non-conforming situations where we do have that and, in all cases, there is these measurements are from the dwelling in which the use would be located to any neighboring dwelling. Thank you.

Will Moore: Yes, sir.

Terry Cooke: Any other questions or comments? Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. I'm just following up on the email I sent you as Chairman. And Will asked me for comments from the Salamander Group on what they thought about the primary present requirements? So, is that something we could hear now, or do we have to wait until [off mic]?

Terry Cooke: Well, I would prefer to stick to the order, and that would come up during the public comment period. I know we have Prem is here from Salamander, so I'm sure we'll hear from him when we get to that point. Okay. And I'll wait. Council Member Jacobs.

Bud Jacobs: I'd be very interested to learn or hear other Commissioner's views on the limitations, the days we would limit availability for short term rentals. I've sort of been grappling with this and I honestly, I don't know what a fair or reasonable standard looks like. And I suspect that not a lot of jurisdictions in the Commonwealth have dealt with this, at least jurisdictions of our size and we sort of maybe setting the standard. And I'd be curious about what folks think about what a reasonable number of days is for each of the categories.

Terry Cooke: Well, I think that's exactly what staff is looking for from us. I think you're right. I think we as far as I know, nobody else has taken this approach. We talked a little bit about this last month, and I applauded staff. I think it's an imaginative and helpful response to the issue as to what the right numbers are that's for us to grapple with. I personally feel that less is better to start with. I mean it. And I'm speaking for myself. This is the Chairman for the record, the number of days strikes me as generous. Number of days allowed strikes me as generous. Perhaps they are. Perhaps they aren't. I

don't know. But I think for my view is that, for our first swipe at this if we're going to err, we should err on the side of being conservative on the number of days. You know, experience might teach us otherwise and we could be open to change as we move along. But I would suggest that we except for the separation required in the R2 district for dwellings that are 35 feet or less being limited to 20 to excuse me to 12 days a year. I think that's reasonable and appropriate. I'm less inclined to be so generous with respect to the 24 day and 36-day limitations for those structures within 35 to 50 feet and more than 50 feet. And I would like to pare those down a bit, but that's just my view. And happy to hear what others think about that if there are any thoughts on it. Will, I do have one question, and I'm looking at page two of your memo, H-3, where it talks about all other properties in the R-1 and R-3 districts.

Will Moore: Yes, sir.

Terry Cooke: And sets out the maximum number of days per year. Could those be altered by a special use permit or are those the maximum that would be allowed under any circumstances? Someone coming in for an SUP could not make part of their application 160-day limit, for example.

Will Moore: Correct. So, the way this is structured in H-3 as well as in H-1 and H-2, those are the maximum number of days that could be considered. They could request up to that. They could request fewer if they thought that might make their application more palatable. But in no case could they request more. And again, those numbers are, of course, subject to this discussion. But that's the way it's structured. That would be the maximum that could be requested.

Terry Cooke: Thank you.

Will Moore: Yes sir.

Terry Cooke: Does anyone have any suggestions regarding the number of days permitted or the distances required for separation between uses? Commissioner Woodruff.

Don Woodruff: Don Woodruff here. It seems to me that one of the things that we were grappling with last time was are these homes that are being purchased and to be used mainly as short-term rentals. And it seems to me that anything that approaches half a year, 180 days or even, I think way less than that. Anything that goes near that is saying my purpose is not to be part of the community. It's to be a landlord. And I don't think that's correct. I don't think that's what we should be looking at.

Terry Cooke: Is there anyone else? Council Member Jacobs.

Bud Jacobs: So, you also would favor us a fewer a smaller allotment of days?

Don Woodruff: Yes.

Terry Cooke: Commissioner Roszel.

Dev Roszel: Yes, Commissioner Roszel here. So, we're saying that in R-2 district subject dwelling to the closest neighbor, 35 feet or less, they're allowed 12 days a year, calendar days for rental?

Will Moore: Yes.

Dev Roszel: Okay.

Will Moore: And just a clarification if I may before Commissioner Minchew speaks. That is with a permit. This is not become by right by any means. This is still subject to securing a Special Use Permit is the first thing. The second thing I just. Likely in the next draft, I'm going to change that word days to nights to add clarity. The Town Manager asked me earlier today and it had been on my mind is like well if I rent for Friday night which goes into Saturday is that two days? And the intent is no, that's one night. So, we might make some clarification to that line.

Dev Roszel: So, we're really looking to not allow them to be a business. It's to allow somebody that if they're gone, they want to rent it and they fit all of the criteria they could rent it out for a maximum of 20 days, 12 days a year, if they're 35 feet or less from their neighbor. Let's take a Chinn Lane, for example. So, if I were to go away and I filed all the papers, I could rent it for 12 days within a year. So, the purpose is not to really make it a business. We want to allow them to be able to do it, but you don't want them to do it consistently over. Obviously, they get to live their 183 days, so we don't want them to rent it out the other 180 days.

Will Moore: I think that's correct. The point you're trying to get to, it's a little nuanced. Anybody that operates one of these, whether you operate it for one night a year or 144 nights a year, it's a business. So, but it's what we're trying to do, which is kind of in concert with the Comprehensive Plan Amendment that you forwarded, and Council adopted, is to weigh the impacts on the neighborhood. And maybe those impacts are greater in the older, established neighborhoods. Maybe they're greater when you're in closer proximity to one another, maybe in a newer neighborhood or in areas where there's greater distance, the impacts of that use are less. And that's why we've come up with this kind of tiered approach.

Dev Roszel: Okay. And that was my other question is why do we believe, why do we feel that 35 feet to 50 feet they should be allowed twice as many nights? Does that really, I mean, if we're setting the standard, does it really why do we give somebody that's 35 feet away from somebody else an extra 12 nights if we're really looking to not constrain it? But I don't really understand why we're allowing somebody that's 50 feet away 36 nights and a guy that's only 35 feet away 12 nights. I don't understand that thought process.

Will Moore: The actual measurement. [off mic] Yeah. You know, the proximity, I think matters now. Are those the right measurements? I'm not 100% sure on, but we're not.

Dev Roszel: I'm not judging. I'm just asking.

Will Moore: No, no, absolutely. The theory and it's at least somewhat supported in scholarly research, is that when these are in close proximity to one another, the potential impacts of noise, just other things that go along with transient occupancy, which can be parking issues, trash issues, things like that, they're greater impacts when they're in closer proximity to neighbors.

Dev Roszel: And I don't disagree with that. I guess my question is just because they're 15 feet further away, I don't necessarily think that the number of days should change. Because of what you're saying, the impact.

