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**MEMORANDUM**

**To: Onancock Town Council**

**Re: Regulation of Homestay / Airbnb**

Earlier this year, the Town passed an Ordinance regulating the use of residential properties as short term rentals, mainly through the new online reservation systems known as Home Stay, Airbnb, and the like. The new Town Ordinance regulates the use by making property owners obtain a special use permit prior to operating such a use in residentially zoned areas within Town limits. As you know, the special use permit process permits the Town to place conditions on the operation of the use that will assist in offsetting any potential impacts on surrounding neighbors.

The question has arisen whether the Town may regulate the properties that were already being operated as short-term rentals on the date of the enactment of the new Ordinance. The properties that were operating prior to the passing of the Ordinance became nonconforming uses at the time the Ordinance was passed. This designation carries certain rights under both Virginia law and the Town's Zoning Ordinance for each property owner. Each property owner has a vested right in that use that cannot be stripped unless certain events happen, such as the use being ceased for the time periods established in Virginia law for nonconformities (i.e. ceased for two years, etc.).

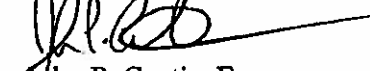
That being said, the Town does have the right to regulate the use so long as such regulations are valid exercises of the Town's police powers under the Zoning Ordinance. For example, collecting information from the owner of property being used as a short-term rental as required by your Ordinance is enforceable so long as it has a valid purpose for doing so. If the language of your Ordinance is not clear that these restrictions apply to the nonconforming properties as well, you may wish to amend the Ordinance to make it clear as to which restrictions are applicable to such uses.

In reviewing the new Ordinance, one concern I will note is the application of a penalty for three substantiated complaints against the property owner holding a special use permit. If such occurs, then the Town, per the Ordinance, has the right to revoke the special use permit. This would be one aspect of your new Ordinance that is unenforceable against nonconformities. As previously mentioned, a nonconformity is a type of vested right under Virginia law that grants the property owner the right to operate and such designation is akin to a by right use. It is substantially different from an approval granted by the Council or the BZA to operate pursuant to certain regulations that can be terminated by the Town. The Town cannot take away a by right use --

such would constitute an unlawful taking. The Town does, however, as you know, have the ability to revoke an approval such as a special use permit.

I am hopeful that this memorandum has answered some of the questions that you have been discussing. I thank you for reaching out and am more than happy to address any further questions you may have on this topic.

Very truly yours,



John P. Custis, Esq.