

Special Called Meeting & Joint Public Hearing of the Damascus Town Council and Damascus Planning Commission

Minutes for Monday, September 9, 2024

6pm at Damascus Town Hall

Council Members Present: Susan Coleman, Charles Fields, Tom Hayes, Beaty Jackson, Robert Kemmerlin, and Jack McCrady

Absent: None

Also Present: Katie Lamb, Mayor
Lucy Phillips, Legal Counsel

Chris Bell, Town Manager
Tuesday Pope, Town Clerk

Mayor Lamb called the meeting to order for the Damascus Town Council.

Tony Bebbler called the meeting to order for the Damascus Planning Commission
Public Hearing

The Town Council and Planning Commission of the Town of Damascus, Virginia are conducting a joint public hearing regarding a proposed amendment to Article 8 and Sections 15.5, 15.9, & 16.5-3 of the zoning ordinance to prohibit transient & semi-transient lodging in R-1, R-2, R-3 and Industrial zones within the town limits.

- Planning Commission Presentation – Mr. Schmidt gave some context regarding the proposed amendment and explained that the purpose would be to stop providing Conditional Use Permits (CUP) for transient lodging (short term rental) establishments, in residential zones only. The existing properties that have already been issued and maintain a CUP will be grandfathered in, can continue to operate their short-term rentals in residential neighborhoods, and those CUPs will transfer with the properties if they are sold. After much data gathering, research, and thought, the Planning Commission believes the proposed zoning changes are appropriate, balanced, and fair to all concerned, and will help reduce negative trends that result from our current zoning ordinance while increasing protections in residential districts.

- Mayor Lamb opened the Joint Public Hearing to solicit comments from citizens.
 1. Montana Earp, Bowlin St., spoke in favor of the proposed ordinance amendment.
 2. Jennifer Connell, S. Railroad Ave., spoke in opposition to the proposed ordinance amendment.

3. Anne Marie Mack-Schmidt, Appalachian Trail Dr., spoke in favor of the proposed ordinance amendment.
4. Sandy Davenport read a letter from Janice Donovan, N. Beaverdam Ave., who spoke in favor of the proposed ordinance amendment.
5. Chris Ivans, Glade Spring, spoke in opposition to the proposed ordinance amendment.
6. Sandy Davenport, Brook St., spoke in favor of the proposed ordinance amendment.
7. Kevin Forrester, Appalachian Trail Dr., spoke in opposition to the proposed ordinance amendment.
8. Will Jacobs, Taylors Valley, spoke in favor of the proposed ordinance amendment.
9. Michael Wright, Backer Ln., spoke in opposition to the proposed ordinance amendment.
10. Belle Avery, Blossom Rd., spoke in opposition to the proposed ordinance amendment.
11. David Atwood, N. Legion St., spoke in opposition to the proposed ordinance amendment.
12. Tom Davenport, Brook St., spoke in favor of the proposed ordinance amendment.
13. Aaron Port, spoke in favor of the proposed ordinance amendment.
14. Trey Waters, Mock Ave., spoke in opposition to the proposed ordinance amendment.

Mayor Lamb Closed the Public Hearing and opened up the floor for Planning Commission Discussion and Possible Action.

There was further discussion between the Council and Planning Commission members.

➤ Planning Commission Recommendation:

Mr. Bebber made a motion to recommend that Council adopt the proposed ordinance to amend the Damascus Zoning Ordinance Article 8 and Sections 15.5, 15.9, and 16.5-3, excluding changes to Industrial zones. This motion was 2nd, and passed unanimously.

➤ Town Council Discussion and Possible Action:

There was further discussion amongst the Council members.

- Ms. Coleman made a motion to take the Planning Commission's recommendation and adopt an ordinance to amend the Damascus Zoning Ordinance Article 8 and Sections 15.5, 15.9, and 16.5-3 regarding no new transient lodging and nonconforming uses, excluding Industrial zones. Mr. McCrady 2nd the motion, which passed (5-1, with Mr. Fields opposed).