Will Moore: Right. Yeah. If it's going to be tiered, you have to draw the line somewhere, I guess is the only way to say that. And at some point, in time it's why is it that measurement and I'm only one foot further away? The line has to be drawn somewhere.

Dev Roszel: Right. Thank you.

Will Moore: Yes, sir.

Terry Cooke: Yeah, it's the Chairman. I think it goes to the question of intensity of use. That's essentially what the issue is. The closer a short-term rental is to a residence. It suggests that the more frequently its used for short term rentals will be more [off mic]. Council Member Jacobs.

Bud Jacobs: Would it make sense for R-2 to simply impose a standard number of days for all three of those categories? I sort of take your point. If you're separation between two residences is 150 feet, that's a substantially different situation from residents, which may be 35 feet apart or 50 feet apart. I mean, the noise level is not going to diminish over those 15 feet. If there's a noise problem caused by short term rental, so would that be sustainable, in your view, to simply have a standard number of days for all of R-2?

Dev Roszel: [off mic] Regardless of how [off mic]?

Bud Jacobs: Yeah, without any. [multiple speakers]

Rachel Minchew: Without any measurements.

Dev Roszel: I think that's where [multiple speakers]

Will Moore: I would have no issue with that if that's the Commission's preference.

Dev Roszel: Okay. Thank you.

Bud Jacobs: I hadn't thought about it until you put it that way, but maybe that's worth thinking about.

Dev Roszel: We should have it fixed. [off mic]

Terry Cooke: Ed, my apologies. I think I'm going to change my my view on your suggestion that we hear from Salamander because this is not necessarily an action item, but we could take action on this if we chose to. And I think we'd benefit from Salamander's views. Give them an opportunity to share what their concerns are before we contemplate any action tonight. So, it's not a public hearing. But that being said, Prem, if you'd like to address us now with your thoughts, that would be [multiple speakers].

Bud Jacobs: I object you shouldn't be forced to sit through the entire [off mic] discussion.

Will Moore: May I make one comment first? Just to clarify. Other than scheduling a public hearing, you can't take action on this amendment. You could not vote to make a recommendation to Council at this point in time. [multiple speakers]. Correct. Correct. Yes. Thank you.

Terry Cooke: Before we get to that, if we get to that, we welcome your comments.

Prem Devadas: Thank you, Mr. Chairman. But first of all, I'm staying until the end, no matter what. All right. [laughter] And to that point, regardless of what we talk about right now, I'm happy to answer questions. And during the comment period, I may have a few more comments based on the discussion.

Terry Cooke: You only get one bite at the apple. [laughter]

Prem Devadas: So. Ed would you repeat your question that you posed the last time?

Ed Fleischman: Well, I wrote to the Chairman when I found out that it had been changed to the primary residence to say that that would, I believe, affect Salamander. Salamander is a big player in the town of Middleburg, and I thought we ought to get opinions and input from Salamander.

Prem Devadas: Thank you. Thank you. That is an important issue. And it touches on one of the topics and then there is the other topic. So, if I may, I'll comment on the question and then maybe some general comments about the other issue.

Terry Cooke: It's okay you can come back in the public comment period.

Prem Devadas: Okay. Great. Thanks. We don't have one buyer or prospective buyer today who is contemplating being a permanent residence in accordance with what your definition is right now. And what that means is you have some people that are, you know, like many different home buyers and

many different neighborhoods, especially out in the horse country that have more than one home. They spend time in different places. They travel a lot for pleasure, but they buy a home in a certain place because it is where they want to be and where their families want to be when they have time to come, they have some attachment. There is no question that every single buyer that we have or is considering buying is interested because it's a place where they want to be, where they want their families to be together, when they can be and when they want to get together their extended families. There are people that are literally buying these houses because driven by the idea of their families getting together for Thanksgiving and Christmas in Middleburg because it means so much to them. Now most of those people came here to stay at the resort Thanksgiving, Christmas, other occasions. And they've talked about it literally for years, about getting together. So back to the specific question we have no one that, by your definition, would qualify. There are people in that group that do want to rent their homes through the resort specifically, they have no interest in renting it themselves. They have no interest in the profit side of it. What they do care about is having their homes taken care of. And we have a homeowner's association fee that was designed not just to take care of the roads and signage, but literally they have no choice in the fact that we maintain their homes, we maintain the exterior of the homes, we maintain the landscaping of the homes. We will offer cleaning service in the homes. But that's not part of the homeowner's actual fee. But what is very much a part of the fee is this full maintenance. And we insisted on that, even though it is a big fee and maybe onerous to sales because we want to make sure that things are always looking right, whether they come and stay for a week and then don't come back for five months or they come every weekend, which I think I don't think there will be anybody that comes every weekend to stay in their vacation home. But I'll bet you that in the late spring through early fall, there will be people that come very often on the weekends for those that live in D.C. at least so. So we have designed our plan of managing those rentals around that concept of being able to take care of the homes, accommodate the people when they do decide to come, accommodate them by the way, when their family comes and they're not there and the family could be somebody else, the difference is there's no rent attached to it. So, the conversation about doing it for business is kind of interesting to me because, you know, they're not they, sure they'd love to offset some of their homeowner's association fees, which they are mandated to do and that are high. There's no question that the cost of that sized house from a utility standpoint, upkeep standpoint is tremendous. So, they would love to offset it, as it does occur in in some other places. But they also want a place where if they have a family or a guest, they can just call the resort they can make a reservation for that person. There is no money transacted. They're just coming and there's a cleaning fee that happens when they leave, but that's up front. Other than that, there's no rent attached to it. So, I guess the last thing I'll say and then I'm happy to answer some specific questions is we also designed our program to be able to manage at a very, very high-level people that come and visit those homes or people that come and live in those homes. It's interesting to me about the concern about noise generated by neighbors, by visitors, which is obviously a different standard than noise generated by people who live in their house. But and we acknowledge that a visitor can be disruptive. We also acknowledge that people that live there full time can be disruptive. But as far as visitor is concerned, we have put a program in place which I think, you know, we shared early on in the discussion about rentals with regards to 24 hour security, 24 hour check in and check out the range of services which I've described to you before, all of those things that we do to govern guests behavior in

