

## MEMORANDUM

TO: Cape Elizabeth Town Council  
FROM: Planning Board  
DATE: November 18, 2020  
SUBJECT: Short Term Rental Amendments/ Comprehensive Plan  
Amendment Recommendations

### Introduction

At the July 13, 2020 and August 10, 2020 meeting, the Town Council referred to the Planning Board review of the Short Term Rental (STR) amendments and a request to amend the 2019 Comprehensive Plan recommendation #86.

### Review

The Planning Board reviewed the STR amendments/ comprehensive plan revision at the August 4th, September 22nd (special workshop devoted just to STR amendments) October 6th and November 4th workshops. A public hearing was held on November 17, 2020, at which 9 members of the public spoke. The Planning Board also received correspondence from members of the public.

### Addendum comments

As a supplement to the review of the draft amendments, the Planning Board offers the following consensus comments to further revise the amendments.

1. **Impact on residential neighborhoods.** The Planning Board consensus is that STRs are a commercial use that is incompatible with the peaceful quiet enjoyment of residential neighborhood properties. Most Short Term Rental Guests are on vacation and not visiting Cape Elizabeth to be part of the community. It recommends that unhosted STRs not be permitted in the residential zoning districts. Nevertheless, the proposed amendments are an improvement of the current regulations.
2. **STR yearly operation.** The Planning Board is concerned with the number of days that STRs can operate. It recommends that the cap on "Primary Residence Unhosted" be reduced from 42 days to a lesser number. One suggestion for all STRs is to consider an "STR season" where STRs operate during July and August only.
3. **STR Adjacent/7 acre categories.** Planning Board members repeatedly questioned these STR categories. While these STRs don't appear to generate complaints, they appear to be unfairly accommodating a select few. The Town should avoid creating any incentives to remove long-term housing stock from the market and the STR Adjacent may be exploited to expand a commercial STR operation in residential neighborhoods. The

current allowance of 105 days for STR Adjacent still allows for a lot of turnover that can degrade a neighborhood's peaceful quiet enjoyment.

4. **Complexity of regulations.** Planning Board members expressed concern that the regulations are overly complex and will be impossible to enforce. They agree that the amendments are needed to address shortcomings with the current regulations. Instead, the complexity of the draft amendments further demonstrates that all but hosted STRs are not a desirable use in Cape's residential neighborhoods.
5. **Second failure to obtain a STR permit.** The Planning Board recommends that the penalty for the second failure to obtain a STR permit be made more severe. Instead of a 1-year prohibition, the Planning Board supports a 5-year prohibition on obtaining a STR permit for that property.
6. **Short Term Rentals in the Business districts.** The Planning Board discussed the appropriateness of treating STRs as a commercial use in the business districts. In order to preserve some commercial activity capacity, the existing Town Center, Business A and Business B districts allow residential uses on *upper* floors, but require that the first floor must be a commercial use. This was the original intent when the Town Center District was created and allowed mixed use buildings, and later replicated in the other business districts.

The Planning Board is also concerned that the current Town Center Zoning requires a minimum of 80,000 sq. ft for a single family house lot. This minimum lot size is established to preserve commercially zoned land for commercial uses. If a STR is allowed on the first floor, the outcome is that a loophole has been created to allow a single family home on a lot smaller than 80,000 sq. ft.

To address these concerns, the Planning Board is recommending that STRs in the commercial districts (Town Center, Business A and Business B Districts) be classified as an accessory use.

### Comprehensive Plan Amendment

Recommendation #86 in the 2019 Comprehensive Plan follows:

Streamline administrative tracking of short-term rental activity by requiring a permit, without expanding regulatory requirements, for operating a homestay or short-term rental of two weeks per year or less.

The Planning Board is recommending that the existing recommendation be replaced with the following, which better demonstrates how STRs should fit into the town's overall land use policies.

Restrict Short Term Rentals (STR) to protect the peaceful quiet enjoyment of neighborhoods and preserve housing stock. Limited STR activity

associated with primary residency, or in lower density portions of town, may be allowed within a permit structure that allows tracking of activity and funding for enforcement.

### Recommendations

The following recommendations are made by a vote of 7-0 to the Town Council.

- The Planning Board recommends that the 2019 Comprehensive Plan be revised to replace Recommendation #86 with the following:

Restrict Short Term Rentals (STR) to protect the peaceful quiet enjoyment of neighborhoods and preserve housing stock. Limited STR activity associated with primary residency, or in lower density portions of town, may be allowed within a permit structure that allows tracking of activity and funding for enforcement.

- BE IT ORDERED that, based on the facts and the information presented, the Planning Board recommends the Short Term Rental Amendments to the Town Council for consideration.