

SOUTH HADLEY PLANNING BOARD PUBLIC HEARING CONTINUANCE:

Discussion on proposing articles to Town Meeting for the purpose of creation of a new Short Term Rental General Bylaw and Short Term Rental Zoning Bylaw

MEETING MINUTES OF MARCH 20, 2023

Present: Brad Hutchison, Chair; Diane Mulvaney, Vice-Chair; Joanna Brown, Clerk; Nate Therien, Member; Michael Davis, Member; Michael Adelman, Associate Member; and Anne Capra, Director of Planning and Conservation; Colleen Canning, Planning/Conservation Coordinator

Chair Hutchison called the public hearing to order at 6:48 PM.

Director Capra summarized the progress of the current draft General and Zoning Short Term Rental (STR) Bylaws. A meeting with Town Counsel would be required to discuss certain items in the general bylaw such as the process for revocation of an STR license. It was recommended that the Board wait for counsel's review of the general bylaw before further consideration. However, this gave the Board the opportunity to further consider the zoning bylaw.

Member Therien drafted a report (attached) which consolidated his thoughts and support of the STR bylaws. His report included regulatory recommendations to quell some concerns heard during the hearings. For example, the current bylaw draft allowed STRs in business zoning districts by-right. If the use required Site Plan Review, abutter notification would be required. Ideally, this change would mitigate concern from residents as all STRs in Town would require abutter notification before in operation. Member Therien also considered recommending capping the amount of STRs one individual could operate. During the previous hearing, stated concerns included the possibility that overzealous entrepreneurship could lead to one entity operating an unequitable amount of STRs.

Chair Hutchison opened the hearing to public comment.

Martha Terry, 25 Brainard Street, addressed the Board. She supported allowing 20 owner-occupied STRs in Town but was opposed to the allowance for 5 non-owner occupied ones. She felt that non-owner occupied STRs lessened available housing stock and could create uncomfortable neighborhood dynamics.

Anne Stockton, Amherst Road, addressed the Board. She opposed non-owner occupied STRs as it would take available housing away from long-term residents.

Members indicated that much of the public concern for short term rentals related to potential nuisance complaints. Member Davis felt there was a public perception of STRs being 'party houses'. However, that was not his experience interacting with STRs. He anticipated that most short-term renters in South Hadley would be affiliated with Mount Holyoke College and did not foresee troublesome tenants. Clerk Brown was familiar with a number of cases where STRs lead to problems within the communities where they were located which included criminal activity. She cautioned that there would be negative consequences associated with STRs. Vice-Chair Mulvaney shared that she had many positive and negative experiences with neighbors. In her

experience, the worst neighbor she had was a homeowner resident. She added that nuisance laws were in place, non-owner occupied rentals were limited to 5, and the Board held thorough discussion on the topic.

Lynn Williams, College View Heights, addressed the Board. She operated a bed-and-breakfast and relayed the rigorous vetting process during tenant selection. She explained that fire and building code requirements were complex and expensive to maintain as she had spent the past year trying to satisfy compliance requirements. She questioned if a kitchen could be included inside the lodging space of an owner-occupied bed-and-breakfast. Chair Hutchison referenced the zoning bylaw and relayed that a kitchen was not permissible inside the lodging space. The requirement could not be waived by the Planning Board.

Members discussed the recommendations included in Member Therien's comment letter including the recommendation to change the permitting threshold from 'by-right' to 'site plan review' for an STR in business zoning districts.

Motion: Member Therien moved to revise the draft STR zoning bylaw to require Site Plan Review for all short term rentals within business zoning districts. Vice-Chair Mulvaney seconded the motion. Four (4) out of five (5) members voted in favor of the motion through roll call. Chair Hutchison voted against the motion.

Members discussed Member Therien's recommendation to limit the amount of STR licenses an individual can be issued to two; of which one needed to be owner-occupied. Associate Member Adelman advocated for limiting the number of licenses to one. Members were supportive of limiting the number of licenses to one or were neutral on the matter.

Motion: Member Davis moved to revise the short term rental bylaw to indicate that only one short term rental license can be issued to an individual. Member Therien seconded the motion. Five (5) out of five (5) members voted in favor of the motion through roll call.