the resort. We don't allow, I mean, we have 168 rooms, and we will not allow a guest to disturb a guest in the next room, which is not even 15 feet or 20 feet. We have very strict rules, and we enforce them, and we know how to do that. So, I to answer your question it would be very damaging for us to require a homeowner to be a permanent resident, otherwise give up their right to rent at any level on a short-term basis. It would be very damaging. That's not been the understanding. I recognize things can change. I understand that I've experienced situations where things have changed. They've generally changed when there is a need to change. And I'm not dismissing at all the concern about making sure we do everything that we can to keep things well and to anticipate threats. But I have to tell you that I think from an operational standpoint, I am very familiar, and we are very experienced with managing that because it's unacceptable to us. And I never like to portray that we are different than any other homeowner or business owner landowner in town, but we are different in the way that we approach that and we're different in the way that we approach a hotel, a resort, a spa and a neighborhood. There are not many five-star places in the United States. There's a reason for that because some just either don't know how to do it or they are not interested in rising to the occasion to that level. They're not experienced at it. That's our business. Our business is operating at that five-star level. And I recognize everybody makes mistakes from time to time or everybody misses something. But I think we've always been known for responding to that concern that may come up. I mean, I was there on Friday night at the family reunion events standing next to our general manager, Dave Mars, when he received a call from the Mayor that you're not breaking the rules as far as the ordinance is concerned. But I did get a call from somebody who heard the noise. Can you turn the music down? This was this was at 9:00 at night. And Dave said he told me what the call was, and he says, I got to go try to do it. And he had it turned down in one minute. That's the way we are. So, I again will share with you that we are putting into place operational procedures to ensure that our guests are well behaving citizens. Whether they pay, they don't pay, they live there, they don't live there. And it would be damaging for us to have a requirement of somebody being a residence in order to rent. I would also just say that I don't want to say too much about the number of days the 183 days that's currently there were part of a discussion that we participated in early on when there was an ordinance that was put together and that represented a restriction to our program just based on our past experiences in other resorts. But we said, okay. Now a big part of it admittedly is because I don't foresee a situation where it's rented as many as 50% of the days in the year. That's not the model. That's really not what most of our owners are looking for, but a reasonable amount of time. What is that? I know that's what you're discussing now. So, I'm not, I want to try to be careful in the discussion about how many days is right or is not right. But some of the things I've heard so far are that restricting the number of days is to ensure that people don't run it as a business or you're deterring them from running it as a business. And once again, I think if that's a philosophical thing, you know, that, hey, we're not going to let people run a business, then that's one thing. If it's geared towards trying to control noise, then I think it's another thing. And to me, the focus should be on the potential of disturbance and how we want to manage that. And I think any other person that could rise to the level of management that we have and are willing to agree to you know, I feel like they should have that opportunity as much as we should. But I don't think that there are people that can rise to that level. So lastly, I will say that I don't want to be treated differently, but I want you to recognize that we are different in the way that we have done things and the way that we are doing things with regards to management of guests who come

into this town. And that's the same philosophical approach that we have to these homes. These are not going to be individuals that are renting their homes there. They are not going to be involved in the reservations process, the check in process, the checkout process, the maintenance, or the cleaning they are entrusting us with doing that. We are not like Airbnb. It's basically an absentee service, if you will, that has no stake in its community. So, we're just different. And so, I would ask you to consider that, and I appreciate the opportunity always to weigh in. I thank you for your question. It really the last thing I'll say is if the intent of requiring somebody to be a full-time resident is to try to create a community that has more full-time residents, I don't believe that it addresses that desire at all. I can assure you that in our 49 homes, it doesn't. Not a bit. It may discourage people from buying a home. That's you know, but it's not going to encourage somebody to buy a home to live there as a full-time resident. And I would dare say that that's the case with most buyers that I know. So that's the last thing I'll say.

Terry Cooke: Thank you Prem.

Prem Devadas: Thank you.

Terry Cooke: Questions? [off mic]

Don Woodruff: Yeah. Prem, I hear two things that are, I think, distinguishable. If I own a house in your community and I decide that I want to let my son and his wife come and stay there, I don't consider that a short-term rental.

Prem Devadas: No, not at all. Not at all. And I'm not taking it as that. That's fine.

Don Woodruff: So, in my mind that would not that or my cousin or my best friend from college or whatever. I think that's internal. And I assume you still would be looking out for it.

Prem Devadas: Sure, yeah and Don I brought up that that example for two reasons. One is that people are primarily buying the house here for that. Okay that's.

Don Woodruff: For guests?

Prem Devadas: That's primarily what they're buying and for themselves and for their kids and their family. So, I wanted you to know that we have not one buyer who's buying because they think they're going to make a ton of money on rentals and that it's going to be a great investment from a rental standpoint. So that's [multiple speakers]

Don Woodruff: I think you clarified that point early on, distinguishing between my guests and oh, Prem, would you have anybody that would like to rent it for a week or something.

Prem Devadas: Right. But the other reason I'm saying that is that if you don't believe that that guest who any owner, by the way, not just our owners, but any owner who invites, you know, an extended family or friends who have kids that come and stay for a weekend. You run the exact same risk of there being a disruption. So, I have trouble kind of you know with the logic.

Terry Cooke: Council Member Jacobs.

Bud Jacobs: Well, I'm glad you have trouble with it because it's very difficult for me to parse all of these factors as well. I think it's encouraging for the Planning Commission at least that your homes will be subjected to the same rigorous standard of management that you apply throughout the resort. That's a big deal because what we're facing outside of the resort is more of and since you mentioned their name, I'll mention them too, the Airbnb threat. And a great part of what we're trying to do here is to as much as we can manage that threat.

Prem Devadas: But we to that point, we have a history of having asked guests to leave who are disruptive.

Bud Jacobs: Oh, no.

Prem Devadas: For a bunch of different reasons.

Bud Jacobs: I got it.

Prem Devadas: And what gives us the right is the registration card that they have to sign and the agreement.

Bud Jacobs: Sure.

Prem Devadas: It gives us the right to ask them to leave if they are disruptive. And that's the backbone of any, you know, enforcement of policy. We rarely, rarely get there. But we have had instances where guests do that. So, we have the enforcement method to be able to do that.

Bud Jacobs: Got it. I'm happy. It's wonderful. But it doesn't help us with the problem we face in the rest of the town. And the short-term rental threat, I think is already here. Before you came, Will mentioned that he's now seeing an uptick of inquiries and we now have our first application for a Special Use Permit since the ordinance that you guys worked on whenever that was 2016, 2017. 2016. So it's starting to happen. There's one other emerging threat which I'm sure you're familiar with, and that is the development nationwide in the United States that entities such as hedge funds are acquiring residential real estate with a view toward renting them out, commercializing them either in long- or short-term rentals. And in our R2 district, because of actuarial issues, that threat is enhanced for us. And so, we've got to get our arms around a way to limit as much as we can the attractiveness

to those sorts of buyers and try to prevent them from coming into our community, soaking up the real estate and turning it into. Well, it's a ridiculous comparison, but Kiawah Island.

