

Consensus Preliminary Recommendation of PB on Short-Term Housing Issues

December 6, 2022

During the summer of 2022, the Planning Board (“PB”) determined to conduct a review of key issues to regulate short-term housing in order to develop a consensus, preliminary summary of its view for the Short-Term Housing Committee (“STHC”). In determining to conduct this review, the PB recognized that the Town had assigned the task of developing these regulations to the STHC and acknowledged that its role was to assist and support the STHC and not to in any way usurp that role. In that regard, the PB publicly stated that it would limit its review to zoning issues such as location and use of dwellings as well as parking, and not consider the permitting process, health and safety issues, compliance mechanisms (such as suspension and terminations of licenses and penalties), taxes, fees and other matters that do not pertain to the PB primary role of addressing zoning issues for the Town of Nahant

Two key objectives of engaging in this assessment and providing these preliminary viewpoints were as follows:

- The PB had provided little guidance on its consensus views of key short-term housing issues to its representative on the PB, Steve Viviano. Because the Town approved a specific representative from the PB on the STHC, the PB wanted that representative to understand the consensus, preliminary views of the PB members.
- The PB may hold hearings on zoning issues related to short-term housing in order to recommend by-law provisions to be considered at the next Town meeting and thought it would be useful for the STHC to understand how the PB is viewing key short-term housing issues.

The PB solicited and invited members of the public to speak during a public forum in September 2022. The members of the public who spoke were chosen by the Chairman of PB pursuant to an authorization from the PB, and those selected to speak represented a variety of viewpoints. Following this meeting, the PB held discussions of key issues with regard to short-term housing within the ambit of its authority in public meetings.

In connection with meeting to determine its preliminary viewpoints, the PB did consider potential conflicts of interest of its members and alternate members. Steve Viviano disclosed that he has a beneficial interest in short-term housing in Nahant, and James Dolan disclosed that he owns short-term housing in Cape Code. The PB sought advice of outside legal counsel whether Steve Viviano’s interest in short-term housing in Nahant was a conflict of interest and legal counsel stated it wasn’t. Legal counsel noted that Steve’s knowledge of short-term housing issues and problems could be beneficial given his actual experience, and the PB believes Steve was helpful to the process and provided an even-handed perspective. The PB determined that they would allow Steve Viviano to continue to be its representative to the short-term housing committee, and also determined that James Dolan should be allowed to provide comments on short-term housing despite an ownership interest, after extensive discussion of these issue.

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 after the STHC completes its work.

Set out below are 8 issue areas with potential rules for each of these areas. The PB reserves the right to modify these views based on additional data and information as well as if it is called upon to review and recommend zoning by-laws in connection with short-term housing for Town Meeting.

Issue 1: Existence and Location of Short-Term Housing

PB Viewpoint

Legal counsel has advised us that the Town does not have a right to ban short-term housing. However, we believe regulation of short-term housing is a priority for our community, and 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 neighborhoods. The regulations should not be so restrictive that people who may want or need to rent their homes (and can benefit from short-term rentals because difficulties in a longer-term rental) to pay property taxes or other expenses do not have that opportunity. Yet, the regulations must address real health and safety concerns as well as zoning restraints 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, in general, a reasonable basis for regulating short-term rentals in Nahant on the basis of whether the units are located in a business district vs residential area, particularly the small size of the business districts as well as the community itself. However, in areas designated natural resource areas, and those that are open spaces and recreational uses, those areas should not be impinged or affected by the construction or existence of short-term housing. We should maintain natural resource, open space and recreational areas (“Protected Areas”) to promote community recreational activities and health. Short-term housing would only be allowed in residential and business area to the extent the use does not impinge on Protected Areas.

At the same time, the PB believes that short-term housing should be added to the Table of Uses in the zoning by-laws. The PB determined that less onerous requirements could be considered for short-term permit holders who rent for 14 days or less per year, but that all who provide short-term housing must register.

Issue 2: Class and Number of Licenses

PB Viewpoint

The PB believes the total number of licenses granted through December 31, 2023, and go forward, should be limited to in and around 4%-5% of the single-family housing units or multifamily units deemed eligible for a short-term rental permit (i.e., 64-80). The PB believe that we currently have 40 short-term units of the approximately 1,600 livable units (approximately 2.5% of the housing in Nahant are used for short-term housing for some period during a calendar year). If the permitting authority receives applications for more than the limit, the PB recommends that permit holders be chosen fair and equitably 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.

The PB notes that Nahant short-term rentals are, to a great extent, self-limiting because of the challenge of occupancy outside of the summer season, and the lack of near-by amenities for the off-season. The PB recognizes the need to provide flexibility to homeowners while minimizing disruption. A cap on short-term rentals can meet this objective, but it is important that those hosts who are highly rated in running operations should be accommodated for permits than those who have shown less capability. Permit holders who select responsible guests are providing a valuable service to the community (particularly given that there are no nearby hotels) and significant tax revenue should be recognized in the permit process, but we leave the details of the process to the STHC.

Issue 3: Number of Days Short-Term Rentals May Operate

PB Viewpoint

The PB recommends that a unit must be rented for 2 days or more to each guest and that the unit must be rented to one party at a time and not rented as separate bedrooms or spaces to separate person(s).

The PB does not see the value of a day limit, as we believe that short-term housing can be sufficiently regulated by other restrictions herein. We understand the occupancy rate for Airbnb is less than 50% and, given Nahant's small population, size and limited amenities, it is not clear that a day per year limit is needed or appropriate. We expect the permit granting authority will consider complaints by neighbor which further reduces the need for a cap.