Clerk Brown identified items that needed clarity in the current drafts. The bylaw made unclear references to affordable housing and housing under a pending sale. Director Capra would review these items with Town Counsel.

Clerk Brown asked if the bylaw language included requirements for snow removal. The zoning bylaw did require a narrative explaining snow removal practices.

As the Board needed to wait for Town Counsel comments on the bylaw, the board considered continuing the hearing to the next regular meeting.

Motion: Clerk Brown moved to continue the hearing to March 27, 2023 at 7:00 PM. Member Davis seconded the motion. Five (5) out of five (5) members voted in favor of the motion through roll call.

The regular meeting reconvened at 8:37 PM.

Respectfully Submitted
Colleen Canning, Planning/Conservation Coordinator

Appendix

Document	Document Location
Public Hearing Draft - General Short Term Rental Bylaw	Planning Files
Public Hearing Draft - Zoning Short Term Rental Bylaw	Planning Files
February 15 commentary report provided by Member Nate Therien	Attached
February 7 email from Hattie Finkle, 450 Amherst Road	Attached

Short-Term Rentals: General and Zoning Bylaws

Nate Therien 2/15/23

As a foundational principle, legislation should fully enable personal liberty as much as possible while limiting impacts on the personal liberty of others and supporting the general interest. In this conception, protection of personal liberty is in fact a means of supporting the general interest because it empowers each of us; and setting carefully constructed limits on personal liberty in the general interest is a means of supporting the personal interests of everyone, in that inescapably, all individuals share an interest in the common good.

The General and Zoning Bylaws for regulation of Short-Term Rentals that the Planning Board is proposing for approval by Town Meeting are framed with this foundational principle in mind. The current drafts of the bylaws do much to balance the interest of home owners wishing to rent part or all of their homes on a short term basis and the interests of abutters and the Town at large. I think, however, some revisions suggested by comments made during the first Public Hearing would be helpful. I want to propose these here, and also to touch on the issue of administrative costs because it was repeatedly raised during the Public Hearing.

But first I want to address directly why we should go to the trouble of enabling Short Term Rentals in the first place.

Why Allow Short Term Rentals?

The draft bylaws seek to enable a property use that current bylaws forbid, a use that we now know was being exercised in town previously without leading to complaints, but also without any regard for potential harm to others or the general public. The draft bylaws would enable this use while serving to protect other interests, those of potential renters, abutters and the Town itself.

My view is that forbidding this use outright harms individual homeowners who have a legitimate interest in gaining revenue from their property. We should not ban this use without exhausting the means of allowing it within a framework that limits harm to others. Property owners seeking to rent part or all of their home on a short term basis may need the extra income to meet the mortgage, to pay for necessary maintenance, to offset medical bills, or simply to take a vacation. Their reasons are not our concern. It must be noted that a total restriction on STR is a real limitation on liberty that harms people.

It should be noted, too, that a bylaw that only allows STR of rooms that are within a residence simultaneously occupied by the owner, forbidding people from renting out their entire home on a short term basis, would be discriminatory: it unjustly and unnecessarily limits this use (and this opportunity for revenue) to persons with larger houses.

I would also reiterate comments made by some members of the public, specifically that allowing STR could benefit others in Town not just homeowners seeking to rent out short term. For example, STR could bring new restaurant and business customers, new attendees to cultural and other recreational events (whether sponsored by the Town, the College or individuals), the parents and siblings of students at the College and guest lecturers (who often give public talks). They could also benefit residents with smaller homes whose friends and relatives cannot find appropriate accommodation in Town due to the lack of hotels. It could even be argued that allowing property owners to generate

additional revenue from their property on an occasional basis not only provides them the means to maintain and possibly improve their homes, but an additional incentive to do so. This would arguably benefit the Town at large and help maintain property values generally.

Finally, it should be noted that Massachusetts General Law provides for taxation of income generated by STR. An excise tax goes to Boston, but additional taxes can be levied by hosting municipalities. While not substantial, we know nearby towns have reported revenues gained from STR.

