

**TOWN OF NAHANT**

**Planning Board**

**November 1, 2022**

The Chairman called the meeting to order at 6:02 pm, stating that the meeting was properly noticed, and then calling the roll of those members attending:

Rob Steinberg – Chairman - Here

Calvin Hastings, Vice Chairman - Here

Sheila Hambleton – Here

Patrick O'Reilly – Here

Steven Viviano – Here

J Shannon Bianchi, Corresponding Secretary – Not Here – joined at 6:09 pm

John Stabile– Recording Secretary - Here

James Dolan – Here

Michelle Capano – Here

The Chairman first asked for approval of the meeting minutes of October 25, 2022. So moved by Cal, seconded by Sheila. The vote was as follows:

Rob Steinberg – Chairman - Yes

Calvin Hastings, Vice Chairman - Yes

Sheila Hambleton – Yes

Patrick O'Reilly – Not present

Steven Viviano – Yes

J Shannon Bianchi, Corresponding Secretary – Not present

John Stabile– Recording Secretary – Yes

The Chairman then noted that members of the PB have questioned the right of Alternate Members to speak in meetings and hearings that are not Special Permit proceedings. The Chairman has conferred with Town counsel and the Town Clerk on this matter. Town counsel stated in writing as follows in response to the Chairman's question:

Can the Chairman allow Alternate Members to comment or ask questions without inviting the public to comment and ask questions (or give Alternate Members priority in speaking over the public)?

Yes, the Chairman can allow Alternate Members to comment and ask questions without inviting the public to comment and ask questions...You can make that addition to the last sentence of Rule 1.02 (via a PB majority vote) (to clarify you can recognize Alternate Members in any meeting or proceeding) but it is unnecessary given the discretion you already enjoy.

Discussion ensued regarding the right of Alternate Members to speak. The Chairman then asked for a motion that Section 1.02 of the Planning Board Rules is hereby revised to add, after the statement in the rule that "Alternate Members participate only when the Board is serving as Special Permit Granting Authority under the terms of the Nahant Zoning By-Laws" the following phrase:

", although the Chairman, in his sole discretion, may permit alternate members to ask questions or make comments in other meetings or hearings".

So moved Cal, seconded by John. The vote was as follows:

Rob Steinberg – Chairman - Yes

Calvin Hastings, Vice Chairman – Yes

Sheila Hambleton – Yes

Patrick O'Reilly – Yes

Steven Viviano – Yes

J Shannon Bianchi, Corresponding Secretary – Did not vote

John Stabile– Recording Secretary – Yes

The Chairman then stated, with respect to our discussion tonight of short-term housing, I intend to exercise my authority to allow Alternate Members to make comments or ask questions after all members of the PB have had a reasonable opportunity to voice their viewpoints or questions in discrete segments in our consideration of short-term housing.

The Chairman noted that there has been a request that the PB go into executive session to discuss an allegation made against a member. The Chairman stated that he has a right to address a matter in a meeting or executive session. In the interest of making best use of our limited time, the Chairman said he has decided there is not a reason to address this issue as we don't know the legitimacy of the claim or any defenses. Once facts are available to us, we can look into the issue and the appropriate action to take.

The Chairman then stated, as far as the comment in the last meeting that the Town is limited to considering the "existence and location" of short-term housing, "class and number of licenses" and number of days a person may operate a short-term rental". Town counsel is of the view that the Town is not so limited. Even if there was such a limitation (and I don't believe there is), the PB has authority to express its viewpoint on short-term housing permitting and other zoning issues to the short-term housing committee, and we have determined already that we want to do so.

Finally, while questions and comments on how we proceed to discuss short-term housing have been made in good faith, it is important we move forward expeditiously to get our viewpoint to the short-term housing committee no later than the first week of December. Accordingly, with the discussion we just had, we will move forward in an organized way to form our consensus viewpoint

Before we address short-term housing, we need to discuss first discuss purchase of Handbook of Mass Land Use and Planning Law. Sheila said that we could borrow a copy to see if we found it

useful. The Chairman raise the issue of 3 ZBA proceedings ZBA proceeding on 10 Wilson Avenue, 56 Valley Road, and 16 Castle Road. The Chairman asked the corresponding secretary to inform the ZBA that we have no reason to comment on or question conclusions reached by the Building Inspector.