Prem Devadas: Sure. Sure.

Bud Jacobs: You know and that's the issue that primarily concerns me for you guys done deal happy love it, but I don't know how we thread the needle necessarily between being equitable to your interests and the other problem we face in town.

Prem Devadas: Sure. I understand. And once again, I can only just point out. Yes, Don. Sorry.

Don Woodruff: Query would be if I allow my cousin to come and use for a week. Do they have to sign in with you?

Prem Devadas: Absolutely.

Don Woodruff: That's all I wanted to hear.

Prem Devadas: Every guest in any house has to register, check, physically check in. That's in our documents. You can't even do it online checking. You have to physically check in.

Don Woodruff: That's what I wanted to hear. Thank you very much.

Terry Cooke: Commissioner Roszel.

Dev Roszel: Yes, hi, Commissioner Roszel. Prem, thank you for all the info. The question I have is if that so really you don't really charge a rent for someone that's staying at one of those houses or?

Prem Devadas: No, no, no.

Dev Roszel: Can people actually rent one of the houses?

Prem Devadas: Yes. I want to be totally clear. What I was referring to were owners, several who I've spoken with personally who wanted to make sure that if their brother from Tennessee is coming and they want them to stay in their house, that they can stay in their house, and they are not charged for it as a guest.

Don Woodruff: So, they are not rentals.

Prem Devadas: And so, we structured the documents that way. It's very clear they can they do have to check in. There does have to be, by the way, I mean, just there's so many little things. But as an example, the owner, any guests they have, they must leave a credit card at the front desk when they

check in or before they check in. Because if the guest goes and does spa or does whatever, you know, or goes to the restaurant and charges it to the account of the owner, there has to be that responsibility and or if they cause damage, for example.

Dev Roszel: So, if you have someone that comes to you and says, hey, we would like to rent for ten days, house number 64 or whatever it is on the corner.

Prem Devadas: Yeah.

Dev Roszel: It's really like staying at the resort because even though they're paying you, they can stay in the resort for ten days and pay you. So, what I'm hearing is it's really not the same. It's not really a short-term rental because they're really renting. They're paying the resort to stay in the house.

Prem Devadas: Well, I appreciate your point of view. I would view it as a short-term rental, but it's a short-term rental through the resort.

Dev Roszel: Through the resort.

Prem Devadas: And again, Airbnb is another organization that you can rent through. But the difference is in who their employees are or in fact, whether they have any employees, you know, whether they have security, whether they require you to check in in a facility that's on the grounds not just proximate, but on the grounds is that's what's different. Now, the homes that are in the rental program. And that's, by the way, right now it seems to be right now it seems to be less than half of our buyers are prospective buyers right now. So, the homes that would be on the rental program would be on the Salamander Resort and Spa website. Just as we have accommodations, we have a bar that says accommodations. And when you click on that, you see all kinds of different rooms, including suites and our presidential suite and multi bedrooms and single bedrooms. You would when you press on accommodations there now will be another thing that says Salamander Vacation, Salamander Rentals.

Dev Roszel: But again, they're going through you.

Prem Devadas: Absolutely.

Dev Roszel: My point about this, Will, and Commissioners is that while we require an individual homeowner to in order to get a permit, they have to have specific parking. There's got to be fire extinguishers. There's a lot of requirements to do that. The homes are under an umbrella of Salamander, so they would have all of those particulars taken care of. So, I guess I do sort of I'm thinking out loud, but I do sort of see it.

Prem Devadas: I'll add another thing that's very key. As you know, every guestroom has telephones, and you can press a single button and it goes straight to the front desk or it goes straight to security or

wherever room service. The owners of our homes are required to have telephones that go direct to our reservation, our PBX, our room service. Now you do get the right to call and order room service, you know, up to a certain time. But my point is consistent with what you're saying. They are very unique in that they are part of the resort program, not independent of it.

Dev Roszel: That's my point. Thank you.

Prem Devadas: And I'll just add that every owner has a right to rent a home themselves. They have the right to rent the home themselves. However, that's where I think if the restrictions are in place, that makes sense to control disturbance, that if that owner decides they want to rent it for themselves because they're not making money from the resort, then there should be restrictions if they're not meeting certain criteria, we intend to meet every criteria and I'm happy to participate in discussions of how we can even elevate that criteria if it's practical to do so. The last thing I would say is I do understand the approach of wanting to take a conservative approach as opposed to taking the chance of things being too loose. I would ask you to consider in our case that once again, I think that I would be totally in agreement if there was a disturbance in the house. It must be responded to in a certain way. In a certain time, you get a citation or a write up, whatever it is. If it happens again, then you're in jeopardy of losing it. And that could be the case with history. Because I also agree with the discussion about 15 feet versus 25 feet versus 50 feet versus 100 feet. You know, it's about the actual disturbance. If it happens, it's to me not about the number of feet. Anyway, but I understand you're trying to put some kind of logic, just [multiple speakers].

Prem Devadas: Yeah, yeah.

Dev Roszel: Well, I think, too, it's if you're going to spend the kind of money on a house that's in the resort, the chances of you wanting somebody to just arbitrarily rent it and trash it are slim.

Prem Devadas: Well, we have a yeah, no, you're absolutely right and you're absolutely right. And we're aligned with the owner. You know, there have been a lot of people, including a lot of real estate people around here that have said, My God, nobody's going to buy your houses. I mean, you have a starting point of \$2.7 million dollars for a four-bedroom house with a .3-acre lot. They say people just don't do that. They're right. But nobody else offers the experience, the service, the protection, the control. I will tell you again, a lot of people put it in the rental program, and this does happen even in places like Kiawah. I don't want to compare. But but people put homes that are very expensive in rental programs to ensure that they're taken care of, you know, because and yeah that's one of the promises that we make.

Dev Roszel: Thank you.

Terry Cooke: Yes. Rachel.

Rachel Minchew: Hi, Rachel Minchew, I have a question. So, you had said obviously not all the houses are built while we have our little dots showing that they're all within a certain R-3 or 103. If the square footage of the house varies, obviously it's going to make a difference so that it's not going to conform with whatever we're at right now. So, the chances are pretty great. I would think maybe that what we're seeing is that it's probably not going to be all of those houses that would be suited.

