

SHORT-TERM RENTAL UNITS – PLANNING BOARD PRELIMINARY COMMENTS
For Consideration at the Continued Joint Public Hearing Scheduled for 10/07/20

Based on Planning Board Meetings of 9/2/20 and 9/16/20

The Planning Board presents this summary of discussion points and tentative proposals for consideration by the City Council prior to the continued joint public hearing scheduled for October 7, 2020. Please note that this is not the formal “report with recommendations” required by M.G.L. Chapter 40A Section 5 for adoption of a proposed zoning ordinance. That report will be prepared following the close of the public hearing.

The Planning Board discussed the “Amendment of the Whole 8/10/2020” draft zoning ordinance amendments for Short-Term Rental Units at its meetings on September 2 and September 16, 2020. It is important to note that three Planning Board members were not present at the September 16 meeting, and that this summary does not represent a consensus of the full Board.

DISCUSSION AND PRELIMINARY CONCLUSIONS

After the initial discussion on September 2, members focused in on the following questions at the September 16 meeting:

1. Do we want to keep the Purposes as stated or make any changes to ensure we are on the same page as we discuss the issues below?
2. Should the different types of STRUs be defined and distinguished in the Zoning Ordinance?
3. Where should STRUs be allowed, and should it be by right or by special permit?
4. Should the Zoning Ordinance require a special permit for some types of STRUs or in some zoning districts?
5. How should the ordinance address the relationship of STRUs to lodging houses and bed & breakfasts (which are regulated more strictly in the table of uses)?
6. How should parking be addressed?
7. How should noise be addressed?
8. Which of the requirements as stated and not already addressed above do we want to keep or eliminate from the zoning amendment or ensure are included in the licensing amendment?

At the end of the September 16 meeting, the Board members present seemed to be in general agreement with the following points, which are incorporated in recommended changes to the amendment following these points:

1. STRUs should be listed in Section V-D, Table of Use Regulations, and described in Section V-E, List of Allowable Uses. This is consistent with the way the Ordinance treats other accessory uses, particularly bed and breakfasts which, like STRUs, represent an accessory use of an owner-occupied residential property. Listing STRUs in the Residential section of the use table also facilitates comparison with other residential uses.

2. Plum Island Rental Uses are a distinct subset of Short-Term Rental Uses and should be listed in the use table and described separately from other STRUs (rather than being considered exceptions to the general rule as proposed in the draft ordinance).

Board members also discussed whether it would be appropriate to list the other three subsets of STRUs (Home Share, Limited Share, and Owner Adjacent) in the use table, but ultimately concluded that this was unnecessary if all three types will be allowed as of right in the same zoning districts.

In conclusion, board members agreed that the Use for Short Term Rental Unit remain the same as proposed in the 8/10 draft ordinance and that an additional Use be created for Plum Island.

3. As proposed in the draft Ordinance, the first “Purpose” statement refers to STRUs being “registered” through “a clear and consistent process,” but the draft zoning ordinance does not prescribe any registration process; rather, it either allows such uses as of right or prohibits them. The proper place for a reference to “process” is in the licensing ordinance. Therefore, this purpose statement should be rewritten to better reflect the role of the zoning ordinance.
4. The proposed definitions of the various types of Short-Term Rental Units overlap with the Zoning Ordinance definitions of lodging house and bed & breakfast, and the corresponding requirements in the Table of Use Regulations conflict, being less restrictive for STRUs in most cases. In order to address these inconsistencies without having to rewrite the definitions of lodging house and bed & breakfast, a provision should be added that gives the STRU provisions precedence over any conflicting provision of the Ordinance. (This is the opposite of the usual rule, where the stricter provision applies.)
5. Because the zoning ordinance requires that a STRU operate under a valid license, it is not necessary to recite the standards for such licensing, including whether the unit must be the owner’s primary residence and whether the owner must be present overnight when the unit is being rented. For zoning purposes, the only important distinctions are between STRUs on and off Plum Island, and whether the dwelling unit to which the STRU is accessory is the owner’s primary residence.
6. Board members felt that the provision in Sec. V-G.3.e of the 8/10/20 draft was superfluous because it calls out standards that already apply to all uses as set forth in Sec. XI of the zoning ordinance and Chapters 7 and 8 of the Newburyport Code of Ordinances.
7. Although the Planning Board is not required to make a recommendation regarding the licensing ordinance, members were concerned about the possibility of that ordinance facing a challenge because it requires on-site or off-site parking spaces to be provided for the STRU. This provision does not state but may imply a numerical parking requirement, which under State law can only be addressed through a zoning ordinance. On the other hand, parking congestion is likely to be a concern of neighborhood residents. It is

suggested that the licensing ordinance explicitly identify adequate parking as one criterion for granting or denying a license to operate a STRU.

PROPOSED ORDINANCE PROVISIONS FOR CONSIDERATION

Based on all the above, the following is a preliminary set of changes to the proposed ordinance.

