

**PROPOSED ZONING AMENDMENT REGARDING SHORT-TERM RENTAL UNITS
PLANNING BOARD REPORT AND RECOMMENDATIONS
April 6, 2022**

This report presents the recommendations of the Planning Board with respect to the proposed amendment to the zoning ordinance to allow Short-Term Rental Units (STRUs). The reviewed version of the proposed amendment is headed “Amendment of the Whole 8-30-2021” with revision dates through December 2, 2021, and the notation “Amended Version Distributed on 2/11/2012.”

The Planning Board discussed the proposed zoning amendment in a joint public hearing with the Planning and Development Committee of the City Council on February 16, 2022; and in its meetings on March 16, March 24 and April 6, 2022.¹ The Board adopted this report with recommendations at its meeting on April 6, 2022.²

PLANNING BOARD RECOMMENDATIONS

The Board generally supports the proposed amendment but recommends several specific changes. After thoroughly considering the proposed amendment, the Board focused on the following three issues:

1. Whether the ordinance should provide for STRUs in any investor-owned (i.e., non-owner-occupied) dwellings in areas of the City in addition to Plum Island;
2. Whether the proposed table of uses should be revised (a) to remove the special permit requirement in the High Street districts, (b) to require special permits in any zoning districts in addition to the High Street districts, and/or (c) to allow STRUs in the Ag/Con, WMU and/or WMD districts; and
3. Whether the proposed off-street parking requirements are appropriate for all types of STRUs.

On some of these issues, Planning Board members did not achieve consensus, and there were strong dissenting opinions. In these cases, this report includes minority comments in addition to the Board’s majority recommendation.

1. Owner-Occupancy Requirement

For properties on the mainland, the current proposed amendment would only allow STRU use within the property owner’s primary residence, or in a separate dwelling unit on the same lot as the owner’s residence. Investor-owned properties would only be eligible for STRU use on Plum Island. The Board was informed that there are an estimated 10 to 15 investor-owned (i.e., non-owner-occupied) dwellings on the mainland that are registered with the State for STRU use, and the proposed ordinance would prohibit those units from continuing that use.

¹ The Board reviewed previous drafts of the proposed zoning amendment in several meetings during 2020 and 2021.

² Seven members of the Board voted on the recommendations in this report. One member was ineligible to vote, having not participated in the prior meetings and public hearing on the proposed ordinance; and one member abstained.

The Planning Board recommends that all new short-term rental units on the mainland comply with the owner-occupancy requirements in the current proposed ordinance.

However, the Board supports allowing existing investor-owned STRUs on the mainland to continue if authorized by special permit from the Zoning Board of Appeals, and provided that the following three conditions are met:

- (a) The STRU use must have been registered with the State as of August 30, 2021;
- (b) The STRU use must strictly comply with all requirements of the ordinance, including the off-street parking requirements; and
- (c) The special permit shall only apply to the current property owner and shall not be transferred to, or renewed for, any future owner.

With these three conditions, the ordinance would allow the small number of existing owners who have been operating an STRU use in good faith to continue operating without a sudden loss of the investment, while controlling the impacts of the use on the surrounding neighborhood and preventing its permanent establishment for future owners of the property.

This provision would not create a precedent for any other existing STRU owners to stake a claim for consideration. For example, a special permit to allow STRU use would not be available to (a) an investor-owned STRU that was not registered with the state as of the effective date, or (b) any STRU (whether owner-occupied or investor-owned, registered or not) that does not comply with all requirements of the ordinance, including but not limited to the off-street parking standards.

The Board reviewed the following provision from Salem's ordinance which could be adapted to Newburyport's ordinance:

Short-term rental of a non-owner occupied unit. An operator may use their non-owner occupied unit as a short-term rental only if the operator was engaged in the short-term rental of the property as of the date this ordinance was filed with the council and provided that the operator obtains a special permit from the zoning board of appeals. Qualifying operators must petition for a special permit within 60 days of the date of passage of this ordinance in order to be eligible for this exception. Rentals of non-owner occupied units must be for the entire unit; individual rooms within non-owner occupied units may not be offered as separate short-term rentals.

Five members of the Board supported the recommendation as presented above. There were two minority opinions:

- One member would permit STRU use of an investor-owned property anywhere in the City.
- One member would oppose the special permit option to allow the continuance of existing investor-owned STRUs if the number of such units is significantly above the estimate of 10-15 units.

2. Districts Where Permitted, and Type of Approval

The current proposed ordinance would make STRUs permitted uses (subject to a determination of zoning compliance) in all Business districts and three Residential districts. A STRU would require a special permit only in the two High Street Residential districts.

The Planning Board discussed three aspects of the proposed entries in the Table of Uses:

- (1) Whether STRU use in the High Street Residential districts should be allowed as of right (P) with a positive zoning determination, as is currently proposed for the other residential and business districts;
- (2) Whether STRU use in the Residential and/or Business districts should require a special permit (SP); and
- (3) Whether STRU use should be allowed in zoning districts where the proposed ordinance currently prohibits them – specifically, the Agriculture/Conservation (Ag/Con), Waterfront Marine Dependent (WMD) and Waterfront Mixed Use (WMU) districts.