Prem Devadas: By the current definition, [multiple speakers] I don't think all of them, but not as much because of the varying size of the houses. I will tell you that the vineyard homes, the smaller lots, that is a 3,550 square foot home that doesn't have room to move because of the lot size. So, believe it or not, there are a couple of prospective buyers, I think one actual buyer who asked for and received a smaller home because they were willing to pay the same price for the equivalent of the lot. But they just didn't want the bigger home and they didn't want to pay for the bigger home that they didn't need. They, so we did a hybrid model of a three bedroom for that. So, you can't go in the vineyard homes, you really can't go up in size. You can go smaller, and some people are doing that. In the larger lots those lots are typically an acre to 1.3 acres, and it's a footprint that has a basic 4,500 square foot home. You can make it larger by the ones that are in the edge of the woods. The topography drops like this. You can make it larger by building down into the grade, and that can give you another equivalent of footprint. And some people are doing that for fitness, room downstairs, wine room downstairs, that kind of thing. And I think there's one person that's added a bedroom to go five bedrooms by going downstairs, but the footprint doesn't change.

Rachel Minchew: All right thank you.

Terry Cooke: Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. Prem, I appreciate your information that you provided. It all seems reasonable. Actually, you didn't provide any new information to me. I'm familiar with resorts and rental programs in other places. I want to address the fellow commissioners and for the fellow commissioners to take a look at the existing zoning ordinance and requirements. This was put in eight years ago, Will is that about, right?

Will Moore: It was almost six years.

Ed Fleischman: Six years.

Will Moore: So almost six.

Ed Fleischman: So, when it was put in, I looked at it and I said, oh, and I mentioned this at a Planning Commission Meeting that I thought Salamander was involved because it was set up as such as it would work for Salamander type operation. Prem, you said it wasn't so that's fine.

Prem Devadas: No, no, I didn't say. I said we had input.

Ed Fleischman: Okay.

Prem Devadas: Yeah, we certainly had input.

Ed Fleischman: And then what came out of that six years ago? I read that and I think what that has in it six years ago is pretty strong. When I read it, it said a property management plan shall be produced, shall be included as part of the application kept current verified, renewed annually at a minimum. The plan shall include, at a minimum, 24-hour contact information for a responsible party, owner on premises, or a management entry within 20 miles. Methods by which bookings will be facilitated. Procedures by which guests will check in. Floor Plan Sketches, provisions for buffering and screening from Neighborhood Residential Properties. Plans for addressing routine and emergency maintenance. List of contractors on call. The property owner shall sign and provide a declaration of the effect. The dwelling meets all applicable building codes and on and on and on Information package. It's pretty strong and I just consider this is really an unnecessary operation that we're doing now. I think if you look at the current, the main thing is to change the name. I like that the short-term rentals.

Prem Devadas: Yes sir. I do too.

Ed Fleischman: But I think the existing rule is pretty strong and I think that we could be doing better things with our time than trying to massage this. Thank you.

Terry Cooke: Thank you. It's the Chairman. Prem, one question I have you mentioned the term rental program several times. And I take that to mean that some of your buyers will be in a rental program.

Prem Devadas: In our rental, resort rental program.

Terry Cooke: They'd want to be able to use their properties for short term rentals. Others, I take it, will not be.

Prem Devadas: That's right.

Terry Cooke: So those that are not would I take it they would not be subject to the same sort of oversight that you've described as pertaining to those who are in.

Prem Devadas: Yeah, that's a great comment. So, they are under the same homeowner's association dues and restrictions, meaning that their grass will never go uncut, their places will be painted and kept up. We will never allow that to happen. It is our responsibility to keep that up because they are paying a fee and they agreed to do it whether they rent or not. They also will have the phone direct to the resort because just as an example, whether they rent their home or not, they absolutely have the ability to call for room service and have it delivered by us. We're also doing certain things like tying in

the technology of the homes, just like a hotel room where they'll be able to get the same screening and all of that. I think they also have in their homeowner's association the services of security as an example. So, if they're in the home or their families in the home, they can call security at the resort. In fact, they're instructed to do so, to call security just like a hotel guests is now. And then we respond to it. We, of course, have the relationship with both Middleburg police and county police. So, if it's something that rises to that level, we do and have brought in the local police department and fire department and all of that. So, whether they rent or not, that's part of our program. No different than if the guest was staying in the in the room. I don't know if that answers your question. Do you have any specific things that you're wondering about?

Terry Cooke: Well, I guess what I was getting at is if you have someone who's not in your rental program, who decides, as you suggested earlier, that they want to independently.

Prem Devadas: Yes.

Terry Cooke: Apply for a special use permit. Offer their property for short term rental. [multiple speakers] But would you have the same authority.

Prem Devadas: Yeah.

Terry Cooke: To respond to problems that might come out of it. People complaining about noise or loud parties or whatever as you would for folks in your rental program.

Prem Devadas: No, that is an excellent distinction. The answer is no, which is why I offered that if there was an owner that chose not to be in the resort rental program but wanted to rent on their own, they are different. And yet, you know, Ed just read off some of the things that are in the current ordinance. In my opinion, they should comply with the ordinance. They should be able to comply with the ordinance or they shouldn't get a permit. Okay.

Terry Cooke: Okay. Thank you. Anyone else? Okay. We're going to move on. Prem thank you so much.

Prem Devadas: Thank you very much and.

Terry Cooke: Appreciate your insights and comments on that and if you have further comments when we get to the public comment.

Prem Devadas: Yes, thank you. [off mic]

Don Woodruff: If they rent something that's a part of the rental program. Do they have to get a special use permit?

Will Moore: Yeah. So just for the benefit of everybody, Mr. Woodruff is asking if any time somebody rents on a short-term basis, if they have to get a special use permit. You have to have a Special Use Permit no matter where you are in town. It's limited to the R-1, R-2, and R-3 districts and a number of other criteria. You have to be a minimum separation from dwellings. But anybody who wants to operate a short-term rental has to have a Special Use Permit. In all cases.

Don Woodruff: Yes. So, they wouldn't have a blanket one?

Will Moore: No. No. So, each individual property must the property owner must individually apply for a special use permit.

Don Woodruff: Can Salamander apply for it?

Will Moore: Well, I mean, they can act as an agent, just like, you know, sometimes a land use engineer will represent the owner when the subdivision application comes in so they can act as an agent for them. But the owner has it's the owner who signs the owner has to sign the application form.

Don Woodruff: So, every time Prem wants to rent some place, he has to come to us and ask for a special use permit?

Will Moore: The property has to get a special use permit to operate short term rentals. Once that's issued, they don't have to come back each individual time. No.

Don Woodruff: Okay, thank you.

Will Moore: Yes. Okay.

Prem Devadas: And we agreed to that readily.