A. Amend Section V-D, Table of Use Regulations, by inserting the following new rows under “1. RESIDENTIAL”:

USE	NUM	CON	HSR-A, HSR-B	R-1	R-2	R-3	B-1	B-2	B-3	I-1	I-1B	I-2	M	WMD	WMU
Short Term Rental Unit	111														
- Home Share Rental Unit	111A	P	P	P	P	P	NP	P	P	NP	NP	NP	NP	NP	P
- Plum Island Rental Unit	111D	NP	NP	NP	NP	P*	NP	NP	NP	NP	NP	NP	NP	NP	NP

* “P” only in Plum Island Overlay District (PIOD); otherwise “NP”.

B. Amend Section V-E, List of Allowable Uses, by inserting the following new uses and their descriptions:

<i>USE</i>	<i>NUM</i>	<i>DESCRIPTION</i>
Short-Term Rental Unit	111	The accessory use of a dwelling unit for residential occupancy by a person or persons for a period of fewer than thirty-two (32) consecutive days in exchange for a payment.
Plum Island Rental Unit	111A	A Short-Term Rental Unit located in the Plum Island Overlay District.

C. Amend Section V-G, Reserved, by replacing the entire section with the following:

[Note: The underlined text is changed from the 8/10/20 draft or new text.]

V-G SHORT-TERM RENTAL UNITS.

1. *Purposes.* The purposes of this section V-G include:
 - a. To provide clear and consistent standards for permitting Short-Term Rental Units (STRUs) as accessory uses to principal residential uses;¹
 - b. To incorporate responsibly the growth of the so-called home-share industry into Newburyport's existing neighborhoods by striking a fair balance between the preservation of permanent housing, including affordable and moderately priced housing (with or without deed restrictions), and the flexibility required for residents to benefit from this new industry; and
 - c. To ensure that potential negative impacts from STRUs, including, but not limited to, impacts upon public health and fire safety, and due to increased trash, noise, traffic, and parking, are mitigated to avoid adverse impacts on overall neighborhood character or property values.
2. *Applicability.* The provisions of this section apply to all Short-Term Rental Units within the City of Newburyport with the following exceptions:
 - a. Residential units contracted for hospital or convalescent stays or for institutional or business stays, if exempted by Article XI (Short-Term Rental Units) of Chapter 9 of the Newburyport Code.²
3. *Accessory use.* A Short-Term Rental Unit may be established only as an accessory use to one of the following principal residential uses: One-family (Use 101), Two-family (Use 102), or Multifamily (Use 103).³

¹ This purpose statement eliminates the references in the 8/10/20 draft to "process" and "registered", both of which relate to the licensing ordinance, and adds the word "standards".

² This statement of applicability and exemptions is necessary to be consistent with the more specific exemptions in the draft licensing ordinance.

Houseboats on the water are not subject to zoning ordinances (only the City's land is zoned), so the exemption of houseboats in the licensing ordinance does not need to be carried into the zoning.

³ This provision consolidates and simplifies three separate provisions in the 8/10/20 draft: V-G.2, V-G.3.b, and V-G.4.

4. *Relationship to other regulations.*

- a. A Short-Term Rental Unit shall comply with all other provisions of this Zoning Ordinance except where specifically provided otherwise.
- b. Notwithstanding the above, where a proposed Short-Term Rental Use would also conform to the description of a lodging house (use 106) or a bed and breakfast (use 110), the provisions of Section V-D, Table of Use Regulations, relating to use 111 or 111A shall apply in lieu of the provisions for use 106 (lodging house) or 110 (bed and breakfast).
- c. A Short-Term Rental Unit shall operate under a valid license issued by the licensing board and shall otherwise be in compliance with all applicable provisions of Article XI (Short-Term Rental Units) of Chapter 9 of the Newburyport Code.

5. *Performance standards.* A Short-Term Rental Unit shall meet all of the following standards:

- a. The Short-Term Rental Unit shall be clearly subordinate to the principal residential use and shall be indistinguishable in appearance from other such principal residential uses in the neighborhood.⁴
- b. There shall be no external, physical evidence of the STRU accessory use to differentiate it in appearance from the principal residential use to which it is accessory, nor from other residential properties similarly situated. All forms of display and/or advertising of the accessory STRU use open to view from outside the lot shall be prohibited.
- c. Except for a licensed Plum Island Rental Unit, the natural person licensed by the licensing board and otherwise in compliance with all applicable provisions of Article XI (Short-Term Rental Units) of Chapter 9 of the Newburyport Code, to manage the STRU accessory use shall reside for no fewer than 183 days of every calendar year in the lawful dwelling unit to which such use shall be accessory.
- d. In the B-2 and B-3 zoning districts, STRU accessory use shall be permitted solely when located above the first floor of the structure, with reasonable allowance for entryways, stairs, and elevators.

⁴ This provision extracts a portion of the definition of “short-term residential unit accessory use” from the 8/10/20 draft and states it as a required performance standard.