The Chairman then turned to discussion of the PB viewpoint on short-term housing rules. The Chairman stated that the PB will review proposals grouped in 9 areas plus an overview. The Chairman read the following overview for the document which may be provided to the short-term housing committee

### **Overview**

The PB's representative to the Short-Term Housing Committee ("Committee") has provided viewpoints on various matters but the PB determined it would be helpful to the Short-Term Housing committee for the PB to provide its consensus view on short-term regulations it would like considered in connection with zoning issues related to these regulations. Set out below are 9 issue areas with potential rules for each of these areas. The PB reserves the right to modify these views if it is called upon to review and recommend zoning by-laws in connection with Short-Term Housing for Town Meeting.

The PB is not opining on health and safety rules, the permitting process itself, compliance mechanisms (such as suspension and terminations of licenses and penalties), taxes, fees and other matters which it believes are better left for the Committee to determine

Because it is providing preliminary viewpoints, the proposals offered have not been subject to legal review, as the PB deems it more efficient to have one legal review covering all areas of short-term housing regulation.

The PB consider that overview to be generally fine but subject to review in any final draft.

The Chairman then read Issue 1:

### **Issue 1: Existence and Location of Short-Term Housing**

#### **Proposed View**

Legal counsel has advised us that we do not have a right to ban short-term housing. We believe regulation of short-term housing is a priority for our community. We must balance the right of the homeowner to make reasonable use of their property while establishing rules that mitigate the risk of negative impact on neighbors and neighborhood. The regulations should not be so restrictive that people who may want or need to rent their homes to pay property taxes or other expenses do not have the opportunity. Yet, the regulations must address real health and

safety concerns as well as zoning concerns so that we minimize the risk of disruptions that can be caused by short-term rentals. We are recommending regulations that fulfill these twin objectives.

We do not believe there is a reasonable basis for regulating short-term rentals in Nahant based on location based on uniformity of housing types and size of community.

Patrick stated we should add that our rules below are limited to R-1 and R-2 zones, and to housing in business zones. He stated that we would add short-term housing to the Table of Uses. Patrick said there could be less onerous cost and regulations (for short-term permit holders who rent 14 days or less per year). It was noted that they would have to register but don't have to pay a tax or fee. Steve disagrees with no registration and that people should register regardless of days of operation. Sheila noted that a permit holder must declare exemption by Jan 15 of the calendar year, and that if the holder does not meet the exemption, they would be responsible paying taxes for first 14 days.

The Chairman then read the proposals for Issue 2.

### **Issue 2: Class and number of licenses**

#### **Proposed View**

The total number of licenses granted through December 31, 2023, shall be limited. PB recommends that the limit be less than \_\_\_% (PB recommends 4 or 5%) of the single-family housing units or multifamily units deemed eligible for a short-term rental permit. If the permitting authority receives applications for more than the limit, the PB recommends that approves permits be chosen randomly from those applicants who meet requirements to receive a short-term rental permit and/or have had more than 14 days of short-term rentals under a permit for the prior year.

Steve said a cap is not a bad idea but said that less than 10% of communities have put cap on it. Sheila said we currently have 40 short-term units, and there 1,400 livable units, so we are at approximately 2.5%. Patrick said that the 14 day and under might not be counted against the cap.

The Chairman then turned to Issue 3.

### **Issue 3: Number of days short-term may operate**

#### **Proposed View**

A permit holder who resides in a residence during all short-term rentals may operate without limitation throughout the year. A permit holder who does not meet that requirement should be limited to \_\_\_ days per year.

The Chairman mentioned the 100 day minimum in Newton and Sheila noted that 100 days would be every weekend. Patrick said we do have a summer season and it at some point become more of a hotel use, so it makes sense to have some threshold of days for operation.