Don Woodruff: That's what I thought [multiple speakers]. Yes, I remembered that. But I was. I thought maybe it was fuzzy inside of this [multiple speakers].

Will Moore: No, once that permit is issued, it's issued.

Don Woodruff: And thank you.

Will Moore: As long as they're operating within the parameters of any conditions that are.

Don Woodruff: That clarifies it. Thank you.

Terry Cooke: Any other comments from the Commission? It's the Chairman speaking. I hate to kick this can down the road again, but I don't the commissioners may feel differently, but I don't feel this is

right for scheduling yet as a public hearing. I think we need to be more deliberate on this and consider some of what we've heard tonight and some of the comments that Commissioners have made generally and see how we can perhaps fine tune this to better get at what we are trying to get at. So, unless someone wants to make a motion contrary to that, I would suggest we close this discussion and conclude the work session.

Will Moore: If I may, Mr. Chairman?

Terry Cooke: Yes Will. I thought you may.

Will Moore: I hear exactly what you're saying, and I agree that based on the discussion, we're not ready to go to public hearing because you want something that's somewhat packaged. But you also but you also want to be respectful of the hearing process in that you're expecting new information maybe to come in during that hearing.

Terry Cooke: [multiple speakers] People who come to the public hearing, have a right to know what we're thinking about.

Will Moore: Correct? Correct.

Don Woodruff: No more secret meetings.

Will Moore: So, I think the only thing I would suggest, [off mic] other than Mr. Fleischman's suggestion that it's probably good enough as it is, except for the change of name, which I 100% agree on the change of name part. I don't I'm not walking away at this point in time with any direction from the Commission based on the discussion this evening, as what could I do with a subsequent draft to hopefully make it more palatable or more in line? So that's and if that doesn't happen tonight, that's fine. But in subsequent meetings, I really need something, so I make sure I'm responding to your concerns.

Terry Cooke: No, I understand. And I think we as a commission are right now uncertain as to the best way to craft this.

Will Moore: Understood.

Terry Cooke: I think we all agree it needs some more work. Exactly what that means. I think, you know, is it possible for us to have a special work session on this, just a Commission to have a conversation among ourselves open to the public of course, but a conversation among ourselves as to what we think. I mean, Ed has stated his view, and maybe that's the prevailing view. I don't know. But before we can give you some direction as to what we think ought to be in here, we have to come to some consensus among ourselves as to whether this is a worthwhile, endeavor or we're just

flogging a dead horse. I don't know. So, I think we as a group, as a Commission, need to focus in on this and spend some time on it.

Will Moore: And it's always your prerogative if you want to schedule a special work session for that purpose.

Terry Cooke: How does the rest of the commission feel about that?

Bud Jacobs: Sure. [off mic]

Terry Cooke: Okay. Probably, as I say, we shouldn't delay this any longer than necessary. Could we do it within the next couple of weeks, perhaps?

Will Moore: Rhonda needs a little bit of notice to notice the, to provide. It's just.

Rhonda North: Three business days.

Will Moore: It's just a few business days, though. So, yes, we would have to look at our calendar, which I'm trying to pull up at the moment. As for the availability of the room.

Don Woodruff: [off mic] held at the Salamander.

Prem Devadas: Well, I will just say that I be happy to bring more information to a discussion next time that might be specific about some of the you know, [off mic] things.

Terry Cooke: That may be one of the things that comes out of our discussion is what more information would we like to hear from [off mic]? Council Member Jacobs.

Bud Jacobs: I can think of one right off. It's Council Member Jacobs. I can think of one data point right off the bat. I think we have a pretty good understanding of the potential impacts of this of what we're considering tonight on the resort. But I don't think we have a similar understanding of what the impacts might be on residents in the R2 and R1 and R3 districts. I certainly don't. And I think perhaps it's wise for us to try to get some sense of that before we proceed too far down the road here. Did that make sense?

Terry Cooke: Wouldn't we get that, though, from if we move forward with a public hearing would that be the opportunity to get that?

Bud Jacobs: Well, I guess it would. All right. I guess I was thinking of something maybe less anecdotal and a bit more rigorous than what's going to happen to property owner A or B looking more at sort of neighborhood trends if such information is available? I just I don't know.

Terry Cooke: Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. I don't know whether this is a proper procedure, but I would really be interested for Will and the town to pursue this unnamed individual who wants to file an application. And then we follow that to see how that works through the existing system. And then maybe when we find out if it works, there are problems, then we can change the system based upon this one application. It might be a test case that would provide the commission input to make some changes.

Terry Cooke: Well, of course we will have to consider that SUP in due course as it comes before us, I think. And that decision as Will suggested is going to be based on what the ordinance currently says.

Ed Fleischman: Right. Right so.

Terry Cooke: And what we're suggesting here or what we're contemplating here is changing that ordinance to require some additional.

Ed Fleischman: Mr. Chairman, my point is I'd like to see if the existing ordinance doesn't work or work, and this might be the test case to provide input to us, or it might provide us input for a few changes that are necessary based upon that. Just a thought thank you very much.

Terry Cooke: [multiple speakers] any action on this until we first do that. Anyone else? All right. I think where we left this was whether we might be able to convene a special work session within the next couple of weeks or so.

Will Moore: Would it be best to try to stick to a Monday since that's our normal meeting day? Is that somewhat generally available?

Terry Cooke: That's fine with me.

Will Moore: If so.

Don Woodruff: I'm away next week, so I would not be able to do it next week.

Will Moore: Okay.

Terry Cooke: We'd have to have notice anyway. So, we're probably talking two weeks or so.

Will Moore: Well, we could potentially do, well two weeks is Labor Day. So, we wouldn't do that, but we could do so next Monday is the 29th. We would have sufficient time to notice that. We could also do Monday, the 12th of September, which would be two weeks before. Well, I think we're going to it

sounds like we're going to stick with September 26th, the regular meeting date after talking to the Chairman.

Don Woodruff: You're not going to be here.

Terry Cooke: Well, I will be.

Don Woodruff: Okay, good.

Terry Cooke: I cannot recall off the top of my head whether the 12th works for me or not. I'll say it will, but I won't know until I get home and look at my calendar.

Will Moore: I can send out some possible dates to the commission tomorrow morning.

Terry Cooke: Let's do that.

Will Moore: And if you would be so kind as to respond.

Terry Cooke: That will give everybody a chance to [multiple speakers].

Will Moore: Try to give three or four dates and just say yes, no, yes, yes. Just respond to each of the dates and we can throw it together really quickly.