The adopted amendment to the ordinance follows:

TOWN OF DAMASCUS, VIRGINIA
AN ORDINANCE TO AMEND THE DAMASCUS ZONING ORDINANCE
ARTICLE 8 AND SECTIONS 15.5, 15.9, AND 16.5-3
REGARDING TRANSIENT LODGING AND NONCONFORMING USES

WHEREAS, the Damascus Zoning Ordinance governs the uses of property that are permitted in the zoning districts of the Town as enabled by Va. Code § 15.2-2280;

WHEREAS, upon recommendation of the Planning Commission, the Town Council has determined it to be in the best interests of the public health, safety, and welfare to restrict establishment of transient and semi-transient lodging to the commercial districts of the Town: C-1, C-2, and C-3; and

WHEREAS, the Town Council and Planning Commission jointly held a public hearing regarding the proposed adoption of this ordinance on September 9, 2024, in the Damascus Town Hall after duly advertising the hearing in accordance with Virginia Code § 15.2-2285;

NOW, THEREFORE, be it hereby **ORDAINED** by the Damascus Town Council after due consideration of the public health, safety, and welfare, that:

1. This ordinance shall be effective immediately upon its adoption.
2. If any provision in this Ordinance is held or made invalid by a court decision, statute or rule, or shall be otherwise rendered invalid, the remainder of the Town's adopted Ordinances shall not be affected thereby.
3. The Code Editor is authorized to revise section numbering and formatting as needed to maintain consistency with the Town of Damascus Code of Ordinances.
4. The following revisions shall be made with the understanding that underlining indicates new text to be inserted and strikethrough indicates existing text to be deleted.

APPENDIX A - ZONING

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ARTICLE 8. USE REGULATIONS

[Note to Editor: the following table shows only the row that requires revisions. All text in the table that is not included in the following excerpt shall remain unchanged by this ordinance.]

P - Principal Permitted Use C - Conditional Use (Article 16) A - Permitted Accessory Use (20.2) Uses Not Noted in Tables Are Prohibited Use	DISTRICT								
	R-1	R-2	R-3/MHP	C-1	C-2	C-3	I	F-1/2	G-1
Transient and Semi-transient Habitation (20.67, 20.78)	C	C	C	P	P	P	C		

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ARTICLE 15. PROVISIONS GOVERNING NONCONFORMING USES

Sec. 15.1. Statement of purpose.

In order to guide the development of compatible land use patterns in the town, nonconforming uses which adversely affect the development of such areas must be subject to certain limitations. The provisions of this article are designed to provide a gradual remedy for existing undesirable conditions which result from incompatible nonconforming uses. While such uses are generally permitted to continue, the provisions are designed to discourage further investment in or continuance of these uses.

Sec. 15.2. Applicability.

The provisions of this article apply to all uses, signs, buildings and structures which are not permitted within the districts in which they are located. Any nonconforming use or structure which existed lawfully at the time of enactment of this ordinance, or any use which shall become nonconforming upon enactment of this ordinance and subsequent amendments, may be continued subject to the provisions of this article. For the purpose of this ordinance, a change in use is a change in the type of activity, however, a change in occupancy or ownership shall not, by itself, constitute a change of use.

Sec. 15.3. Change of nonconforming use to conforming use.

A nonconforming use may be changed to any conforming use. However, all applicable regulations and accessory off-street parking requirements shall apply to such change.

Sec. 15.4. Change of nonconforming use to nonconforming use.

In all districts, a nonconforming use, building or structure may not be changed to another nonconforming use, building or structure.

Sec. 15.5. Discontinuance.

No nonconforming use, structure, use of land or sign shall be reestablished after discontinuance of ~~one year~~ two years.

State law reference: Two year discontinuance, Va. Code § 15.2-2307(C).

Sec. 15.6. Repairs, alterations and expansion of nonconforming structure or use.

15.6-1. Incidental alterations. Incidental alterations as defined by this ordinance may be made to a building or structure occupied by a nonconforming use.

15.6-2. Alterations other than incidental alterations. No alterations other than incidental alterations shall be made to a building or other structure occupied by a nonconforming use except when made:

- a. In order to comply with requirements of law regarding fire protection, safety of structure, etc.
- b. In order to conform to the applicable district regulations.

15.6-3. Repair of nonconforming use. No nonconforming structure or structure used for a nonconforming use shall be rebuilt or repaired after damage exceeding 75 percent of replacement cost unless the use and structure conform to the other provisions of this ordinance.

15.6-4. Expansion of nonconforming use. No structure used for a nonconforming use shall be expanded except in conformity with this ordinance. The nonconforming use of land, not involving a building or structure, or involving a use or structure which is incidental or accessory to the principal use of the land, shall not be expanded beyond the area it occupies.

15.6-5. Conditional use permit. Nonconforming manufactured homes in place at the time of the enactment of this ordinance may be replaced by conditional use permit provided the new unit meets applicable department of housing and community development regulations and the Virginia Uniform Statewide Building Code and is no more than five years old.

Sec. 15.7. Nonconforming signs.

(See section 14.6.)

Sec. 15.8. Existing structures in floodplain districts.