Steve said it would be hard to monitor and, if we have rules in place to make this not bothersome, we don't need to this add-on rule. Jimmy Dolan said if we have 2 nights minimum, it limits the transient issues and ameliorates the churn issue. Jimmy said it is important to focus on regulations that allow comfortable enjoyment of our home.

Patrick said short-term is taking housing stock away from longer term rental. Patrick asked: Is there a number that would encourage them to put the house back into the housing stock? We would not want to force people to have, for example, the 100-day minimum during the summer.

Jimmy said it is unlikely that a short-term would be put into long-term rentals. He noted that, if the tenant doesn't leave, it could take months to evict the person so the owner would lose short-term rental time. Jimmy argued that regulations on amount of time will not create more comfort – the 2-night minimum addresses the issue.

The Chairman then turned to Issue 4 and began by reading the first three proposals under Issue 4.

#### **Issue 4: Who Can Qualify to receive a permit**

Short-Term Rentals are prohibited in dwelling units owned by corporations. (GB, Stock) Short-Term rentals are permitted for an LLC or Trust only when the shareholders and members of the legal entity is a natural person (as shown on the application).

An Owner can register to operate 1 dwelling unit as a short-term. If the person owns property individually or owns others as an LLC or has equitable title or beneficial ownership, the person must choose among those properties to register.

A tenant cannot offer a rental unit for short-term rentals nor can owners of units that are below market rate or have income restrictions or otherwise subject to housing or rental assistance or deemed affordable housing.

Steve said a person will rent 30 units and make them Airbnb's suggesting allowing too many units is a problem. Steve said he didn't know if we legally can prevent a tenant from renting short-term housing. Steve also questioned the legality of limiting to natural person must be registered (inc. would be precluded). Jimmy said he questions the legality of limiting corporations right to engage in short-term housing. Jimmy said Boston says if buy 50 unit and rent them all out, there were some restrictions. He argues that it isn't about who owns it, but how you regulate.

Shannon said, according to Mass landlord.net, one town had restrictions of 270 days per year for accessory units, Salem has 183 days, and there are quite a few towns that limit the days – which center around half the year. Shannon said he likes half the year restriction which is more conducive to Nahant's character.

The Chairman said with respect to limits on short-term dwelling units, grandfathering those who relied on the fact that there was no regulation in this regard should be considered.

The discussion of the PB then turned to questions about conduct.

Shannon first noted that he and Sheila and Cal were only people who attended the training and the importance of these trainings as they lower the Town's insurance premium.

Shannon then said to avoid even an appearance of a conflict of interest, anyone who has participated in the forming for the by-laws should commit on their own to not do short-term rentals for a period of time. Sheila suggested that Shannon provide the Chairman with a succinct statement of what is seeking with regard.

Michelle said transparency is important and it does make sense of anyone has interest in Airbnb or own an Airbnb should disclose it. Michelle said Steve has operated in good faith, and his knowledge is a benefit to the Town. Michelle said he appreciates Shannon's concern, as this Town has had an issue with transparency issues. The Chairman mentioned it is also important that people who live near Airbnb should disclose it as that also might affect their perspective.

Jimmy said he owns multiple properties and operates short-term and long-term rentals. Jimmy noted it is important to establish rules for short-term rental. Jimmy said shouldn't everyone have to run an Airbnb on the Board, so they have sufficient knowledge as well?

Sheila noted that we need to add webinar to Treasurer's report, and we need to prepare one. Sheila sent an email for more training.

The Chairman asked for a motion to adjourn. Sheila so moved, seconded by Cal. The vote was as follows:

Rob Steinberg – Chairman - Yes

Calvin Hastings, Vice Chairman – Yes

Sheila Hambleton – Yes

Patrick O'Reilly - Yes

Steven Viviano – Yes

J Shannon Bianchi, Corresponding Secretary – Yes

John Stabile– Recording Secretary – Yes

Public meeting adjourned at 7:38 pm

Meeting Minutes prepared by Recording Secretary and Rob Steinberg.

Approved by Planning Board on November 21, 2022