Terry Cooke: Let's do it that way. Okay. Okay. Thank you all. Good discussion. Ok we will that will conclude our work session and we will convene our regular meeting of the Planning Commission and we will call that meeting to order. The first order of business would be disclosure by Commission Members of any meetings with persons having applications or matters before the Commission. Rhonda, would you call the role on that question?

Rhonda North: Chair Cooke.

Terry Cooke: I've had no meetings or discussions. Thank you.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: I've had no meetings or discussions. Thank you.

Rhonda North: Commissioner Fleischman.

Ed Fleischman: I have had no discussions. There are hardly any application before the Commission that I would have discussions.

Rhonda North: Commissioner Minchew.

Rachel Minchew: I've had no discussions with anyone.

Rhonda North: Commissioner Roszel.

Dev Roszel: I've had no meetings or discussions with anyone before the Commission.

Rhonda North: Commissioner Stein.

Mimi Stein: I've had no meetings or discussions with anyone applicants.

Rhonda North: Council Member Jacobs.

Bud Jacobs: I've had no meetings or discussions with anyone with any matters before the Commission.

Don Woodruff: I like that statement, any matters.

Terry Cooke: Thank you all. Our next agenda item is public comment. I know we have some folks here this evening.

Rhonda North: Yes.

Terry Cooke: I will invite you folks since you've been patient. [laughter]

Pam Curran: I did talk to Will about my Piaya in Safeway. [off mic]

Terry Cooke: How did it come out?

Pam Curran: It was great.

Terry Cooke: Please remember to state your name [off mic].

Pam Curran: You will have to come over. Pam Curran. Pam Curran. I live at 800 Blue Ridge Avenue, so I just I wanted to say I agree with Prem on the point he made about a disturbance is a disturbance. I have stayed in many short-term rentals in Middleburg before I bought my house and it's done very similarly to what Prem described, except you don't have the button to push the resort for room service. But all the things that he talked about, and Commissioner Fleischman stated, you know, most of the really good, there are about 25 Middleburg homes that are I disagree a little bit with you in terms of the price dictates how people feel about renting out their home. But it's done very similarly to what Prem described and a disturbance is a disturbance. If you need someone call to tell your renters,

you're out. If you have another disturbance, your permits taken away. But, you know, I actually even met a very well-known historian, American historian in Safeway that I had known in the past life. And I said, oh, do you own a home in Middleburg? And he said, no, I have a short-term rental that I found on, you know, Airbnb, and I would tell you his name, but he might get mad at me when I tell you. But I mean, he's very well. [multiple speakers]

Pam Curran: Reputable historian. It's not Meacham but it's right below. Meacham So I'm telling you, he's reputable and he's renting a short term rental right now, and so I would just say this, I always since I've moved here recently, I've noticed there is a little bit of a not intentionally well intended, but a haves and have nots type of governance related to home ownership. And I think some of you were sensitive to that with the last vote that we took on, you know, setbacks and heights and things like that. And I would just encourage you, I think the same thing, though not all of us have the same experience the resort has in property management. Many of the principles that the resort will put in place would work for us to over here in Ridge View, we love our homes. My home has been identified as meeting the criteria of being able to rent to this historian if I chose to. So, I would just ask you to really, you know, look at a disturbance is a disturbance. And if we do put in the permit and we want to do short term rentals, we have to be as responsible to our neighbors as Prem will be to anybody that rents from him. So that's what I would say. And if anybody wants to ask me who I saw, I'll tell you after the meeting. But he told me, and I actually have brought my family into Middleburg. I've stayed in the resort many times, but I've also rented from very wonderful homes that do short term rentals in Middleburg. So that's all I would say that I don't know that we have to divide the two, you know, we have to divide, you know, Salamander from the rest of what happens. So that's it thank you.

Don Woodruff: Historians are a very seedy lot.

Pam Curran: Oh, this this one is good though. He's.

Don Woodruff: Pardon.

Pam Curran: He's well known, he's well-written and he's a wonderful person so I was glad to see him in Middleburg.

Terry Cooke: Commissioner Fleischman, you had a question?

Ed Fleischman: Well, I just want to state that a lot of times people don't understand the difference between the Town of Middleburg and Middleburg in general. So, a lot of times people say they have an Airbnb, or they rent in Middleburg. They don't really do that in the town. And I think that's just an important clarification.

Pam Curran: But a disturbance is a disturbance if it's in town or out of town, right? I mean, the same type. I mean.

Ed Fleischman: No, I'm just referring to the town boundaries are different than what people feel is Middleburg.

Pam Curran: Yeah. Understood. Understood. Thank you. Thank you very much.

Terry Cooke: Thank you. [inaudible] anything? [off mic]

Roxene Hill: Agreement with her, I think [off mic]

Terry Cooke: Prem, did you have some additional comments you wanted to make, or did you cover everything?

Prem Devadas: Very quickly. I will not be in town September the 12th, and I would love to be part of the discussion just to let you know. But if it's not possible, I have great confidence that some members of our team can come and be able to present. It would be great if we had an idea of some of the questions that might come so that we can make sure that we're prepared. But otherwise, I will be here as much as possible. And again, I always appreciate the opportunity to do that. And I honestly feel very awkward in saying that, that we will be different. But this is just one of those times where everything we have set up from, you know, from the management of it to the resources to it, to the rules and regulations and all of those things are different. And I think that for me, it was a good point that the discussion has started out as an issue of distance and number of nights, and I would really encourage us all to talk about what I think is the meat of any ordinance in this case, which is whether it's 12 nights or it's 144 nights. What is the control of it? And I think that there is a lot of that in there. We can add more to it, but I think that that would be an important part of the discussion. Okay.

Don Woodruff: I think along and agree with you 100%. But I think that one of the things that we have to decide first is what is our real goal in accomplishing this and respecting everyone involved, homeowners, Salamander, other people in town, etc., and still protect the town.

Prem Devadas: Sure. And I respect that. And so, I'll just repeat that if an objective is to get more people to move in town who are going to live in the house, the rental ordinance is not going to factor into our homes. I don't know about the other homes, but it won't factor into our homes. Okay. So there has to be some other measure that we can. Thank you.

Terry Cooke: Thank you. Thank you. Ok concludes the public comment period. Next move on to approval of minutes from our July 25, 2022 work session and regular meeting. Do we have a motion?

Don Woodruff: I move that we accept the minutes as presented.

Bud Jacobs: Second.

Terry Cooke: Moved and seconded. Any opposition? All in favor say aye. Aye. Thank you. We now turn to the Council Representative Report.

Don Woodruff: Oh, boy [off mic].

Terry Cooke: Council member Jacobs.