The Need for Regulation

While the ways property owners would use the income generated by STR are not our concern, how they use the right to do so and how that exercise might adversely impact abutters and the Town in general certainly is. We should regulate the use responsibly and wisely, with an eye to potential harm.

The PB carefully considered potential harm when drafting the bylaws, and included provisions intended to safeguard against these harms. In doing so, it took into account the nature of the Town, the likely market for STR in Town, the experiences of other Towns. I would like to note that reports of harms caused by STR often come from localities very different from South Hadley in that they are major tourist or business destinations, and so create a larger demand for STR, more renters, and even different kinds of renters. It should be noted, too, that many negative reports come from localities whose bylaws do not include the provisions included in the draft bylaws proposed for South Hadley. In fact, some of these localities are currently adopting these provisions.

I would like to review here ways the proposed bylaws would guard against various harms, many of which were identified by residents at the recent public hearing. I have focused a bit on short term rentals of whole residences when owners are not present during the rental term because many members of the public seem to view them as potentially more harmful, assuming the co-residence of owners would be protective. I would also like to suggest some additional protective provisions that might address issues raised during the Public Hearing.

Annual Licensing for STR

No dwelling unit or part of a unit can be rented without receiving a business permit from the Town Clerk and permits from the Director of Public Health and the Building Commissioner ensuring compliance with health, safety and construction standards. In addition, under the proposed general bylaw short term rental of a whole dwelling unit or part of a unit is not allowed without a license from the Building Commissioner. Only the owner of the residence being rented (in whole or in part) is eligible to apply for a license, and the bylaw holds the owner responsible for the observation of the terms of the license, including payment of fines for violations. The permit must be renewed annually and can be suspended or cancelled if conditions are not met. These conditions include requirements regarding trash and snow disposal, provision for off-street parking, occupation limits, a ban on signage, etc. Importantly, the permit also requires compliance with the Town's nuisance bylaw. These provisions will incentivize people renting out STR to ensure that those they rent to are fully aware of Town laws, including the laws against excessive noise. Indeed, it will likely shape how owners choose their tenants.

Suggested additions:

- The bylaw should outline the process by which a violation is signaled by the Commissioner and the point at which daily violation fines begin.

- I am not certain it is wise to specify the amount of a violation fee in the bylaw—it seems it may change over time for good reasons and that setting a specific amount should be left to the Commissioner. But I do wonder if \$100/day, as currently specified, is too little, as has been argued by some members of the public.
- The bylaw should specify that grounds for non-renewal or suspension of a license may include reports of citizen complaints to the Police Department regarding violation of the nuisance laws, as confirmed by the Department. The current wording suggests a more limited sense of what constitutes an actionable violation by referring to the Commissioner’s obligation to “inspect” the residence upon reception of a complaint: this wording implies that only structural, safety or health regulation violations are contemplated for enforcement.
- The bylaw should explicitly require that licensees provide tenants clear instructions regarding their obligation to comply with all Town ordinances, specially referencing and describing the nuisance ordinance. (Such warnings commonly form part of rental agreements on STR platforms, such as Airbnb, so meeting this requirement would place no undue burden on the licensee and should be easily enforceable.)

Capping of total numbers of STR, with lower cap on STR of whole residences

Recognizing that STR have the potential to burden or disrupt neighborhoods and the Town at large, despite careful regulation, and that the regulation envisioned to enable the liberty of homeowners without harming others might itself place new and uncertain burdens on Town administration, the Planning Board chose to use the General Bylaw to cap the total number of STR licenses allowed in any given year. The Board also sought to avoid the potential for negative consequences on the availability of affordable housing in town, especially rental housing. The Board’s thinking was that a total of 25 licenses per year would allow the Town to gauge what was possible and desirable without risking harm, given the regulations proposed. The 25 limit was set in part based on the Board’s knowledge that there were fully 12 “illegal” STR in operation before they were discovered and subjected to cease and desist orders from the Building Commissioner, and that none of these had engendered complaints.

The Board recognizes that short term rentals of entire homes, while undoubtedly providing benefits to homeowners, could have a greater impact on the availability of affordable housing than short term rentals of parts of houses. So, the Board decided that licenses for such short term rentals should be more strictly capped—no more than 5 of the total 25 licenses allowed in any given year should be for entire residences.

