

DRAFT

Proposed Zoning Amendment Regarding Short-Term Rental Units (ODNC00141) Planning Board Report and Recommendations June 21, 2023

In accordance with MGL c.40A s.5, the Planning Board submits to the City Council this report with recommendations concerning ODNC00141, a proposed amendment to the zoning ordinance to allow Short-Term Rental Units (STRUs).

The Planning Board discussed the proposed zoning ordinance amendment in a joint public hearing with the City Council's Planning and Development Committee on April 19, 2023; and in the Board's meetings on May 3, May 17, June 7 and June 21, 2023. The Board adopted this report at its meeting on June 21, 2023.

The Planning Board recognizes that it is necessary to adopt zoning regulations to define both the locations where STRUs may be located and the standards for such uses. The Board strongly supports the proposed ordinance's stated purposes, as follows (emphasis added):

- To define short-term rental use and regulate the use of short-term rentals in the City;
- *With the overall well-being of residents and neighborhoods in mind*, to strike a balance between competing interests such as *the need for long-term rental housing* and the benefits of STRUs; and
- *To minimize the adverse effects on residential properties and neighborhoods* that may arise from residential properties being used as STRUs.

The Board generally supports the overall approach represented by the current proposed ordinance, which contains separate regulations and standards for three classes of STRUs: owner-occupied, investor, and Plum Island. The proposed ordinance appropriately recognizes Plum Island's distinct history and character as a beach community with numerous seasonal short-term rentals, while being more restrictive of STRUs in mainland residential neighborhoods.

Board members (as well as residents) have raised concerns about the following specific issues with the proposed ordinance:

- Owner-Occupied STRU definition: The proposed ordinance defines "Owner-Occupied STRU" as including "a unit on the same lot as the Operator's Primary Residence." An STRU that is a separate unit on the same lot as the owner's primary residence is not very different in nature or neighborhood impact from an Investor STRU, since an owner of an Investor STRU may live on an adjacent lot to the STRU or nearby in the same neighborhood.
 - The current proposed definition of "Owner Occupied STRU" combines three separate concepts from the 2021-2022 proposed ordinance: "home share," "limited-share" and "owner-adjacent" units. An STRU that is "a unit on the same lot as the Operator's Primary Residence" in the current proposal corresponds to the "owner-adjacent rental unit" in the 2021-2022 proposal, but the 2021-2022 proposal would have required the owner to be "personally and physically present overnight" whenever the "owner-adjacent unit" was rented as an STRU.

- If the Operator is not required to be present, a proposed STRU use of a second unit on a lot should be subject to additional scrutiny and perhaps be regulated differently than STRU use of the owner's primary residence. For example, it may be more appropriate to regulate a second unit on an owner-occupant's lot in the same way as an Investor STRU rather than treating it as an owner-occupied unit.
- Owner's absence from Owner-Occupied STRU: When an Owner-Occupied STRU is a second unit on the same lot as the owner's primary residence (as opposed to the unit that is the owner's primary residence), the 120-day allowance for the owner-occupant to be absent from the property blurs the line between owner-occupants and investors.
 - If the definition of Owner-Occupied STRU is changed to apply only to the unit that is owner's primary residence, the 120-day absence allowance could remain.
 - However, if "Owner-Occupied STRU" includes a second unit on the lot, the absence allowance should be reduced or eliminated altogether.
- Off-street parking requirements: The proposed ordinance sets limits on both the number of bedrooms and the number of guests but links the off-street parking requirement only to the number of bedrooms. This creates a potential ambiguity in determining the required number of parking spaces. This ambiguity could be resolved by tying the number of occupants to the number of bedrooms (e.g., two adult occupants per bedroom).

In addition, it is important that the ordinance clarify the intent regarding nonconforming situations with respect to off-street parking. For example, if a two-bedroom single-family dwelling does not already have two off-street parking spaces, does it need to provide only two spaces for the STRU use (recognizing the existing nonconformity), or does it need to fully conform to the ordinance and provide four spaces (two for the dwelling plus two more for the STRU use)?
- Neighborhood input: The proposed ordinance allows owner-occupied STRUs as of right ("P") in residential districts as well as business districts. This precludes any opportunity for input by neighbors prior to zoning approval of the STRU.
 - Some Planning Board members strongly believe that in the absence of explicit limitations or controls in the zoning ordinance, a formal process for notice to and input from abutters and other neighbors should be required for proposed STRUs in residential neighborhoods.
 - If a formal process for notice and input is not included as part of the licensing ordinance, these members would oppose allowing any STRUs as of right ("P") in these neighborhoods, which would mean requiring a special permit for all STRUs.
- Treatment of existing STRUs: There are a number of investor-owned STRUs in the residential zoning districts, and also a number of STRUs (both owner-occupied and investor-owned) that do not comply with the off-street parking requirements of the proposed ordinance.
 - Some Planning Board members would like to see an allowance in the ordinance for continued STRU use of investor-owned properties in residential neighborhoods,

- which could be either a time-limited “amnesty” provision (i.e., a “sunset” provision) or an amnesty tied to the current owner (i.e., not transferable to a future owner).
 - Planning Board members generally oppose continued STRU use when off-street parking is not provided, for both owner-occupied and investor units.
 - Some Planning Board members do not agree with the concept of granting amnesty for any unit that does not comply with all provisions of the ordinance as ultimately enacted.
- Special permit findings and criteria: The Planning Board recommends that the ordinance provide guidance to the Zoning Board of Appeals with respect to required findings for granting a special permit.
 - Sec. X-H.7.A.(7) requires a finding that “The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.” The ordinance should include a measurement or other guidance to assist the ZBA in making this finding. Examples could include (a) a limitation of one or two STRUs per block face, (b) a minimum separation of 300 feet between any two STRUs, or (c) an absolute cap on the number of STRUs in the City. These could be either established as absolute standards in the ordinance, or provided as presumptions for the ZBA to use in finding that granting a special permit for a particular property would or would not result an “excess” of STRUs in the neighborhood.
 - Sec. X-H.7.A.(2) requires a finding that “The requested use is essential and/or desirable to the public convenience or welfare.” The ordinance should include a general statement regarding the public benefits of STRUs in residential and business districts to which the ZBA can refer in making this finding.
 - Another criterion to consider in the granting of an STRU special permit could include a history of operation without issues or complaints.
- Licensing and enforcement: Although the Planning Board’s purview is limited to advising the Council on the zoning ordinance, the issue of enforcement – and thus the licensing ordinance – is inextricable from the zoning discussion. There is a concern that the City does not have the resources to respond effectively and expeditiously to ordinance and license violations or to neighbor complaints, particularly on weekends when problems may be more likely. Board members believe that two steps are necessary before the zoning ordinance is amended to permit STRUs:
 - (1) A licensing ordinance with strong monitoring and enforcement provisions must be enacted, and
 - (2) The City must provide the necessary resources (financial and/or staffing) to effectively monitor STRUs and enforce the applicable zoning and licensing requirements.

The Planning Board recommends that the above issues be further reviewed and addressed before a final ordinance is enacted.