Bud Jacobs: Oh, Joy. I want to take some time to discuss the statement for the record that Commissioner Fleischman made at our last meeting, and I hope to clarify some of the misunderstandings that are contained in Mr. Fleischman's statement. I'm doing this for two reasons. One, the statement was made. It's on the record. And I think we need a rebuttal to some of the more questionable aspects of Ed's statement. And two, because Ed's statement. [multiple speakers]

Ed Fleischman: Is this in the Council Members Report, is this proper there?

Terry Cooke: He is speaking as a member of the Town Council.

Bud Jacobs: Yes, I am indeed. [off mic] Well, Ed, if you'll allow me? The second reason is that Ed statement has apparently served as a starting point for members of the community who are opposed to some of the things the Council is doing to attack the Council, to attack the Chairman, in fact, as well as town staff. So, I'm going to comment on just two elements of your statement, Ed. The first was the accusation that Town Council and or staff have been engaged in so called secret BLA's. Let me state for the record, as I did, I think at our meeting, there are no secret BLA's. The efforts that Council has made with respect to both the Homewood and the Windy Hill potential BLA's has been characterized more than anything by the transparency with which we've attempted to deal with these issues. We've had public briefings, public information sessions, as you well know. We have open public comment at months' worth of meetings of Town Council, and we have received something on the order of about 200 comments from residents about the proposed BLA's on our website. At the moment we're working through those comments. I think we're going to try to do some sort of analysis pro con and some of the more useful comments that have been made both pro and con and try to capture that in a meaningful way so that we can share that information with our residents and also with the potential applicants. In the case of two of the meetings I think you cited, Ed. One was the meetings that individual members of Town Council, including me, held with the owner and operator of the Mount Defiance Cidery about their potential interest in a BLA so that they could build a hotel on site. You should understand that these kinds of discussions are normal and in fact not at all out of line with any policy in any jurisdiction in the Commonwealth. In fact, in Loudoun County, potential applicants are required to hold such meetings with the local jurisdiction before anything moves forward. And if you think about it, it makes sense. Somebody has an idea whether it's a property owner or a builder or a developer before they spend money and energy to pursue their goal, they probably want to know what might fly, what might not fly, and get some sense from the local jurisdiction of where ground truth really lies with respect to their particular interest. The other instance that I believe you cited was the

Hill School sewer hookups. And I think the implication of what you were saying was that somehow. [off mic] Was that Vince?

Don Woodruff: That was Vince.

Bud Jacobs: Oh, okay. Well, that's good. I'm glad you never said that.

Don Woodruff: That's not Ed.

Bud Jacobs: For the record, the Hill School hookups, Ed, were conducted entirely publicly. I can cite two meetings, one on May 14, 2020, the other one on June 11, 2020, when head of school came to Town Council and briefed him over his interest in perhaps having sewer hookups for the six homes. I guess it is on Hill School property. So, any allegation that there's secrecy or something going on there is simply, well, it's not only wrong, it's stupid. You just need to check the record to find out what Town Council has done. The second comment that you made, and you did make this comment was about the role of the Planning Commission and your view that the Planning Commission should be involved on BLA proposals. There is not a jurisdiction in the Commonwealth of Virginia in which Planning Commissions are involved in BLA's before the BLA's are approved. BLA's are judicial proceedings that take place between the requesting jurisdiction and in our case, it would be us and Loudoun County. Once the BLA has been approved, if it is approved, it then moves to the Planning Commission for action. In our case, I imagine, Will, correct me if I'm wrong here, but any action that might fall to us to pursue would relate to zoning requests or rezoning requests that are necessary as a result of the BLA. I want to assure you, Ed, that this is not going to change. Our Planning Commission will not be involved in BLA's any more here than it would anywhere else in the Commonwealth. There's an old joke about prisoners in their cell who have been together for many, many, many years, and they decide that they're just, rather than repeating the same jokes over and over again, they're simply going to assign a number to each joke just to save time. So, in the future, should you decide to raise the question of the role of the Planning Commission in BLA's, I'd suggest that we simply assign a number to your complaints, so we don't have to listen to them. We can say, okay, Ed Fleischman complaint number five and move on. I think it's time for us to remove some of these distractions from our deliberations. I think as we've seen tonight, this stuff is hard enough as it is. So, let's be collegial, let's be open and honest, and let's not blindside the Commission with unnecessary statements for the record that are then used to further complicate the ability of the town to get its business done.

Terry Cooke: Any other comments Council Member Jacobs?

Bud Jacobs: That's it.

Terry Cooke: It's been a slow month. Commissioner Fleischman? All right. [off mic] Not unless you want to, it's not a debate. I will say this. As I mentioned last month, I think when this matter came up. And Council Member Jacobs stated again just now that [inaudible] BLA's are not the province of local

Planning Commissions, they are statutory processes. I went back after that meeting last week and I read through the [inaudible] code again to make sure I was right. And in all the sections that discussed BLA's, you will not find one reference to Planning Commission. The Planning Commissions are not involved in that process. And it's as simple as that. So, if and that's the end of the discussion on that issue, as far as I'm concerned. Commissioner Fleischman.

Ed Fleischman: Thank you, Mr. Chairman. I think it was an unnecessary personal attack, Councilman Jacobs. And I'm surprised that you went to that level. All on the what I was trying to do over the last couple of months, Mr. Chairman, was not have the Commission deal with a boundary line adjustment as a matter of definition, as a matter of judicial lawyers. What I was trying to do was to say that the Planning Commission should deal with regional comprehensive plan issues, and the comprehensive plan includes the boundaries. And I think there should be some just general discussions, nothing in the code or any of the regulation. I'm not familiar with that. I'm not a lawyer, I'm a planner. And I think that as planners, we should discuss general items that would affect the comprehensive plan. And that's all. Nothing about rules, regulations, and judicial proceedings. I just thought it should be something that we should discuss, however I've been told last month that it's off the table and I didn't bring it up. This month until it was brought up by the Council Member. Thank you.

Terry Cooke: Thank you. And it is off the table. And that being said, we will move on to discussion items. Anything else anyone wants to bring up for the Commission's consideration? Hearing none we'll move on. And we go to the quorum for next month's meeting. At last month's meeting, I indicated that I did not expect to be here for the regular meeting on September 26th. [off mic] that my plans have changed and in fact, I will be around on the 26th. So, I presume we'll proceed on that date. Is there anyone who will not be available? Very good.

Ed Fleischman: I will notify you later on whether I'm available or not.

Terry Cooke: Okay. Thank you. There being nothing further to come before us this evening. We are adjourned. Thank you all.