Seeking to avoid impacting the availability of housing, and especially affordable housing, the Board used the General Bylaw to forbid STR of any deed-restricted affordable housing.

Suggested Additions

- Given concerns regarding the possibility that even the recommended caps on licenses will not prevent the harmful effects that might follow if multiple dwelling units were bought up by single persons or partnerships then rented out as STR as large businesses, it might be helpful to include a provision that would limit the total number of STR licenses granted any single person or partnership to two, with the provision that one of the two licenses would need to be for a rental that was owner occupied.

Zone specific restrictions (including requirements for public hearings and consultation with abutters)

The proposed Zoning Bylaw stipulates conditions that would apply to all STR in residential zones. It also provides that in residential and business zones short term rental of whole dwelling units without co-residence of owners requires granting of a Special Permit from the Planning Board. Continuation of this permit is contingent on renewal of the annual license granted by the Building Commissioner, providing a check on the potential harmful impacts. The Permit would also lapse if the property were sold, which would require a new review of the application. The proposed zoning bylaw also requires that in residential zones the short-term rental of parts of dwelling units, even with the owner co-resident must undergo Site Plan Review by the Planning Board. The process for awarding either a Special Permit or conducting Site Plan Review, includes notification of abutters and a public hearing, as advocated by several residents at the recent Public Hearing.

Suggestions for Additions

- The proposed zoning bylaw would allow short term rental of parts of dwelling units in business zones by right (so without review by the Planning Board), even though in residential zones a Site Plan Review is required. At the recent Public Hearing, it was suggested that Site Plan Review should be required in business zones because business zones sometimes abut residential zones. For this reason and because Site Plan Review is required for Home Occupation II in Business Districts A and B, it seems consistent to also require Site Plan Review for STR of parts of dwelling units in all business districts.

Costs of Administration

The General and Zoning Bylaws on STR are proposed with the intention of allowing a legitimate use of property while protecting against harm. To this end, they include provisions for careful regulation. Administration of these regulations will entail some administrative costs, as several members of the public have noted. The administration of duly enacted bylaws is not the responsibility of the Planning Board, but rests with the Select Board and the Town Administration, and ultimately Town Meeting. Still, the Board should note that there are means of meeting the costs of administering the regulations it proposes: under MGL, the Select Board can levy taxes on income derived from STR; with input from the Building Commissioner, the Town can charge fees for STR licenses; it can also set fines for violations of the terms of these licenses.

Fwd: STR bylaw question

Colleen Canning <ccanning@southhadleyma.gov>
To: Colleen Canning <ccanning@southhadleyma.gov>

Fri, Mar 24, 2023 at 11:52 AM

----- Forwarded message -----

From: **Ashleigh Murphy** <ashleighmurphy624@gmail.com>
Date: Mon, Mar 20, 2023 at 9:06 PM
Subject: STR bylaw question
To: acapra@southhadleyma.gov <acapra@southhadleyma.gov>

Hi Anne,

I was just an attendee at the public hearing about owner occupied STRs. This question occurred to me after you all had moved on. If the bylaws are approved and a path is created for home owners to apply for a special permit, do you know details of what the building inspector and fire chief will require of these spaces? I heard a quick comment from the chair that the requirements of the fire and building chief may significantly limit the number of approved STRs anyway and I just want to have that important detail clarified. I want to point out, that if the fire chief and building inspector require something, like sprinkler systems for example, to be installed in order to gain permit approval, this whole discussion is a mute point because the cost of that process would be prohibitive for most. Is there a way to make recommendations from the planning board and the community regarding these potential requirements? When would their requirements be known and shared with the public?

Have you looked into the bylaws in Northampton and Amherst, who have a number of listed STRs, to inform your process for South Hadley? Are those towns requiring special permits that include site plan review?

My concern is that through this process, somehow the by laws and requirements are going to be prohibitive to something that has caused no known issue in town, serves as a nice *little* financial side gig, and has created a welcoming space for folks visiting family and friends, coming to town for events at the college, and even provided some traffic for small businesses in town.

Thank you for your time and service to our community.

Best,

Ashleigh Murphy
5 Dove Hill