The Planning Board’s recommendations on these questions are as follows:

- (1) Support the current proposal for the High Street districts – i.e., keep the existing special permit requirement. While there was some support for removing this requirement, it was recognized that these districts represent a small number of properties and that some residents strongly support the special permit requirement for these districts.
- (2) Support the current proposal for the other Residential districts and the Business districts – i.e., keep the “P” in the table of uses.
- (3) Allow (P) STRU uses in the Ag/Con, WMD and WMU districts subject to a positive zoning determination, as for the Residential and Business districts.

The Board was unanimous in supporting the above recommendations.

3. Off-Street Parking

The current proposed amendment would require STRUs on the mainland to provide at least one off-street parking space per guest bedroom in addition to the number of parking spaces that are required for the underlying residential use (i.e., 2 spaces for a single-family use, 4 spaces for a two-family use, 5 spaces for a three-family use, etc.). Properties that do not currently provide required off-street parking could continue to be nonconforming to the same degree.

The impact of STRUs on parking congestion appears to be the most significant impact that can be addressed through the zoning ordinance (as opposed to operational concerns such as noise), and a majority of the Planning Board agreed that some additional off-street parking provisions would be appropriate to address this concern. In addition to the question of whether the particular STRU use creates any additional parking demand, there are concerns that short-term renters may not be sensitive to neighborhood parking patterns and congestion in the same way that longer-term renters would be.

In debating the off-street parking questions, the Board recognized that the three types of STRU – Home-Share, Owner-Adjacent, and Limited-Share – can have different impacts in terms of parking generation:

- Home-Share units, where the owners rent out their home while they are temporarily living somewhere else (for example, on vacation), may not have any parking impact that is different from the condition when the owners are at home.
- Owner-Adjacent units, where an entire second dwelling unit on the property is rented by the owner-occupants, may or may not have a parking impact that is greater than the impact of a family with a long-term rental agreement.
- Limited-Share units, where the owners rent out individual guest rooms within their own dwelling unit, bring in vehicles in addition to the owners' vehicles and thus do have a definable impact on parking. This use is comparable to a bed-and-breakfast, for which the existing zoning ordinance requires one additional parking space per guest bedroom; the similarity of a Limited-Share STRU to a B&B suggests that the parking standards should be comparable.

The Planning Board recommends as follows:

- (1) The proposed ordinance should clearly state that regardless of the off-street parking required for the STRU use, the underlying primary use shall continue to be vested for any existing legal nonconformity with the off-street parking requirements. A statement similar to the following should be inserted in Sec. V-G.4.b.viii:

Where the existing Residential Use is legally nonconforming as to the off-street parking requirements of this ordinance, such nonconformity shall be maintained and only the additional parking spaces required for the STRU use need be provided.

- (2) No vesting from subsequent amendments to parking regulations: The zoning ordinance should provide that subsequent amendments to the parking requirements for STRUs shall apply to existing STRUs upon the next Zoning Determination by the Zoning Administrator.
- (3) Home-Share: No additional parking required beyond the underlying single-family use (including any legal nonconformity).

The Board was unanimous (7-0) in supporting recommendations (1), (2) and (3) above.

- (4) Owner-Adjacent: Require one additional parking space for the STRU use (not for each guest bedroom) in addition to the parking required for the underlying use

Four of the seven voting members supported this recommendation. There were three minority opinions regarding parking for Owner-Adjacent STRUs:

- One member would require one additional parking space for each guest bedroom in an Owner-Adjacent STRU (i.e., as provided in the current proposed ordinance).

- One member would require a total of three parking spaces for an Owner-Adjacent STRU (regardless of the number of bedrooms), with no vesting of any existing nonconformity.
- One member would not require any additional off-street parking spaces for an Owner-Adjacent STRU.

(5) Limited-Share: The Board did not reach consensus on the parking requirement for Limited-Share STRUs.

- Three members would require one additional parking space for each guest bedroom (as in the current proposed ordinance).
- Three members would not require an additional parking space for the first guest bedroom in a Limited-Share STRU but would require one space for each guest bedroom after the first.
- One member would not require any additional off-street parking spaces for a Limited-Share STRU.

(6) Investor-Owned on the mainland: If the ordinance provides for a special permit to allow the continuance of existing investor-owned STRUs on the mainland, as recommended above, the parking requirement should be the same as for a Home-Share STRU.

4. Other Recommendations on the Proposed Ordinance

In Sec. V-G.1 (Purposes), paragraph c, change “mitigated to avoid adverse impacts on overall neighborhood character or property values” to “do not create additional adverse impacts on neighborhood character or property values”.

5. Recommendations Regarding Implementation of the Ordinance

Should the proposed ordinance be enacted, the Board recommends that all current STRU owners/operators be identified through searches of the State’s database as well as the listings of the rental platforms (Airbnb, VRBO, Home Away) and that such owners be notified about the new zoning and licensing requirements, including deadlines for compliance.

The Board also recommends that periodic reviews of the rental platforms be undertaken in order to identify and notify newly listed owners about the City’s ordinances and processes.