Issue 4: Who Can Qualify to Receive a Permit

PB Viewpoint

The PB recommend the following limits on who can receive a permit:

- Short-Term rentals should be permitted for an LLC or Trust only when the shareholders and members of the legal entity are a natural person (as shown on the application).
- An Owner can register to operate 1 dwelling unit as a short-term owner/operator in Nahant. 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. However, this rule should be prospective, and a person should be able to register homes that have been used as short-term rental prior to the effective date of regulation of short-term rentals in Nahant.
 - We ask the short-term housing committee to consider that, if the cap has not been reached, whether it be 3% or 4% of livable units, the permit granting authority may allow an applicant to have up to 3 short-term units where circumstances so justify.
- 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 be allowed to own/operate short-term rentals.

- Dwellings may not receive short-term rental permit (or continue to hold one) if they (i) are subject to an outstanding building, electrical, plumbing, mechanical fire, health, housing or zoning code enforcement order (including notices of violation, notices of cure, orders of abatement, cease and desist orders and corrective actions); (ii) if there are any outstanding building permits allowing work on the property in the unit be rented; or (iii) if there are unpaid taxes, fees (including water, sewer and trash) or assessments related to the property.

The PB believes that an owners need not reside in the property during the short-term rental and need not reside in Nahant during part or all of the year; however, the owner must appoint a nearby operator as detailed below (see Issue 8). As long as the rules and regulations are clearly established and enforced by the owner and Town, the necessity of an owner/occupied unit is alleviated. Any recommendation regarding enforcement is outside the scope of this document, but the PB urge a robust enforcement mechanism with meaningful penalties.

Issue 5: Capacity Limits

PB Viewpoint

The maximum occupancy should be set at one (1) more than twice the number of bedrooms (e.g., five (5) for a two (2) bedroom unit). The dwelling's bedroom count is based on the assessors' records (legal bedrooms) and shall include accessory units. Occupants two year or older will be counted in this limit.

The maximum number of bedrooms that can be rented for short-term housing could be 4. There may be more risk of disruption with more bedrooms being rented, but it can be argued that the cap at 4 bedrooms may not be needed depending on how effective the rules ultimately adopted are. If the ultimately proposed rule provide strong protection against disruption, it may be useful to revisit the cap at 4. We also note that the host that takes the risk of having too many guests may have difficulty maintaining or renewing license. Protection the quiet enjoyment of neighbors must be maintained as well.

There is a roomer and lodger provision in the by-laws which would likely need to be clarified to be consistent with the short-term housing limit at 4 units.

The PB suggests the maximum number of visitors (nonregistered guests, i.e., visitors for a meal) in the house should be limited to in and around 5.

Issue 5: Prohibited Uses

PB Viewpoint

- Commercial uses are prohibited in short-term rentals. Such uses include, without limitations, accessory uses for an event center, service of food and drink for payment or use as a bed & breakfast, rental for meetings, etc.
- No excessive noise or outdoor activities or other disturbances between 10 pm and 8 am.
- No signage should be allowed for a short-term rental.

Issue 6: Parking

PB Viewpoint

The PB believes that on-site parking of one space per short-term rental bedroom is appropriate and that the permit should specify the number of parking spaces given the lay-out of the driveway. Vehicles of visitors/guests in excess of this amount must receive a parking pass from the Nahant police with the pass conspicuous on the front dashboard. Excess parking for registered guests will be granted at the discretion of the permitting authority. The PB leaves it to others to determine the appropriate fee amount for parking for short-term housing.

The PB recommends that recreational vehicles, boats, commercial vehicles and other vehicles that are not regularly used for passenger transportation of small groups not be permitted on the premises of a short-term rental or on a residential street near a short-term rental for purposes of the parking of guest or visitors.

Issue 7: Notifications and Recordkeeping

PB Viewpoint

The PB believes that the Owner should be required post a notice with the following information in a conspicuous place and owners should be required to send it to guest to acknowledge they will abide by these rules before the rental starts. The PB discussed the notice containing the following items:

- Owner certificate of registration
- Contact information for Operator and whom to call in an emergency
- Instructions for recycling and waste disposal
- Requirement that dogs be leashed and use a pooper scooper
- Outdoor activity and noise restriction (see police bylaws)
- Parking regulations Including visitor parking passes, and parking restrictions for street sweeping and snow emergencies)
- Quiet hours
- And such other requirements as put forward by BOS or the regulatory authority for short-term housing

The PB recommends that applicants be required to notify legal abutters, those within 300 feet, within 10 days before filing a permit application (or seeking a renewal) via hand delivery and certified mail (and this notification by applicant shall be submitted with application or renewal)

The PB deems it helpful for the Town Administrator to issue an annual report on statistical data on short term housing and post it on the Town website.

The short-term housing approved permits and contact information of the owner, operator or agent should be provided to police and fire.

The PB suggests that short-term rental owner/operators or their agent be required to maintain an up-to-date log of all occupants of their short-term units, with the name, addresses, mobile phone number, and driver's license number (and State of license) and the commencement and expiration date of the occupancy short-term rental unit. The log must be available to the Department of Health and Police Department.

Issue 8: Other Safeguards

PB Viewpoint

The PB recommends the following additional safeguards:

- Registrations are nontransferable and terminate on sale of the property
- The owner or operator must respond to emergencies or neighbor disruptions or after hour activity (or mitigate the same) as quickly as possible and no later than within two hours, and a failure to do so (without justifiable excuse) may be grounds for immediate termination of a license.