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions may be continued subject to the following conditions:

- a. Existing structures located in the floodway district shall not be expanded or enlarged unless certification (with supporting technical data) by a registered engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrences of the base flood discharge, which have been approved by all appropriate local and/or state authorities, as required in article 7A.
- b. Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain district, to an extent or amount of less than or equal to 50 percent of its market value, shall be elevated and/or floodproofed to the greatest extent possible.

The modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use regardless of its location in a floodplain district, to an extent or amount of 50 percent or more of its market value, shall be undertaken only in full compliance with the provisions of the Virginia Uniform Statewide Building Code and the National Flood Insurance Program.

- c. Uses of appurtenant or accessory structures thereof which are, or become, nuisances shall not be permitted to continue.

15.9. Transient/semi-transient habitation in the R-1, R-2 and R-3 district.

Effective as of September 9, 2024, the Town ordinance was revised to no longer allow transient and semi-transient habitation in the R-1, R-2, and R-3 districts upon issuance of a conditional use permit. However, where such use was established prior to September 9, 2024, it shall be governed by Article 15 provisions governing nonconforming uses. Additionally, the following regulations shall apply to transient and semi-transient habitation in the R-1, R-2, and R-3 to the extent they continue as pre-existing non-conforming uses.

- a. No adverse effect. The location, site, and design of such facilities shall be in keeping with the character of the surrounding area, and shall not have an adverse effect on properties within the surrounding area. The activity shall not create any additional noise, vibration, dust, fumes, odors, glare, other than those normally expected in a residential district.
- b. Off street parking. Transient and semi-transient uses that continue to operate as non-conforming uses shall maintain no fewer off-street parking than required by the applicable conditional use permit or, if not specified, then no fewer than the number of off-street parking spaces in existence as of September 9, 2024."

(Ordinance, 9-9-2024)

ARTICLE 16. CONDITIONAL USE PROVISIONS

16.5-3. Transient/semi-transient habitation in the R-1, R-2 and R-3 district.

~~Transient and semi-transient habitation may be permitted only as a conditional use in accordance with Article 8, Use Regulations. Effective as of September 9, 2024, the Town ordinance was revised to no longer allow transient and semi-transient habitation as a use in the R-1, R-2, and R-3 districts upon issuance of a conditional use permit. However, where such use was established prior to DATE, it shall be governed by Article 15 provisions governing nonconforming uses.~~

- ~~a. No adverse effect. The location, site, and design of such facilities shall be in keeping with the character of the surrounding area, and shall not have an adverse effect on properties within the surrounding area. The activity shall not create any additional noise, vibration, dust, fumes, odors, glare, other than those normally expected in a residential district.~~
- ~~b. Planning commission review. The planning commission shall review and may approve site plans for any new facility to be constructed or any existing facility to be converted for this conditional use prior to the issuance of a conditional use permit.~~
- ~~c. Off-street parking. One space for each unit in a building serving transient guests.~~
- ~~d. General conditions. Proposed uses shall conform to the general bulk, yard, and site requirements.~~

(Ordinance, 9-9-2024)

At a special, called, joint meeting held on September 9, 2024, of the Planning Commission and Town Council, the Council took the following action after public hearing and receiving the recommendation of the Commission.

On motion of Ms. Coleman seconded by Mr. McCrady, the Council voted to adopt the proposed ordinance to amend the Damascus Zoning Ordinance Article 8 and Sections 15.5, 15.9, and 16.5-3 regarding Transient Lodging and Nonconforming Uses, subject to exclusion of the proposed strikethrough of conditional use permitting for such use in the industrial zone district, which amendment to the proposed ordinance has been effected in the above-stated form of ordinance, as follows:

VOTE:

<i>Katie Lamb, Mayor</i>	<i>No Vote</i>		
<i>Jack McCrady, Vice-Mayor</i>	<i>Aye</i>	<i>Tommy Hayes</i>	<i>Aye</i>
<i>Susan Coleman</i>	<i>Aye</i>	<i>Beaty Jackson</i>	<i>Aye</i>

<i>Charles Fields</i>	<i>Nay</i>	<i>Robert Kemmerlin</i>	<i>Aye</i>
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ADOPTED, the 9th day of September 2024.

➤ Adjourn - Planning Commission:

Mr. Bebber made a motion to adjourn the Planning Commission meeting, which was made, 2nd, and passed unanimously.

➤ Adjourn – Town Council:

- Mr. McCrady made a motion to adjourn, 2nd by Mr. Jackson. The motion passed (6-0).

Katie Lamb, Mayor

Tuesday Pope, Clerk